

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.538 OF 2014**

Rudraji Shivram Parshekar & Ors. ...Petitioners.

V/s

Narayan Krishna Palyekar & Ors. ...Respondents

Shri S.G. Desai, Senior Advocate with Shri V.R. Parsekar, Advocate for the Petitioners.

Shri Vallabh D. Pangam, Advocate for Respondent No.1.

CORAM : C.V. BHADNAG, J.

Reserved on : 22/06/2016

Pronounced on : 15/11/2016

ORDER :

The challenge in this petition is to the judgment and order dated 23/07/2014 passed by the learned Administrative Tribunal in Land Revenue Appeal No.98/2009. By the impugned judgment the appeal filed by the first respondent, has been allowed and the application filed by the first respondent under Section 114 of the Goa Land Revenue Code (Code, for short) has been remanded back to the learned Deputy Collector and Sub-divisional Officer, Mapusa.

2. The brief facts are that the first respondent filed an application purportedly under Section 114 of the Code, for re-fixation of the boundary stones on the eastern and northern side of the land bearing Survey No.63/8 of Village Guirim, Bardez, Goa. The present petitioners, who were the respondent nos.2,3 & 4 before the learned Deputy Collector objected for the re-fixation and demarcation. It was contended that the land Survey No.63/8 belonging to the first respondent and the land bearing Survey No.66/6 of now deceased Laximan Naik (original respondent no.1), was originally a single property bearing old Survey No.674. It was contended that the land under Survey No.63/5 of the present petitioners, which is old Survey No.675, is distinct and separate than land Survey No.63/8.

3. It appears that the Deputy Collector initially obtained two survey reports which were discarded. The Deputy Collector appointed a fresh surveyor on 23/06/2008 for re-fixation of the boundary stones and demarcation of the property under Survey No.63/8 as per the existing survey

record. In pursuance of the same, Inspector of Land Survey and Records (ILSR) submitted his report dated 27/02/2007. The respondent no.1 filed his objection to the said report and sought cross-examination of the surveyor. However, the learned Deputy Collector by his order dated 1/10/2009 accepted the survey report dated 27/02/2007 and confirmed the same. Feeling aggrieved, the first respondent challenged the same before the Administrative Tribunal.

4. On behalf of the present petitioners, an objection was raised to the maintainability of the appeal. It was contended that the appeal against the order of the Deputy Collector would lie before the Collector and the appeal filed before the Administrative Tribunal was not maintainable. In so far as the merits are concerned it was contended that the Deputy Collector had rightly accepted and confirmed the Survey report dated 27/02/2007 and there was no occasion for remand.

5. The Administrative Tribunal however, found that the Deputy Collector while entertaining the

application under Section 114 of the Code was exercising powers of the Collector as the powers of the Collector in this regard were delegated to the Deputy Collector and, as such, the appeal before the Administrative Tribunal was maintainable. On merits, the learned Administrative Tribunal found that the survey report was not drawn to scale and the surveyor had adopted "reverse procedure". As such, the learned Administrative Tribunal found that the survey report cannot be accepted or acted upon. In that view of the matter, the appeal came to be allowed and the matter has been remanded with a direction to the Deputy Collector to seek a fresh demarcation report from ISLR showing the demarcation and re-fixation of the boundary stones on the eastern and northern side of the property bearing Survey No.63/8 on the copy of the survey plan. The Deputy Collector has been directed to hear the parties on the report and decide the application in accordance with law. Feeling aggrieved, the petitioners are before this Court.

6. I have heard Shri Desai, the learned Senior

Counsel for the petitioners and Shri V. Pangam, the learned Counsel for the respondent no.1.

7. It is submitted on behalf of the petitioners that the impugned order is without jurisdiction inasmuch as under Section 188(1)(b) of the Code, an appeal against order passed by the Deputy Collector and Sub-Divisional Officer would lie to the Collector and not to the Tribunal. Strong reliance in this regard is placed on the decision of this Court in the case of **Teresa Rodrigues & Ors. V/s. State & Ors. 2013 (1) Goa L.R. 559 (Bom.) (PB)**. It is submitted that the Administrative Tribunal thus was in error in rejecting the objection to the maintainability of the appeal.

8. It is next contended that Section 113 of the Code does not empower the learned Deputy Collector to go beyond confines of completed/promulgated survey boundaries. It is submitted that under Section 114 of the Code, the Collector can demarcate the boundaries of survey

number or sub-division on the application of a party interested where there is a dispute as to the boundary marks and not otherwise. It is submitted that the land under Survey No.63/8 has been rightly and correctly demarcated and the boundary marks are fixed which would be apparent from the report of the ISLR dated 27/02/2007. It is next submitted that the Tribunal failed to appreciate that the first respondent was claiming a part of the property already surveyed under no.63/5 as a part of Survey No.63/8 and such a dispute cannot be entertained by the revenue authority but has to be agitated in a Civil Suit. It is submitted that the mother and brother of the first respondent had filed Regular Civil Suit No.497/87/B which was subsequently withdrawn and, as such, a similar issue cannot be again raised. He, therefore, submits that the impugned order be set aside. The learned Senior Counsel has also placed reliance on the decision of this Court in the case of **Vishnu Dada Lokhande V/s. Umabai 1955 (57) BOMLR 816, Keshav Dhondi Sinde V/s. Jairam Gangaram Pawar 1911 (13) BOMLR 1031 and Dr. Gersan Ferreira V/s. Dr. Inacio Criz dos M. Paes &**

Ors. 1995 (2) Goa L.T. 324.

