

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 99 OF 2009**

1. Smt. Sheela Naguesh Naik, widow,
Telecom Colony, Bldg. No. 1, Type 3, Room
No.4, Deonar, Mumbai – 400 088 (Expired)

2. Shri Amar Naguesh Naik

3. Smt. Amarpali Amar Naik

Both r/o. AAI Colony, Type-2, B-4, Dabolim
Airport, Goa 403 802.

4. Shri Jayaraj Naguesh Naik

5. Smt. Jayashree Jayraj Naik,

Both r/o. Telecom Colony, Bldg. No. 1, Type-
3, Room No. 4, Deonar, Mumbai – 400 088.

6. Shri Manoj Naguesh Naik

7. Smt. Mangili Manoj Naik,

Both r/o. Welwada, Poinguinim, Canacona,
Goa.

8. Shri Deepak Naguesh Naik,

9. Smt. Deepika Deepak Naik,

Both r/o. Welwada, Poinguinim, Canacona,
Goa.

10. Miss Maghana N. Naik

11. Miss Sadhana N. Naik

Both r/o. Telecom Colony, Bldg. No. 1, Type-
3, Room No. 4, Deonar, Mumbai – 400 088. ... Appellants

Versus

1. Rajendra Guna Ramchandra Petkar, r/o. Welwada, Poinguinim.
2. Beby Petkar, wife of Rajendra alias Guna Petkar, r/o. H. No. Welwada, Poinguinim, Canacona, Goa.
3. Comunidade of Poinguinim, r/o. Welwada, Poinguinim. (Appeal stands dismissed for want of prosecution against Respondent no.3 as per order dated 21.06.2012 passed by Id. Reg. (Judl.) ...Respondents

Mr. P. Sawant, Advocate for the Appellants.

Mr. V. P. Thali, Advocate for the Respondents.

CORAM: MANISH PITALE, J

DATED: 24th November, 2021

ORAL JUDGMENT

1. By this Appeal, the Legal representatives of original interested party no.1 have challenged judgment and order dated 06.02.2009, passed by the District and Sessions Court, South Goa, Margao, in Land Acquisition Case No. 57 of 2006. By the said Judgment and Award, the aforesaid Court held that interested party no.1 i.e. the Predecessor of the Appellants and interested party no.2 i.e. the Predecessor of Respondent nos. 1 and 2 herein, were the only two interested parties entitled to share in the compensation for acquisition of land. According to the Appellants, the interested party no.1 alone ought to have been granted the entire compensation.

2. The facts in brief leading to filing of the present Appeal are that land acquisition proceedings were initiated in respect of land situated in Survey no. 92/2 in Canacona, for construction of road. By award dated 09.12.2004, the Land Acquisition Officer awarded compensation of ₹ 26,978/- for the acquired land. Since there was a dispute amongst the interested parties as regards entitlement to the said compensation, the Land Acquisition Officer forwarded a reference to the Court below under Section 30 of the Land Acquisition Act, 1894, for resolving the dispute and for ascertaining the apportionment of compensation amongst the disputing interested parties.

3. Before the Court below, there were five interested parties seeking a share in the compensation. It is an admitted position that party no.4 was also the party no.1. So effectively, there were four parties before the Court below seeking a share in the compensation. It is undisputed that the real contest before the Court below was between the party no.1 and party no.2, as these were the only parties who led oral and documentary evidence in support of their respective claims.

4. On the basis of the oral and documentary evidence on record, the Court below found that party no.1 and party no.2, were brother and sister and these were the only persons entitled to share in the compensation. It was found on the basis of material available on record that party no.1 had conceded that party no.2 was his sister. On a dispute raised on behalf of the Appellants i.e. the Successors in interest of the party no.1 with regard to the entitlement of Respondent no.1 to a share in the compensation, on the basis that there was a serious dispute regarding his date of birth and his very identity of being the son of party no.2, the Court below found on the basis of oral and

documentary evidence on record that the Appellants had failed to prove their assertion in that regard. It was noted that the Appellants claimed that the Respondent no.1 was not Rajendra son of Ramchandra Petkar and that he was one Rajendra Sugandas Paiginkar, but the said contention was rejected on the basis of material available on record.

