
(2022) 06 BOM CK 0072

In the Bombay High Court

Case No : Writ Petition No . 1044 Of 2018, 313, 356 Of 2021

Shriram R. Deshprabhu And Others

APPELLANT

Vs

State Of Goa And Others

RESPONDENT

Date of Decision : 21-06-2022

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6, 11, 11(2), 30, 31(2)

Goa Agricultural Tenancy Act, 1964 — Section 12, 13A, 13A(1), 13A(2), 18, 18(H), 30

Citation : (2022) 06 BOM CK 0072

Hon'ble Judges : R. N. Laddha, J;M. S. Sonak, J

Bench : Division Bench

Advocate : Pavithran A. V, Susan Linhares, Ashwin Bhobe, Rupa Banaulikar, S. D. Lotlikar, T. Sequeira

Final Decision : Allowed/Disposed Of

Judgement

M.S. Sonak, J

1. Heard learned Counsel for the parties.
2. Rule. The rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties. Sufficient time was granted to the parties to complete pleadings, and parties were put to notice that these matters would be taken up for final disposal at the admission stage.
3. As substantially common issues of law and fact arise in each of these petitions, with the consent of the learned Counsel for the parties, we dispose of these three petitions with a common judgment and order. However, Writ Petition No.356/2021 will be treated as the lead petition, and allowances will be made for the distinguishing facts in the other two petitions.
4. By final award dated 29.10.2015, the Deputy Collector/S.D.O. & Land Acquisition Officer (L.A.O.) referred the disputes for apportionment of compensation between the petitioner on one hand and respondent nos.5 to 26 on the other for determination by the District Court under Section 30 of the Land

Acquisition Act, 1894. The compensation amount was also directed to be deposited in the District Court. This amount was to abide by the determination of shares and apportionment to be made by the District Court (Reference Court). The L.A.O., who made this award, was Mr. N.M. Gad.

5. After the transfer of Mr. N.M. Gad, Mr. Ravishankar Nipanikar (respondent no.4) began functioning as L.A.O. In 2019, he entertained applications from respondents nos.5 to 26 and disbursed an amount of over Rs. 5.00 crores to the said respondents, who claimed that they were the tenants of the acquired property. This claim was entirely premised on certain entries in survey records.

6. Mr. Ravishankar Nipanikar (respondent no.4) made the above disbursements:-

(a) Despite the final award dated 29.10.2015 made by his predecessor Mr. N.M. Gad noting the disputes between the parties and ordering a reference under Section 30 of the said Act. After such reference, Mr. Nipanikar had become functus officio and lacked any authority to review or modify the final award dated 29.10.2015 substantially;

(b) Without issuing any notice to the petitioner and other interested persons or otherwise complying with principles of natural justice and fair play;

(c) By relying, at least in Writ Petition No.356/2021, solely upon entries in revenue records;

7. In Writ Petition No.313/2021 and Writ Petition No.1044/2018, the facts and circumstances are not much different from those referred above. However, the L.A.O. who ordered the disbursements was Mr. Sudhir Kerkar (respondent no.4). Further, the beneficiaries of the disbursement had produced a declaration of tenancy and purchase sanads in addition to revenue records. The amount disbursed by Kerkar after he lacked authority to tinker with the final award made by his predecessor and without any notice to the affected parties was over Rs. 9.00 crores.

8. Nipanikar has not bothered to file an affidavit. However, Kerkar has filed an affidavit in Writ Petition No.313/2021 and stated that the disbursement cheques were distributed by the then Tourism and Sports Minister and M.L.A. of Pernem Taluka to the beneficiaries. Paragraph 10 of his affidavit reads as follows:

"10. I say that in view of the fact that the tenants had produced documents evidencing their right to the compensation payable to the aforesaid land, the office of the Respondent No.3 vide letter dated 10/10/2017 requested the Assistant Manager (Accounts), E.D.C. Limited to release the amounts due to the tenants. The cheque/s for the amounts were distributed by the then Tourism and Sports Minister and M.L.A. of Pernem Taluka, to the beneficiaries."

