

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITIONS NO. 1050, 1051, 1052 & 1053
OF 2018

Mulla Abdul Razac,
Son of late Mulla Patcha,
51 years of age,
r/o Flat No. 1, Montopio Police Qtrs.,
Comba, Margao – Goa.

.... Petitioner.

Versus

1. Mulla Ibrahim (S.D. through his
legal representative)
 - a) Smt. Hafiba Bi Mulla Ibrahim,
(since deceased)
Major of age,
Wife of late Mulla Ibrahim,
 - b) Mulla Murtuza Ibrahim,
Major of age,
Son of late Mulla Ibrahim,
 - c) Mulla Zaibunisabi Murtuza,
Major of age,
Daughter of late Mulla Ibrahim,
 - d) Sayed Babasaheb, (since deceased)
Major of age,
 - e) Sayed Rabiyyabi Babasaheb,
Major of age,
 - f) Mohamad Hanif Khan,
Major of age,
 - g) Hamidabi Hanif Khan,
Major of age,
 - h) Shaik Abutahir Muzawar,
Major of age,

- i) Shaikh Ramizabi Abutahir,
Major of age,
 - j) Miss Noor Nisabi Ibrahim,
Major of age,
All r/o Sahapur, Bandora,
Ponda – Goa.
2. Mulla Abdul Latif (S.D. Through his legal representative)
- a) Mrs Sakina Mulla (deceased)
 - b) Mulla Abdul Rehman,
Major of age,
 - c) Mulla Rahimtulla,
Major of age,
 - d) Mulla Kasim,
Major of age,
 - e) Mulla Iqbal,
Major of age,
All r/o near Police Station, Siroda.
 - f) Amudabi Shaikh,
Major of age, r/o Commerce
Centre, B-wing,
Flat No. D-2, 4th Floor, Vasco-da-Gama.
 - g) Noorjanbi Khan,
Major of age,
C/o Mohamed Khan,
r/o Kundaikar Chawl, Nr.

Davarlim Masjid,
Indona Davorlim, Margao Goa.

- h) Sazia @ Kusum Khan,
Major of age,
r/o GI, Pankaraj Bldg., Opp. to
Mitai Mandir,
Tonca, Caranzalem
- i) Hasina Shaikh,
Major of age,
r/o Kurtarkar Arcade, Flat No. T-
16, 3rd Floor,
Kaziwada, Ponda.
- j) Mumtaj Bi Mulla,
Major of age,
r/o near Police Out post, Siroda

3. Mulla Hassan (S.D. through his legal
representatives)

- a) Hfiza Mulla (deceased)
- b) Mulla Anwar,
Major of age,
- c) Mulla Farroq,
Major of age,
- d) Mulla Nazir,
Major of age,
- e) Mulla Salim
Major of age,

f) Mulla Aslam,
Major of age,
All r/o Shahapur Bandora, Ponda
Goa.

4. Mulla Ali (S.D. through his legal
representatives)

a) Kulsumti Ali Mulla (deceased)

b) Mulla Javed, (since deceased)

Major of age,

c) Mrs. Mulla Javed,

Major of age,

d) Mulla Rasid, (since deceased)

Major of age,

e) Sakiba Rasid Mulla,

Major of age,

f) Mulla Vahid,

Major of age,

g) Mrs. Mulla Vahid,

Major of age,

h) Farida Bi Raziabi,

Major of age,

4(h)(i) Farida Bi,

Major of age,

4(h)(ii) Razia Bi

Major of age,

i) Kamal Shaikh,

Major of age, All r/o Shahapur,
Bandora, Ponda Goa.

5. Mulla Insuf (S.D. through his legal representatives)

α) Mulla Iklak,

Major of age,
r/o Shahapur, Bandora, Ponda
Goa.

6. Mulla Abdul Gani (S.D. through his legal representatives)

a) Mulla Noor Mohamad,

Major of age,
r/o Shahapur, Bandora, Ponda
Goa.

7. Mulla Mohamad Mirza (deceased)

a) Mulla Mohamad Zaruddin,

Major of age,

b) Mulla Yakub,

Major of age,

c) Mulla Amodasab (deceased)

7(c)(i) Mr. Mulla Mohamed Zahid,

Major of age,

(Power of Attorney in favour of
Mulla Zahiruddin

revoked vide deed of revocation
dated 09/01/2015)

7(c)(ii) Miss Reshma Mulla,

Major of age,
Both r/o Shapur, Ponda. Presently
residing
At Flat No. 101, Block B,
Alfattaim Building,
Khalid Bin Waleed Stree, Bur –
Dubai, UAE

(Power of attorney in favour of
Mulla Zahiruddin

revoked vide Deed of Revocation
dated 15/04/2015)

d) Mulla Usman (deceased)

All resident of Shahapur,
Bandora, Ponda Goa.

