

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.578 OF 2008.

Mr. Damodar G. Lotlikar, Major of
age, Resident of Devrai Complex,
Bldg.`C' Near Pandav Chapel,
Aquem, Margao, Goa. Petitioner.

Versus

1. State of Goa, through, the
Secretary (Revenue), with his
office at the Secretariat,
Porvorim, Bardez, Goa.
2. The Land Acquisition Officer-
cum-Deputy Collector (L.A.)
Margao, Goa.
3. Village Panchayat of Davorlim,
Dicarpale, P.O. Navelim,
Salcete-Goa. Respondents.

Mr. S. D. Lotlikar Senior Advocate with Ms. Addi Naik, Advocate
for the petitioner.
Mr. V. Rodrigues, Additional Government Advocate for the
respondent nos. 1 and 2.
Mr. D. Pangam, Advocate for the respondent no.3.

**Coram:-F. M. REIS,
K. L. Wadane,JJ.**

Date:-18th June, 2015.

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. S. D. Lotlikar, learned Senior Counsel
appearing for the petitioner, Mr. V. Rodrigues, learned
Additional Government Advocate appearing for the respondent
nos. 1 and 2 and Mr. D. Pangam, learned Advocate appearing for

the respondent no. 3.

2. The above petition inter alia seeks to quash and set aside the notification dated 5.1.2007 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act") as well as notification dated 3.1.2008 issued under Section 6 of the said Act as well as notice under Sections 9 and 10 of the said Act dated 21.8.2008.

3. Briefly the facts of the case are that the petitioner purchased a plot of land admeasuring an area of 1185 square metres situated in the village of Davorlim village pursuant to the Sale Deed dated 16.11.1978. It appears that in view of the dispute with regard to the interference inter alia in the said property by some persons namely Mr. Manuel Miranda, a civil proceedings were initiated to restrain and/or stop such interference. Civil proceedings initiated by said Manuel Miranda and others came to be withdrawn. As said Manuel Miranda was interfering with the said property, the petitioner filed a civil suit which was decreed by the learned Trial Court and an appeal preferred by the said Manuel Miranda came to be dismissed by the learned District and Sessions Judge. Second Appeal preferred before this Court was thereafter withdrawn on 21.9.2005. It appears that on 15.10.1986, the respondent no.1 issued a notification under Section 4 of the said Act to acquire

the said land belonging to the petitioner which was followed by subsequent notification under Section 6 of the said Act. The petitioner challenged the said acquisition by filing a Writ Petition before this Court bearing No.140/1989 whereby this Court granted relief to the petitioner inter alia holding that the acquisition proceedings of the petitioner's land would not serve a public purpose for which the same was being acquired. It is to be noted that the purpose for which the said land was acquired pursuant to the said notification was for putting up a threshing ground for paddy operation. It is further contention of the petitioner that thereafter a fresh notification was issued on 5.1.2007 under Section 4 of the said Act to acquire the said land for the same purpose referred to herein above. The petitioner filed his objections under Section 5-A of the said Act contending that the whole exercise by the respondents was a malafide action only to deprive the petitioner of his legitimate right over the disputed land. It was also pointed out that there were earlier acquisition proceedings which were initiated which were thereafter withdrawn. A specific undertaking was taken from the petitioner that he would not claim any compensation on account of such withdrawal of the acquisition. The petitioner also raised objections with regard to the public purpose inter alia contending that it was a colourful exercise of powers by the respondents to acquire the land of the petitioner. Various objections were raised as can be seen from the objections filed

by the respondents dated 30.01.2007. It is further case of the petitioner that a report was submitted by the Land Acquisition Officer(hereinafter referred to as "LAO" for short) to the respondent no.1 in connection with the said acquisition. Thereafter on 3.1.2008, a notification under Section 6 of the said Act came to be published by the respondent no.1. In the meanwhile, according to the petitioner, the LAO/respondent no.1 had informed to the petitioner that in case the notification is withdrawn no compensation should be claimed by the petitioner and an affidavit to that effect would have to be filed by him. Accordingly, an affidavit was sworn by the petitioner before the concerned notary inter alia confirming the said aspect. Despite of the above, it is the case of the petitioner that the respondents proceeded to issue a notice under Sections 9 and 10 of the said Act which forced the petitioner to file the present Writ Petition.

4. The respondent nos. 1 and 2 have not filed any reply to the above petition but however, the respondent no.3 has filed the affidavit inter alia disputing the contentions raised by the petitioner. It is the case of the respondent no.3 that the earlier acquisition proceedings were dropped as the panchayat/the respondent no. 3 herein did not have financial resources to pay for such acquisition. It is further their contention that as a threshing ground was required for the benefit of farmers in the

vicinity, the respondent no.3 had approached respondent no.1 to take necessary action to acquire the land belonging to the petitioner. The contention that the acquisition was for malafide purpose and that the same was not for public purpose were expressively disputed by the respondent no.3. It is pointed out that in the objections raised by the petitioner under Section 5A of the said Act there were different ground on which objections were raised opposing the acquisition initiated by the respondent no. 3.