9. Before the disbursements, the beneficiaries were called upon and have furnished indemnity bonds to indemnify the L.A.O. for any loss that may be occasioned on account of the release of the amounts. After the institution of

these petitions, Nipanikar issued notices dated 23.09.2021 to the beneficiaries calling upon them to redeposit the entire compensation amount of Rs. 5,55,54,965.00 (Rupees Five Crores, Fifty-five Lakhs Fifty Four Thousand Nine Hundred & Sixty Five only) in the office of the L.A.O. within 30 days failing which such amount would be recovered as arrears of land revenue. However, Kerkar, who disbursed over rupees nine crores, has not bothered to issue similar notices to the beneficiaries of the paid amounts.

10. The established facts and circumstances in these petitions disclose how Nipanikar and Kerkar, L.A.O.s, for reasons best known to themselves and in total disregard of the legal position and breach of the principles of natural justice and fair play proceeded to disburse an amount of over Rs. 15.00 crores only by obtaining an indemnity bond from such beneficiaries. The L.A.O.s are senior Officers in the State Administration presently holding responsible positions. The only assertion was that they acted in 'good faith.'

11. The record establishes that large areas of land in which the petitioners and the private respondents claim interest were acquired to station one permanent C.I.S.F. battalion in Goa at Pernem Village, North Goa. The names of the petitioners and the private respondents were reflected in the notification issued under Sections 4 and 6 of the said Act. The petitioners and the private respondents filed their compensation claims. The petitioners, as landlords, claimed 100% of the compensation amount. Some of the petitioners claimed that this 100% compensation amount should be awarded exclusively to them and independent of the claims of the other co-owners. On the other hand, the private respondents claimed to be tenants of the acquired property and claimed they should be awarded 60% of the compensation amount. These conflicting claims undoubtedly raised disputes about entitlement and apportionment.

12. The claims of the petitioners, as well as the private respondents, were not very precise. Still, on perusing the same, it is apparent that there was a serious dispute about the apportionment of compensation not only amongst the co-owners of the acquired property but also between the co-owners on the one hand and the tenants on the other.

13. Mr. S.D. Lotlikar learned Senior Advocate and Mr. Sudesh Usgaonkar did urge that the petitioners raised no dispute about the apportionment of compensation to the tenants. However, this contention cannot be accepted because the petitioners and other co-owners had claimed 100% of the compensation amount, implying their disagreement to the award of compensation to the extent of 60% to the tenants. Moreover, in the specific context of the acquired properties surveyed under no.230/0 and 253/1, there is a particular objection lodged by one Mr. Umesh Raghunath Deshprabhu against the tenants' claims. This co-owner made a specific request to the L.A.O. not to entertain any tenancy claims regarding the property surveyed under no.230/0 and 253/1. This letter is on page 178 of the paper book in Writ Petition No.356/2021.

14. There is no dispute that the L.A.O., Mr. N.M. Gad made a final award on 29.10.2015. In this award, after recording the objections of various parties to the apportionment of compensation in respect of each of the survey numbers involved in the acquisition, he made the following observations:-

"Since there is a dispute about the share of the compensation to be paid to the interested persons the matter be referred to Civil Court u/s 30 of the Land Acquisition Act, 1894."

15. In "STATEMENT – B" appended to the final award dated 29.10.2015, forming a part of the said award as against the acquired lands bearing survey no.230/0, 250/0, 253/1(p), 253/2(p), 254/2(p), again the L.A.O. has made the following observations:-

"Since there is a dispute among the interested parties about the compensation/ shares to be paid to them individually, the matter be referred to the District Session Court, as approved by the Government."

16. By communication dated 27.10.2016, the L.A.O. informed all the interested parties about the reference under Section 30 of the said Act to the District Court. The communication dated 27.10.2016 reads as follows:-

"No.DCP/LA/F-1/CISFBattalion/
Pernem/2014/2950

dated 27.10.2016

To,

1. Jagannath B. Deshprabhu,

2. Krishnaji P. Dehsprabhu

3.

4.

44.

45. Shivram Anant Sinai Dessai All r/o. Pernem, Goa.

Sub.: Land Acquisition for stationing of one permanent C.I.S.F. Battalion in Goa at Pernem village of Pernem Taluka

Sir,

This is to inform you that the compensation amount of Rs.25,53,13,085/- awarded in respect of land acquired for stationing of one permanent C.I.S.F. Battalion in Goa at Pernem village in Pernem Taluka bearing Sy. No.230/0, 250/0, 253/1(p), 253/2(p), 254/2(p) & 270/1(p) of village Pernem Taluka has been referred to the Hon'ble Principal District & Session Judge, District and

Session Court, Panaji vide this office letter No.DCP/LA/F-1/CISF Battalion/Pernem/2014/2954 dated 26/10/2016 under Section 30 of the Land Acquisition Act, 1894.

