

IN THE HIGH COURT OF BOMBAY AT GOA

First Appeal No. 190 of 2005

1. Shri Sadassiva Anandu Sangtu Devidas
House No.04, Mudkuda-Agonda, Canacona.
- 1a) Mrs. Rupa Prasad Amonkar
Indian National, w/o Prasad Prakash Amonkar,
36 years of age, housewife,
- 1b) Mr. Prasad Prakash Amonkar,
s/o. Prakash Amonkar,
39 years of age, service,
both resident of H.No.30 Amona,
Quepem Goa.
- 1c) Mr. Rupesh Anandu Mudkudkar,
s/o. Late Anandu Mudkukar,
35 years of age, service,
- 1d) Mrs. Vaishali Rupesh Mudkudkar,
w/o. Rupesh Anandu Mudkudkar,
Age 26 years,housewife,
both r/o H. No.4,
Mudkud, Agonda, Canacona Goa.
- 1e) Mr. Sanju Anand Mudkudkar,
s/o Sadashiv alias Anandu Devidas
33 years, Advocate.
- 1f) Mrs. Pratiksha Sanju Mudkudkar,
w/o Sanju Anand Mudkudkar,
30 years, service,
both r/o Sarita Apartments,
Ground floor, Near to Goa Urban Bank,
Malwaddo, Chavde,
Canacona, Goa.

(Amendment carried out as per order dtd.
1/3/2019 in MCA no. 722/18.)

2. Smt. Parvati Sangtu Devidas
Mudkuda-Agonda, Canacona.

3. Shri Hari Sangtu Devidas
E-3 Colony, Room No.15,
Zuari Nagar, Mormugao taluka, Goa.
4. Shri Ulhas Sangtu Devidas
Plastic Container, SA-12,
Vasco Industries Nagar,
Mormugao taluka, Goa.
5. Smt. Nirmala Laxuman Patil,
Near Society Parvem, Agonda,
Canacona, Goa
6. Smt. Shoba Prabhakar Naik,
Komarpantwada Ghotnibag,
Mugali, Karwar (N.K.), Karnataka. Appellants

V e r s u s

1. Shri Govind Vaikunth Dessai
2. Shri Vinayak Nilba Naik Gaunkar (since deceased)
- 2 (a) Shri Ashnak Sudhakar Naik
son of Shri Sudhakar Naik and
late Pushpa Sudhakar Naik ,
Major, married and his wife
- 2 (b) Smt. Supria A. Naik
Major, married
- 2(c) Shri Abhijit Sudhakar Naik ,
son of Shri Sudhakar Naik and
late Pushpa Sudhakar Naik,
Major, married and his wife
- 2 d) Smt. Niyati A. Naik,
Major, married.

(As per order dtd. 9/2/12 passed by ld.
Registrar (Judl.) matter stands dismissed
for want of prosecution.)

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2(a) to 2(d) residing at Mudkud,
Agonda Goa.

2(e) Shri Narendra V. N Gaunkar,

2 (f) Smt. Navanita N. Gaunkar
both residing at Agonda, Canacona Goa.

2 (g) Shri Molu V. N. Gaunkar (since deceased)

2 g (a) Smt. Chaya Molu Gankar,
Major, widow of late Molu Gaonkar

2 g (b) Shri Nikhil Molu Gaonkar,
Major,bachelor, son of late
Molu Gaonkar,

2 g (c) Shri Kundan Molu Gaonkar,
Major, bachelor, son of late
Molu Gaonkar, All residing at
Agonda, Canacona, Goa.

(As per order dtd. 9/12/12 passed by the
ld. Registrar (Judl). Matter stands dismissed
for want of prosecution)

2 (h) Smt. Lata A. P. Desai

(as pr order dtd.9/2/12 of the ld. Registrar (J))

2 (i) Shri Anant P. Desai,
both residing at Kakoda, Quepem Goa.

2 (j) Smt. Jyoti V. M. Gaunkar and

2 (k) her husband, both resident of
Mokhard, Canacona Goa.

2 (l) Smt. Anjali V. N. Gaunkar

2 (m) Shri Sharad D. Phal Desai
residents of Aquem, Margao Goa.

2 (n) Shri Sudhakar P. N. Desai,
resident of Mudkud, Agonda Goa.