5. Mr. Sawant, learned Counsel appearing for the Appellants, vehemently submitted that the issue with regard to the birth certificate and the claim of Respondent no.1 that he was Rajendra son of Ramchandra Petkar and that his date of birth was 01.03.1959, was still a matter of dispute and that, therefore, any observations made by this Court in the present Appeal would prejudicially affect such a pending dispute. On this basis, it was submitted that this Court may defer the hearing of the present Appeal till the matter regarding the issue of date of birth and identity of the Respondent no.1 is resolved. Reference was made to proceedings initiated at the behest of the Appellants with regard to the aforesaid dispute pertaining to Respondent no.1 and it was claimed that the last order passed by this Court in the series of proceedings indicated that finality was yet to be reached.

6. It was further submitted that a perusal of the material on record demonstrated that the Court below had erred in appreciating the oral and documentary evidence while rendering findings in favour of Respondent nos. 1 and 2, to the extent of entitlement towards half share in the amount of compensation. On this basis, it was submitted that the impugned Judgment and Order of the Court below deserved interference.

7. On the other hand, Mr. Thali, learned Counsel appearing for Respondent nos. 1 and 2, submitted that the contentions raised on behalf of the Appellants on the aspect of alleged dispute pertaining to the date of birth and identity of Respondent no.1 were baseless and that a reference to the subsequent proceedings would show that the date of birth as claimed by the Respondent no.1 on the basis that he is the son of Ramchandra Petkar has been accepted after full-fledged proper inquiry in terms of law and that, therefore, there is no substance in the said contention. It was brought to the notice of this Court that the oral and documentary evidence available on record was correctly appreciated by the Court below in the impugned Judgment and Award, while holding that Respondent nos. 1 and 2 were entitled to half share in the compensation. On this basis, it was submitted that the Appeal deserved to be dismissed.

8. Having heard the learned Counsel for the rival parties, the following points arise for consideration in the present Appeal:

(a) Whether the Court below was justified in holding that original interested party nos. 1 and 2 were entitled to half share each in the compensation determined by the Land Acquisition Officer?

(b) Whether the Appellants are justified in claiming that there was sufficient material to indicate that the identity of Respondent no.1 as the son of interested party no.2 was shrouded in doubt and that the said Respondent could certainly not be entitled to a share in the compensation?

9. This Court has perused the impugned judgment and order and the material on record. There are two aspects that have been deliberated upon and decided by the Court below in the impugned judgment and order. It is found on the basis of oral and documentary evidence on record that the interested party nos. 1 and 2 were brother and sister and that they were entitled to share in compensation pertaining to acquisition of land from survey no. 92/2. It was also found that notwithstanding the challenge raised on behalf of the Appellants as regards the identity and date of birth of Respondent no.1, there was sufficient material to hold that the Respondent no.1 was indeed entitled to share in the compensation as the son of the interested party no.2.

10. As regards the first aspect pertaining to the entitlement of original party nos. 1 and 2 towards share in the quantum of compensation awarded, a perusal of the material on record shows that the interested party no.1 i.e. predecessor of the Appellants, himself had stated in an application filed before the Mamlatdar that he and original interested party no.2, i.e. the predecessor of Respondent nos. 1 and 2, were brother and sister and that they were the only owners of survey no. 92/2. The witness who appeared on behalf of interested party no.1 himself admitted signature of the original interested party no.1 on the said application and also admitted the contents thereof. It is also found that the original interested party no.1 had admitted in the evidence that the original interested party no.2 was indeed his sister.

11. It is on the basis of such oral and documentary evidence that the Court below came to a considered conclusion that both party nos. 1 and 2 had share in compensation for acquisition of land from survey

no. 92/2. This Court has perused the material on record and it is found that the aforesaid conclusions are in tune with the material available on record and that no error can be attributed to the same. Therefore, there is no substance in the contentions raised on behalf of the Appellants that only the original interested party no.1 ought to have been held as entitled to the entire amount of compensation.

12. As regards the second aspect of the matter pertaining to the alleged doubt regarding the identity of Respondent no. 1 and his date of birth being 01.03.1959, the Court below took into consideration the oral and documentary material available on record at the stage when the impugned Judgment and Award was passed. It was found as a matter of fact that the Appellants had indeed challenged the birth certificate issued in the year 1980 by the Executive Magistrate and that the proceedings were pending. But, at the same time, the Court below found that the evidence on record was not enough for the Appellants to successfully claim that Respondent no. 1 was not the son of the original interested party no.2 or that the birth certificate could not be relied upon.

