

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.703 OF 2019

Vinay Anant Verlekar and another. Petitioners.
Versus
Union of India and others. Respondents.

Mr. Joaquim Godinho, Advocate for the Petitioners.

Mr. D. J. Pangam, Advocate General with Mr. Sagar Dhargalkar,
Additional Govt. Advocate for the Respondents-State .

WITH

WRIT PETITION NO. 912 OF 2018

Cintia Fernandes and others. ... Petitioners
Versus
Union of India and others. ... Respondents

Mr. Esperdiao Dias Do Rosario with Mr. R. Shetkar, Advocate for the
Petitioners.

Mr. D. J. Pangam, Advocate General with Mr. Sagar Gurudas
Dhargalkar, Addl. Government Advocate for Respondent Nos.2,3,4
& 5.

WITH

MISC. CIVIL APPLICATION NO. 165/2019

IN

WP NO.912/2018

Ramesh A. Verlekar. Applicant.
Versus
Union of India and others. Respondents.

Mr. Gaurang D.Panandiker for the Applicant.

Mr. D.J. Pangam, Advocate General with Mr. Sagar Gurudas
Dhargalkar, Addl. Government Advocate for Respondent Nos.2,3,4

& 5.

WITH
MISC. CIVIL APPLICATION NO. 660/2019
IN
WP NO.912/2018

Chandrakala Chandrasen alias

Chandrakant Verlekar.

.... Applicant.

Versus.

Union of India and others.

.... Respondents.

Mr. Nikhil Pai, Advocate for the Applicant.

Mr. D. J. Pangam, Advocate General with Mr. Sagar Gurudas Dhargalkar, Addl. Government Advocate for Respondent Nos.2,3,4 & 5.

WITH
STAMP NUMBER (APPLN.) N0.1927/2019
IN
WP NO.912/2018

Cintia Fernandes & ors.

..... Applicants.

Versus

Union of India and others.

..... Respondents.

Mr. Esperdiao Dias Do Rosario with Mr. R. Shetkar, Advocate for the Applicants.

Mr. D. J. Pangam, Advocate General with Mr. Sagar Dhargalkar, Addl. Government Advocate for Respondent Nos.2,4 & 5.

Coram : M.S. Sonak &
Nutan D. Sardessai, JJ.

Date : 6th August, 2019.

ORAL ORDER : (Per M.S. SONAK, J.)

Heard learned Counsel for the parties.

2. Yesterday, by an order dated 5th August, 2019, we have disposed of Writ Petition No. 912/2018, by accepting the Consent Terms only in so far as Petitioner Nos. 1, 2 and 6 to 11 were concerned. Since there were some issues of apportionment of the compensation and other benefits in relation to Petitioners No.3, 4 and 5, we had deferred the hearing in Writ Petition No.912/2018. In so far as these Petitioners are concerned, today, in terms of the Consent Terms taken on record yesterday, they have agreed to make way for the construction upon the National Highway to proceed. In lieu of this, the consent terms provide that the Petitioners were to be paid a lump sum by way of compensation, an alternate plot and some rent which is to be paid from the date they hand over possession, till the expiry of one year from the date of allotment of the alternate plot.

3. The Petitioners in Writ Petition No.703/2019 have, today, pointed out that they too have right and interest in the land and the structure which is now being acquired for the purpose of the national project. Mr. Godinho pointed out that representations were, in fact, made jointly by the Petitioners in Writ Petition No.703/2019 and Petitioner No.3 in Writ Petition No.912/2018. Mr. Godinho, therefore, submits that the compensation and other benefits in terms

of the consent terms cannot be paid only to Petitioner No.3 to the exclusion of Petitioners in Writ Petition No.703/2019.

4. Mr. G. Panandiker and Nikhil Pai appearing for the parties who have filed intervention applications being Misc. Civil Application No.165/2019 and Misc. Civil Application No.660/2019 in WP No.912/2018, submit that the parties, who seek to intervene, are substantially in the same position as the Petitioners in Writ Petition No.703/2019. They point out that the names of the Applicants/their predecessors-in-title are reflected in the survey records. They submit that the Applicants too are entitled to a share of compensation, and other benefits in terms of the consent terms filed in Writ Petition No.912/2018.

5. As we have noticed in our order dated 5th August, 2019, Section 3H of the National Highway Act, 1956 provides that if any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated. We are informed that in the present case, the principal civil court of original jurisdiction will be the Principal District Judge, at North Goa, Panaji.

6. According to us, the issue of apportionment of the compensation, as well as the issue of appropriate sharing of rights in respect of the alternate plot to be allotted to Petitioners No.3, 4 and 5 in Writ Petition No.912/2018, is required to be referred by the competent authority to the Principal District Judge, at North Goa, so that there can be appropriate inquiry and consequent apportionment. This will be consistent with the provisions of Section 3H of the National Highway Act, 1956. The parties have no dispute about the benefits under the Consent Terms. The dispute only is in relation to the apportionment of these benefits. Therefore, it is only appropriate that such a dispute is resolved by the Principal District Judge, at North Goa.