(Amendment in view of order dtd.25/6/10 in MCA no.176/10)

(As per order dtd. 9/2/12 passed by the ld. 9/2/12 passed by the ld. Registrar (Judl.) matter stands dismissed for want of prosecution)

3. Shri Gangadhar Nilba Naik Gaunkar

3 (i) Smt. Gopikabai G. N. Gaunkar

3 (ii) Smt. Shoba G. N Gaunkar

3 (iii) Smt. Amita S. N. Gaunkar

3 (iv) Shri Sharad G. N. Gaunkar

3 (v) Smt. Harsha S. N. Gaunkar

3 (v) Smt. Harsha S. N. Gaunkar

3 (vi) Shri Santosh G. N. Gaunkar

All residents of Agonda, Canacona Goa

(Amendment in view of order dtd.225/6/10 in mCA 176/10)

4. Shri Shivram Nilba Naik Gaunkar

4 (i) Smt. Shantabai S. N. Gaunkar (since deceased)
resident of Agonda, Canacona Goa.

(Amendment in view of order dtd. 6/7/10)

5) Shri Pandhari Shamba,

5 (i) Smt. Bhimbai P. N. Gaunkar (deleted as per order dtd. 9/2/12)

5(ii) Shri Shabhu P. N. Gaunkar

5 (iii) Smt. Sulaksha S. N. Gaunkar

5 (iv) Shri Pandurang P. N. Gaunkar

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All resident of Agonda, Canacona Goa.

5 (v) Smt. Shaila Ratnakar Desai
resident of Thalhy, Gaundongrem,
Canacona Goa.

5 (vi) Smt. Chandrashekar Shet,

5 (vii) Shri Chandrashekar Shet.
Both residents of Odlem, Canacona.

(Amendment in view of order dtd. 25.6.10 in MCA 776/10)

6. Comunidade of Canacona
Through its attorney,
With his office at Agonda-Canacona, Goa.

7. Shri Raghoba Naillu Phal Dessi (since deceased) by his LRS

7 (a) Smt. Sudha Govind Desai,
Major, married, daughter of ate Raghoba Desai
and her husband.

7 (b) Shri Govind Vaikuunt Desai,
Major, married.
Bth resident of Agonda, Canacona Goa.

7 (c) Smt. Bhagirathi Balsu Naik Gaokar
Major, married, daughter of late Raghoba Desai
and her husband

7 (d) Shri Balsu Babu Naik Gaokar
Major, married,
Both residents of Nagarcem, Canacona Goa

7 (e) Smt. Pikem Vasant Desai,
Major, married, daughter of late Raghoba Desai
and her husband

7 (f) Shri Vasant Desai,
Major, married,
both resident of Sheldem, Quepem Goa.

7 (g) Smt. Vithe Govind Desai,
Major, married daughter of late Raghoba Desai

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and her husband.

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(As per order dtd. 8/2/12 passed by the ld. Registrar (J)
matter stands dismissed for want of prosecution)

7 (h) Shri Govind Desai,
Major, married, resident of
Apgnai Bhaire, Opposite Garage,
Karwar, North Karnataka.

7 (i) Smt. Vimal Laxman Desai
Major, married, daughter of late Raghobai Desai
Agonda, Canacona Goa.

7 (j) Smt. Malini R. Phal Desai.

7 (k) Shri Kamlakar Babu Naik
both resident of Mudkud, Canacona Goa

(Amendment in view of order dtd. 25.6.10.)

8. Shri Vassant Uttam Raut Desai (since deceased)
by his heirs.

9. Shri Vassant Parshattam Naik Gaunkar

9 (i) Shri Sainath V. N. Gaunkar,

9 (ii) Shri Shivaji V. N. Gaunkar

9 (iii) Shri Tanaji V. N. Gaunkar,

9 (iv) Smt. Roshan V. N. Gaunkar,

All resident of Agonda, Canacona Goa.

9 (v) Smt. S. Arojini L. P. Desai

9 (vi) Shri Laxman R. Prabhu Desai

both resident of Cotombi, Quepem Goa.

9 (vii) Smt. Kalpana V. N. Gaunekar,
resident of Cotombi, Quepem Goa.

9 (vii) Smt. Kalpana V. N. Gaunekar

resident of Agonda, Canacona Goa

(Amendment in view of order dtd. 25/6/10 in MCA 176/10).

