IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 218 OF 2013

1. Shri Fati Laximan Raut (since deceased)
   represented by his L.R's,
   1a. Smt. Satyawati Fati Raut, wife,
   1b. Shri Krishna Fati Raut, son
   1c. Shri Shivam Fati Raut, son
   All major of age and residents of Sal,
   Madhalawada, Taluka Bicholim.

2. Shri Mhatru alias Mataro Mahadev Raut
   major of age and resident of Sal,
   Madhalawada, Taluka Bicholim. …. Petitioners

V e r s u s

1. The Special Land Acquisition Officer (N),
   T.I.P. Complex,
   P.O. Tivim Industrial Estate,
   Karaswada, Mapusa,
   Bardez Goa.

2. The Executive Engineer,
   Works Div. VIII, GTIDC,
   TIP Complex,
   P.O. Tivim Industrial Estate,
   Karaswada, Mapusa,
   Bardez Goa. …. Respondents

Mr. G. Shirodkar, Advocate for the petitioners.

Mr. D. Lawande, Addl. Advocate General with Ms. P. Kamat, Addl. Government Advocate for the respondents.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 25th August, 2016

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. G. Shirodkar, learned counsel appearing for the petitioners and Mr. D. Lawande, learned Addl. Advocate General with Ms. P. Kamat, learned Addl. Government Advocate appearing for the respondents.

2. The above petition inter-alia prays for a writ of mandamus or any other writ directing the respondents to pay the enhanced compensation awarded to one of the co-owners in respect of the acquired property or in the alternative for any other appropriate writ directing the respondents to withdraw the reply dated 14.11.2012 and 03.12.2012 and make the payment to the petitioners at the rate of Rs.20/- per square in respect of 1/4th share of the property Surveyed under No. 130/0 along with all other benefits.

3. Briefly, the facts of the case are that by Notification under Section 4 of the Land Acquisition Act, 1894, (herein after referred to as

“the said Act”) dated 08.08.1991 published in the Official Gazette on 07.11.1991, land was acquired by the respondents for the project of rehabilitation in Sal Village of Bicholim Taluka. By another Notification dated 15.11.1991 published in the Official Gazette on 02.01.1992, land was also acquired for the purpose of construction of Sal Distributory in Village Sal, Bicholim Taluka. The Land Acquisition Officer by an award dated 26.03.1993 has fixed compensation for the land acquired 96714 square metres in respect of the property surveyed under No. 130/part of Village Sal, jointly owned by the petitioners and other co-owners. By another award dated 06.04.1993 an area of 8000 square metres of survey No.130/part, situated in the same village was also acquired and awarded compensation at the rate of Rs.5/- per square metre and since the parties failed to produce the documents of their respective shares as co-owners, the amount was deposited in Revenue deposit without referring to the Court. The Reference Court under Section 30 of the Land Acquisition Act by an award dated 01.03.2002 awarded compensation without hearing the petitioners and consequently, the petitioners preferred a First Appeal before this Court which came to be disposed of on 15.11.2008 thereby the petitioners were allowed to file a written statement and the

Reference Court was directed to decide the reference afresh. The Reference Court by an award dated 31.10.2009 awarded $1/4^{th}$ share in the acquired land to the petitioners as co-owners besides another $1/4^{th}$ share to the interested party no.3 Rama G. Raut, $1/4^{th}$ share to Vishram K. Raut and $1/4^{th}$ share to Arjun Babaji Raut. The petitioners challenged the said award before this Court in First Appeal No. 14/2010 which came to be disposed of on 23.04.2012 whereby this Court confirmed the share of the petitioners to be $1/4^{th}$ in the property surveyed under No.130/part. During the pendency of such proceedings under Section 30 of the said Act, the petitioners as co-owners did not file any application for enhancement of compensation. But however, the petitioners learnt that Rama G. Raut and Arjun Babaji Raut had filed an application for enhancement of compensation on the basis that Rama G. Raut had $1/4^{th}$ share in the acquired land and Arjun Babaji Raut had $1/3^{rd}$ share in both the acquisition and filed a reference under Section 18 of the said Act for enhancement of compensation. The petitioners learnt that the Reference Court had enhanced the compensation to Rs.20/- per square metre and also granted Rs.15/- per square metre as severance charges towards the unacquired land admeasuring an area of 10086 square metres. It is further contended that the petitioners also learnt that the appeal preferred by the Government was dismissed on 31.03.2008 confirming the compensation awarded by the Reference Court at the rate of Rs.20/- per square metre. As the compensation had been enhanced at the instance of one of the co-owners, the petitioners requested the respondents to pay the enhanced compensation towards 1/4th share of the said property to the petitioners. But however, the respondents did not reply to such request. Subsequently, by a legal notice dated 15.10.2012 the petitioners called upon the respondents to pay the said compensation at the enhanced rate to the petitioners towards 1/4th share. But however, the respondent no.1 refused to pay the enhancement amount as the petitioners had not preferred a reference for enhancement. Being aggrieved by the said stand of the respondents, the petitioners filed the above petition praying for the aforesaid reliefs.

