
(2014) 12 BOM CK 0125
In the Bombay High Court
Case No : First Appeal No. 45 of 2010

Gram Dev Laxmi Narayan

APPELLANT

Vs

Ganesh Arjun Velip

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 30

Citation : (2015) 3 ABR 725 : (2015) 2 BomCR 237

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : Sudesh Usgaonkar and R. Pereira, Advocate for the Appellant

Judgement

U.V. Bakre, J.—Though the notice after admission of the appeal was duly served on the respondents, however, they have been remaining absent. On 05.09.2014, when the matter came up for final hearing, the respondents were absent and an opportunity was given to them to appear on 25.09.2014. On 25.09.2014, also the respondents remained absent. One more opportunity was given to the respondents but by making it clear that on the next date of hearing if the respondents remain absent, the appeal will be heard in their absence. In spite of the above, they were absent on the date of final hearing. Hence the matter was taken up for final hearing in the absence of the respondents.

2. Heard Mr. Usgaonkar, learned Counsel for the appellant.

3. This appeal is directed against the Judgment and Award dated 26.12.2008, passed by the Ad-hoc District Judge-1, Fast Track Court-1, South Goa, Margao (Reference Court, for short), in Land Acquisition Case No. 51/2004/I.

4. Land admeasuring 300 square metres and 370 square metres from survey nos. 7/6 and 7/9 respectively of village Cola of Taluka Canacona was acquired for construction of road. Compensation amount of Rs. 17,120/- was settled towards the said acquisition, under section 11 of the Land Acquisition Act, 1894 (L.A. Act, for short). However, since there was dispute as to the apportionment of the

compensation, the same was referred to the District Court, South Goa, Margao, under Section 30 of the L.A. Act. That gave rise to Land Acquisition Case No. 51/2004. The said dispute was between Party No. I and Party No. II. Party No. II expired and as such, the legal representatives of the Party No. II were brought on record. The appellant was the Party No. I in the said Land Acquisition Case whereas, the respondents were the Party No. II. The parties shall hereinafter be referred to as per their status in the said case.

5. The Party No. I had filed written statement alleging that the acquired land was part of their property and that Party No. II had no right to the same. It was alleged that the Party No. II was pujari (priest) at the temple of Shree Betal which was one of the affiliates of the Party No. I and the family of the Party No. II was allowed to enjoy the property as part of the consideration of such services.

6. The legal representatives of the deceased Party No. II filed their written statement and pleaded as under:

They were in absolute possession and enjoyment of the property which has been acquired by the Government and the Party No. I had no right to the same. The entire survey no. 7 of village Cola of Canacona Taluka originally belonged to late Sidu Bicro Velipo of Soliem of Cola, the father of late Ganesh Arjun Velip, Party No. II, i.e. grandfather of the legal representatives of the Party No. II. The entire area of survey no. 7, known as "Gharacodil" is inscribed in the name of late Sidu Bicro Velipo under matríz no. 1348 with the boundaries as follows:

East: By "Toliecodil" of Harischandra Deuli under matríz no. 1349;

West: By hillock of the Government under matríz no. 1353;

North: By "Deure" of Shri God under matríz no. 1352 and hillock of the Government under matríz no. 1343;

South: By "Custam Porbulem" of Govind Visnum Porobo under matríz no. 1347.

The said description existed at loco. The northern boundary of property under matríz no. 1349 indicates that the property is situated on the northern side of matríz no. 1348, which belongs to God Betal and not to Gramdev Laxminarayan i.e. Party No. I. The said property of late Sidu Bicro Velipo under matríz no. 1348 is now surveyed under nos. 7/1 to 7/11 and is in possession and enjoyment of the persons as under:

Survey nos. 7/7 and 7/8 are gifted to one Chandi Devidas by the ancestors of Party No. II for her services to God Betal and are recorded in her name. Survey nos. 7/1 and 7/3 to 7/5 which originally belonged to God Betal have been gifted to various persons for their services to God Betal. The claim of the Party No. I was based on the wrong entry of the subdivisions 6 and 9 of the survey no. 7 and was without any right. The entire claim of the Party No. I as owner of the said subdivision under the acquisition was made on the contention of the management of the temple of God Betal as an affiliate, by virtue of

compromisso. The said contention of the management of the Party No. I was incorrect. The Party No. II belonged to Adivasis of Cola and God Betal belonged to Adivasi cult and was established much prior to the establishment of the temple of Gramdev Laxminarayan and the compromisso of the said temple of Gramdev Laxminarayan and therefore, Party No. I has no right.

