

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 169 OF 2018**

**SAVIO NUNES.,**

**... Petitioner**

**Versus**

**DEPUTY COLLECTOR (LA) AND LAND  
ACQUISITION OFFICER, PANAJI AND 2  
ORS.,**

**... Respondents**

Adv. Rohit Bras De Sa for the Petitioner.

Ms. P. Bhandari, Addl. Governemnt Advocate for respondent  
no.1.

Adv. S. Bandodkar for Respondent no.2.

Adv. M.S Joshi for Respondent no.3.

Coram:- C. V. BHADANG, J.

Date:- 6th June 2018

Order:

Heard Shri De Sa, the learned Counsel for the petitioner, Ms. Bhandari, the learned Additional Government Advocate for respondent no.1, Ms. Bandodkar, the learned counsel for the respondent no.2 and Shri Joshi, the learned counsel for the respondent no.3 for some time.

2. The petitioner is challenging the order dated 8/11/2017 passed by the Executing Court, in Execution Application No.32/2011 in Land Acquisition Case No.16/2004, by which, the application for intervention filed by the petitioner has been dismissed.

3. The brief facts are that: According to the petitioner, the decree holder has fraudulently withdrawn the land acquisition compensation of Rs.28,16,600/- on 14/12/2011 during the life time of Beatriz Mendonca to whom the compensation was payable. The compensation was in respect of the acquisition of an area of 1202 sq.mtrs. from the property bearing survey no.172/8 of village Taleigao Bardez Taluka According to the petitioner, he is entitled to receive the compensation by virtue of a Will dated 24/2/2003 executed by Beatriz Mendonca.

4. The learned District Judge relying upon the decision in the case of GOVIND NARAYAN LOTLIKAR VS. SAVITRIBAI R. LOTLIKAR, AIR 1987 BOM, 32, and the decision of the Supreme Court in the case of "SHYAMALI DAS VS. ILLA CHOWDHRY AND OTHERS, (2006) 12 SCC 300, PRAYAG UPNIVESH AWAS EVAM NIRMAN SAHKARI SAMITI LTD. VS. ALLAHABAD VIKAS PRADHIKARAN AND ANOTHER (2003) 5 SCC 561, has held that a person who was not a party before the Land Acquisition Case, in a reference under section 18 of the Land Acquisition Act, cannot be impleaded as a party in a reference under section 30 of the Act. The Executing Court has thus come to the conclusion that the application was without any merit and has dismissed the same.

5. On hearing the learned counsel for the parties, I find that it may not be necessary to go into the correctness of the impugned order, inasmuch as subsequent to the passing of the impugned order, the decree holder has withdrawn the execution application and the same has been dismissed as withdrawn on 17/2/2018. It can thus be seen that the prayer for impleadment would not survive in view of the fact that the execution itself is withdrawn. The petition is accordingly disposed off as infructuous. However, needless to mention that this would not preclude the petitioner from taking recourse to any other remedy if available in law and if so advised.

6. Shri De Sa, the learned counsel for the petitioner submitted that in the event the petitioner takes recourse to any such remedy, the period bonafidely spent in prosecuting the application before the Executing Court may be directed to be excluded. Shri Joshi, the learned counsel for the respondent no.3/decreed holder submits that this Court may pass appropriate orders in this regard.

7. Without expressing any opinion about the availability or the merits of any such remedy, if available, it is directed that if any such remedy is availed by the petitioner, the competent court shall have due regard to the provisions of section 14 of the Limitation Act in the context of time spent in prosecuting the

application before the Executing Court. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

ap/-