13. In this regard, subsequent proceedings assume significance. It is found that the challenge raised to the aforesaid birth certificate issued by the Executive Magistrate in favour of Respondent no.1, was subject matter of proceedings before the Registrar under the provisions of the Registration of Births and Deaths Act, 1969. The Registrar negated the challenge raised on behalf of the Appellants and in that context the matter travelled up to this Court in the form of Writ Petition no. 188 of 2014, filed by Appellant nos. 4 and 6. The said Writ Petition no. 188 of 2014, was finally decided by this Court on 14.10.2014 wherein, on a

point of law, it was held that the Executive Magistrate did not have power to issue birth certificate in view of the amendment of the Code of Criminal Procedure in the year 1973. On this basis, the Writ Petition was allowed and the orders passed by the Registrar in favour of Respondent no. 1 were quashed and set aside. But, at the same time, this Court granted liberty to Respondent no.1 to approach Judicial Magistrate First Class (JMFC) in terms of Section 13(3) of the aforesaid Act for issuance of birth certificate and till such an application was decided, the effect and operation of the Judgment and Order dated 14.10.2014, was kept in abeyance.

14. It is an admitted position that when the Respondent no.1 initiated proceedings before the Court of JMFC, wherein the aforesaid Appellants were also made parties, on a detailed inquiry, the JMFC by an order dated 31.08.2015 held in favour of Respondent no.1. It was held that the date of birth of Respondent no.1 was indeed 01.03.1959. This order was challenged by the aforesaid Appellants by filing Criminal Revision Application before the Sessions Court, which was admittedly dismissed on 13.12.2015. The aforesaid order was in turn challenged before this Court by filing Writ Petition no.179 of 2017. The said Writ Petition was disposed of by this Court without interfering with the orders passed by the Magistrate and the Sessions Court. This Court took note of the fact that a Civil Suit between the parties was pending and it was observed that it would be open for the competent Civil Court to take into consideration the order passed by the JMFC in favour of Respondent no.1 and to decide the matter accordingly. All rights and contentions in that regard were kept open by this Court.

15. This Court has referred to the said subsequent proceedings on the aforesaid aspect of the matter for the reason that the learned Counsel appearing for the Appellants tried to impress upon this Court that any order that may be passed in the present Appeal, may unnecessarily affect the proceedings in the pending suit, particularly when this Court while disposing of Writ Petition no. 179 of 2017 by order dated 16.08.2017, made it clear that the said Civil Suit would be decided on its own merits, uninfluenced by any observations made in the order impugned in the said Writ Petition.

16. This Court is not in agreement with the aforesaid contentions raised on behalf of the Appellants. The challenge raised to the birth certificate of Respondent no.1 on behalf of the aforesaid Appellants has met with the fate recorded above. The order of the JMFC passed in favour of the Respondent no.1 in the proceedings initiated under the aforesaid Act of 1969, is holding the field. Therefore, there is no question of postponing hearing of the present Appeal, only because the aforesaid Civil Suit is pending before the competent Court.

17. Even otherwise, the present Appeal has arisen out of a Judgment and Award passed by the Court below under Section 30 of the Land Acquisition Act, 1894. In the said Act, at various places the expression "*interested person*" is used and the said expression is defined under Section 3(b) to state that it includes all persons claiming an interest in compensation to be paid on account of acquisition of land. The nature of proceedings under Section 30 of the aforesaid Act is for determining as to whether claims made by interested persons for share in the compensation are justified or not. Such proceedings obviously do not decide title in the subject land which has been acquired. Another

pointer in this direction is Section 31 of the aforesaid Act. The third proviso to Section 31(2) of the Act clearly provides that nothing contained in the said provision shall affect the liability of any person who may receive whole or any part of compensation awarded under the Act, to pay the same to the person lawfully entitled thereto. Therefore, it is abundantly clear that if a person is able to prove on the basis of appropriate proceedings initiated before a competent Civil Court as regards ownership and title in the subject land, the person who has received compensation under the provisions of the said Act, would be liable to make over the said amount to such a person who proves his claim in accordance with law. Therefore, the apprehension expressed on behalf of the Appellants is misplaced.

18. This Court is of the opinion that on both aspects of the matter, the Court below has arrived at appropriate conclusions, on the basis of the material available on record. The subsequent orders passed by the JMFC, Sessions Court and this Court in proceedings pertaining to the challenge raised on behalf of the Appellants to the birth certificate of Respondent no.1, also do not disturb the view taken by the Court below on the second aspect of the matter.

19. In view of the above, this Court finds that both the points framed above deserve to be answered against the Appellants and in favour of Respondent nos. 1 and 2.

20. In view of the above, the Appeal is dismissed.

21. Needless to say, the interim order passed by this Court in the present Appeal, stands vacated.

MANISH PITALE, J