

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 856 OF 2016**

1. Purshottam V. Dessai (Since deceased)
represented through his legal
representatives:
 - a) Smt. Bharathi P. Dessai,
Widow of late Purshottam V. Dessai,
Major of age,
 - b) Mr. Mahesh P. Dessai,
son of late Purshottam V. Dessai,
Major of age,
 - c) Mrs. Mahima M. Dessai,
Wife of Mr. Mahesh P. Dessai,
 - d) Mr. Divakar P. Dessai,
Son of late Purshottam V. Dessai,
Major of age,
 - e) Mrs. Manisha D. Dessai,
Wife of Mr. Divakar P. Dessai,
Major of age,
All residents of Chapoli,
Canacona Goa.
- Petitioners

Versus

1. Prakash Naik Gaonkar,
s/o late Vithoba Keshav Naik Gaonkar,
age 68 years, agriculturist,
and his wife,
2. Draupadi Prakash Naik Gaonkar,
Age 60 years, housewife,

Both r/o House No.511,
Karashirmoll Agonda,
Canacona Goa.

3. Ganaba B. Dessai,
Resident of Canacona Goa,
(Expired through Lrs)
1a) Vasant Ganba Dessai,
s/o Ganaba Desai,
major in age,
(since deceased represented
by his legal heir i.e. (b) herein below, his wife)

b) Nila alias Nirmala Vasant Dessai,
w/o Vasant G. Desai,
major in age,
Both residents of Palolem,
Nagarcem, Canacona,

c) Tulsi S. Dessai,
d/o late Ganaba Desai,
major in age,

d) Sadanand M. Dessai,
Major in age,
Both resident of Flat No.58,
Housing Board Colony,
Gogal, Margao,

(e) Smt. Anuradha B. Parte,
d/o late Ganaba Desai,
major in age, Resident of
19 Velha Niwas, St. Xavier Street,
Parel, Bombay – 400012.
(since deceased by her legal heirs)

i) Miss. Sanyogita Phadte,
major of age,

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ii) Miss. Seema Phadte,
major of age,
iii) Miss. Bhakti Phadte,
major of age,
all r/o 19, Velhal Niwas,
St. Xavier Street, Parel,
Mumbai 400012.

4. Vithoba G. Naik,
major in age,
landlord,
r/o House No. not known,
agonda, Desaiwaddo, Canacona, Goa,
(since deceased represented by
His legal heir i.e. respondent no.10),

5. Bhozro S. Naik Gaonkar,
Major in age,
r/o H.No. Not known,
Nagorcem, Canacona, Goa.

6. Ratnakar M. Naik,
major in age, r/o H.No. not known,
Nagorcem, Canacona Goa.

7. Shrinivas F. Naik,
Major in age, landlord,
Major in age,
r/o H.No. not known,
Nagorcem, Canacona, Goa,
(since deceased represented by
His legal heir by his wife)
a) Smt. Devyani Shriniwas Naik,
major of age,
resident of Nagorcem,
Canacona Goa.

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8. Shamrao R. N. Gaonkar,
major in age, landlord,
Agonda, Canacona Goa,
9. Subhash R. N. Gaonkar,
Major in age, landlord,
resident of Agonda, Canacona Goa.
10. Madhukar G. N. Gaonkar,
(since deceased)
 - a) Smt. Vasundhara Madhukar Naik Gaonkar,
wife of late Madhukar Ganaba Naik Gaonkar,
aged about 73 years,
widow, occupation housewife,
 - b) Smt. Bhargavi Bharat Naik Gaonkar,
wife of Shri Bharat Madhukar Naik Gaonkar,
aged about 38 years, occupation housewife,
both residents of Flat No. S-1, Second Floor,
Durga Bhat, Behind Kirti Hotel,
Ponda Goa.
 - c) Smt. Suvarna Sharad Prabhu Dessai,
daughter of late Madhukar Ganaba Naik Gaonkar,
wife of Shri Sharad Prabhu Desai,
aged about 51 years, occupation teacher,
and her husband,
 - d) Shri Sharad Prabhu Desai,
son of late Laxman Prabhu Desai,
aged about 60 years,
both residents of Durga Bhat,
behind Kirti Hotel, Ponda Goa.
 - e) Smt. Kavita Satish Prabhu Gaonkar,
daughter of late Madhukar Ganaba Naik Gaonkar,
wife of Shri Satish Prabhu Gaonkar,
aged about 43 years, occupation teacher,

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and her husband

f) Shri Satish Prabhu Gaonkar,
son of late Vishnu Prabhu Gaonkar,
aged about 52 years, occupation housewife,
and her husband,

g) Smt. Maithili Mahesh Gaonkar,
daughter of late Madhukar Ganaba Naik Gaonkar,
wife of Shri Mahesh Gaonkar,
aged about 41 years,
occupation housewife,
and her husband.

h) Shri Mahesh Gaonkar,
son of late Soiru Shankar Gaonkar,
aged about 47 years,
occupation businessman,
both residents of Flat No.T-1,
Third Floor,
durga bhat, Ponda Goa,