7(d)(i) Mr. Zameer Usman Mulla,

Major of age,
r/o Rahmani Building, B/19,
First floor, Opp. Railway Station,
Mumbra Dist. Thane 400612

(Power of attorney in favour of
Mulla Zahiruddin

revoked vide Deed of Revocation
dated 29/12/2014)

7(d)(ii) Mr. Zakir Usman Mulla,

Major of age,
r/o Radisson Blu Hotel,
Dubai Deira Creek, Baniyas Road,

P.O. Box 476, Dubai – UAE

(Power of attorney in favour of
Mulla Zahiruddin

revoked vide Deed of Revocation
dated 28/12/2014)

7(d)(iii) Miss Zaheera Usman Mulla,

Major of age,

r/o Rahmani Building, B/19,

First floor, Opp. Railway Station,

Mumbra Dist. Thane 400612

(Power of attorney in favour of
Mulla Zahiruddin

revoked vide Deed of Revocation
dated 29/12/2014)

7(e) Mirza Zahiruddin Mulla

major of age, son of Mulla
Zahiruddin

r/o Near Maruti Temple,

Shapur, Ponda Goa.

7(f) Faizan Zahiruddin Mulla

15 years of age, son of Shri Mulla
Zahiruddin

r/o Near Maruti Temple,

Shapur, Ponda Goa.

Represented herein by his father &
Natural Guardian

Mulla Zahiruddin, major of age,

Businessman, Resident of Shapur,
Ponda Goa

8. Abdul Karim Mulla (S.D. through his legal representatives)
 - a) Razia Bi,
Major of age,
r/o 237, Sacherpir Street, Camp,
Pune.
9. Mulla Mohamed Husain (S.D. through his legal representatives)
 - a) Mulla Mohamed Hussain, (since deceased)
Major of age,
 - b) Mulla Mohamed Ayub, (since deceased)
Major of age,
 - c) Mulla Mohamed Aslam,
Major of age,
 - d) Mulla Mohamd Afzal,
Major of age,
 - e) Mulla Mohamed Allbodine,
Major of age,
 - f) Mulla Mohamed Mansur,
Major of age,
 - g) Fatima Bi, (since deceased)
Major of age,

h) Asmat Bi,

Major of age,

i) Mumtaz Bi,

Major of age,

j) Shaida Bi

Major of age,

k) Shaireta Bi,

Major of age,

All r/o Shahapur, Bandora, Ponda
Goa.

10. Mulla Abas (S.D. through his legal
representative)

a) Mulla Javed,

Major of age,

r/o 237, Sacherpir Street, Camp,
Pune.

11. Mulla Hanza (deceased)

11(a) Istiyaz Mulla

Son of deceased Mulla Hamza

Major of age, service, bachelor,

11(b) Rafiq Mulla

Son of deceased Mulla Hamza

Major of age, businessman,
married to

11(c) Mrs. Irfama Bi,

Daughter in law of deceased Mulla
Hamza

Major of age, housewife

11(d) Imtiyaz Mulla, (since deceased)

Son of deceased Mulla Hamza

Major of age, businessman,
bachelor

All resident of Flat No. G-2,
Macedo Apartments, St. Cruz,
Ponda Goa.

11(e) Waheeda Shaikh

Daughter of deceased Mulla
Hamza

Major of age, housewife and her
husband

11(f) Sheikh Ayoob

Son in law of deceased Mulla
Hamza

Major of age, businessman

Both residing at H. No. 1009,
Demani

Cuncollem, Salcete Goa.

11(g) Mrs. Sajeeda Khan

Daughter of deceased Mulla
Hamza

Major of age, housewife, married
to

11(h) Mr. Karim Khan @ Yunus
Khan (since deceased)

Son in law of deceased Mulla
Hamza Major of age, both r/o H.
No. 277,

Malbhat, Margao, Salcete Goa.

11(i) Mrs. Farida Khan,

Daughter of deceased Mulla
Hamza, Major of age, housewife,
married to

11(j) Mr. Khan Majid,

Son in law of deceased Mulla
Hamza

Major of age, Govt. Servant

Both residing at H. No. 31,

Near Market Yard, Valpoi.

11(k) Mrs. Faimida Khan

Daughter of deceased Mulla
Hamza

Major of age, housewife, married
to

11(l) Mr. Shaikh Hussain

Son in law of deceased Mulla
Hamza

Major of age, service,

Both residing at Opposite Rohidas
Chodankar,

H. No. 7, Sasmollem, Baina,

Vasco-da-Gama, Goa.