Sd/-

(Harish N. Adconkar)

Deputy Collector & SDO/LAO

Pernem-Goa."

17. The petitioners have also placed on record Form D addressed by the L.A.O. in the year 2016 itself to the Principal District & Sessions Judge at Panaji-Goa, in which it is stated that a sum of Rs. 25,53,31,085/- (Rupees Twenty Five Crores Fifty Three Lakhs Thirty One Thousand Eighty-Five only) on account of compensation for land acquired for the above purpose payable as detailed below is tendered for determination in the Court under Section 31(2) of the Land Acquisition Act, 1894. Furthermore, in a tabulated form, the details of such compensation amount and the names of the persons believed to be interested were also set out.

18. Instead of registering the reference under Section 30 of the said Act, the Registry of the District Court raised some objections like want of correct names, details of legal heirs, etc., and returned the papers to the L.A.O. for clearing such objections. As a result, even the cheque regarding the compensation amount was returned to the L.A.O. The affidavit states that since this cheque amount was not accepted, the same was returned to E.D.C. Ltd. and even the compensation amount remained deposited with E.D.C. Ltd.

19. The affidavit filed by respondent no.3 states that on 18.10.2019, applications were received from some interested parties claiming tenancy of the acquired lands. At this stage, in so far as lands which are the subject matter of Writ Petition No.356/2021 are concerned, the L.A.O. was Nipanikar. The affidavit states that Nipanikar perused Form I and XIV (survey records) produced by these parties, verified from them that there were no disputes pending before the Mamlatdar's Court, and based on the same requested E.D.C. Ltd. to release the amounts by drawing out cheques in the names of these alleged tenants. Accordingly, the E.D.C. Ltd. issued such cheques, which Nipanikar disbursed to the alleged tenants. As a result, the compensation amount paid by Nipanikar comes to Rs. 5,55,54,965/- (Rupees Five Crores Fifty Five Lakhs Fifty Four Thousand Nine Hundred & Sixty Five only).

20. Though Nipanikar was impleaded in person as respondent no.4 in Writ Petition No.356/2021, he has not chosen to file an affidavit in this matter. Mr. P. Faldessai learned Additional Government Advocate, who appeared on behalf of Nipanikar, submitted that Nipanikar adopts the affidavit filed by Mr. Rajesh Ajgaonkar, Deputy Collector/S.D.O. & L.A.O. (respondent no.3). Mr. Rajesh Ajgaonkar was the L.A.O. on the date the affidavit was filed, i.e., on 22.10.2021.

21. Several allegations were made against Nipanikar, who was impleaded in person. Therefore the least that was expected was that Nipanikar files his affidavit and explains the circumstances in which he defied the law and the principles of natural justice and proceeded to disburse an amount of over Rs. 5.00 crores when on the date of such disbursement, he had no power or authority to tinker with the final award dated 29.10.2015 made by his predecessor. Nipanikar did not even bother to comply with the principles of natural justice and fair play.

22. Be that as it may, we must note and appreciate that Mr. Salkar, the learned Government Advocate, admitted at the very outset that the actions of Nipanikar and Kerkar were indefensible. He, however, submitted that the two Officers possibly proceeded on the basis that since the references had been returned and there were no disputes about the shares of the tenants, there was no harm in making disbursements to the alleged tenants. He, however, admitted that Nipanikar and Kerkar should have at least issued notices to the other interested persons and complied with the principles of natural justice and fair play.

23. Mr. Salkar pointed out that Nipanikar has now issued notices dated 23.09.2021 to the beneficiaries invoking their indemnity bond and requiring them to deposit the entire compensation amount of Rs. 5,55,54,965/- (Rupees Five Crores Fifty Five Lakhs Fifty Four Thousand Nine Hundred & Sixty Five only) in the office of the Deputy Collector & Land Acquisition Officer within 30 days from the date of notice dated 23.09.2021.

He submits that this subsequent conduct indicates good faith.