5. The learned Senior Counsel has taken us through the report submitted by the LAO to point out that the objections raised by the petitioner have not at all being considered nor any reasons given by the LAO rejecting such objections. The learned Senior Counsel has further submitted that the fact that the land was earlier acquired and thereafter dropped was not even considered by the LAO to examine whether the proceedings resorted to by the respondents is a colourful exercise. The learned Senior Counsel further submitted that as the objections raised by the petitioners have not been considered by the LAO, this by itself would vitiate the report under Section 5A of the said Act and consequently the acquisition proceedings deserves to be quashed and set aside. The learned Senior Counsel in support of his submission has relied upon the judgment of this Court reported in **2015(3) ALL MR 134** in the case of **Arjun**

Mahadev Harmalkar Vs. The State of Goa. The learned Senior Counsel further submits that the Division Bench of this Court relied upon the Judgment of the Apex Court reported in 2013(2) MH. L. J. 190 to hold that non-consideration of the objections by the LAO would itself vitiate the report submitted by the LAO. The learned Senior Counsel has submitted that on this ground alone the acquisition proceedings deserves to be quashed and set aside. The learned Senior Counsel further submits that the action taken by the respondents to acquire the land of the petitioner is a colourful exercise of powers resorted to with malafide intention. The learned Senior Counsel further submitted that the respondent nos.1 and 2 have exercised its powers under the said Act only to deprive the petitioner of his legitimate right over the disputed land which is levelled in the settlement zone. The learned Senior Counsel further submits that as the powers exercised by the respondents are colourable, the acquisition proceedings itself stand vitiated. The learned Senior Counsel further points out that having a threshing ground cannot be a public purpose and, as such, the respondent nos. 1 and 2 are not entitle to the acquisition of the land of the petitioner.

6. On the other hand, Mr. V. Rodrigues, learned Additional Government Advocate appearing for the respondent nos.1 and 2 has pointed out that from the report under Section 5-A of the

Act submitted by the LAO it emerges that the objections raised by the petitioner have not been considered, as the LAO had given a hearing to the petitioner and that report need not be in the form of a judgment to record all the reasons on which the objections have been rejected. The learned Additional Government Advocate has taken us through the report and pointed out that the LAO was satisfied that the land was being acquired for public purpose and consequently submitted the said report. The learned Additional Government Advocate further submits that there was no colourable exercise exercised by the Respondents and the LAO, has examined all the objections of the petitioner and as such, the contention of learned Senior Counsel that all objections are not examined by the LAO cannot be accepted. The learned Counsel further points out that the contention of malafide have not been established by the petitioner, as according to him, there are no particulars given by the petitioner to that effect. The learned counsel further submits that as such, the contention of Mr. Lotlikar, learned Senior Counsel on that count cannot be examined unless such parties are before the Court. The learned Additional Government Advocate, however, points out without prejudice that in case this Court comes to the conclusion that the proceedings under Section 5A of the Act are vitiated, this Court may direct inquiry to be held and proceeded for acquisition be proceeded after submitting a fresh report under

Section 5A of the said Act. The learned Additional Government Advocate further points out that any other relief granted to the petitioner would cause great injustice to the respondents and, as such, this Court may direct that the acquisition be continued from the stage of Section 5A of the said Act. In support of his submission learned Additional Government Advocate relied upon the judgment of this Court dated 1.11.2012 passed in Writ Petition No. 170 of 2011 (Mrs. Estefania Dias e Pereira and another Vs. State of Goa and others).

7. Mr. D. Pangam, learned counsel appearing for the respondent no. 3 has pointed out that the petition deserves to be rejected on the ground of delay. The learned counsel further points out that petition has been filed only after a period of one year from the date of Section 6 notification and this delay will cause great prejudice to the respondent no.3. The learned counsel for the respondent no. 3 further submits that land of the petitioner is required for the public purposes and, as such, the LAO has rightly accepted the request of the respondent no. 3. The learned Counsel further submits that even assuming the proceedings under Section 5-A of the said Act are vitiated it would not be appropriate for this Court to quash the notification under Section 4 of the said Act, as according to him, due to the delay in filing the petition, the proceedings itself would lapse. The learned counsel further submits that the contention of the

petitioner that there are malafides have been seriously disputed by the respondent no.3 in their affidavit and, as such, it is not open for this Court to accept the said contention. The learned counsel further points out that as such the question of any interference by this Court in the acquisition proceedings would not arise in exercise of jurisdiction under Section 226 of the Constitution of India. In support of his submission, the learned counsel has relied upon the judgment of the Apex Court reported in **(1998) 4 SCC 387** in the case **Larsen & Turbo Ltd Vs. State of Gujarat and others** to point out that the contentions of the petitioner that the respondent intended to withdraw the notification cannot be accepted.

