
(2014) 07 BOM CK 0119
In the Bombay High Court
Case No : First Appeal No. 172 of 2006

Ramesh Sukdow Bhandari	Vs	APPELLANT
Chandrakala Shantaram N. Gaonkar		RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Citation : (2014) 07 BOM CK 0119

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

Bench : Single Bench

Advocate : Ryan Menezes, Advocate for the Appellant; Sudin Usgaokar and G. Dalvi, Advocate for the Respondent

Final Decision : Dismissed

Judgement

U.V. Bakre, J.—Heard learned Counsel appearing on behalf of the parties.

2. This appeal is directed against the judgment and award dated 15/02/2006 passed by the learned Ad-hoc Additional District Judge, Fast Track Court-I, South Goa, Margao (Reference Court, for short) in Land Acquisition Case No. 106/2000.

3. Parties shall hereinafter be referred to as per their status in the said Land Acquisition case.

4. Relevant facts may be stated as under: Land was acquired for construction of Mokordamol road in Village Panchayat Shristhal in Canacona Taluka and that included a plot admeasuring 3450 square meters bearing survey no. 19/1. As there was a dispute between the parties no. 1 to 9 on one side and party no. 10 on the other side, reference u/s 30 of the Land Acquisition Act, 1984 (L.A. Act, for short) was made by the Land Acquisition Officer which gave rise to the said L.A.C. No. 106/2000.

5. Case of the parties no. 1 to 9 was that they were from Naik Gaonkar family and party no. 10 was from Bhandari family. According to them, Bhandari family had no right to the acquired land and that the party no. 10 had no connection of

whatsoever nature with Babul Zomon Naik. They stated that party no. 10 belongs to Bhandari Community which is an Other Backward Caste Community and his father by name Sukdo Babani Bhandari was a coconut plucker working on daily wages, whereas Babul Zomon Naik belonged to Kshatriya Maratha caste and Naik Gaonkar family also belongs to the same Kshatriya Maratha caste. They stated that the claim of Bhandari family for allotment of the property in Inventory Proceedings was without any right, title and interest since the properties listed in the Inventory Proceedings did not give any right or title in the properties to Bhandari family. It was claimed that the acquired land was part and parcel of the property known as "Borigal or Condimol" bearing land registration no. 12750; matriz nos. 182 and 184 and new Survey Nos. 19/1, 19/2, 176/1 to 176/16 and the said property was inscribed in the name of Morto Giblo Naik, the father of Dr. Giblo Naik Gaonkar, late Gangadhar and late Shantaram Naik Gaonkar under inscription at folios 154 V of the Book G 9. It was alleged that late Morto Giblo Gaonkar inherited the property from his father Giblo Morto Naik Calvodcar who had acquired the same from Comunidade of Canacona under decree in Civil Suit No. 4595/1892 and the said property was self acquired property of late Morto Giblo Naik Gaonkar with which Babul Zomon Naik had no connection. It was further alleged that the Gaonkar family had donated a plot of land from this property to Gopal Krishna Devasthan of which party no. 10 was the Secretary at the relevant time and he had not only acknowledged the same but also published the same in Official Gazette. The parties no. 1 to 9, therefore, claimed that entire compensation be paid to them. There was no dispute about apportionment of compensation amongst parties no. 1 to 9.

6. The party no. 10 contended that he was the owner of the property bearing survey no. 19/1 and that the same was his ancestral property. According to him, the property was inherited over generations from Babul Zomon Naik and that it was allotted to him and others vide Inventory Proceedings bearing No. 3/2000/C. He claimed that the said property bears inscription and description no. 9056. He, therefore, claimed that entire compensation be paid to him.

7. Accordingly, the issues were framed by learned Reference Court. Parties no. 1 to 9 examined Somdatta Gangadhar Deshmukh alias Gaonkar as PW1 and Gopinath alias Gopi Shivram Bhandari as PW2. Party No. 10 examined himself as RW1.

8. Learned Reference Court, upon consideration of the entire evidence on record, held that parties no. 1 to 9 are entitled for the entire compensation along with accrued interest thereof.

9. The party no. 10 being aggrieved by the said judgment of the Reference Court has filed the present appeal.

10. Mr. Menezes, learned Counsel appearing on behalf of the party no. 10 submitted that the acquired land was from the property known as "Mocoda" inherited by party no. 10 and his family members from their great grandfather

namely Shri Babul Zomon Naik. He submitted that the evidence of RW1, the party no. 10, establishes that though his family used the surname as Bhandari, however, they originally belonged to Kshatriya Maratha caste. According to him, the parties no. 1 to 9 by misrepresentation and malpractice got their names recorded in the survey records. He submitted that the land description and endorsement no. 9056 produced by RW1 proves ownership of party no. 10 regarding the said property and, therefore, the Reference Court erred in awarding the compensation to the parties no. 1 to 9. He therefore urged that the impugned judgment be set aside and the compensation be awarded to the party no. 10.