24. Mr. P. Faldessai, though an Additional Government Advocate, appeared for Nipanikar, who was impleaded in his private capacity. He asserted that there was nothing wrong with the action of Nipanikar. He submitted that the petitioners had never objected to the tenancy claims of the private respondents. He offered that the existence of a dispute is a sine qua non for a reference under Section 30 of the said Act. Without any dispute, the L.A.O. should not have referred to Section 30 of the said Act. He submitted that, in any case, after the Registry of the District Court returned the reference, Nipanikar had powers under Section 13-A of the said Act to correct the award. He submitted that the order in the roznama dated 02.11.2020 amounts to an order correcting the final award dated 29.10.2015. He submits that the non-furnish of any notice to other interested parties is not a jurisdictional error. Finally, he submits that Nipanikar acted bonafide and in good faith. All these assertions were made in the absence of an affidavit of Nipanikar and contrary to the Government's stand in the matter.

25. Mr. Bhobe, who appeared for Kerkar, did not go as far as Mr. Faldessai in his submissions. However, he submitted that the tenants had produced a declaration of tenancy and a purchase sanad which is conclusive under Section 18H of the Goa Agriculture Tenancy Act. He pointed out the affidavit of Kerkar in which Kerkar has stated that cheques in the amounts were distributed by the then

Tourism and Sports Minister and M.L.A. of Pernem Taluka. Mr. Bhohe submitted that there were no malafides involved in the actions of Kerkar.

26. Mr. Lotlikar and Mr. Usgaonkar also submitted that there was never any dispute raised by any of the petitioners about the tenancy status of the private respondents. Mr. Lotlikar submitted that the parties he represents had produced tenancy declarations and even purchase sanads which are conclusive under Section 18H of the Goa Agricultural Tenancy Act. Therefore, they proposed that the subsequent L.A.O.s were entitled to correct the final award by resorting to Section 13A of the said Act.

27. Mr. Lotlikar went to the extent of submitting that the final award should have been under Section 18 and not Section 30 of the said Act only to overcome the bar of limitation prescribed in Section 13A of the said Act. Mr. Lotlikar also submitted that the two L.A.O.s have merely corrected clerical or arithmetical mistakes or errors in the final award. Finally, Mr. Lotlikar and Mr. Usgaonkar submitted that even if there may have been some procedural lapses on the part of the two L.A.O.s, the tenants or beneficiaries were not responsible for the same, and therefore, no relief could be granted against them.

28. Since the main contention on behalf of almost all the respondents, except perhaps Mr. Salkar, the learned Government Advocate, was that the actions of Nipanikar and Kerkar are traceable to Section 13A of the said Act, we think it appropriate to deal with this contention at the very outset.

29. In the first place, the affidavits filed on behalf of the State do not refer to the exercise of powers under Section 13A of the said Act. Moreover, as noted earlier, Nipanikar has not bothered to file an affidavit, and Kerkar, in his affidavit, does not claim to have exercised any power under Section 13A of the said Act.

30. If the action can be justified under Section 13A of the said Act, the mere fact that such a plea is not raised in the affidavits filed will be irrelevant. Therefore, we agree with the contentions of Mr. Lotlikar, Mr. Usgaonkar, and Mr. Faldessai that we must examine the plea based on Section 13A of the said Act, even though such a plea may not have been raised explicitly in the returns.

31. Section 13A of the said Act reads as follows:-

"13-A. Correction of clerical errors, etc.—

(1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required under Section 18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority:

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered as an arrear of land revenue."

32. In *Naresh Kumar & Ors. V/s. Government (N.C.T. of Delhi)* 2019 (9) SCC 416, the Hon'ble Supreme Court, in somewhat similar circumstances, considered the scope of Section 13A of the said Act. The issue before the Hon'ble Supreme Court was whether a review of a final award is contemplated under the said Act and, if not, what is the scope and import of the provisions of Section 13A of the said Act.

33. The decision begins by expressing that the short question involved was whether, under the Land Acquisition Act, 1894, after passing of award under Section 11 of the Act, the award could be reviewed under any of the Act's provisions, especially under Section 13A of the Act.

34. The Hon'ble Supreme Court, in paragraph 8, held that there is no provision under the Land Acquisition Act, 1894 for review of the award once passed under Section 11 of the Act and had attained finality. The only provision for correcting a clerical error in the award is provided under Section 13A of the Act, which was inserted with effect from 24.09.1984. After quoting the provision, the Court held that the bare reading of Section 13A would make it clear that the same is not a provision for review of the award but only for correcting clerical or arithmetical mistakes.