7. Accordingly, an issue was framed by the learned Reference Court, as to which party was entitled for compensation awarded. The Party No. I examined its Procurador (Attorney) namely, Shri Arvind G. Prabhudessai as PW-1. He produced various documents namely:-Forms No. I & XIV of survey nos. 7/6 and 7/9 of village Cola of Canacona Taluka, as Exhibit 40; Judgment, Order and Decree dated 08/07/2003, passed by the Civil Judge Junior Division, Canacona in Special Civil Suit No. 30/1993(old): Regular Civil Suit No. 93/2000 (new), along with deposition of Shri Arjun Velip in the said suit, as Exhibit 41; Judgment, Order and Decree dated 10/02/2006, passed by the Ad hoc Additional District Judge, FTC-II in Regular Civil Appeal No. 106/2003, as Exhibit 42; and Government Order No. 761 dated 29th September 1927, published in the "Boletim Official", as Exhibit 43. The Party No. II(1), Rama Ganesh Velip examined himself, as RW1. He produced the Matriz Certificate of Matriz No. 1348 as Exhibit 46; Forms No. I & XIV of survey nos. 7/1 to 7/11 of village Cola as Exhibit 47; and survey plan as Exhibit 48.

8. Upon consideration of the entire evidence on record, the learned Reference Court observed that the witness of Party No. I admitted that the acquired property was in exclusive possession of Party No. II and that there was no document to prove that Party No. II was allotted land by the managing committee of Party No. I, on account of their rendering services to the temple. It was found that the said witness of Party No. I also admitted that there were no documents to show that late Ganesh Arjun Velip was appointed as a pujari by the mazanias of the temple. The Reference Court found that the Party No. I did not produce any document to show the source of title to the acquired land. He held that the Party No. II established settled possession and produced matriz records and thus, proved their ownership right to the acquired land. The entire compensation of Rs. 17,120/- alongwith accrued interest has been awarded to the legal representatives of the Party No. II. Aggrieved by the impugned judgment and award, Party No. I has filed the present appeal.

9. Mr. Usgaonkar, learned Counsel for the party no. 1, submitted that in the promulgated survey records in Forms No. I & XIV of survey nos. 7/6 and 7/9, the Party No. I has been duly shown as occupant whereas, original Party No. II is shown as tenant. He further pointed out that in the written statement of Party No. II, they clearly pleaded that they were not tenants and their names were wrongly shown as tenants. He, therefore, urged that no presumption regarding possession, had arisen in favour of the Party No. II because of entry of the name in the survey records. He submitted that the ownership of the acquired land by Party No. I-Devasthan was proved in Civil Suit No. 30/1993(old): 93/2000 (new)

and therefore, there was no question of Devasthan proving their independent title. He submitted that the enjoyment of property was given to persons on account of services rendered by them and therefore that was permissible enjoyment, and such enjoyment was also given to the Party No. II. He submitted that the claim of the Party No. II was based only on the matrix record, which could not confer title. He relied upon the judgment of this Court in the case of *Fabrica da Igreja de N.S. de Milagres Vs. Union of India (UOI) and Others*, and also the judgment of this Court in the case of *"M/s. Deeksha Holding Ltd. Vs. Smt. Sita Desai and others"*, [1998 (2) Goa L.T. 443]. The learned Counsel submitted that under Section 30 of the L.A. Act, the adjudication was about ownership of the property. He submitted that in the Special Civil Suit No. 30/1993, in which one of the legal representatives of the Party No. II was the plaintiff no. 3, it has been held that the plaintiffs are not the owners of the property, inter alia, bearing survey nos. 7/6 and 7/9. He pointed out that the appeal filed by the said plaintiffs was also dismissed. He contended that the Party No. II could not rebut the presumption under Section 105 of the Land Revenue Code, which was in favour of the Party No. I. He further pointed out that the learned Reference Court wrongly held that the names of the properties were not mentioned in the bye-laws of the Party No. I, whereas, in the said bye-laws, the names of these properties were duly mentioned. He relied upon the judgment of the Hon'ble Supreme Court in the case of *Maria Margarida Sequeria Fernandes and Others Vs. Erasmo Jack de Sequeria (Dead) through L. Rs.,* and submitted that long possession of whatever nature it may be, cannot confer title. He urged that the impugned Judgment and Award is erroneous in law and is bound to be quashed and set aside. He therefore, prayed that it may be held that the Party No. I is entitled to receive the entire compensation alongwith accrued interest.