8. Mr. Lotlikar, learned Senior Counsel in answer to the contention of the learned Additional Government Advocate that the acquisition proceeding be continued from the stage of Section 5A of the said Act has relied upon the Judgment of the Apex Court reported in **(2002)3 SCC 533** in the case of **Padma Sundara Rao(Dead) and others Vs. State of T. N. and others** wherein the said aspect has been examined and held that in case the proceedings under Section 5-A vitiates there is no other option but to quash the notifications under Section 6 and Section 4 of the said Act. The learned Counse, as such, submits that the petition deserved to be allowed.

9. We have given our thoughtful consideration to the rival submissions of the respective Counsels and we have also gone through the records.

10. The essential ground on which the proceedings are being challenged is that the report under Section 5-A of the Act does not meet the test laid down by this Court in the judgment in the case of **Arjun Mahadev Harmalkar** (supra) wherein this Court has observed at paras 8 to 11 thus:-

“8. Dealing with the first contention referred to herein above, before we proceed to examine the facts in the present case, it would be appropriate to note the observations of the Apex Court in this connection in the Judgment reported in **2012(2) SCC 25 in the case of Kamal Trading (P) Ltd. v. State of W.B.**, wherein it has been observed at para 14 to 16, thus :

"14. It must be borne in mind that the proceedings under the LA Act are based on the principle of eminent domain and Section 5-A is the only protection available to a person whose lands are sought to be acquired. It is a minimal safeguard afforded to him by law to protect himself from arbitrary acquisition by pointing out to the authority concerned, inter alia, that the important ingredient, namely, “public

purpose” is absent in the proposed acquisition or the acquisition is malafide. The LA Act being an expropriatory legislation, its provisions will have to be strictly construed.

15. Hearing contemplated under Section 5-A(2) is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report. The report of the Collector referred to in this provision is not an empty formality because it is required to be placed before the appropriate Government together with the Collector's recommendations and the record of the case. It is only upon receipt of the said report that the Government can take a final decision on the objections. It is pertinent to note that declaration under Section 6 has to be made only after the appropriate Government is satisfied on the consideration of the report, if any, made by the Collector under Section 5-A(2). As said by this Court in Hindustan Petroleum Corpn. Ltd. 3, the appropriate Government while issuing declaration under Section 6 of the LA Act is required to apply its mind not only to the objections filed by the owner of the land in question, but also to the report which is submitted by the Collector upon making such further inquiry thereon as he thinks necessary and also the recommendations

made by him in that behalf.

16. Sub-section (3) of Section 6 of the LA Act makes a declaration under Section 6 conclusive evidence that the land is needed for a public purpose. Formation of opinion by the appropriate Government as regards the public purpose must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. It is, therefore, that the hearing contemplated under Section 5-A and the report made by the Land Acquisition Officer and his recommendations assume importance. It is implicit in this provision that before making declaration under Section 6 of the LA Act, the State Government must have the benefit of a report containing recommendations of the Collector submitted under Section 5-A(2) of the LA Act. The recommendations must indicate objective application of mind."

9. In another Judgment of the Apex Court reported in **2013(4) SCC 210 in the case of Usha Stud & Agricultural Farms (P) Ltd. v. State of Haryana** the Apex Court has observed at para 30 thus-

"30. The ratio of the aforesaid judgments is that Section 5-A(2), which represents statutory embodiment of the rule of audi alteram partem, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not

required for the public purpose specified in the Notification issued under Section 4(1) or that there are other valid reasons for not acquiring the same. That section also makes it obligatory for the Collector to submit report(s) to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings held by him so that the Government may take appropriate decision on the objections. Section 6(1) provides that if the appropriate Government is satisfied, after considering the report, if any, made by the Collector under Section 5-A(2) that particular land is needed for the specified public purpose then a declaration should be made. This necessarily implies that the State Government is required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1)."

10. It would be also advantageous to note the observations of the Apex Court in another Judgment reported in 2013(8) SCC 99 in the case of Women's Education Trust v. State of Haryana, wherein it has been observed at para 35 thus:

"35. What is most surprising is that the High Court did not even deal with the issue relating to application of mind by the Government to the report submitted by the Land Acquisition Collector under Section 5-A(2) along with his

recommendations. The documents produced before the High Court and this Court do not show that the State Government had objectively applied mind to the recommendations made by the Land Acquisition Collector and felt satisfied that the land in question deserves to be acquired for the purpose specified in the notification issued under Section 4(1). The record also does not contain any indication as to why the State Government did not consider it proper to accept the recommendations of the Land Acquisition Collector. Therefore, there is no escape from the conclusion that the impugned acquisition is ultra vires the provisions contained in Section 6 of the Act."

