

(2012) 02 BOM CK 0181
In the Bombay High Court
Case No : First Appeal No. 194 of 2002

Shri Janum Narayan Gaunkar (since deceased) through legal representatives (Smt. Satyavati Arjun Gaunkar (since deceased) through legal representatives and Others

APPELLANT

Vs

Shri Audhuth M. Timblo and Others

RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Citation : (2013) 2 ALLMR 350

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : R.G. Ramani, for the Appellant; Sudin M.S. Usgaonkar, Advocate for Respondents No. 8, 12, 15, 16, 17, 18, 19, 21, 23, 24, 25, 26, 28, 29, 30, 33, 34, 36, 37, 41, 43, 44, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Reis, J.—Heard Shri R.G. Ramani, learned Counsel appearing for the appellants and Shri Sudin M.S. Usgaonkar, learned Counsel appearing for respondents no. 8, 12, 15, 16, 17, 18, 19, 21, 23, 24, 25, 26, 28, 29, 30, 33, 34, 36, 37, 41, 43, 44.

2. The above appeal challenges the judgment and award dated 27/02/2002 passed by the learned Reference Court in Land Acquisition Case No. 115/1988 whereby the amount of compensation was directed to be paid to the appellants and respondents no. 7 to 44. Respondents no. 1 to 6 who were applicants before the Reference Court were held to be not entitled for any compensation.

3. Shri R.G. Ramani, learned Counsel appearing for the appellants has assailed the impugned judgment as according to him the property acquired in the present proceedings admeasuring an area of 3140 square metres from the property surveyed under no. 328/1 of Loliem Village which was acquired for the reconstruction of cross drainage in Loliem village. Learned Counsel further

pointed out that the property acquired forms part and parcel of the property belonging exclusively to the appellants and that the respondents have no right at all to any portion of the said property. Learned Counsel further pointed out that the whole property corresponds to the property registered in the Land Registration Office at Quepem under no. 3928 and belonged to three persons namely Govind Bhisso Gaonkar, Rama Pingo Gaonkar and Govind Guno Gaonkar. Learned Counsel further pointed out that the heirs and the descendants of Govind Bhisso Gaonkar have sold their share of the property known as "Tanosso" to the original applicants/respondents no. 1 to 6 herein in the reference proceedings and that the portion which has been sold does not correspond to the acquired portion in the present proceedings. Learned Counsel further pointed out that the appellants are the only descendants of the said Rama Pingo Gaonkar and Govind Bhisso Gaonkar and, as such, they are exclusively entitled to the compensation in the above proceedings. Learned Counsel further pointed out that there were earlier land acquisition proceedings which were subject matter of Land Acquisition Case No. 137/88 in respect of the property surveyed under no. 328/1 wherein the compensation was exclusively paid to the appellants herein wherein an area of 9,000 square metres and odd was acquired. Learned Counsel further pointed out that respondents no. 7 to 44 have not raised any objection to the receipt of the compensation by the appellants in the earlier proceedings and, as such, the question of claiming any compensation in the present case would not arise. Learned Counsel has taken me through the impugned judgment as well as the evidence on record and pointed out that the learned Judge has not at all adverted itself to other documents produced by the appellants in support of their claim for compensation and that the learned Judge without giving any appreciable reasons directed compensation in favor of respondents no. 7 to 44. Learned Counsel, as such, pointed out that the learned Judge has misappreciated the evidence on record and has erroneously come to the conclusion that the appellants are not exclusively entitled to the compensation awarded in the above proceedings. Learned Counsel, as such, submits that the impugned judgment deserves to be quashed and set aside.

4. On the other hand, Shri Sudin M.S. Usgaonkar, learned Counsel appearing for the respondents has supported the impugned judgment. Learned Counsel pointed out that the remaining respondents no. 7 to 44 are the descendants of Rama Pingo Gaonkar and Govind Bhisso Gaonkar and, as such, they are also jointly entitled to the compensation which has been awarded. Learned Counsel further pointed out that the exclusive ownership claimed by the appellants is misconceived as according to him there is no evidence on record to the effect that the appellants are the exclusive owners in possession of the acquired portion of the land. Learned Counsel further pointed out that in a Deed of Settlement which has been executed ratifying the original Sale Deed in favor of respondents no. 1 to 6, respondents no. 7 to 44 as well as the appellants have been parties, which itself establishes that respondents no. 7 to 44 also have a right and interest in the property as well as the acquired portion of the land. Learned