10. I have gone through the entire material on record. I have considered the arguments advanced by the learned Counsel for the Party No. I and also the judgments relied by him.

11. In paragraph 10 of the impugned Judgment, the learned Reference Court held that there was no document on record produced by Party No. I to show the source of title to the acquired land and to prove that the Party No. II was allotted land by managing committee for their services rendered to the temple. In fact, PW-1 had produced on record the Judgment and Decree dated 08.07.2003, passed by the learned Civil Judge Junior Division, Canacona in Special Civil Suit No. 30/1993 (old); Regular Civil Suit No. 93/2000 (new) as Exhibit-41. In that Suit, the Party No. II(2), namely Arjun Ganesh Velip was the plaintiff no. 3. The plaintiffs pleaded that the temple of Xri Betal and other temples owned various properties named in the plaint, which inter alia included survey nos. 7/6 and 7/9 of village Cola. But they also claimed that they were the owners in possession of the said properties. The learned Civil Judge rightly observed that since the plaintiffs pleaded that the said properties belonged to the said temples, the plaintiffs could not claimed that those properties belonged to themselves. It was found that in the evidence, PW1 changed his stand and stated that the property

bearing survey nos. 38/1 and 38/2 was given to his family by Devasthan in consideration of the services rendered for the temple of Xri Betal and the temple of Xri khamkar. That was contrary to the pleading. Since the name of defendant i.e. Xri Gram Deu Laxmi Narayan of Cola (Party No. I) has been recorded as occupant in Forms No. I & XIV of various survey numbers including survey nos. 7/6 and 7/9 of village Cola, the learned C.J.J.D. held that the presumption under section 105 of the Land Revenue Code was in favour of the defendant. It was found that the plaintiffs had failed to rebut the said presumption. The learned C.J.J.D. found that in the constitution/compromisso of 1927, the defendant has been shown as owner of the properties, which were claimed by the plaintiffs. The learned C.J.J.D. held that there was document of title i.e. constitution/compromisso in favour of the defendant (Party No. I) and the record of rights in Forms No. I & XIV also supported the defendant. The learned C.J.J.D. held that the temples mentioned in paragraph one of the plaint were the affiliate temples of the main temple Shri Gram Deu Laxmi Narayan of Cola and that the plaintiffs had no right to the management of the same. The said suit, which was for declaration of ownership, was thus dismissed. The plaintiffs had filed Regular Civil Appeal No. 105/2003 against the said Judgment and Decree dated 08/07/2006. By Judgment and Decree dated 10/02/2006, the learned Ad hoc Additional District Judge, Fast Track Court-II dismissed the said appeal. The Judgment and Decree in the Appeal are at Exhibit 42. The Reference Court did not even bother to discuss about the said Judgments and decrees.

12. The learned Reference Court held that the presumption of correctness in respect of the entries in the survey records was rebuttable and in the present case, the Party No. II established settled possession and also produced old matriz records, thereby rebutting the said presumption. It is well settled that once the promulgated survey records are prepared, the old matriz records lose their values. In the case of "Fabrica da Igreja de N.S. De Milagres" (supra), this Court held that entries in the matriz documents are only for purpose of collection of revenue and not the source of title or proof of possession. In the case of, "M/s. Deeksha Holding Ltd." (supra), this Court held that once the presumption under Section 105 of G.D.D. Land revenue Code, 1968 is available from records prepared under the said Code, the presumption of the old matriz records ceases to have any value. Admittedly, in the present case, the name of the Party No. 1 has been recorded as occupant, against both the survey nos. 7/6 and 7/9 of village Cola, whereas, the name of Ganesh Arjun Velip has been recorded as tenant. But, the legal representatives of Party No. II, in paragraph 12 of their written statement, have specifically stated that the name of Party No. II has been wrongly recorded as tenant in the survey records. Therefore, admittedly the legal representatives of Party No. II are not tenants of the acquired land. There is no presumption in favour of the Party No. II. But, since the name of Party No. is duly recorded as occupant in Form I & XIV of survey nos. 7/6 and 7/9, the presumption of correctness of the said entries, under Section 105 of the Land Revenue Code, was in favour of the Party No. I, which presumption was not