7. As noted earlier, the Consent Terms provide for payment of lump sum compensation, alternate plot and rent. The record reveals that Petitioners No.3, 4 and 5 in Writ Petition No.912/2018 and the Petitioners in Writ Petition No.703/2019 are actually residing in the house which is now to stand acquired in terms of the Consent Terms. In contrast, the Intervenor claim certain rights in the land, as well as the house, but, admittedly, they are not presently actually residing in the house. In the circumstances, in so far as the component of rent is concerned, it is only appropriate that this component is shared by Petitioners No.3, 4 and 5 in Writ Petition No.912/2018 with the Petitioners in Writ Petition No.703/2019.

8. Mr. E. Dias, learned Counsel for the Petitioner No.3, 4 and 5 in WP No.912/2018, on the basis instructions from Petitioners No.3, 4 and 5, states that they have no difficulty in sharing this rent amount proportionately with the Petitioners in WP No.703/2019. This statement is accepted. These parties shall act accordingly.

9. In so far as apportionment of the lump sum compensation amount and apportionment of rights in respect of the alternate plot is concerned, this is a matter which will have to be left to the Principal District Judge, at North Goa to decide.

10. The learned Advocate General points out that the portion of the compensation amount otherwise payable to Petitioners No.3, 4 and 5 in WP No.912/2018, in terms of the consent terms, is presently lying with the Registry of this Court. He submits that an additional amount of ₹ 22,42,370 is also required to be paid in terms of the consent terms. Accordingly, we direct the Registry to transfer the amount of compensation payable to Petitioners No.3, 4 and 5 in WP No.912/2018 to the Court of Principal District Judge, North Goa, within a period of four weeks from today.

11. We clarify that the transfer shall be only in respect of the amounts payable to Petitioners No.3, 4 and 5 in WP No.912/2018. Rest of the amount will have to be paid to the remaining Petitioners

as indicated in the Consent Terms which we have already taken on record yesterday.

12. The Respondent-State is also directed to deposit the additional amount of ₹ 22,42,370 in the Court of the Principal District Judge, North Goa, within a period of four weeks from today.

13. Upon receipt of the aforesaid amounts, we direct the Principal District Judge, North Goa to invest the same in any nationalized bank. We also direct Petitioners No.3, 4 and 5 in WP No.912/2018, the Petitioners in WP No.703/2019 and the Intervenors to appear before the Principal District Judge, North Goa on 16th September, 2019 at 10 a.m. to seek directions. This is necessary because the Principal District Judge, consistent with the provisions of Section 3H of the National Highway Act, 1956 is to resolve the dispute of apportionment of compensation/benefits as between these parties, in accordance with law and on its own merits. Needless to add that the Principal District, North Goa will follow the principles as applicable to apportionment proceedings under Section 30 of the erstwhile Land Acquisition Act, 1894.

14. We request the Principal District Judge, North Goa to dispose of these proceedings within a period of one year from the date the parties first appear before the Court. We clarify that the Principal District Judge will have to go into the issues of

apportionment of compensation and the entitlement in respect of the alternate plot, now allotted. In so far as the rents are concerned, we have already clarified that it is only Petitioners No.3, 4 and 5 in WP No.912/2018 and the Petitioners in WP No.703/2019 who will be entitled to share the sum amongst themselves.

15. Accordingly, we accept the consent terms already taken on record yesterday and dispose of Writ Petition No.912/2018, in so far as the Petitioners No.3, 4 and 5 are concerned, in terms of the consent terms, as modified by the present order. Similarly, we also dispose of Writ Petition No.703/2019 and the two intervention applications, Misc. Civil Application No.165/2019 and Misc. Civil Application No.660/2019 in terms of the present order. However, we clarify that the consent terms shall operate subject to the directions in this order on the issue of allotment.

16. This means that though in terms of the consent terms, the lump sum compensation or the allotment of alternate plot is to be paid/made to Petitioners No.3, 4 and 5 in WP No.912/2018, in effect, the lump sum compensation shall be deposited in the Court of the Principal District Judge, North Goa and shall abide by the apportionment to be made by the Principal District Judge, North Goa, after afford of proper opportunity of hearing to all the parties. Similarly, even though in terms of the consent terms, the allotment of

the alternate plot is to be made in the names of Petitioner No.(s) 3, 4 and 5 in WP No.912/2018, such allotment will not be final, in the sense that such allotment shall abide by the determination to be made by the Principal District Judge, North Goa, who will have to decide whether and in what proportion the parties are entitled to right and share in the alternate plot. Subject to this clarification, we accept the consent terms and dispose of Writ Petition No.912/2018 and Writ Petition No. 703/2019, as well as the two miscellaneous applications, seeking interventions therein.

17. In view of the disposal of Writ Petition No.912/2018, Civil Application STA No.1927/2019, does not survive and stands disposed of, accordingly.

Nutan D. Sardesai, J.

M.S. Sonak, J.