10. Shri Babu Vishwanath Naik Gaunkar (since deceased)

10(i) Smt. Prabhavati B. N. Gaunkar,

10 (ii) Shri Vishwanath B. N. Gaunkar

both resident of Agonda, Canacona Goa

(Amendment in view of order dtd. 25/6/10 in MCA 176/10)

10 (iii) Smt. Prafula alias Sneha A. Desai

10 (iv) Shri Arvind S. Desai

both resident of Calangute, Bardez Goa

10 (v) Shri Subhash D. Phal Desai

10 (vi) Smt. Sandhya S. Phal Desai

[10 (vii) Kum. Nivedita B. N. Gaunkar]] (as per order dtd. 9.2.12
passed by ld. Registrar (judl))

All residents of Adnem, Quepem, Goa.

11. Shri Raghunath Datta Naik Gaunkar (since deceased)

11 (i) Smt. Ambikabai R. N. Gaunkar

11 (ii) Shri Vivekanand R. N. Gaunkar

11 (iii) Smt. Anuradha V. N. Gaunkar

All residents of Agonda, Canacona Goa.

(Amendment in view of order dated 25/6/10 in MCA no.176/10)

11 (iv) Smt. Ujwala U. Desai

11 (v) Shri Udaysing S. Desai

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both residents of Shantinagar,
Wadem, Vasco da Gama Goa

11 (vi) Smt. Anuradha A. Naik

11 (vii) Shri Ashok T. Naik

11 (viii) Shri Dattu R. N. Gaunkar

11 (ix) Kum. Sufala R. N. Gaunkar

All resident of Agonda, Canacona
Goa. ((deleted as per order dd. 9.12.12 passed by the ld.
Registrar)

12. Shri Govind Bhiku Naik Gaunkr (since deceased)

12 (i) Smt. Mahalaxmi Govind N. Gaunkar

12 (ii) Shri Rajendra G. N. Gaukar

[12 (iii) Smt. Jotsna Rajendra N. Gaunkar

12 (iv) Shri Suresh K. Pawar]

(Appeal against R-12(i), 12 (ii) and 12 (iv) stands dismissed
for want of prosecution)

12 (v) Smt. Swati S. Pawar

all resident of Kurtarkar Building
G-1, Near Kiran Hall, Aquem Alto,
Margao Goa.

12 (vi) Shri Suhas S. Phal Desai

12 (vii) Smt. Niyati S. Desai

both resident of Shanti Niwas,
Quepem Goa.

12 (viii) Smt. Milan G. N. Gaunkar,
resident of Kumta, Karwar, N.K.

(Amendment in view of order dtd 25/6/10 in MCA 176/10 dtd
6/7/10)

13. Shri Vihtoba Bhiku Naik Gaunkar(since deceased) by his heirs

13 (i) Shri Pramod Desai
Major, married and his wife

13 (ii) Smt. Pramila Pramod Desai,
Major, married
both residents of Kalika Square,
Second floor, Building 2,
Housing Board Road,
Near Bank of Maharashtra,
Gogol, Margao Goa.

13 (iii) Shri Ratnakar alias Uday Desai
Major, married and his wife

13 (iv) Smt. Sima Ratnakar Desai
Major, married,
both residents of 11D, Government Quarters,
Patto Colny,
Pananji Goa.

13 (v) Smt. Ratnaprabha Shaba Desai,
Major, married and her husband

13 (vi) Shri Shaba Desai
Both residents of opposite
Multipurpose High School,
Glorious Plaza, Borda,
Margao Goa.

13 (vii) Smt Surekha alias Swaroopa
Satish Gawas Desai
Major, married and her husband

13 (viii) Shri Satish Gawas (Expired)
Major, married, both residents of next to
Manipal Finance, Behind Loyola High School,
Shivneri, Comba, Margao Goa **(deleted as per
order dtd. 26.2.2009 in Stamp no.754/2009)**

**(Amended as per Courts order dtd 18/3/2009 in MCA 856
2008)**

14. Shri Gurudas Jaiwant Prabhu (since deceased) by his heirs

- 14 (i) Kumari Premanandi (Gurudas Prabhu),
major, spinster, daughter of late
Gurudas Prabhu, resident of
Mudcheli, Parve Agonda,
Canacona-Goa

(Amendment carried out as per Courts order dtd. 23/6/09 in MCA 857
2008)

15. Shri Subash Ramachandra N. Gaunkar.

16. Shri Madhukar Gana N. Gaunkar

17. Shri Premanand Bhazro N. Gaunkar (since deceased)

17 (i) Shri Shekar P. N. Gaunkar

17 (ii) Smt. Sagari S. N. Gaunkar

17 (iii) Smt. Shoba P. N. Gaunkar

17 (iv) Shri Mallikesh P. N. Gaunkar (since deceased)
all residents of Agonda, Canacona Goa.