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11. Shaba G. N. Gaonkar,
major in age, landlord
(since deceased represented by his legal heir)
 - a) Smt. Vijaya Shaba Naik Gaonkar (expired)
 - b) Shri Shivaji Shaba Naik Gaonkar,
 - c) Mr. Rahul Naik Gaonkar,
 - d) Mrs. Milan Shivaji Naik Gaonkar,
 - e) Mrs. Rasai Harichandra Sawant,
all major of age,
all residents of H. No. Not known,
Dessaiwaddo, Agonda,
Canacona Goa.
12. Premanand B. N. Gaonkar,
(expired) (represented by his legal heirs)
 - a) Smt. Subashini Premanand Naik Gaonkar,

major in age,
 b) Shri Chandrashekar Premanand Naik Gaonkar,
 major in age,
 c) Shri Mallikesh Premanand Naik Gaonkar,
 major in age, (deceased)
 (deleted as per Order dated 22.04.2010
 passed in MCA No.870/08)
 d) Miss. Harsha Premanand Naik Gaonkar,
 major in age,
 all r/o H.No. Not known,
 Agonda, Canacona Goa,

13. Krishna G. Naik Gaonkar,
 major in age,
 r/o H.No. not known,
 Agonda, Canacona Goa,

14. Chandrakant G. N. Gaonkar,
 (since deceased) through legal heirs :
 a) Sandesh Raghoba Naik Gaonkar,
 b) Meghanath Raghoba Naik Gaonkar,
 c) Umanath Raghoba Naik Gaonkar,
 d) Navanath Raghoba Naik Gaonkar,
 e) Ankush Raghoba Naik Gaonkar,
 All residents of Agonda,
 Canacona, Goa.

15. Vaikuntha G. Naik Gaonkar,
 major in age, r/o H.No. Not known,
 Agonda, Canacona Goa.
 (since deceased represented by his legal heirs)
 a) Smt. Leelabai Vaikunth Naik Gaonkar,
 b) Shri Krutesh Naik Gaonkar,
 c) Shri Pratap Vaikunth Naik Gaonkar,
 all major in age,
 r/o Chicalim,
 Green Akar, Near Chicalim Govt. Hospital,
 Vasco-da-Gama.

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16. Shri Kissan V. Gaonkar,
major in age,
r/o H.No. Not known,
Rego building, Bambolim Complex,
Bambolim Goa,
 17. Shri Narayan P. Gaonkar,
major in age, H.No. Not known,
Agonda, Canacona Goa,
(deleted as per Order dated 29.04.2010
passed in MCA No. 309/10 in WP No. 42/2007)
 18. Manoj P. Dessai (expired)
Represented through his legal representative
a) Vedanth M. Dessai, minor,
Through his mother, natural guardian
Sheela M. Dessai,
 19. Sheela M. Dessai,
Widow of late Manoj P. Dessai,
Both residents of Chapoli, Canacona Goa.Respondents
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Mr. Sudin Usgaonkar, Senior Advocate with Ms. Vinita Vishram Palyekar, Advocate for the petitioners.

None for the respondents though served.

Coram:- F. M. REIS, J.

Date:- 14th December, 2016

ORAL JUDGMENT

Heard Mr. Sudin Usgaonkar, learned Senior Counsel

appearing for the petitioners. None for the respondents though served.

2. Rule. The notice issued to the respondents indicate that the petition may be disposed of finally at the stage of admission. None appeared for the respondents despite of the opportunities given. Hence, the matter was taken up for consideration.

3. The challenge in the above petition is to an order dated 29.04.2015 whereby an application filed by the respondent nos. 1 and 2 to be impleaded in the proceedings pending before the learned Reference Court for apportionment of compensation under Section 30 of the Land Acquisition Act, 1894 came to be allowed.

4. Mr. Sudin Usgaonkar, learned Senior Counsel appearing for the petitioners points out that admittedly the respondent nos. 1 and 2 were not parties to the proceedings before the Land Acquisition Officer as they were not named as interested parties while making a reference to the Reference Court for deciding the dispute between the parties therein. It is further pointed out that

during the pendency of such proceedings, the respondent nos. 1 and 2 filed an application for impleadment on the basis that they were co-owners of the subject property which came to be allowed by the impugned order. The learned Senior Counsel further submits that though the law is well settled that no interested party can be impleaded in the proceedings under Section 30 of the Land Acquisition Act as the Reference Court has to decide the Reference between the parties named in the Reference by the Land Acquisition Officer. The learned Senior Counsel further points out that the application filed by the respondent nos. 1 and 2 itself was not maintainable and as such the impugned order deserves to be quashed and set aside. The learned Senior Counsel in support of his submissions has relied upon the judgment of the Apex Court reported in **(2013) 11 SCC 296** in the case of ***Ram Prakash Agarwal and another V/s Gopi Krishan and others*** and the judgment of the learned Single Judge of this Court reported in **1986 Mh. L. J. 844** in the case of ***Govind Narayan Lotlikar V/s Savitribai Raghuvira Lotlikar and others***. The learned Senior Counsel as such points out that the impugned order be quashed and

set aside. None appeared for the respondents despite of being served.