12. Mulla Abdul Samad (S.D. through

his legal representatives)

a) Zainat Bi,

Major of age,

b) Mulla Ismail,

Major of age,

c) Mulla Izaz,

Major of age,

d) Mulla Aktar,

Major of age,

e) Safina Bi,

Major of age,

f) Rahana Bi,

Major of age,

All r/o Shahapur, Bandora, Ponda
Goa.

13. Mulla Mohamed Salia

Major of age,

r/o Antruz Nagar, Curti, Ponda Goa.

14. Mulla Abubkar

Major of age,

r/o Shahapur, Bandora, Ponda Goa.

15. Late Mulla Abdul Kadar (since
deceased)

Represented by his LRs

a) Mr. Mulla Issac,

Major of age,

b) Mrs. Taiyab Bi,

Major of age,

c) Smt. Khatija Bi,

Major of age,

d) Mr. Shaikh Dawood (since
deceased)

Amendment carried out as per
order dated 18/02/2016

e) Mr. Shaikh Irshad,

Major of age,

f) Mr. Shaikh Kassim,

Major of age,

r/o Shahapur, Bandora, Ponda Respondents.
Goa.

**Mr A.D. Bhobe with Ms Annelise Fernandes, Advocates
for the Petitioners.**

Mr John Abeau Lobo, Advocate for Respondent No. 1(e)

CORAM : M. S. SONAK, J.

DATE : 16th March 2023

ORAL JUDGMENT :

1. Heard Mr A.D. Bhobe for the Petitioner and Mr John Lobo for Respondent No.1(e) in all these Petitions. The endorsement dated 8/11/2018 confirms that all the Respondents

have been served.

2. This Court, by an order dated 25/10/2018, while issuing notices to the Respondents, had made it clear that all these Petitions would be taken up for final disposal at the admission stage. This was more so since proceedings before the Reference Court were also stayed by this Court.

3. Accordingly, Rule is issued in all these Petitions, and these Petitions are taken up for final disposal.

4. The challenge in this Petition is to the separate but identical orders dated 10/8/2018, dismissing the Petitioner's applications for impleadment as a party in the references under Section 30 of the Land Acquisition Act, 1894 (said Act) on the ground that though, factually a reference was made concerning the Petitioner, due to a clerical error on the part of the Collector's Office, the Petitioner's name remained to be included in the references forwarded to the District Court

5. The learned Reference Court, relying upon the decision of *Shayamali Das vs. Illa Chowdhry & ors.* - Appeal (Civil) 4632 of 2006, has held that Order 1, Rule 10(2) of CPC does not apply to a reference under Section 30 of the said Act. Therefore, the Petitioner's applications for impleadment in the three pending

references were rejected.

6. The Reference Court has also noted that Section 30 of the said Act does not postulate any time limit as such. Therefore, a reference under Section 30 can be made at any point in time if such an application is made to the Collector. In short, the Reference Court virtually advises the Petitioner to approach the Collector once again and urge a fresh reference under Section 30 of the said Act because there is no time limit as such within which such a reference can be applied for or made.

7. Mr Lobo, learned Counsel for Respondent No.1(e), endorses the reasoning of the learned Reference Court by submitting that the Reference Court had no power or jurisdiction to implead the Petitioner as a party in the pending references. He relied upon *Hafix Ismail Shaikh and ors vs. Special Land Acquisition Officer, Panvel, and ors.* [2005 (3) Mh.L.J. 232 in support of this endorsement of the view taken by the Reference Court.

8. *Hafix Ismail Shaikh* (supra) holds that the parties, who had not applied for enhancement, cannot be entitled to enhancement in the absence of their applying for enhancement against their share. Accordingly, the issue involved in *Hafix Ismail Shaikh*

(supra) was different from the issue involved in the present Petitions. Similarly, even the issue in *Shayamali Das* (supra) was different. The third party, who had never raised any dispute before the Land Acquisition Officer about apportionment or enhancement, attempted to seek impleadment directly before the Reference Court in the pending reference under Section 30 of the said Act. It is in the above circumstances that it was held that the Reference Court could not, by resorting to the provisions of Order 1, Rule 10 of CPC, broaden the scope of the reference.

9. However, the position in the present Petitions is entirely different. Here, the Petitioner, even within the time prescribed for applying a reference under Section 18 of the said Act, had applied the Collector/LAO raising disputes of the rate and apportionment. In these applications, the Petitioner had claimed the co-ownership regarding the acquired property. Some genealogy, in support of such a claim, was also provided. Besides, the Petitioner had expressed dissatisfaction with the quantum of compensation, as also the issue of apportionment was clearly raised by the Petitioner before the Collector/LAO.