4. Mr. G. Shirodkar, learned counsel appearing for the petitioners has pointed out that on perusal of the reference filed by one of the co-owners, it clearly records that such co-owners had clearly mentioned that the petitioners also had an undivided right in the subject property. The learned counsel further pointed out that it is well settled that an application for enhancement of compensation by one of the co-

owners inures to the benefit of all the other co-owners and consequently, the respondents are not justified to refuse the payment of compensation to the petitioners at the enhanced rate. The learned counsel further pointed out that the amount awarded by the Land Acquisition Officer in the award prepared under Section 12 of the said Act was not paid to any of the co-owners in view of the dispute raised by the interested parties in the distribution of the compensation. The learned counsel further submits that the right of the petitioners crystallized only after the appeal preferred by the other co-owners was dismissed by this Court by judgment dated 23.04.2012. The learned counsel further pointed out that in such circumstances, the petitioners are entitled for compensation at the enhanced rate to the extent of their shares together with all other statutory benefits in terms of the said Act. The learned counsel in support of his submissions has relied upon the judgments reported in **1991(4) SCC 17** in the case of **A. Viswanatha Pillai V/s Special Tahsildar For Land Acquisition No.Iv**, **(2003) 1 SCC 526** in the case of **Jalandhar Improvement Trust V/s State of Punjab and others, [2014(1) Civil L J 838]** in the case of **Mohinder Singh and another V/s Hoshiarpur Improvement Trust** and **AIR 2004 Delhi 351** in the case of **Smt. Kalawati and others V/s Union of India and others.**

5. On the other hand, Ms. P. Kamat, learned Addl. Government Advocate appearing for the respondents has pointed out that as the petitioners did not file a reference under Section 18 of the said Act, the question of awarding any enhanced compensation to the petitioners would not arise. The learned counsel further submits that as no steps were taken by the petitioners to file a reference for enhancement of compensation within the time prescribed, it is late in the day to the petitioners to claim the enhanced compensation. The learned Addl. Government Advocate further points out that in the reference filed by the other co-owners there was no mention that the compensation was also claimed at the instance of the petitioners herein.

6. Mr. Lawande, learned Addl. Advocate General however fairly accept that a reference for enhancement of compensation would inure benefit to all the other co-owners but according to him the share of the petitioners would have to be determined by the Land Acquisition Officer in accordance with law. The learned Addl. Advocate General in support of his submissions has relied upon the judgment of the Apex Court reported in **AIR 1996 SC 1513** in the case of **Smt. Ambey Devi V/s State of Bihar and another.**

7. We have considered the submissions of the learned counsel and we have also gone through the records. On perusal of the reference filed by the other co-owners, we find that at para 2 of the said reference by Shri Arjun B. Raut and Smt. Subhadra Arjun Raut, they had clearly stated that one half of the said property belonged to Loximona Mataro Raut in view of the gift made to him by his father by deed dated 24.01.1914 whereas the other half of such property belonged to Subodri Rautina and others wherein 1/3rd was allotted to Subodri and her son and daughter in law and other 1/3rd to Esso Nanu Rauto and his wife and remaining 1/3rd to Vitu Vishram Rauto. The fact that the petitioners have also a right in the property is also mentioned in para 6 of the reference. Considering the averments in the said reference by the other co-owners, the fact that the petitioners were also co-owners of the property is clearly mentioned therein and though the applicants claimed their shares, the subject matter of the reference was the whole property including the share of the petitioners herein. In such circumstances, taking note of the ratio laid down in the judgment of the Apex Court relied upon by Mr. Shirodkar, the right to claim enhanced compensation would inure also to the petitioners. In the case of **Jalandhar Improvement Trust** (supra), the Apex Court has observed at para 5

thus :

> "**5**. Having regard to the view we propose to take and the manner of disposal intended to be given, it is unnecessary for us to even advert to the relevance or applicability of Section 28-A of the Act to the case of the nature before us. The 4th respondent indisputably is a co-owner alongwith her children who were added as petitioners 2 to 5 to the award dated 5.2.1986, in which case, even on the first principles of law one co-owner is entitled to have the benefit of the enhanced compensation given in respect of the other co-owners in a reference made at his instance in respect of the land acquired, which belonged to all of them, jointly. So far as the fact that in this case the 4th respondent's application for reference under Section 18 was rejected by the Tribunal ultimately on the ground that the reference was made on a belated application, does not make any difference and, is no reason, in our view, to differentiate the claims of such co-owners whose claims came to be really sustained and that of the 4th respondent, for differential treatment. We are fortified to some extent in the view expressed above, by the principles laid down by this Court in the decision

> reported in A. Viswanatha Pillai and Ors. v. Special Tahsildar for Land Acquisition."

