

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.863 of 2016**

1. The Deputy Collector (LA) and
L.A.O., Panaji
2. The Town Planner, Town and
Country Planning Dept. Panaji .. Petitioners

Vs.

1. Shri Joaquim Francis Fernandes
(since deceased) through his legal
heirs,
 - 1a) Vistacao Rosa Fernandes
widow, (deceased) through legal heirs
 - 1b) Aloysium Paul Fernandes, son,
 - 1c) Bosco Bruno Fernandes, son,
 - 1d) Bernard Fernandes, son,
 - 1e) Remedios James Fernandes, son
 - 1f) Maria Juliana Fernandes, daughter,
 - 1g) Michael Gregory Valerian
Fernandes, son,
 - 1h) Teresa Fernandes, daughter,
 - 1i) Joaquim Fernandes, son in law,
all residents of Candolim, Bardez,
Goa.
2. Smt. Ana Maria Joanita Fernandes
(deceased), resident of Mercês
wadi, Mercês, Ilhas, Goa, through
her legal heirs,
 - 2a) Joaquim Francisco Justiniano
Esteves, son,
 - 2b) Mrs. Alzira Esteves, daughter-in-law,
 - 2c) Shri Francis Assis Justiniano Esteves, son,

- 2d) Mrs. Fatima Antonette Esteves,
daughter in law,
All residents of Bhuttem Bhat,
Merces, Ilhas, Goa.
- 2e) Mrs. Natalina Escolastica Fernandes,
daughter,
- 2f) Mr. Alerio Fernandes, son in law
All residents of Parra, Mapusa,
Bardez, Goa.
- 3. Smt. Martina Adelis Fernandes,
resident of Corlim, Ilhas, Goa.
- 4. Smt. Arcanjela Fernandes,
resident of Santa Cruz, Ilhas, Goa.
- 5. Agostinho Matias Balbino
Fernandes (deceased), through his
legal heir,
- 5a) Smt. Maria Merciana Vaz e
Fernandes
- 6. Shri Domingos Jose Crisanto Fernandes
(since deceased)
- 6a. Mr. Felix Oliveira Salazar Fernandes,
son, and his wife
- 6b. Mrs. Fatima Figueiredo Fernandes,

Both residents of Bomonwado,
Candolim, Bardez, Goa.
- 6c. Mr. Judas Tomas Tadeus Aquino
Fernandes, and his wife,
- 6d. Mrs. Maria Natty Fernandes,
Both residents of Bomonwado,
Candolim, Bardez, Goa.
- 6e. Mrs. Aurita Antoneita Lalita de
Souza, daughter and her husband,
- 6f. Mr. Sereno Acacio Milagres
Estaanislau de Suza,

Both residents of Dando, Candolim,
Bardez, Goa.

6g. Mrs. Jackline Elvino Lobo,
daughter, and her husband,

6h. Mr. Manuel Simao Lobo,
Both residents of Dando, Candolim,
Bardez, Goa.

6i. Mr. Constancio Agnelo Fernandes, son,

6j. Mrs. Pelifa Fatima D'Costa, and
her husband,

6k. Mr. Wilfred D'Costa,

Both residents of Dando, Candolim,
Bardez, Goa.

6l. Ana Severina Fernandes alias
Severina Fernandes, widow of
Domingos Fernandes, major of
age, resident of Bamonwado,
Candolim, Bardez, Goa. .. Respondents.

Mr. Pravin N. Faldessai, Additional Government Advocate for the
Petitioners.

Mr. J. Vaz, Advocate for respondent nos.1(b) to 1(i), 2(a) to 2(f), 3,
4 and 5(a).

Mr. J. Abreu Lobo, Advocate for respondent nos.6(a) to 6(l).

CORAM :- C. V. BHADANG, J.

DATE:- 14th February, 2017

ORAL JUDGMENT :

Rule, made returnable forthwith. The learned Counsel
for the respective parties waive service. Heard finally by consent
of the parties.

2. The petitioners are challenging the order dated 20/04/2016, passed by the Executing Court in Execution Application No.17/2001 and 24/2011. A perusal of the order shows that the computation of the amount payable was obtained from the Nazir. In pursuance thereof, the petitioners/ Judgment Debtors are found to be liable to pay Rs.1,14,82,194/- as on 31/12/2014.

3. The only contention raised on behalf of the petitioners is that in the computation of the Nazir, (at page no.118 of the compilation), the amount of Rs.44,20,063/- deposited by the Acquiring Body on 04/08/2012 before the District Court, has not been taken into consideration. The learned Additional Government Advocate submits that this will also have a bearing on the amount of interest, to which the respondents are entitled.

4. In such circumstances, the parties submit that the matter can be sent back to the Executing Court for passing fresh orders. In such circumstances and by consent of the parties, the following order is passed :

- (i) Writ Petition is partly allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The Executing Court shall obtain fresh computation from the Nazir and shall decide the application in accordance with law.

(iv) The parties are entitled to produce their respective computation before the Executing Court.

(v) The amount of Rs.57,41,097/- deposited before this Court shall be transferred to the Executing Court, along with interest, if any.

(vi) Rule is partly made absolute in the aforesaid terms, with no order as to costs.

Judgment is corrected
as per order dated
12/04/2017 in
W.P.863/16.

Sd/-
P.S.

C. V. BHADANG, J.

SMA