(Amendment in view of order dtd. 25/6/10 in MCA 176/10)

18. Shri Prakash Vithoba N. Gaunkar

**Respondents 1 to 5 and 7 to 18 are
all residents of Agonda, Canacona.**

19. Devalya of Lakneshwar,
through its attorney with his office at
Mudkuda-Agoda, Canacona, Goa. Respondents

Mr. Nigel Fernandes, Advocate for the Appellants.

Mr. J. Godinho, Advocate for Respondent no.3.

Mr. P. A. Kamat, Advocate for the Respondent no.6

CORAM: MANISH PITALE, J.

DATE: 27th October, 2021.

ORAL JUDGMENT:

By this appeal filed under section 54 of the Land Acquisition Act, 1894, the appellants i.e. the legal heirs of the original interested party no.19 have challenged judgment and order dated 24/3/2005, passed by the District and Sessions Court, South Goa, whereby the said Court refused to accept the claim of the predecessor of the appellants towards compensation for acquisition of land. In fact, the Court below, by the impugned judgment and order, held that none of the contesting parties could prove their title to the acquired land and on that basis rejected the reference, further directing that the amount of compensation be returned to the Land Acquisition Officer for disposal in accordance with law.

2. The impugned judgment and order was passed by the Court below on a reference application under section 30 of the aforesaid Act as a dispute arose as regards apportionment of the compensation payable for acquisition of land. The land acquired was from survey no.24 of village Agonda, Taluka Canacona to the extent of 9200 sq. mtrs. The Land Acquisition Officer awarded compensation of Rs.5,98,629/- for the said land. Several parties laid claims to the said amount of compensation. In the proceedings before the Court below, a

total of 20 interested parties filed their claims. It is an admitted position that, except for the predecessor of the appellants i.e. interested party no.19 and the interested party no.6 (respondent no.6 herein) i.e. the Comunidade of Canacona, none of the other interested parties seriously pursued their claims before the Court below.

3. As a consequence, the evidence on record was led on behalf of the predecessor of the appellants i.e. interested party no.19 and the Comunidade i.e. interested party no.6. Although, the interested party no.20, being a Devalaya was interested in claiming compensation, but, it did not pursue the matter and conceded that it had no material to show title in any part of the acquired land from survey no.24.

4. The aforesaid interested party no.19 led evidence before the Court below and claimed that the names of the predecessors of the said party were recorded in the survey records, as they had been in continuous and uninterrupted possession for more than 100 years in survey no. 24. It was brought before the Court below that by an order dated 26/3/1999 passed by the competent authority, re-survey of survey no.24/0 was ordered, resulting in 10 sub-divisions. The said interested party no.19 in his written statement before the Court below referred to the said fact and claimed that he had right, title and interest in sub division nos.2,3,6,7,9 and 10 of survey no.24, admeasuring 6060 sq. mtrs. Similarly, the interested party no.6 i.e. Comunidade claimed right to compensation in the aforesaid survey

5. The interested party no.19 produced witnesses in support of his claim, which included witness no.2, who in cross examination stated that he had worked on the property of the interested party no.19 for about 25 years, thereby supporting the case of the said party about continuous uninterrupted possession. The evidence recorded before the Court below also demonstrated that the third witness who deposed on behalf of interested party no.6 i.e. the Comunidade, in cross examination claimed that the aforesaid Devalaya had entrusted part of the property to the ancestors of the interested party no.19 about 100 years ago. There was also a reference in the evidence available on record that the Devalaya had initiated certain proceedings in the form of civil suit for possession against the interested party no.19, pertaining to portion of survey no. 24, which was not the subject matter of acquisition. The said civil suit appears to have been dismissed for want of prosecution. In any case, as noted above, the Devalaya being the interested party no.20 had given up its claim as regards the compensation for acquisition of 9200 sq.mtrs of land from survey no. 24.