8. Taking note of the said observations, it cannot be disputed that the petitioners being co-owners are entitled to have the benefit of the enhanced compensation given in respect of the other co-owners in a reference made in respect of the land acquired which belongs to all of them jointly. As already noted herein above, the reference made by the other co-owners had clearly spelt out that the petitioners also have a share in the subject property. In the case of **Smt. Kalawati** (supra), the Delhi High Court relying upon the said judgment of the Apex Court has observed at paras 21 and 22 thus:

> "**21**. Reading of the aforesaid judgment makes it clear that it was treated as the first principles of law that a co-owner is entitled to have the benefit of the enhanced compensation given to the other co-owners qua the same land acquired which belonged to all of them, jointly. It can thus be clearly concluded that this judgment is the authority for the proposition that even if the case does not fall strictly within the ambit of Section 28A of the Act, still on the principle of parity, another exception is

carved out, namely, when the acquired land belongs to co-owners jointly, which is subject matter of acquisition, all the co-owners are to be given the same compensation and they cannot be treated differentially. This is inherent in the concept of co-ownership itself as laid down by the Supreme Court in the case of A.Viswanatha Pillai (AIR 1991 SC 1966) (supra) in the following words:

> " It is settled law that one of the co-owners can file a suit and recover the property against strangers and the decree would ensure to all the co-owners. It is equally settled law that no co-owner has a definite right, title and interest in any particular item or a portion thereof. On the other hand he has right, title and interest in every part and parcel of the joint property or coparcenery under Hindu law by all the coparceners. In Kanta Goel V. B.P. Pathak (1977) 2 SCC 814 : (AIR 1977 SC 1599) this court upheld an application by one of the co-owners for eviction of a tenant for personal occupation of the co-owners

as being maintainable. The same view was reiterated in Sri Ram Pasricha Vs. Jagannath, (1976) 4 SCC 184 : (AIR 1976 SC 2335) and Pal Singh Vs. Sunder Singh (1989) 1 SCC 444: (AIR 1989 SC 758) . A co-owner is as much an owner of the entire property as a sole owner of the property. It is not correct to say that a co-owner's property was not its own. He owns several parts of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner in the property. That position will undergo a change only when partition takes place and division was effected by metes and bounds. Therefore, a co-owner of the property is an owner of the property acquired but entitled to receive compensation pro rate. The State would plead no waiver nor omission by other co-owners to seek reference nor disentitle them to an award to the extent of their legal entitlement when in law they are entitled."

> **22**. Thus, we conclude that normally a person whose land is acquired and thereupon award is made by the LAC fixing the compensation, he should seek enhancement thereof in the manner provided under the Act by resort to the provisions of Sections 18, 54 and 28 of the Act. However, if he is co-owner of the land acquired and other co-owner gets enhanced compensation in appeal etc., he would be entitled to same treatment even if he did not prefer appeal, on the first principles of law that one co-owner is entitled to have the benefit of the enhanced compensation given in respect of other co-owners of the land acquired, which belonged to all of them, jointly.”

9. Taking note of the said observations, we find that the petitioners are entitled for the enhanced compensation as paid to the other co-owners. As far as the share of the petitioners is concerned, needless to say that 1/4th share of the petitioners would have to be determined by the Land Acquisition Officer in accordance with law.

10. The only aspect we would have to examine in the circumstance is whether the petitioners would be entitled for interest on the enhanced rate of compensation from the date of land acquired up to the actual payment. In the present case, the records clearly reveal that after the reference under Section 30 of the said Act was made by the Land Acquisition Officer, it came to be disposed of finally in the year 2012. The petitioners were parties to such proceedings and failed to take steps to claim for enhanced compensation even after the reference under Section 30 of the said Act was disposed of by the Reference Court. The petitioners chose not to seek for enhancement of compensation even though enhanced compensation at the instance of the other co-owners had been finalized. No doubt, the petitioners would be entitled for all the other statutory benefits as provided under the Land Acquisition Act. But however, as far as interest on the enhanced compensation is concerned, the respondents will be liable to pay interest to the petitioners from the date of notice issued by the petitioners on the respondents on 15.10.2012. Consequently, though the petitioners would be entitled for all statutory benefits in terms of Sections 23(1A), 23(2) and 28 of the said Act, interest on the enhanced compensation in terms of Section 28 of the said Act would be payable from 15.10.2012 up to

the actual payment.

11. In view of the above, we pass the following :

<u>O R D E R</u>

(i) The petition is partly allowed.

(ii) The Land Acquisition Officer is directed to determine the amount of enhancement payable to the petitioners towards 1/4th share of the land acquired in the aforesaid two Notifications and pay such amount to the petitioners in the light of the observations made herein above in accordance with law.

(iii) Needless to say that the amount which is otherwise withdrawn in the other reference filed by the other co-owners would have to be adjusted in accordance with law.

(iv) Rule is made absolute in the above terms.

(v) The petition stands disposed of accordingly.

NUTAN D. SARDESSAI, J. **F. M. REIS, J.**

at*