35. The Hon'ble Supreme Court further held that Section 13A of the said Act itself provides in sub-section (1) that correction can be made at any time but not later than six months from the date of the award. The Court found fault with the exercise of powers under Section 13A beyond such a period of six months. Further, the Court found that a substantive review was not permitted under Section 13A of the said Act, which is meant to correct any clerical or arithmetical mistake. Finally, the Court found no other provision under said Act under which the L.A.O could have reviewed a final award.

36. The Hon'ble Supreme Court referred to Section 12 of the Act's provisions. It held that these provisions provide that the award of Collector shall become final on the same being filed in the Collector's office, of which the Collector will give notice to the persons interested. Such award that had become final could not have been reviewed, and that too beyond six months within which period only clerical or arithmetical mistakes could have been corrected. The Court referred to the well-settled principle that the review power can be exercised only when the statute provides for the same. In the absence of any such provision in the statute concerned, such power of review cannot be exercised by the authority concerned.

37. The Hon'ble Supreme Court referred to its decision in *Kalabharati Advertising V/s. Hemant Vimalnath Narichania* 2010 9 SCC 437.

This decision, in turn, refers to other rulings in *Patel Narshi Thakershi V/s. Pradyuman Singhji Arjunsinghji* (1971) 3 SCC 844 & *Kuntesh Gupta V/s Hindu Kanya Mahavidyalaya* (1987) 4 SCC 525. These rulings have held that review jurisdiction can only be derived from the statute. Thus any order of review in the absence of any statutory provision, the exercise of review jurisdiction is a nullity being without jurisdiction. These rulings also clarify that in the absence of any statutory provision for review, entertaining an application for review or under the garb of clarification/modification/ correction is not permissible.

38. In *Orissa Industrial Infrastructure V/s. Supai Munda & Ors.* AIR 2004 SC 390. The L.A.O. made an award on 25.07.1992 under Section 11 of the said Act. After that, the L.A.O. proceeded to make a further award on 06.08.1992. Before the Hon'ble Supreme Court, the question was whether the further award dated 06.08.1992 was a legal award and ultra vires.

39. The Hon'ble Supreme Court held that it was quite surprising how the L.A.O. could make a further award on 06.08.1992 when he had already made his final award on 25.07.1992. Furthermore, the Court held that when the Collector makes an award under Section 11 of the Land Acquisition Act, 1894, the proceedings before him stand terminated as soon as the award is made. Therefore, even by resorting to Section 11(2) provisions, the Collector had no power or authority to make a subsequent award.

40. Applying the above principles to the facts of the present case, it is apparent that Nipanikar and Kerkar had no power, authority, or jurisdiction to tinker with the final award dated 29.10.2015, almost four years after such award was made, that is on 02.11.2019. Therefore, section 13A of the said Act cannot be a defense to such usurpation of power that the two officers did not possess.

41. Besides, the two officers have not corrected any clerical or arithmetical mistakes in the final award dated 29.10.2015. On the contrary, they have substantially reviewed the final award dated 29.10.2015. The final award dated 29.10.2015, after taking cognizance of the disputes between the parties, had ordered a reference under Section 30 to the District Court. After that, the L.A.O. was functus officio and could not have reviewed the decision of ordering a reference under Section 30 of the said Act.

42. The two officers, almost four years after Mr. N.M. Gad made the final award dated 29.10.2015, have reviewed the same, and virtually vacated or modified the order of reference under Section 30 of the said Act. Such an exercise does not amount to correcting any clerical or arithmetical mistakes in the award or errors as contended by some of the learned Counsel for the respondents. Instead, such an action on the two officers' part amounts to the review jurisdiction exercise they never had. The two officers conveniently ignored the proviso to section 13A about notice and reasonable opportunity to the affected

parties.

43. Therefore, the action of the two officers cannot be sustained by resorting to Section 13A of the said Act. In the first place, their action was beyond six months from the date of the final award dated 29.10.2015. Their action was almost four years after the date of the final award. Secondly, their action did not amount to correction of a clerical or arithmetical mistake in the award or errors. Thirdly, the so-called correction has prejudicially affected the petitioners and other co-owners. Still, the two officers acted without giving a reasonable opportunity to the affected parties. The proviso to Section 13A(1) provides for such a reasonable opportunity. The two officers did not even bother to give any immediate notice or any notice of the so-called correction made in the award to all the persons interested, even though such notice is required under Section 13A(2) of the said Act.