6. It is in this backdrop that the Court below passed the impugned judgment and award. A perusal of the same shows that the Court found that none of the interested parties could show any semblance of title to any portion of the acquired land and on that basis, the

reference was rejected. The amount of compensation deposited in the Court was directed to be returned to the Land Acquisition Officer.

7. The points that arise for consideration in this appeal are as follows:

(a) Whether the court below was justified in rejecting the reference, only on the ground that the interested parties were unable to show documents of title, even when the interested party no.19 i.e. predecessor of the appellants had placed on record documentary and oral evidence to show continuous uninterrupted possession in the land in question?

(b) Whether the material placed on record on behalf of the predecessor of the appellants was sufficient to show that he was a person interested in the acquired land and hence entitled to compensation?

(c) Whether the Court below was justified in rejecting the reference by proceeding on the basis as if the reference was akin to inquiry into title of the interested parties in the acquired land, which was beyond the scope of section 30 of the aforesaid Act pertaining to the dispute as to apportionment of compensation?

(d) Does the impugned judgment and award deserve
interference?

8. Mr. Fernandes, the learned counsel appearing for the appellants submitted that the approach adopted by the Court below was not justified and the scope of section 30 of the aforesaid Act was ignored by the Court below. It was submitted that the inquiry under the said proceedings was limited to the entitlement of the interested parties to the compensation determined by the Land Acquisition Officer and it could not have been converted into an inquiry into title in the acquired land. It was submitted that the various provisions of the aforesaid Act refer to the expression “person interested” as defined in section 3 (b) thereof, which the Court below failed to appreciate. It was submitted that even if the documentary and oral evidence produced on behalf of the appellants did not qualify the appellants to claim title in the acquired land, the entitlement towards compensation was sufficiently proved, particularly when the true owner of the said land did not come forward to raise any claim towards compensation. It is further submitted that in the facts of the present case, Section 110 of the Evidence Act operated in favour of the appellants. The learned counsel further claimed that the appellants were certainly entitled to claim possessory title, as sufficient material was placed on record, indicating continuous uninterrupted possession of the predecessor of the appellants, as well as the appellants themselves in a portion of the

acquired land. On this basis, it was submitted that the reference ought not to have been rejected and the claim raised on behalf of the predecessor of the appellants (interested party no.19) ought to have been accepted.

9. Mr. Fernandes, the learned counsel appearing for the appellants has placed reliance on the following judgments:

(i) **Dossibai Nanabhoy Jeejeebhoy Vs. P.M. Bharucha 1958 SCC online Bom. LR 120B. 60 BOM LR 1208**

(ii) **Comunidade of Balli, Goa Vs. Mangesh Uttam Sinai Ambo (expired) thr LRS and ors., 2014 (5) Mh.L.J. 423** and

Judgments of the Hon'ble Supreme Court in the case of (iii) **Somnath Burman Vs. Dr. S. P. Raju and anr, 1969 (3) SCC 129** and (iv) **Poona Ram Vs. Moti Ram (dead) Through LRS and ors. (2019) 11 SCC 309.**

10. Mr. J. Godinho, learned counsel appeared on behalf of respondent no.3 and Mr. P. A. Kamat, learned counsel appeared for the respondent no.6.

11. Heard learned counsel for the parties and perused the material on record.

12. A perusal of the impugned judgment and award shows that while the Court below considered the documentary and oral evidence on record in detail, it was held that the reference deserved to be rejected and the claims of the interested parties could not be accepted for the

reason that none of the interested parties had been able to show any semblance of title in the acquired land. The Court placed emphasis on the necessity of placing on record documentary and other material showing title of the interested parties in the acquired land. In other words, according to the Court below, unless the interested parties were able to show title in the acquired land, their claims for compensation could not be considered.

13. As noted above, only the interested party no.6 i.e. the Comunidade and the interested party no.19 i.e. the predecessor of the appellants supported their claims before the Court below with oral and documentary evidence, while all other interested parties either did not pursue the matter or conceded that they did not have any material to support their claim.

