

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 59 OF 2022.

- 1 Shri Vinayak Padmanabh Sinkre
(deceased) Through legal heirs,
- 1(a) Smt. Vinayak P. Shinkre, 80 years,
Wife of late Vinayak Shinkre, r/o
Pandit Wadda, Dhavali, Ponda
Goa.
- 1(b) Shri Hemant Vinayak Shinkre, 58
years, son of late Vinayak Shinkre,
r/o Pandit Wadda, Dhavali, Ponda
Goa.
- 1(c) Smt. Hemant Shinkre, 54 years of
age, Wife of Hemant Shinkre, r/o
Pandit Wadda, Dhavali, Ponda
Goa.
(Petitioner Nos.1(b) to (c)
represented herein by their POA
the Petitioner No. 2 Constituted
vide POA dated 14/12/2020)
- 1(d) Shri Shyam Vinayak Shinkre, 63
years of age, Son of late Vinayak
Shinkre, r/o Pandit Wadda,
Dhavali, Ponda Goa.
- 1(e) Smt. Shobha Shyam Shinkre, 59
years of age, r/o Pandit Wadda,
Dhavali, Ponda Goa.
(Petitioner Nos. 1(d) to (e)
Represented herein By their POA
the Petitioner No. 2 Constituted
vide POA dated 04/1/2020).

- 2 Dr. Pradip Vishnu Sincro, 64 years of age, son of Vishnu Caxinath Sincro, r/o. H. No. 169/16(1) B-1, Raj Heritage, Shantinagar, Ponda-Goa.
- 3 Dr. Neelam Pradip Sincro, 56 years of age, Wife of Dr. Pradip Vishnu Sincro, r/o. H. No. 169/16(1) B-1, Raj Heritage, Shantinagar, Ponda-Goa.
- 4 Shri Ajit Vishnu Sincro, 61 years of age, son of Vishnu Caxinath Sincro, r/o. Kurtarkar Nagari, Shantinagar, Ponda-Goa.
- 5 Smt. Yeshoda Ajit Sincro, 56 years of age, Wife of Ajit Vishnu Sincro, r/o. Kurtarkar Nagari, Shantinagar, Ponda-Goa.
(Petitioner Nos. 3 to 5 Represented herein By their POA the Petitioner no. 2 Constituted vide POA dated 09/1/1996)
- 6 Smt. Meenaxi Vishnu Sincro, 71 years of age, Daughter of Vishnu Caxinath Sincro, r/o Sanvarkatta, Cuncolim Goa.
(Petitioner No. 6 Represented herein By their POA the Petitioner No. 2, Constituted vide POA dated 14.12.2020)
- 7 Shri Guiri alias Prakash Sridhar Kunde, (deceased) through legal heirs:

7(a) Smt. Gauri Pritesh Naik Karmali,
34 years of age, Daughter of late
Shri Guiri alias Prakash Sridhar
Kunde, Wife of Pritesh Naik
Karmali, r/o. H. No. 26,
“Shantidham” Dovorlim,
Ravondfond, Margao Goa.

7(b) Shri Pritesh Pushpashil Naik
Karmali, 39 years of age, Son of
Shri Pushpashil Naik Karmali, r/o.
H. No. 26, “Shantidham”
Dovorlim, Ravondfond, Margao
Goa.

Petitioner nos. 7(a) and 7(b) are
represented herein By their POA
the Petitioner No. 2 Constituted
vide POA dated 01/06/2019).

...Petitioners

Versus

Shri Vishnudas Dattatray Sadhale,
Major of age, r/o Kapila Housing Society,
Khandpaband – Ponda

...Respondent.

Mr. A. D. Bhobe and Ms. S. Shaikh, Advocates for the petitioners.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. V. Braganza and
Mr. S. Rivankar, Advocates for the respondent.

CORAM: SANDEEP K. SHINDE, J.
RESERVED ON: 27 July 2022.
PRONOUNCED ON: 17 August 2022

JUDGMENT:

1. Rule, made returnable forthwith. Learned Counsel for the

respondent waives notice on behalf of the respondent.

2. In brief facts of the case are as follows,

In the Land Acquisition Case no.43 of 1996, the Deputy Collector (SDO) Ponda, vide order dated 12.12.1995, referred the dispute between, the “parties interested”, as to the apportionment of the compensation to the District Judge, under Section 30 of the Land Acquisition Act. Parties interested were, Shri Vishnudas Dattatray Sadhale/respondent no.1 herein and Shri Vinayak Padmanabh Shinkre.