44. These are not some simple procedural lapses as was sought to be contended by the learned Counsel for some of the respondents. Instead, these are serious breaches of substantive law. The two officers have usurped jurisdiction which was not vested in them and proceeded to review the final award made by their predecessor without even minimum regard to the principles of natural justice and fair play or the limits of their power, authority, and jurisdiction. The decision-making process is entirely flawed. The plea of alleged good faith is too lame to defend or justify the actions of the two officers. In circumstances, perhaps less gross, such pleas have been turned down by coordinate Benches of this Court in the past.

45. As noticed earlier, there is no merit in the contention of the learned Counsel for some of the respondents that the petitioners or other co-owners had not raised any dispute about the tenancy status of the beneficiaries or the apportionment of the share of compensation to them. However, the record indicates that such disputes were undoubtedly raised. The final award dated 29.10.2015 takes cognizance of such objections and disputes and correctly orders a reference under Section 30 of the said Act. In any case, the two officers had no power or authority to sit in judgment over the final award made by their predecessor almost four years earlier.

46. It is well settled that the L.A.O. should not ordinarily attempt to resolve disputes between the parties on the issues of entitlement apportionment. Nevertheless, if such apportionment disputes are raised, the L.A.O. should ordinarily refer such disputes under Section 30 of the said Act by the District Court unless he has strong reasons otherwise. Here, the L.A.O., who made the final award, had already referred the disputes to the District Court on 29.10.2015. Consequently, the two officers who followed him four years later had no jurisdiction or authority to review or otherwise tinker with the final award dated 29.10.2015. The two officers did not even bother to comply with the principles of natural justice and fair play. According to us, at least legal malafides are writ large. However, the State is reluctant to enquire into factual malafides.

47. In *Shri Vajrajit S. Dubhaxi & Ors. V/s. Special Land Acquisition Officer (North) & Ors.* WP No.261/1986 decided on 12.08.1987. The L.A.O. himself decided the disputes between the parties and even proceeded to the house of respondent no.4 to pay the compensation. The L.A.O.'s action in resolving the disputes of apportionment and disbursing the compensation amount to respondent no.4 was considered illegal and ultra vires by a coordinate Division Bench. However, Dr. G.F. Couto, J. found no malafides in the L.A.O.'s action and felt that a direction to the respondent no.4 to furnish a bank guarantee would suffice.

48. G.D. Kamat, J., however, disagreed with Dr. G.F. Couto, J. on issues referred to in paragraph 1 of his opinion, which is quoted for reference of convenience :

"1. I would have been content to agree with the judgment prepared by my learned brother but, however, my conscience does not permit me to agree on two propositions:-

i) Having regard to the facts admitted and circumstances of this case, it must be held that the action of the Land Acquisition Officer is not only highly objectionable but smacks of malafides.

ii) Once I come to this position, then the compensation paid to the second respondent, through her attorney, at 9.00 A.M. on December 12, 1986, must be recalled and placed before the reference court."

49. G.D. Kamat, J. found malafides in the L.A.O.'s action and directed respondent no.4 to deposit the compensation amount before the Reference Court. However, given the conflict, the matter was referred to P.B. Sawant, J. (as His Lordship then was). By his opinion dated 05.01.1988, P.B. Sawant, J. agreed with the view taken by G.D. Kamat, J. and proceeded to pass strictures on the action of the L.A.O.

50. Thus, the decision in *Shri Vajrajit S. Dubhaxi (supra)* is an authority for the proposition that the L.A.O. should not ordinarily resolve serious disputes about title or apportionment but consider a reference under Section 30 of the said Act to the District Court for resolution of such conflicts. Further, this decision is an authority for the proposition that this Court can recall the compensation amounts paid by the L.A.O. in excess of the powers vested in him.

51. In *Comunidade of Bambolim V/s. Maximo Mergulhao & Ors.* WP No.2/1988 decided on 07.06.1988. The Coordinate Bench of this Court was concerned with a dispute between the Comunidade and Maximo about the apportionment of compensation. Maximo had also claimed that he was the tenant of the acquired property and therefore entitled to the entire compensation to the exclusion of the Comunidade. Accordingly, the L.A.O. not only held that Maximo was entitled to compensation as a tenant but disbursed an amount of Rs. 5,29,939.07 to Maximo.