9. On the contrary, it is submitted by Shri Pangam, the learned Counsel for the first respondent that the judgment in the case of **Teresa Rodrigues** (supra) is distinguishable and would not apply to the facts of the present case. It is submitted that when the Deputy Collector is exercising the delegated powers of the Collector, the appeal would lie before the Tribunal, as has rightly been held by the learned Tribunal in this case. In so far as the merits are concerned, it is submitted that the Tribunal has given cogent reasons for discarding the survey report. It is submitted that the survey report is not to scale and contains several other infinities as noticed by the learned Tribunal. It is submitted that in such circumstances, the Tribunal was justified in remitting the matter back to the Administrative Tribunal and no interference is called for.

10. I have carefully considered the rival circumstances and the submissions made and I do not

find that any case for interference is made out. At the outset, it is necessary to note that Collector as defined under Section 2(7) of the Code includes any officer appointed by the Government to exercise and perform all or any of the powers and functions of a Collector under the Code. The application filed by the first respondent is purportedly under Section 114 of the Code which falls in Chapter IX pertaining to the 'boundaries and boundary marks'. Section 112 provides for determination of field boundaries while Section 113 provides for the resolution of the disputes regarding boundaries between villages, survey numbers and sub-divisions. Section 114 provides that the Collector may on the application of a party interested demarcate the boundary of a survey number or of a sub-division and construct boundary marks thereon. Section 115 provides for effect of settlement of boundaries and declares that the settlement of a boundary under chapter IX shall be determinative-(a) of the proper position of the boundary lines or boundary marks; and (b) of the rights of the holders on either side of the boundary fixed, in respect of the land

adjudged to appertain, or not to appertain, to their respective holdings. It can thus be seen that the powers under Section 113 and 114 are to be exercised by the Collector which when read along with Section 2(7) of the Code would mean any other officer appointed by the Government to exercise and perform all or any other powers and functions of a Collector under the Code. The Tribunal has held that as the Deputy Collector was exercising the delegated powers of the Collector the appeal was maintainable before the Tribunal.

11. In this regard, a useful reference may be made to the decision of this Court in the case of **Anantrau Atmarama Malik & Ors. V/s. Union of India & Ors. AIR 1975 Goa, Daman & Diu 45**. In that case, it has been held that where a sub-divisional Officer is exercising powers of the Collector under Section 14(3) for all purposes, the said powers will be deemed to have been exercised by the Collector and, as such, an appeal against said order can lie only to the Administrative Tribunal and to no other forum.

12. The question in the case of **Teresa Rodrigues** (supra) was whether the impugned judgment passed by the learned Deputy Collector was in terms of the provisions of Section 193 of the said Code providing for review of orders or it was an order in terms of provisions of Section 56 authorising the Government to direct revenue survey. In the facts and circumstances of that case, this Court found that it cannot be accepted that the power which was exercised by the Collector was in terms of provisions of Section 56 of the said Code and, as such, it was found that the appeal would lie in terms of Section 188(b). Incidentally, Section 188(b) provides for an appeal to the Collector against an order passed by the Sub-Divisional Officer while under Section 188(c) an appeal against an order passed by the Collector lies to the Tribunal. In my considered view, the case of **Teresa Rodrigues** (supra) turned on its own facts and cannot come to the aid of the petitioners herein.

13. In so far as the merits are concerned, the Tribunal has considered the survey report from para

9 onwards and has found that the sketch prepared was not to scale and the features of the land as are shown in the survey plan are not at all demarcated. The Tribunal has given detailed reasons for not accepting the survey report and has ultimately held that it was necessary for the surveyor to first take the measurements as per the survey plan. It has been held that the surveyor has adopted 'reverse procedure' and, as such, the entire report is vitiated. While holding so, the Tribunal has noticed that the surveyor has not taken the survey plan as a base plan for the purpose for re-fixation and demarcation of the boundary points and secondly the surveyor has shown imaginary distances that may be on the basis of calculation on the site without measuring the distances as per the survey plan. It is in these circumstances that the appeal is allowed and the matter is remanded back. In my considered view, no case for interference is made out as the impugned order cannot be said to be perverse, much less resulting into any manifest injustice as the petitioners would get an opportunity to contest the application before the Deputy Collector on all

available grounds in accordance with law. The Hon'ble Apex Court has held in the case of **Shalini Shyam Shetty & Anr. V/s. Rajendra Shankar Patil 2010 (8) SCC 329** that the jurisdiction under Article 227 is meant to be exercised to keep the Courts and Tribunals within the bounds of their authority and to avoid any manifest injustice. If the said principles are applied, I see no reason to interfere with the impugned order.

14. In the case of **Keshav Dhondi Shinde** (supra) it has been held that the Assistant Collector, who is put in revenue charge of any portion of a District, is empowered, by Section 10 of the Bombay Land Revenue Code of 1879, to exercise all the powers conferred upon the Collector of the District by Section 23 of the Bombay Mamlatdars' Courts Act, 1906. In the case of **Vishnu Dada Lokhande** (supra), the question in the second appeal was whether the District Deputy Collector was competent to hear an appeal against the order passed by the Mamlatdar under Section 24(2) of the Bombay Tenancy Act, while in the case of **Dr. Gerson Fereira** (supra), it has

been held that the presumption under Section 105 of the Code refers only to the entries in the Survey Record and not in respect of the boundaries. It can thus be seen that these cases are distinguishable and turned on its own facts. Needless to mention that all the rival contentions which may be available to the parties on merits are left open to be raised before the Deputy Collector, who shall deal with the same in accordance with law.

15. The petition is without any merit and it is accordingly dismissed with no order as to costs.

C.V. BHADANG, J.

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