14. The interested party no.19 did place on record documentary and oral evidence in support of his claim that his ancestors had been in continuous and uninterrupted possession of a portion of the acquired land admeasuring 6060 sq.mtrs. This included re-survey in proceedings resulting in sub-divisions created in survey no.24. Oral evidence was led to support the record showing the predecessor of the interested party no.19, as the occupant in sub-division nos.2, 3, 6, 7, 8 and 9 of survey no.24. Oral evidence was led to the effect that activities of cultivation were undertaken continuously and that the predecessor of the interested party no.19 and consequently the said

interested party had acquired prescriptive title in the land in question.

If the relevant portions of the impugned judgment and award are perused, pertaining to the evidence led by the interested parties, it becomes clear that the Court below held that the claim as regards possession and enjoyment pertaining to the aforesaid sub-divisions was indeed proved by the interested party no.19. In fact, in para 49 of the impugned judgment, it was observed as under:

“49. On the one hand, the party no.6 has failed to produce any document to show that the Comunidade of Canacona was having any title in respect of this land under survey no.24, which has been acquired for the road. So also the arty no.19 failed to prove that they had acquired title by adverse possession in respect of the said land acquired for the the road. No doubt, the survey records would indicate that the party no.19 has been in possession and enjoyment of the sub-divisions of survey no.24/o, i.e. the sub-divisions no.2, 3, 6, 7,9 and 10, which stand in the name of the party no.19 and his family members. But, the survey records do not indicate the title to the property. In the present reference, the Court has to decide which party has proved that he was the owner of the property acquired. Though 13 years have lapsed since the matter has been referred to this Court, unfortunately, we are still at the beginning of the road as none of the parties have proved that they were the title holders in respect of the land acquired for the road.”

15. But, the Court below has proceeded on the basis that since recording of the name of the interested party no.19 and his family members in survey records pertaining to the aforesaid land was not enough to indicate title in the property, the claim towards

compensation could not be accepted.

16. A perusal of the judgment of this Court in of **Dossobai Nanabhoy Jeejeebhoy Vs. P. M. Bharucha (supra)** shows that this Court has deliberated upon the expression “person interested”, to hold that such persons would include those having an interest in compensation when land was acquired under the said Act. In para 6 of the said judgment, it was held as follows:

“6. The Legislature has undoubtedly used different expressions such as "persons interested", "persons known or believed to be interested" and "persons possessing an interest". But, in our judgment, the expressions "person interested", and "person possessing an interest" appear to have the same meaning which the expression "person interested" defined in [Section 3\(6\)](#) has. We are unable to agree with the contention of Mr. Gupte that the Legislature has used the expression "person interested in the land" as having a connotation distinct from the connotation of "person interested". A "person interested in the land" under [Section 9](#) will, in our judgment, by the definition in [Section 3\(b\)](#), include a person who claims interest in compensation to be paid on account of the acquisition of land, and the interest which is contemplated by [Section 9](#) and the other sections to which we have referred is not restricted to legal or proprietary estate or interest in the land but includes such interest as will sustain a claim to apportionment with the owner of the land. If a

person has a right to remain in occupation or has a claim against the land, or some obligation or restriction is imposed upon the ownership of the land, the person in whom the right or claim is vested or who is entitled to the benefit of the obligation or restriction will, in our judgment, be entitled to compensation, even though the right, claim or the benefit may not amount to an interest or estate in the land. If a person has, without having any interest, a right to remain in occupation or possession of land of the ownership of another, compensation for extinction of that right by compulsory acquisition will be payable to the person having the right of occupation or possession. For instance, a person who has a licence which is irrevocable will be a person interested, even though the licence does not amount to an interest in the land. The owner of a dominant tenement, having an easement over a servient tenement, even though the easement does not amount to an interest in the land, is by the definition declared expressly to be a person interested in land. In our judgment, the right to receive compensation for compulsory acquisition of land is not restricted to those persons who have a legal or proprietary interest or estate in the land and is available to all persons who have a right or claim to land, even if such right or claim does not amount to legal or proprietary estate or interest in the land.”

