

IN THE HIGH COURT OF BOMBAY AT GOA.

**STAMP NUMBER (APPL) NO. 2498/2015 AND FIRST APPEAL
NO.240 OF 2009.**

**STAMP NUMBER (APPL) NO. 2498/2015
IN
FIRST APPEAL NO.240 OF 2009.
WITH
FIRST APPEAL NO. 240 OF 2009.**

- 1 Shri Filip Neri, Since deceased, Represented by his L.rs
 - a. Rene Francisco Zora Bareeto and wife
 - b. Maria Godinho, Both major in age,
 - c. Mario Excelso Barreto and his wife,
 - d. Julie Costa, Both major in age,
 - e. Sr. Maria Julie Leonildas Nery de Souz Barreto, major in age,
 - f. Jose Linton Barreto, and his wife.
 - g. Orfelinda Rodriuges, Both major in age,
 - h. Nina Francisco Barreto Corte Real and husband
 - i. Austin Corte Real (deceased) Both major in age, All r/o Patrong, Vasco Da Gama, Goa
- 1(i)A Mrs. Minella Savina Corte-Real Lopes daughter of late Austin Corte Real, age 36 years, r/o A3/3, Yashodhan Apartments, Opposite HDFC Bank

Near Babu Naik House,
Aquem Alto, Margao,
Salcette-Goa 403 001.

1(i)B Mr. Raimondo F. V.
Lopes son in law of late
Austin Corte Real, age
36 years, r/o A3/3,
Yashodhan Apartments,
Opposite HDFC Bank
Near Babu Naik House,
Aquem Alto, Margao,
Salcette-Goa 403 001.

1(i)C Mrs. Marcina Rosette
Corte-Real e
Mascarenhas, daughter
of late Austin Corte
Real, age 34 years, r/o
C/o Melanie Noronha 19
Mofflyn Circle, East
Victoria Park, Perth,
Western Australia-6101

1(i)D Mr. Gerard Mascarenha,
son in law of late
Austin Corte Real, age
34 years, r/o C/o
Melanie Noronha 19
Mofflyn Circle, East
Victoria Park, Perth,
Western Australia-6101

1(i)E Mr. Marvin Bosco Corte-
Real, Son of late Austin
Corte Real, Age 27
years, Bachelor, H. No.
113/C, Ward No. 10,
Khorlim Mapusa,
Bardez-Goa, 403507.

..... Appellants.

Versus

Shri Rajendra Rebello, r/o. H.
No. 38, Fulwado, Velsa,
Cansaulim, Goa.

..... Respondent.

Mr. P. A. Kamat, Advocate for the appellant.

None for the respondent..

Coram:- K. L. WADANE, J.
Reserved on: 13th October, 2015.
Pronounced on: 20th October, 2015

JUDGMENT

The appellants/applicants being aggrieved by the judgment and decree dated 28.7.2009 in Land Acquisition Case No. 25/2008 passed by the District Court, South Goa at Margao, have filed First Appeal no.240/2009. It is contended by the appellants/ applicants that the name of the original appellant Filip Neri, Since deceased was recorded in old form I and XIV however the respondent has illegally recorded his name in the survey records. After notification under Section 4 of the Land Acquisition Act, the respondent produced the said form I and XIV before the Reference Court and on the basis of which the Court has recorded a finding that the possession was with the respondent. However, the applicants/appellants have other documents like order dated 6.8.2003 in which it is mentioned that the respondent has admitted that he has no right in the suit property. According to the appellants/applicants, the respondent taking undue advantage of the mutation entry in his name with regard to the acquired land, the learned Reference Court has wrongly held that the respondent- party no. 2 is entitled to receive the compensation.

2. I have heard arguments of Mr. P. A. Kamat, learned counsel appearing for the applicants/appellants. The respondent though served with the notice remained absent.

3. During the course of arguments, Mr. Kamat, learned counsel has stated that initially the acquired land i.e. survey no. 49/3 was recorded in the name of Filip Neri, however, after the notification under Section 4 of the Act, the party no. 2 Rajendra Rebello has recorded his name in form I and XIV and produced the same before the Reference Court, and mislead the Court.

4. I have perused the copy of the award passed by the Land Acquisition Officer particularly, at page no. 42 in para C, it is observed by the Land Acquisition Officer as follows:-

“Plot no. 49/3 this plot is recorded in the name of Filip Neri. It is mentioned in the notification that the person is expired. But no one has claimed and brought to the notice of the undersigned in whose possession the land is falling. Therefore, payment is proposed in the name of Filip Neri.”

5. So from the observations of the Land Acquisition Officer, it is very much clear that at the time of acquisition of the land, the name of the appellant Filip Neri was shown in the revenue records. Mr. P. Kamat, learned Counsel further argued that the appellants even after due diligence were unable to produce such document before the Reference Court as it was misplaced.

6. I have gone through the relevant documents produced along with this appeal, from which it appears that the name of Filip Neri was encircled and name of Rajendra Rebello, party no. 2 is recorded. In such circumstances, this Court is of the opinion that an opportunity must be given to the applicants/appellants to produce such documents before the Reference Court and to prove such documents to establish their claim. Therefore, for the reasons recorded in the application filed under the provisions of Order 41 Rule 27 of CPC, the application is allowed. The permission is granted to the appellants/applicants to adduce additional evidence. As such, the applicants/appellants are permitted to produce the following documents:-

- (i) Form I and XIV,
- (ii) Copy of the letter dated 8.10.2008 of the Mamlatdar of Marmugao alongwith order in case no. 20/1993.

7. As such, the Judgment passed by the District Judge, South Goa Margao in Land Acquisition Case No. 25/2008 dated 28.7.2009 is hereby set aside and the matter is remanded to the Reference Court to decide afresh after giving opportunity to both sides to adduce their evidence. Reference Court shall decide the reference as expeditiously as possible in accordance with law. Parties are directed to remain before the Reference Court on 16.11.2015 at 10.00 am.

8. In view of the above, First Appeal No. 240/2009 as well as Stamp Number (Appln) No.2498 of 2015 stand disposed of.

K.L. WADANE, J.

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