3. Shri Vinayak P. Shinkre, filed a statement of claim on 25.6.2000, through his duly constituted attorney Shri Audumber Jagannath Shinkre. Claim was to the following effect.

- 1 That, a portion admeasuring 9050 sq. metres of the property called “Varcondem” or “Booreachem Bhat” , situated in the village Queula of Taluka Ponda-Goa, surveyed under No. 31/1 was acquired for the construction of Ponda Bypass Road.
- 2 As a head of the “Shinkre, a joint Hindu Family”, he was, the owner, in possession of the said above mentioned property surveyed under No. 31/1 having inherited the same from his ancestors, and his name has been rightly entered in the I and XIV form of the

said survey number as occupant thereof.

- 3 In the Taluka Revenue Office at Ponda, the said property is registered under Matríz No. 859 in the name of Cashinath Porob Sincro who was his ancestor.
 - 5 On the death of Caxinata Sincro in inventory proceedings Civil Court Ponda allotted subject land to Smt. Essodabai Porob Sincro, widow of Caxinath Sincro and it was finally approved by order dated 12th March 1931. The said property is at Sr. No. 3 of the list of assets in the inventory.
4. Be that as it may, pending reference, Vinayak Shinkre expired and his legal representatives namely, his widow(petitioner no.1(a)); son Hemant Shinkre (petitioner 1(b)); Shyam Shinkre (petitioner 1(d)); and their spouses 1(c) and 1(e) were brought on record.
5. Thus, Vinayak Shinkre, claimed that the acquired land was owned and possessed by him, since the time of his ancestors and his name has been rightly entered in the Form I and XIV, as occupant thereof.
6. Pending reference, Dr. Pradip Vishnu Shinkre, as a constituted

attorney of the petitioners, 1(a) to 1(e) moved an application in the subject Reference Case, seeking leave to amend the statement of claim made by, Vinayak Padmanabh Shinkre in the following terms;

- 1 The land surveyed under No. 31/1, acquired for construction of Ponda Bypass road was continuously, openly, publicly and peacefully possessed and enjoyed by his predecessor-in-title, Kashinath Shinkre as its legal owner. Upon the death of Kashinath Shinkre, one half of the said property was allotted to Essodibai Shinkre, on account of her moiety in the Inventory Proceedings before the Court of Civil Judge, Ponda. Kashinath Shinkre and Essodibai Shinkre were survived by son, Vishnu Kashinath Shinkre and his wife Krishnabai Vishnu Shinkre. Dr. Pradip Vishnu Sincro, Dr. Neelam Pradip Sincro, Shri Ajit Vishnu Sincro and Smt. Yeshoda Ajit Sincro, (eventually, petitioner nos. 2, 3 ,4 and 5) who are the children/legal representatives of, Vishnu Kashinath Shinkre, and as such, the land surveyed under No. 31/1 was legally

owned, possessed by them peacefully and publicly, without any interference and/or obstruction.

2 The family of Shinkre being joint family, Vinayak Padmanabh Shinkre (original claimant) and other members of joint family of Shinkre were assisting Vishnu Kashinath Shinkre to look after and maintain the acquired property and all other properties of Shinkre.

3 The name of, Vinayak Padmanabh Shinkre has been inadvertently recorded in the survey records and it continued, as there was no clash of interest of said Vinayak Shinkre and that of Vishnu Kashinath Shinkre or the legal representatives of said late Vishnu Shinkre.

(emphasis supplied)

4 The right and interest of said Vinayak Padmanabh Shinkre was restricted to his house and land adjacent to it.(emphasis supplied)

5 The acquired property was in possession of the legal

representatives of late Shri Kashinath Shinkre.
(eventually petitioner nos.2,3,4, and 5 herein)

On these assertions, the Dr. Pradip Vishnu Shinkre (petitioner no.2) sought leave to amend paragraph nos. 2, 3 4 and 9 of the statement of claim.

7. It may be stated that in paragraph no. 2 of the statement of claim Vinayak Shinkre, had claimed, entire compensation, as a owner of the property surveyed under no.31/1, having inherited the same from the ancestors. This claim was sought to be amended, whereby the words, “Owner in possession of the above mentioned property having inherited the same from his ancestors” were deleted and in its place amendment was sought to the effect that, “Vinayak Shinkre was managing and administering the properties of Shinkre family and has been looking after the interest of the Shinkre family, in respect of their properties. (emphasis supplied)

8. The, learned reference Court, vide order dated 3.8.2012, allowed the amendment of 'statement of claim' and directed to carry

out amendment to the statement of claim within eight days.

Whereafter statement of claim has been amended.