Counsel further submitted that there is no dispute that the respondents no. 7 to 44 have their residential house in the remaining portion of the land which was the subject matter of the acquisition and this itself discloses that the property does not belong exclusively to the appellants. Learned Counsel further pointed out that though there is no appreciable evidence on record to come to the conclusion as to the manner in which the title of the property has been devolved in favor of the appellants and respondents no. 7 to 44, nevertheless, the learned Judge has taken a correct view of the matter and directed the compensation awarded in the acquisition proceedings to be paid to the appellants and respondents no. 7 to 44. Learned Counsel further pointed out that in any event the learned Judge has not decided the payment of compensation on the basis of the exclusive claim of title of the parties and, as such, the question of title can always be adjudicated before an appropriate forum, in case any such situation arises in future. Learned Counsel, as such, submits that there is no reason for any interference in the impugned judgment and award.

5. Having heard the learned Counsel and on perusal of the record, the following point for determination arises in the present appeal:

POINT FOR DETERMINATION:

Whether the Reference Court was justified to direct compensation to be apportioned in favor of the appellants and respondents no. 7 to 44.

6. On perusal of the evidence of the appellants as well as the respondents and the documents produced by the parties it cannot be disputed that the original property which has been described in the Land Registration Office belonged to Govind Bhisso Gaonkar, Rama Pingo Gaonkar and Govind Guno Gaonkar. The material on record further establishes that the descendants of Govind Bhisso Gaonkar have sold their 1/3rd share in favor of applicants/respondents no. 1 to 6. In view of the claim of the respondents no. 7 to 44 to the effect that the descendants of the said Govind Bhisso Gaonkar were not entitled to sell specific portion of the property as the property was not partitioned a Deed of Settlement was executed which is at Exhibit AW1/D wherein all the parties including the appellants as well as respondents no. 7 to 44 are stated to be parties. It is also not in dispute that the portion of the property which has been sold to the said applicants/respondents no. 1 to 6 does not correspond to the property surveyed under no. 328/1 and as such the learned Judge was justified to come to the conclusion that applicants/respondents no. 1 to 6 had no right to the compensation awarded in the present proceedings. But however, with regard to the land which is surveyed under no. 328/1 only a portion is the subject matter of the present acquisition and it cannot be disputed that the said portion of the property is the part of the inheritance of the original owners namely Rama Pingo Gaonkar and Govind Guno Gaonkar. Learned Judge on appreciation of evidence on record has come to the conclusion that the appellants have failed to establish that they were the only descendants of the said Rama Pingo Gaonkar and Govind Guno Gaonkar. The appellants have fairly accepted that no evidence to that

effect has been produced by the appellants to substantiate their claim that they are their only descendants. The learned Judge while appreciating the evidence on record has also found that respondents no. 7 to 44 have their residential houses in the remaining portion of the property which forms part and parcel of the property which is registered in the Land Registration Office under No. 3928. The learned Judge after considering the fact that the appellants as well as respondents no. 7 to 44 are in possession of the remaining portion of the property directed that the compensation be awarded to the appellants as well as the respondents no. 7 to 44. The learned Counsel for the appellants was unable to point out any material on record to suggest that the respondents no. 7 to 44 are also the descendants of the said two persons. Considering the material on record and taking note of the fact that there is no conclusive evidence adduced by the appellants to substantiate their claim of exclusive ownership and possession of the acquired portion, I find that the learned Judge was justified to direct the apportionment of the compensation as directed in the impugned judgment.

7. The judgment in the earlier Land Acquisition Case which is sought to be relied upon by the appellants would not advance the case of the appellants, as it is not in dispute that respondents no. 7 to 44 were not parties nor they were notified about the said proceedings and, as such, the said judgment would not be binding on the remaining respondents. Taking note of the contentions of the learned Counsel appearing for the appellants to the effect that the title of the remaining portion of the property has not been adjudicated by the learned Judge, I find it appropriate to clarify that the impugned judgment would not come in the way of the respective parties to claim their title in respect of the remaining portion of the property, if such occasion arises in future. In any event, it is well settled that the judgment passed by the Reference Court does not declare the title in favor of the persons who receives the compensation. As such, the apportionment of the compensation directed by the learned Reference Court does not call for any interference.

8. Subject to the above, I find no reason to interfere in the impugned judgment. Hence, point for determination is answered accordingly. All the contentions with regard to their respective claim of title of the parties are left open. Subject to the above the appeal stands dismissed.