10. Since there were disputes amongst the co-owners or the alleged co-owners, the Collector/LAO made a reference under Section 30 of the said Act to the Reference Court vide letter dated

28th February 2014. However, in this letter, the Petitioner's name was omitted. This position was accepted by the Collector/LAO in his letter dated 12th April 2017, addressed to the Reference Court.

11. The communication dated 12th April 2017 is extremely important and, therefore, the same is transcribed below for the convenience of reference :

*“ No.2-2-2011/LAND/M-532
Office of the Deputy Collector & S.D.O.
Ponda Sub-Division, Ponda, Goa.
Dated: 12/04/2017.*

*To,
The District and Sessions Judge,
District and Sessions Court,
Ponda-Goa.*

*Sub: L.A. for Establishment of transport office and
other infrastructure at Ponda in Ponda Taluka.*

Sir,

In continuation of our letter No. 2-2-2011/LAND/666 dated 28/02/2014, on account of sheer omission on our part, the name & address of the interested party in relation to the land acquired for the purpose of establishing transport office and other infrastructure at Ponda was left out. In order to fill up the gap the name of following person may also be taken into consideration while determining the quantum of shares u/s 30 of the L.A. Act, 1894.

*1. Mullam Abdul Ruzac
FN. 1st Moniopio Police Qts.*

Comba, Margao, Goa.

Yours faithfully,

Sd/-

(Paresh M. Faldessai)

Deputy Collector & S.D.O.

Ponda Sub-Division, Ponda-Goa.”

12. Mr Bhobe, learned Counsel for the Petitioner submitted that the Petitioner made inquiries with the Collector/LAO about the fate of their references. Accordingly, they were informed that the references have already been made to the Reference Court, and the Petitioner should inquire with the Reference Court. Upon undertaking such inquiries, the Petitioner realised that though the reference had been made, his name was inadvertently excluded from the letter by which such reference was made.

13. In the above peculiar circumstances, the Petitioner applied for him to be included in the pending references. These applications were, however, rejected by the impugned orders dated 10/8/2018 for the above reasons. Hence, the present Petitions.

14. The Petitioner, in this case, as noted above, had raised the dispute about his entitlement and apportionment before the Collector/LAO. Though no period of limitation as such is prescribed, the record bears out that applications raising such

dispute were filed before the Collector/LAO within the time limit prescribed, even for seeking reference under Section 18 of the said Act. A reference under Section 18 is considerably wider than a reference under Section 30 of the said Act. Section 18 refers to any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection is to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

15. Section 30 of the said Act, refers to disputes as to apportionment. It provides that when an amount of compensation has been settled under section 11 if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.

16. In this case, the record bears out that not only was the Petitioner's application raising a dispute of apportionment duly made to the Collector/LAO, but the Collector/LAO had every intention to refer even this dispute for determination of the

Reference Court. It is only due to some inadvertent clerical error that the Petitioner's name was omitted. This is evident and, even otherwise, accepted by the Collector/LAO in his communication dated 12/4/2017 transcribed above.

17. In the above peculiar circumstances, the Reference Court should have included the Petitioner in the pending references rather than advising the Petitioner to approach the Collector again for fresh references. Even if, such fresh references were to be made, such fresh references would have to be decided along with the pending references. Such multiplicity should have been avoided in the peculiar facts and circumstances of the present case.

18. As pointed out earlier, it is not a case where the Petitioner raised no dispute of apportionment before the Collector/LAO, but, for the first time, sought impleadment before the Reference Court to raise such dispute of apportionment. However, the Reference Court did not consider this crucial factor. Further, the Reference Court, with respect, erred in refusing to take cognizance of the Collector/LAO's above-transcribed communication dated 12/4/2017, though the Petitioner's contention was mainly based upon the said communication.

19. The Rule is made absolute in all these Petitions for all the

above reasons. Accordingly, the impugned orders dated 10/08/2018 are set aside. The Reference Court is directed to include the Petitioner in the pending references so that all issues of apportionment are determined in the pending references by affording reasonable opportunity to all the parties to establish their own claims.

20. It is made clear that this Court has not even remotely gone into the issues of actual apportionment, entitlement, etc. Therefore, all such questions are left open to be determined by the Reference Court in accord with the law and the evidence that the parties produce before the Reference Court. Further, in this regard, all contentions of all parties are kept explicitly open.

21. The Rule is made absolute in the above terms, without any cost orders. Misc. Civil Applications, if any, are also disposed of.

22. Ad interim orders granted earlier, are hereby, vacated. Parties are directed to appear before the Reference Court on 3rd April 2023 at 10.00 a.m. If any of the Respondents do not appear, the Reference Court must issue notices to them, or if any Counsel is appearing on their behalf, then to such Counsel.

M. S. SONAK, J.