

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO.35/2021

IN

FIRST APPEAL NO.21/2021

COMUNIDADE OF LOUTOLIM,
THR. ITS PECIAL ATTORNEY,
FRANCISCO MONTEIRO ALISA
FRANKY MONTEIRO

... APPLICANT

Versus

CLARA SUBRINHO (DEC) REP.
THR. HER LRS.

... RESPONDENTS

AND

CIVIL APPLICATION NO.36/2021

IN

FIRST APPEAL NO.22/2021

AND

CIVIL APPLICATION NO.37/2021

IN

FIRST APPEAL NO.23/2021

COMUNIDADE OF LOUTOLIM,
THR. ITS SPECIAL ATTORNEY,
FRANCISCO MONTEIRO
ALISA FRANKY MONTEIRO

... Applicant

Versus

JOSE FRANCIS SUBRINHO
(DEC) AND 5 ORS

... Respondents

Mr S. D. Padiyar with Mr P. Shirodkar, Advocates for the
Applicant.

Mr Vithal Naik, Advocate for the Respondents in all three CAs.

CORAM: M. S. SONAK, J.

DATED: 19th OCTOBER 2023

P.C.:

1. Heard Mr S. D. Padiyar appears for the Applicants/Appellants and Mr Vithal Naik appears for the Respondents and files replies opposing grant of any interim relief.
2. The First Appeals against the awards made by the Reference Court have already been admitted. These applications are for interim relief.
3. The amount in dispute is already deposited before the Reference Court and in this Court. This position is not disputed by the learned counsel for the appellants and respondents.
4. By the impugned award, the Tribunal has apportioned compensation favouring the respondents. Mr Padiyar states that the apportionment is basically by considering the entries in the survey records. He submits that the Comunidade is the owner of the land and the records of the Comunidade also show that the Comunidade has been the owner of the land which is acquired.
5. Mr Vithal Naik submits that the Comunidade despite being aware of the survey entries did not bother to file any suit in the last four decades. He submits that even otherwise it is the

respondents who are the owners of the land based on the entries in the Tombo records maintained by the Comunidade.

6. The Trial Court held that the respondents have not proved their title to the acquired property. The documents at Exh.79 and Exh.81 based upon which title was claimed by the respondents were considered but the Reference Court did not accept the respondents' case that they had title to the acquired property based on these documents. The Reference Court has mainly gone by the aspect of possession and the entries in the survey records.

7. Therefore, considering the above circumstances, it would not be safe to decline interim relief to the Comunidade or to allow the respondents to withdraw the compensation amount without offering any security of its return, should these appeals be ultimately allowed.

8. If the respondents withdraw the awarded amount pending the appeal, it would be extremely difficult to recover the same. As it is, the Comunidade procedures are quite tardy and secondly, there will be no guarantee that the respondents will not spend this amount and claim that there is nothing remaining to recover. Mr Naik's offer about indemnity bond will also not suffice in the facts and circumstances of the present case.

9. Accordingly, the respondents are restrained from withdrawing the amounts in terms of the impugned awards. The amounts to remain deposited before the Reference Court and this

Court. However, the amounts, if not already invested, must be invested in a Nationalized Bank in a suitable financial instrument.

10. If any of the respondents wish to withdraw the deposited amount or any portion of the same, they are granted liberty to do so provided they furnish a bank guarantee from a Nationalized Bank to secure the withdrawn amount. For this purpose, the respondents will have to file an application accompanied by the bank guarantee of a Nationalized Bank.

11. The hearing in the First Appeals is however expedited.

12. These Civil Applications are disposed of in the above terms.

M. S. SONAK, J.

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