11. On the other hand, Mr. Usgaonkar, learned Counsel appearing on behalf of parties no. 1 to 9, submitted that the promulgated survey records in Form No. I and XIV in respect of survey no. 19/1 shows the name of the party no. 1 as sole occupant whereas the name of the party no. 10 is not included in any of the columns of the same. He further submitted that PW1 in his evidence has produced the land registration document under No. 12750 and also the matríz certificates of nos. 182 and 184. He urged that the evidence on record clearly reveals that Gaonkar family had donated a plot from survey no. 19/1 to Gopal Krishna Devasthan and the party no. 10 who was the Secretary of that Devasthan, at that time, had published the said fact in the Official Gazette. He submitted that the party no. 10 claims to be the owner of acquired land on the basis of the Inventory Proceedings which have no foundation of title. He submitted that by judgment dated 23/09/2011 passed in First Appeals no. 168, 169, 170 and 171 of 2006, the present parties no. 1 to 9 and others from their side have been held by this Court to be the owners of the property bearing Survey nos. 19/1, 19/2, 176/1 to 176/16. He, therefore, submitted that there is no substance at all in the present appeal.

12. I have gone through the original record and proceedings and I have also considered the submissions advanced by the learned Counsel appearing on behalf of the parties.

13. The point that arises for determination is as to which of the party is entitled to receive the compensation, whether it is the group of parties no. 1 to 9 or whether it is party no. 10 ?

14. It is admitted fact that in the promulgated survey records that is Form No. I and XIV of Survey No. 19/1 from which the property is acquired, the name of the party no. 1 figures in the occupant's column but the name of party no. 10 does not figure, in any of the columns. PW1 has produced the Forms No. I and XIV of Survey no. 19/1 and other survey numbers and the blue print of survey Nos. 19/1, 176/1, 171/1, 171/2, 177/1. There is no evidence on record to show that the survey entries have been challenged by party no. 10 at any time. PW1 has produced on record the inscription and description document of "Borigal or Condimol" bearing land registration No. 12750 and matríz certificates in respect of the said property bearing matríz nos. 182 and 184 and the said documents

reveal that the property "Borigal or Condimol" are inscribed in the name of Morto Giblo Naik, father of Dr. Giblo Naik Gaonkar, late Gangadhar and late Shantaram Naik under inscription of folios 154 V of Book G 9. It is further revealed that late Morto Giblo Gaonkar inherited the property from his father late Giblo Morto Naik Calvodcar having acquired the same from Comunidade under decree in Civil Suit No. 4595/1892 passed by the Civil Judge Senior Division at Quepem.

15. It is pertinent to note that PW1 has produced the Official Gazette dated 01/05/1986 which shows that the portion of the property admeasuring 5250 square meters wherein the Gopal Krishna Devasthan is situated was donated by late Shri Giblo Morto Naik Gaonkar, the son of late Shri Morto Giblo Naik Gaonkar to the said Devasthan. The Official Gazette shows that at the relevant time party no. 10 himself was the Secretary of said Devasthan and he had published the factum of the said donation in the Official Gazette. There is absolutely no dispute that the said plot was donated from survey no. 19/1.

16. The entire case of party no. 10 is based on Inventory Proceedings bearing no. 3/2000/C which was produced by him. According to party no. 10, the acquired land was subject matter of the said Inventory Proceedings and was allotted to the Bhandari family. Admittedly, the property under survey no. 19/1 was not figuring in the said Inventory Proceedings. Even no land registration number and matriz number was mentioned in the said Inventory Proceedings and even the boundaries of the property were not mentioned. As has been rightly held by the learned Reference Court, even otherwise allotment of properties in Inventory Proceedings ipso facto does not give any right or title to the person to whom it is allotted.

17. RW1, the party no. 10, has produced land description and inscription no. 9056. However, the same pertains to the property known as "Mocoda" and there is absolutely no evidence to establish that the same corresponds with the property bearing survey no. 19/1 of village Canacona. Besides the above, the said land description and endorsement reveals that the same is inscribed in the name of one Raghunath Anta Sinai constituted by Babul Zomon Naik. However, party no. 10 has not produced any evidence to show his relation with Babul Zomon Naik and his family members.

18. Vide judgment dated 23/09/2011 passed in First Appeals no. 168, 169, 170 and 171 of 2006, this Court has clearly held that the evidence produced by the respondents in those appeals which included the present parties no. 1 to 9 and PW1, established that the property bearing survey nos. 19/1, 19/2, 176/1 to 176/16 belongs to them. Mr. Menezes, learned Counsel appearing on behalf of the party no. 10 submitted that the Review Applications have been filed by party no. 10 against the said judgment dated 23/09/2011. Be that as it may, even otherwise the evidence produced in the present case sufficiently establishes the ownership and possession of parties no. 1 to 9 with regard to the acquired land. Hence, point for determination is answered in favour of the parties no. 1 to 9 and against the party no. 10.

19. The impugned judgment and award is in accordance with the settled principles of law. No interference is called for with the same.

20. In the result, the appeal is dismissed.