52. The Division Bench held that the action of L.A.O. was illegal, and it was not

expected from any reasonable and competent officer to make the payment of the compensation. The Division Bench observed that it would therefore appear that something that the records do not disclose had motivated the L.A.O. to make such payment. The Division Bench finally held that the circumstances justified a direction to Maximo to deposit the compensation amount he received in the District Court within two weeks.

53. The precedents in Shri Vajrajit S. Dubhaxi (supra) and Comunidade of Bambolim (supra) apply to the circumstances of the present case. Moreover, in these matters, the original L.A.O. had quite correctly appreciated the legal position and referred the disputes under Section 30 of the said Act. After almost four years, Nipanikar and Kerkar, who assumed the office of L.A.O., could not have reviewed the final award made by the L.A.O. on 29.10.2015 in breach of practically all the provisions of the said Act on the subject. Therefore, the beneficiaries cannot contend that they are not concerned with the two officers' illegalities or procedural irregularities. If the beneficiaries have benefited from the illegal and ultra vires act of the two officers, they cannot insist on retaining such benefits. The beneficiaries have furnished indemnity bonds, and they cannot now refuse to abide by them.

54. There is also no merit in the contention that since no reference was pending before the District Court, the L.A.O.s Nipanikar and Kerkar had jurisdiction to make the disbursements. As noted earlier, the final award dated 29.10.2015 had already made a reference under Section 30 of the said Act. Since the reference was not forwarded in the proper format and with all details, the same may have been returned by the Registry of the Reference Court to the L.A.O. All that the L.A.O. was required to do was to provide the details, remove the deficiencies, and to forward the papers to the Reference Court. Because the original L.A.O. may have failed to do this, possibly because he was transferred, neither Nipanikar nor Kerkar acquired any jurisdiction to tamper with or review the final award dated 29.10.2015.

55. In Writ Petition No.356/2021, the L.A.O., Nipanikar, acted only based on entries in survey records and virtually accepted the private respondents' claim of a tenancy. Based on these documents and without any regard to the provisions of the law or the limits of his jurisdiction, Nipanikar proceeded to disburse an amount of Rs. 5,55,54,965.00 (Rupees Five Crores, Fifty-five Lakhs Fifty Four Thousand Nine Hundred & Sixty Five only) to the private respondents.

56. The details of the disbursements made in Writ Petition No.356/2021 are reflected in a note appended to the reply filed on behalf of respondents nos.1 to 10,13,14,17,24 & 25. The details read as follows:

Sr. No.

Survey No.

Name of the Interested party

Total area of land in sq. mtrs

Total Compensation

1

230/0

1) Shri Yeshwant K. Kavthnkar @ Kauthankar

92,900 sq. mtrs.

Rs.1,11,10,993/-

2

230/0

2) Shri Anand H. Kavthnkar @ Kauthankar

92,900 sq. mtrs.

Rs.1,11,10,993/-

3

230/0

3) Chandrakant M. Varadkar

92,900 sq. mtrs

Rs.1,11,10,993/-

4

230/0

4) Shri Satyawar Vithal Bandekar

92,900 sq. mtrs.

Rs.1,11,10,993/-

5

230/0

5) Shri Gurudas S. Kole

92,900 sq. mtrs.

Rs.1,11,10,993/-

57. As noted earlier, the respondents referred to in paragraph 55 above are beneficiaries of the illegal and ultra vires disbursement by Mr. Nipanikar. These respondents, therefore, cannot retain the amounts received by them. Instead, they will have to deposit these amounts before the Reference Court. Accordingly,

a direction is liable to be issued to them to deposit these amounts at the earliest.

58. Mr. Usgaonkar, who appears for the above respondents, submitted that liberty be granted to the said respondents to deposit 50% of the amount and secure the balance with a Bank Guarantee. However, later, he submitted that the respondents would not be in a financial position to deposit any amounts.

59. The above respondents have already furnished an indemnity bond undertaking to bring back the amounts they received should any claim arise. Therefore, the above respondents cannot avoid the obligation of bringing back the amounts. Furthermore, the above respondents are the beneficiaries of illegal and ultra vires acts of Nipanikar; therefore, they cannot insist on retaining the amounts. In *Shri Vajrajit S. Dubhaxi (supra)* and *Comunidade of Bambolim (supra)*, in virtually similar circumstances, the beneficiaries of illegal disbursement were directed to bring back the amounts received by them. Therefore, the contention that the above respondents are not responsible for any illegalities committed by Nipanikar cannot be accepted.