5. On perusal of the impugned order, I find that the learned Judge has allowed the impleadment of the respondent nos. 1 and 2 on the ground that they were claiming to be co-owners of the subject property. The basic aspect to be considered is whether parties who were not before the Land Acquisition Officer in the proceedings under the Land Acquisition Act can directly approach the Reference Court to be impleaded as parties therein. The learned Single Judge of this Court in the judgment in the case of **Govind Lotlikar** (supra) has held at para 8 thus :

“8. The above observations in Municipality, *Nalgonda V/s Hakeem Mohiuddin & Co.*, undoubtedly support the view I have taken that if a person who was not a party before the Collector is allowed to be impleaded by the District Court in a reference to it, the nature of the dispute referred to will be substantially changed, for a new dispute incorporating the claim of such a person will be raised.

This is not permissible, as the jurisdiction of the District Court in a reference under the provisions of the Land Acquisition Act is restricted to the precise terms of the reference. Such impleading would amount to an enlargement of the terms of the reference and as such, the District Court would act without jurisdiction or in excess of jurisdiction, if it so orders.

6. The Apex Court in the judgment in the case of **Ram Prakash Agarwal** (supra) has observed at paras 23, 24, 25 and 26 thus :

“23. The matter basically relates to the apportionment of the amount of compensation received for the land acquired. This Court in *May George v. Tahsildar*, has held, that a notice under Section 9 of the 1894 Act, is not mandatory, and that it would not by any means vitiate the land acquisition proceedings, for the reason that ultimately, the person interested can claim compensation for the acquired land. In the

event that any other person has withdrawn the amount of compensation, the “person interested”, if so aggrieved, has a right either to resort to the proceedings under the provision of the 1894 Act, or he may file a suit for the recovery of his share. While deciding the said case, reliance has been placed upon a large number of judgments of this Court, including *G.H. Grant v. State of Bihar*.

24. The said case is required to be examined from another angle. Undoubtedly, the respondents did not make any application either under Section 18 or Section 30 of the 1894 Act to the Land Acquisition Collector. The jurisdiction of the Reference Court, vis-à-vis “persons interested” has been explained by this Court in *Shyamali Das v. Illa Chowdhry*, holding that the Reference Court does not have the jurisdiction to entertain any application of *pro interesse suo*, or in the nature thereof. The Court held as under: (SCC p. 304, para 19)

“19. The Act is a complete code by itself. It provides for remedies not only to those whose lands have been acquired but also to those who claim the awarded amount or any apportionment thereof. A Land Acquisition Judge derives its jurisdiction from the order of reference. It is bound thereby. His jurisdiction is to determine adequacy or otherwise of the amount of compensation paid under the award made by the Collector.”

Thus holding that: (SCC p. 304, para 19)

“19. ... It is not within his domain to entertain any application of pro interesse suo or in the nature thereof.”

The plea of the appellant therein, stating that the title dispute be directed to be decided by the Reference Court itself, since the appellant was not a person interested in the award, was rejected by this Court, observing that the Reference Court does not have the power to enter into an application under Order 1 Rule 10 CPC.

25. In *Ajjam Linganna v. Land Acquisition Officer* this Court made observations to the effect that it is not open to the parties to apply directly to the Reference Court for impleadment, and to seek enhancement under Section 18 for compensation.

26. In *Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. v. Allahabad Vikas Pradhikaran*, this Court held as under: (SCC p. 565, para 7)

“7. It is well established that the Reference Court gets jurisdiction only if the matter is referred to it under Section 18 or Section 30 of the Act by the Land Acquisition Officer and that the civil court has got the jurisdiction and authority only to decide the objections referred to it. The Reference Court cannot widen the scope of its jurisdiction or decide matters which are not referred to it.”

While deciding the said case, the Court placed reliance on the judgments in *Parmatha Nath Mullick v. Secy. of State for India in Council* and *Mohd. Hasnuddin*

v. State of Maharashtra. (See also Kothamasu Kanakarathamma v. State of A.P.)”

7. Taking note of the said observations, the jurisdiction of the Reference Court is to decide a reference by examining the rival claims referred to by the Land Acquisition Officer. In such circumstances, the application filed by the respondent nos. 1 and 2 who were not parties nor shown as interested parties in the Award passed by the Land Acquisition Officer was not maintainable before the Reference Court and as such the impugned order passed by the Reference Court dated 29.04.2015 cannot be sustained and deserves to be quashed and set aside.

8. In view of the above, I pass the following :

ORDER

(i) The impugned order dated 29.04.2015 is quashed and set aside.

(ii) Rule is made absolute in the above terms with no order as to costs.

(iii) The petition stands disposed of accordingly.

F. M. REIS, J.

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