17. In the case of **Haryana Wakf Board Vs. State of Haryana and others reported in (2019) 13 SCC382**, which is also referred by the learned counsel appearing for the appellants, this Court considered a case where the lessees were in possession of land belonging to the Waqf Board, which stood acquired. Although, the Court concluded that the possession could not be said to be legal as the lease of the property had expired, yet a small portion of the quantum of the compensation was found payable to such lessees, on the basis that they were displaced and deprived of settled possession in the acquired land. The said position of law clearly indicates that a person in possession of land, which becomes subject matter of acquisition can claim interest, even though he may not be able to demonstrate title in the land acquired. Payment of compensation under the provisions of the said Act is for deprivation of settled possession and it is for this reason that the provisions of the said Act use the expression “interested person”. The said expression is defined in section 3(b) to the aforesaid Act, to include all persons claiming an interest in compensation to be made on account of acquisition of land under the Act.

18. The approach adopted by the Court below is found to be erroneous on the touchstone of the aforesaid position of law, recognized by the Hon'ble Supreme Court and this Court in the above mentioned judgments.

19. The learned counsel appearing for the appellants also referred to the aspect of possessory of title on the basis of the judgments of the Hon'ble Supreme Court in the case of **Somnath Burman Vs. Dr. S. P.Raju and anr, 1969 (3) SCC 129** and **Poonam Ram Vs. Moti Ram (dead) Thr. LRS and ors. (supra)**. It has been held in the said judgment that a person who asserts possessory title is required to show that he is in settled or established possession of the said property. Settled possession has been held that to be effective, undisturbed possession to the knowledge of the owner. On this basis, it is claimed that there was sufficient material placed on record on behalf of the interested party no.19 to demonstrate possessory title in the land acquired.

20. But, this Court is of the opinion that the nature of inquiry in a reference under section 30 of the aforesaid Act does not concern determination of title of the person making a claim towards compensation for acquisition of land. It would be enough to demonstrate that the person qualifies to be a "person interested" as contemplated under the said Act for laying a claim on the amount of compensation payable for acquisition of land. Since the nature of the enquiry under section 30 of the aforesaid Act is not for determining title of the claimant in the land acquired and is concerned more with apportionment of compensation on the basis that the person claiming the same can be said to be a person interested, this Court is not

inclined to comment upon the contention raised on behalf of the appellants while claiming possessory title on the basis of the aforesaid judgments of the Hon'ble Supreme Court.

21. It is evident from the manner in which the Court below has proceeded to pass the impugned judgment and order, that the correct position of law was ignored and much emphasis was erroneously placed on the necessity for the appellants i.e. interested party no.19 to prove title in the acquired land for successfully claiming compensation towards acquisition of land. This Court is of the opinion that the interested party no.19 had placed on record sufficient documentary and oral evidence to lay claim on part of compensation payable for 6060 sq. mtrs of land, regarding the aforesaid sub-divisions in respect of which the name of the interested party and its predecessor were recorded in the survey records. Therefore, it is found that the points framed hereinabove deserve to be answered in favour of the appellants and to that extent, the impugned judgment and order deserves to be interfered with.

22. At the same time, this Court cannot ignore the fact that an affidavit filed on behalf of respondent no.6 (original interested party no.6) i.e. the Comunidade states that civil suits were filed by the Comunidade regarding cancellation of names of interested parties in survey records pertaining to survey no.24. The learned counsel appearing for respondent no.6 submitted that the concerned persons

of the respondent Comunidade were unable to give specific instructions as regards the fate of the aforesaid suits. In this connection the third proviso to section 31 assumes significance. The said provision reads as follows:

31 Payment of compensation or deposit of same in Court.

(1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of ⁷⁰ [appropriate Government] instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interest of the parties concerned.

(4) *(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.*

23. The third proviso to section 31 (2) of the Act quoted above shows that even if the compensation is disbursed to a person under the provisions of the said Act, the said person would be liable to pay the same to a person lawfully entitled thereto. It clearly means that even if the present appeal is allowed, the appellants would receive compensation, subject to the aforesaid rider spelt out in the third proviso to section 31(2) of the aforesaid Act.

24. In view of the above, the appeal is allowed. The impugned judgment and award is set aside, to the extent the claim of the appellants was rejected. The reference is partly allowed to the extent that the appellants are held entitled, through the original interested party no.19, to compensation for acquisition of land admeasuring 6060 sq. mtrs from survey no.24 of village Agonda Taluka Canacona, along with all statutory benefits as provided under the provisions of the said Act.

MANISH PITALE, J.

AP/-