

Aura

IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition NO. 1057 of 2019

Shiva Kusta Naik Gaonkar (since deceased)
through Lrs:

1. Shri Anand Fulu Gayek alis Anand Filu Gae, s/o late Fulu Gayek, age 54 years, agriculturist,
2. Shri. Ajit Anand Gayek alias Ajit Anand Gae, s/o Shri Anand Gae age 28 years, service
3. Shri Amol Anand Gyaek alias Amol Ananda Gae, s/o Shri Anand Gayek, age 30 years, service

All resident of H. NO.53, Mastimol,
Xeller, Canacona Goa.

Petitioners

Versus

1. Shri Mallikarjun Devasthan Shrishtal,
Through its attorney Satish Ganaba Dessi,
Son of Ganaba Dessai, Service, Age 54
years, R/o H. NO.376, Mokod, Shrishtal,
Canacona Goa. And ors.
2. Shiva Vasudev Deshmukh, s/o Vasudev Deshmukh, age 32 years, service, r/o Khalvadem, Canacona, Goa. (LR of party no.2 brought record. (as per ord 17.4.2017)

Respondents

Mr. Rohan Rama Desai, Advocate for the Petitioners.

Mr. Parag G. Wagle, Advocate for the Respondents.

CORAM: MANISH PITALE, J

DATED: 14th September, 2021

ORAL ORDER

1. By this Writ Petition, the petitioners have challenged order dated 1/11/2019 passed by the Court of District Judge, South

Goa, Margao, whereby an application filed by the respondents for leading further evidence in a reference proceeding has been allowed.

2. The background in which the said application was moved is that there is a dispute raised as regards apportionment of compensation for acquisition of land under the provisions of the Land Acquisition Act, 1894. The Land Acquisition Officer referred the dispute under section 30 of the said Act to the District Court and it is in the said proceedings that the respondent desired to lead evidence in support of its contentions.

3. The petitioners claim to be tenants of the property that was acquired. It is their contention that the issue regarding their tenancy is already pending before the competent authorities under the provisions of the Goa, Daman and Diu Agricultural Tenancy Act 1964 and till such time that the said issue is settled, the reference proceedings before the Court below ought to be stayed and that the application moved by the respondents for leading further evidence ought not to have been allowed.

4. It is also relevant to mention here that the petitioners had brought to the notice of the Court below that a Revision application moved under the provisions of the aforesaid Act

against the orders of the Mamlatdar and the Deputy Collector had been dismissed as withdrawn and that they had moved an application for restoration of the same with an application for condonation of delay. The concerned Court had rejected the application for condonation of delay and that Writ Petition No.127 of 2017, challenging the said order was pending before this Court. In the impugned order, the Court below took note of the said contention and allowed the application of the respondent, observing that in such a situation the recording of the evidence could be completed and, perhaps, the Court below would not be in a position to finally decide the reference till the aforesaid writ petition was decided by this Court.

5. Writ Petition No.127 of 2017 filed by the petitioners has been allowed today by a separate Judgment and the Revision application has been restored for consideration on merits. Therefore, the issue of tenancy raised by the petitioners is pending consideration before the competent Tribunal/authority in the revision application.

6. In this context, the learned counsel appearing for the petitioners has invited attention of this Court to the Judgment of this Court in the case of *Smt. Kalyan Madgaonkar Vs. Shri Dattaram Shiva Harmalkar (since deceased through Lrs)*

2010 3 ALLMR 629, wherein it has been held in the context of the issue of tenancy being referred to the competent authority that when the said issue is decided by the Mamlatdar i.e. the original authority under the provisions of the relevant statute, the order of the Mamlatdar is subject to further challenges as available in law.

7. In another Judgment in the case of *Dossibai Nanabhoy Jeejeebhoy Vs. P.M. Bharucha – (1958) 60 BOMLR 1208*, a Division Bench of this Court in the context of apportionment of compensation when an issue of tenancy is raised, has held that different methods of apportionment of compensation have to be applied when the amount of compensation is to be distributed between the landlord and the tenant. On this basis, the learned counsel for the petitioners submits that the unless and until the issue of tenancy is finally settled, the proceedings pending before the Reference Court under section 30 of the Land Acquisition Act ought to be kept in abeyance.

8. The learned counsel for the respondents has not been able to dispute the position of law as laid down in the aforementioned judgments of this Court on which the learned counsel for the petitioners has placed reliance.

9. This Court is also of the opinion that until the issue of tenancy is finally put to rest, the proceedings before the Court below under section 30 of the said Act would have to be kept in abeyance, as the finality of the issue of tenancy would have a direct impact on the claim of apportionment of compensation raised by the rival parties.

10. In view of the above, the Writ Petition is allowed. The impugned order is set aside. Consequently, it is directed that the proceedings in the Court below arising out of reference made under section 30 of the aforesaid Act shall remain stayed till the issue of tenancy is finally decided upon termination of challenges that may be raised against the order of the Mamlatdar.

MANISH PITALE, J.