

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 563 OF 2014

SHRI. NARAHARI RAMA NAIK

... Petitioner

Versus

SHRI JAIWANT N. KALANGUTKAR AND 2
ORS.,

... Respondents

Mr. P.A. Kholkar, Advocate for the Petitioner.

Mr. Pravin N. Faldessai, Advocate for Respondents No.3(a) to 3(c).

Coram:- F. M. REIS, J.

Date:- 26th June, 2015

ORAL ORDER:

Heard Mr. P.A. Kholkar, learned Counsel appearing for the petitioner and Mr. P. Faldessai, learned Counsel appearing for the respondents.

2. The above petition challenges the orders passed by the authorities below whereby the purchase application filed by the petitioner came to be disposed of.

3. Mr. P.A. Kholkar, the learned Counsel appearing for the petitioner has raised the grievance that though the petitioner had opted for 5 metres around the house, the import of such order would be that the petitioner would not get the benefit of getting 5 metres around the plinth of the house. The learned Counsel has pointed out that the learned Deputy Collector has reserved an access on the

northern side of the property when according to him the respondents have an access on the southern side of such property. The learned Counsel further pointed out that the learned Deputy Collector ought to have held an inquiry before passing the impugned order. The learned Counsel further pointed out that the learned Tribunal has also erroneously dismissed the revision filed by the petitioner. The learned Counsel further submits that this Court should direct the authorities to hold a fresh inquiry in the matter and pass appropriate orders.

4. On the other hand, the learned Counsel appearing for the respondents has supported the impugned order. The learned Counsel has taken me through the observations in the order of the Deputy Collector and pointed out that in case an area as claimed by the petitioner is allowed the property of the respondents would be land locked and, consequently, the respondents would not be able to enjoy their property located on the western side of the property. The learned Counsel further points out that the public road is towards the eastern side of the property and as per the sketch produced by the respondents at page 67 it clearly discloses that all the intervening occupants of the property towards the eastern side up to the main road have in fact maintained the access towards the northern side which leads to the remaining portion of the property of the respondents on the western side. The learned Counsel further pointed out that the whole exercise of the petitioner is to deprive the

respondents from enjoying the property located on the western side by curtailing the access reserved towards the northern side. The learned Counsel, as such, submits that the petition deserves to be dismissed.

5. I have given my thoughtful consideration to the rival contentions raised by the parties. On perusal of the impugned order passed by the learned Deputy Collector, I find that it has been clearly observed therein at paras 7 & 8 that in case the petitioner is permitted to purchase the portion of the land as claimed by petitioner, it would result in a situation wherein the remaining portion of the property of the respondents would be landlocked. On perusal of the said plan, I find that all the intervening occupants in the subject property have reserved an access on the northern side to proceed to the western side of the property belonging to the respondents. The learned Deputy Collector has also examined the inspection note on record prepared by his predecessor to draw such conclusions. The Tribunal on reexamining the matter also did not find favour with the contention of the petitioner. In such circumstances, these findings of fact cannot be re-appreciated by this Court under Article 227 of the Constitution of India. The matter has been remitted for compliance by the learned Mamlatdar in terms of the observations in the order passed by the appellate authorities. There is no jurisdictional error committed by the authorities below whilst passing the impugned order. The authorities have duly examined the relevant provision of the Mundkar

Act to come to such conclusion. Hence, the petition stands rejected.

F. M. REIS, J.

NH