9. It appears that on 31.8.2019, an application was moved to incorporate the names of **Dr. Pradip Vishnu Shinkre(Petitioner no.1), Neelam Pradip Shinkre (petitioner no.2), Ajit Vishnu Shinkre (petitioner no.4) and Smt. Minaxi Vishnu Shinkre (petitioner no.6)** and their respective spouses as, interested parties/ respondents, in the Reference case no.43 of 1996.

10. That application was titled, as an, 'application seeking amendment' of the cause title.

11. This application was, resisted by Shri Vishnudas D. Sadhale, respondent no.2 on the following grounds;

- 1 That Pradip Shinkre, Ajit Shinkre and Minaxi Shinkre and their spouses are not the legal representatives of Vinayak Shinkre(original claimant)
- 2 That Vinayak Shinkre, expired and his legal representatives, namely his widow and his two sons

Hemant Shinkre and Shyam Shinkre along with respective spouses have been brought on record.

- 3 That in paragraph no.3 of the original statement of claim Vinayak Shinkre had claimed his right in the subject land, having inherited the same from his ancestors and his name has been rightly entered in I and XIV form in the said survey number as the occupant thereof.
- 4 That neither Pradip Shinkre and others petitioner nos. 2 to 7 nor their parents were parties before the Collector, at the time when reference was made.
- 5 The claim as to apportionment, was between Vinayak Shinkre and Sadhale, respondent.

12. The learned Reference Court vide order dated 20.11.2021 rejected the said application, and refused to implead petitioner nos. 2 to 7 as a respondents/interested parties, in Land Acquisition Reference Case no. 43 of 1996.

13. Feeling aggrieved by the said order, this petition is preferred.

14. Heard Mr. A. D. Bhobe, learned counsel for the petitioners and Mr. J. E. Coelho Pereira, learned Senior Counsel for the respondent.

15. Question for consideration is, “Whether in restricted jurisdiction under Section 30 of the Land Acquisition Act, Reference Court, can exceed terms of reference, as to decide and adjudicate the rights of the petitioner nos.2, 3, 4 and 5 to claim compensation, although they were not the claimants, before the Collector when reference was made?”.

16. This Court in the case of *Govind Narayana Lotlikar, AIR 1987 Bombay 32 and Dattaram Deu Desai, 2000(3) Mh. L. J. 477* has held that a person who was not a party to the proceedings before the Land Acquisition Officer, cannot be added as party to the proceedings before the reference Court in a reference under Section 30 of the Land Acquisition Act, even if such party has or has acquired any right over the land which was acquired and which was the subject matter in the Land Acquisition proceedings in which reference has been made.

17. It is well settled that the jurisdiction of the District Court while disposing a reference under the Land Acquisition Act is restricted by the term of reference itself. That being so, it necessarily follows that,

a person who was not before the Collector and who claims to have interest in the land and therefore is entitled for payment of compensation or part thereof, is raising a new dispute and, as such, such person cannot be impleaded.

18. In the case at hand, admittedly the petitioner nos. 2 to 7 were not before the Collector nor their ancestors asserted their claim before the Collector and therefore, the application seeking to implead themselves in the reference proceedings, being persons interested has been rightly rejected by the reference Court.

19. In fact, assertions in the amendment/statement of claim, in no uncertain terms suggest that, claim raised by such persons will be a cause to new dispute, which was not before the Collector and that being so, adding such persons, is not necessary to effectually and completely adjudicate upon the questions involved in the referred dispute. Rather it will completely change and definitely exceed the terms of reference, beyond the restricted jurisdiction of the District Court acting in reference under Land Acquisition Act.

20. In fact, the petitioner nos. 2 to 7 through the amendment raised the new dispute and simultaneously claimed that name of Vinayak Padmanabh Shinkre(original claimant) was inadvertently recorded in the survey records and further the right, title and interest of the said Vinayak Shinkre, in the acquired land was restricted to his house and land adjacent thereto. Thus to be stated that petitioner nos.2 to 7 under the guise of order allowing amendment to the statement of claim, were attempting to implead themselves as respondents in the land reference which in view of the law laid down in the *Dattaram Deu Desai and others and Govind Lotlikar* (supra) was not sustainable.

21. In consideration of the facts of the case and in view of the law propounded in the aforesaid two rulings, in my view, the impugned order dated 20.11.2021 passed by the District Judge-II, Panaji below Exh. D-138 in Land Acquisition Case no. 43 of 1996 *inter alia* refusing to implead the petitioner nos. 2 to 7 as party respondents/interested party in the said reference, calls for no interference.

22. In the result; petition is dismissed with cost. Rule is discharged.

SANDEEP K. SHINDE,J.