

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 696 OF 2016

1. Shri Vinodkumar S. Gosalia,
P. O. Box no. 162,
Margao, Goa 403 601
(Expired Represented by Legal
heirs of Petitioner)
(Through Power of Attorney)
 - 1.(a) Mrs. Rita Vinod Gosalia
Aged 62 years, Indian National,
 - (b) Mr. Manish Vinod Gosalia
Aged 41 years, Indian National,
 - (c) Mrs. Toral Manish Gosalia
Aged 34 years, Indian National,
 - (d) Mrs. Neelam Punit Gandhi
Aged 38 years, Indian National
 - (e) Mr. Punit Gandhi
Aged 42 years, Indian National

All residents of Margao, Goa.
Petitioner nos. 1(a, c, d and e) are
represented by Petitioner no. 1(b)
through Power of Attorney.

..... Petitioners

V e r s u s

1. Shri Avelin Fernandes,
C/o. Cipriano Fernandes
136, Pedda, Ambelim,
Salcete, Goa.
(Expired, represented by his heirs)
 - 1.(a) Smt. Ritina Fernandes,.
Indian National
 - (b) Shri Socorro Fernandes
& his wife
Indian National
 - (c) Smt. Milagrina Fernandes,

..... Respondents

Indian National,

- (d) Shri Cipriano Fernandes,
Indian National
- (e) Smt. Moryly Fernandes.
Indian National
- (f) Shri Felix Fernandes,
Indian National
- (g) Shri Avelino Menino Fernandes,
Indian National

2. Shri Minguel Fernandes,
C/o Cipriano Fernandes
136, Pedda, Ambelim
Salcete, Goa.
(Expired represented by his heirs)

- (a) Smt. Rosaria Fernandes,
- (b) Mr. Anunciaco Fernandes
- (c) Smt. Franskina Fernandes,
- (d) Smt Fatima Fernandes
- (e) Cruz Fernandes

All resident of Cipaiano Fernandes,
136, Pedda, Ambelim,
Salcete, Goa.

3. Shri Muno Bicaró Naik Dessai
H. No. 3, Quitol, Fatorpa,
P. O. Cuncoim, Quepem, Goa.

..... Respondents

Mr. H. D.Naik, Advocate for the Petitioner.

Mr. R. G. Ramani, Advocate for the Respondent no. 1(d).

Coram :- **F. M. REIS, J**

Date : **23rd November, 2016**

ORAL JUDGMENT

Heard Mr. H. D. Naik, learned Counsel appearing for the Petitioner and Mr. R. G. Ramani, learned Counsel appearing for the Respondent no. 1(d).

2. At the request of Mr. Naik, learned Counsel appearing for the Petitioner, Respondent no. 3 stands deleted at the risk of the Petitioner.

3. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents, waives service.

4. The challenge in the above Petition is to an Order dated 22.06.2016, whereby an application filed by the Petitioner for leave to rely upon the Judgments in their favour came to be dismissed.

5. Mr. Naik, learned Counsel appearing for the Petitioner, pointed out that the proceedings before the learned Judge are a Reference under Section 30 of the Land Acquisition Act wherein the Petitioner desired to produce four Judgments wherein the Petitioner was a party which, according to him, are in respect of the survey numbers which form part and parcel of the larger property which was purchased by the Petitioner. Learned Counsel further pointed out that the learned Judge has refused leave to the Petitioner essentially on the ground that the Respondents are not parties to such proceedings and, as such, the Oral Judgments are irrelevant for deciding the matter in controversy. Learned Counsel further submits that the Judgments which are sought to be proceedings are

essentially to corroborate the case of the Petitioner that the subject matter of the land acquired forms part and parcel of the property of the Petitioner. Learned Counsel as such submits that grave injustice would occasion to the Petitioner in case the petitioner is precluded from filing such document.

6. On the other hand, Mr. Ramani, learned Counsel appearing for the Respondent no. 1(d) pointed out that as the Respondents are not parties to such proceedings, any findings therein are irrelevant. Learned Counsel further pointed out that the property in question therein is surveyed under no. 79/1 of Quitol Village whereas the property which is subject matter in the acquisition is surveyed under no. 82/1, 77/1 and 75 (part). Learned Counsel as such pointed out that as the subject matter of the acquisition in the said Judgment has nothing to do with the property under acquisition, the learned Judge was justified to pass the impugned Order.

7. I have considered the submissions of the learned Counsel and I have also gone through the records. The application filed by the Petitioner is merely for leave to produce Judgments. The authenticity of such documents cannot be disputed. No doubt, whether the Judgments are relevant or not, is a matter which the learned Judge would have to consider on its own merits whilst disposing of the Reference Proceedings. At this stage, considering the contention of the Petitioner that the subject matter of the land acquired in the said Judgment is part and parcel of the larger property claimed by the Petitioner, I find that the learned Judge was not justified to refuse leave to the Petitioner to rely upon such Judgment. No doubt, the finding in the said Judgment may not be binding on the Respondents who were

admitted nor parties therein but, however, considering that the Petitioners are independently claiming their right, the relevance or otherwise of the findings in the said Judgments would have to be examined by the learned Judge whilst deciding the matter on merits.

8. In such circumstances, I find that the learned Judge has acted in material irregularity whilst passing the impugned Order refusing to grant leave to rely upon the said document. As such, the impugned Order dated 22.06.2016 is quashed and set aside. The Petitioner is permitted to rely upon all the four Judgments in the light of the observations made hereinabove. Needless to say, the relevance of the said Judgments in the Reference are left open.

9. Rule is made absolute in the above terms.

F .M. REIS, J.

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