60. Mr. S.D. Lotlikar submitted that the position of the private respondents in Writ Petition No.313/2021 and Writ Petition No.1044/2018 is different because most of the private respondents had produced declarations of tenancy followed by purchase sanads. He submitted that such sanads are conclusive given Section 18(H) provisions of the Agricultural Tenancy Act.

61. According to us, little credence can be given to the purchase sanads. This is because the applications for the issue of such sanads and the actual issue of such sanads were after the commencement of acquisition proceedings. The sanads were issued after the possession of the lands was taken, and the lands had vested in the Government free from encumbrances. The parties suppressed the factum of acquisition from the Mamlatdar and obtained the purchase sanads.

62. However, some credence can be extended to the declarations that some private parties may have produced before Kerkar. Mr. Sahil Deshpurabhu, however, submitted that even these declarations were a product of non-joinder of necessary parties and without effecting proper service on the landlords. At this stage, it is not for us to decide such disputes. However, we think that at least some credence should be given to the declarations, and based on the same, the cases of the private respondents in these two Writ Petitions can be considered slightly differently when it comes to the direction for deposit of the amounts that these private respondents have received through Kerkar and the then Tourism Minister.

63. The interests of justice will be met if the private respondents in Writ Petition Nos. 313/2021 and 1044/2018 are directed to deposit 50% of the amounts received and furnish an undertaking to the Reference Court about the return of the balance 50% if ordered by the Reference Court. The indemnities given by these private respondents shall, however, continue till the disposal of the reference.

64. The State Government must take expeditious steps to recover the amounts from the private respondents. The State should consider involving Nipanikar and Kerkar in recovering these amounts totaling Rs.15 crores. But for their illegal and ultra vires acts, such a situation might not have arisen. Indemnity bonds have already been invoked regarding the private respondents in W.P. No. 356/2021. The same should be invoked in the other two petitions as well immediately. Further emergent steps should be taken to recover the amounts and their deposit in the Reference Court. This is independent of our directions to the private respondents.

65. At one stage, we were contemplating placing the case papers before the Chief Secretary, State of Goa, to consider whether any action should be taken against Nipanikar and Kerkar for their role in disbursing an amount of almost Rs. 15.00 crores without the authority of law. However, in the fond hope that Nipanikar and Kerkar will assist the State in expeditiously recovering these amounts, we make no such direction for the present. However, if Nipanikar and Kerkar do not cooperate in the recovery of the disbursed amounts, the State may consider appropriate action. Further, for the role played by Nipanikar and Kerkar, in this matter, they are liable to pay costs to the petitioners.

66. Accordingly, all these petitions are allowed and disposed of by making the following order:-

ORDER

(a) The present L.A.O. must, within four weeks from today, forward the case papers to the Reference Court in terms of the final award dated 29.10.2015. The L.A.O. must ensure that this reference is delivered in the proper format and with all details.

(b) The Reference Court to register the references and dispose of the same in accord with law and on their own merits.

(c) The private respondents in Writ Petition No.356/2021 who have received the amounts from Nipanikar must deposit the same, without interest, before the Reference Court within two months from today.

(d) The private respondents in Writ Petition No.313/2021 & Writ Petition No.1044/2018 must deposit 50% of the amounts they received before the Reference Court within two months from today. In respect of the balance amounts, they must furnish an undertaking to the Reference Court that they will abide by the orders of the Reference Court concerning such amounts.

(e) The State must enforce its notices dated 23.09.2021 and recover the amounts disbursed by Nipanikar to the private respondents in Writ Petition No.356/2021.

(g) The State must also immediately issue notices to the private respondents in Writ Petition No.313/2021 & Writ Petition No.1044/2018 to recover at least 50%

of the amounts disbursed to them by Kerkar and further take steps to enforce such notices.

(h) The State must complete the exercise of recovery of the above amounts from the private respondents to the extent indicated above within two months from today. The State must consider involving Nipanikar and Kerkar in recovering such amounts.

(i) Mr. Nipanikar shall pay costs of Rs. 25,000/- to the petitioners in Writ Petition No.356/2021. Mr. Kerkar shall pay costs of Rs. 25,000/- to the petitioners in Writ Petition No.313/2021 and Writ Petition No.1044/2018. These costs shall be paid within two months from today.

(j) The Rule is made absolute in these petitions in the above terms.

(k) Civil applications do not survive, and the same are disposed of.