at all rebutted. In the circumstances above, the learned Reference Court could not have held that the legal representatives of the Party No. II has proved the ownership right to the acquired land. It is seen that in the bye-laws of the Party No. 1, which are at Exhibit 43, the names of the properties including "Goracodil" are duly mentioned.

13. In the cross examination of PW1, a suggestion has been put to him that the lands under survey nos. 7/6 and 7/9 are enjoyed by the family of Party No. II as part consideration of their services at the temple of Betal. First of all, the case of Party No. II, as pleaded in the written statement, was that the entire survey no. 7 of village Cola originally belonged to late Sidu Bicro Velip of Soliem of Cola, the father of late Ganesh Arjun Velip, the Party No. 2, by virtue of inscription in matriz records under no. 1348. Nowhere in the written statement, it was pleaded that the said lands originally belonged to the temple of Shri Betal and that the Part No. II enjoyed the same as consideration for services rendered by him to the temple. Be that as it may, the enjoyment by Party No. II was thus permissible on account of the services rendered by them. However, the ownership of the property was still the temple. In the Regular Civil Suit No. 93/200 (new), it has been held that the temples mentioned in paragraph one of the plaint (which includes the temple of Xri Betal) were the affiliate temples of the main temple Shri Gram Deu Laxmi Narayan of Cola and that the plaintiffs had no right to the management of the same. The Party No. II had not claimed ownership by adverse possession, but, they had independently claimed to be the owners of the said property and their claim was based on matriz records, which admittedly is not title document. In the case of "Maria Margarida Sequeria Fernandes and others" (supra), the Hon''ble Supreme Court has held thus:

"67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.

68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the Court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularized specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive:

- (a) who is or are the owner or owners of the property;
- (b) title of the property;
- (c) who is in possession of the title documents;
- (d) identity of the claimant or claimants to possession;
- (e) the date of entry into possession;
- (f) how he came into possession-whether he purchased the property or inherited or got the same in gift or by any other method;
- (g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount;
- (h) If taken on rent, license fee or lease-then insist on rent deed, license deed or lease deed;
- (i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;
- (j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and
- (k) basis of his claim that not to deliver possession but continue in possession."

14. The claim of the Party No. II regarding their ownership to the land, inter alia, under survey nos. 7/6 and 7/9 was dismissed by the learned Civil Judge Junior Division vide Judgment dated 08.07.2003. The appeal against the said Judgment and Decree was also dismissed thereby, maintaining the finding of the learned Civil Judge Junior Division, Canacona.

15. Therefore, the Party No. I, by virtue of promulgated survey records and other evidence on record, had established that they were entitled to receive the entire compensation in respect of the acquired land. The Party No. II had failed to prove that they were entitled to be apportioned the compensation in respect of the acquired land. It is made clear that this Court has not given any declaration of ownership of the Party No. I in respect of the property. The present decision is confined to the apportionment of compensation and any discussion on incidental questions of legal status of the contesting parties is only to achieve the purpose of apportionment.

16. In the above circumstances, the impugned Judgment and Award cannot

sustain, the same being illegal and contrary to the settled principle of law.

17. In the result, the appeal is allowed.

(a) The impugned judgment and award is quashed and set aside.

(b) Party no. I is held to be entitled to receive the entire compensation in respect of the acquired land.

(c) The entire compensation of Rs. 17,120/- alongwith accrued interest, if any, shall be paid to the Party No. 1.

18. The appeal stands disposed of accordingly.