11. In another Judgment of the Division Bench of this Court (where one of us F. M. Reis, J. was a party,) reported in **2013(2) Mh. L. J. 190** in the case of ***Estefania Dias e Pereira & anr. vs. State of Goa & Ors,*** this Court dealing with the report of the Land Acquisition Officer under Section 5A of the said Land Acquisition Act of 1894 and taking note of the Rules framed by the appropriate Government has observed at para 15 to 17 thus :

"15. The report in this case does not meet this fundamental requirement. For instance, the petitioners contend that the acquisition is only for the benefit of two houses, whereas the authorities contended that it would benefit five houses. The report merely states that the acquisition will improve the accessibility in the village and will add a long way towards the benefit of the public and

that the acquisition is required for the construction of the motorable road to the residents of the Deussua village. This is merely a conclusion. There is absolutely nothing to indicate any application of mind on the rival contentions as to why the Collector preferred one version against the other. The Collector has a duty not merely to hear and note the objections, but to make a recommendation about the same to the Government. A recommendation posits a view being taken on the objections and the response thereto. The report must therefore indicate what prompted him to make a recommendation. It must disclose his mind.

(emphasis supplied)

16. It was obvious during the course of hearing that an attempt was made to support the order on the basis of affidavits filed in this Court and submissions advanced only during the hearing of this writ petition. In other words, we were invited to discharge functions of the Land Acquisition Officer under section 5-A of the Act. We are not inclined to do so, especially in the facts and circumstances of the present case. Had the matter been clear and uncomplicated, we may have done so with a view not to delay the acquisition proceedings. We, however, find that the nature of the objections are such that they require consideration and possibly a

further inquiry. It is essential that the objections and the answers thereto are considered by the authorities.

17. In the circumstances, the impugned report under section 5-A dated 28th October, 2010 is set aside qua the land of the petitioners alone. Respondent No. 2 is directed to file a fresh report, after hearing the petitioners and furnishing reasons in support thereof."

11. On perusal of the said observations specifically of the Apex Court referred to therein the Collector has a duty not merely to hear and note the objections, but to make a recommendation about the same to the Government. A recommendation postulates a view has to be taken with regard to the objections which have been raised by the interested parties. The report must therefore indicate what prompted the LAO to make a recommendation with regard to such notification as pointed out herein above. On perusal of the objections raised by the petitioner, we find that, there were specific objections raised with regard to such notifications. There were contentions to the effect that the acquisitions were earlier quashed and that the same were dropped as the land was not required for public purpose. There was also a contentions that the intended public purpose is not a public purpose interms of provisions of law. There were also contentions that initiation of the proceedings were itself malafide and a colourful exercise of power. On

perusal of the report submitted by the LAO, we find that all these objections have not been examined by the LAO. Non-consideration of such objections would itself vitiate the report under Section 5A of the Act and, as such, it would call for interference by this Court. It is to be remembered that the only right reserved to the interested parties/Owners of the land in terms of the provision of the said Act is to raise objections under Section 5A of the said Act. Non-examination of such objections would cause great injustice to the owners of the property.

12. In such circumstances, we find that as the LAO has not examined the objections while submitting the recommendation, the notification under Section 6 of the said Act stand vitiated on this ground alone and as such, the acquisition proceedings deserve to be quashed and set aside.

13. With regard to the contention of Vivek Rodrigues, learned Additional Government Advocate to the effect that the proceedings should continue from the stage of Section 5A of the said Act, we find that the Apex Court in the said judgment in the case of ***Padma Sundara Rao(Dead)***(*supra*) has examined the said aspect to come to the conclusion that once the report under Section 5A stand vitiated, the question of reviving the Section 5A of the said Act which has been lapsed cannot be accepted.

In such circumstances, the contention of learned Additional Government Advocate Mr. V. Rodrigues cannot be accepted.

14. With regard to the contention of Mr. Pangam, that the petition is barred by laches, we find that there is material on record to show that in fact the petitioner himself has filed an affidavit to the effect that he would not claim any compensation in case the acquisition proceedings are withdrawn. An affidavit dated 21.8.2005 would support the said contention. Hence, the contention that the respondents have altered their position and that the petition is barred by laches cannot be accepted.

15. With regard to the contention of Mr. Lotlikar of malafides and colourable exercise of power raised by the petitioner, we find that taking note of the view taken by us while holding that the proceedings under Section 5A itself are vitiated, the question of going into that aspect is not necessary for the disposing of the above Writ Petition.

16. In view of the above, We pass the following:-

ORDER

- (i) The impugned notification dated 5.1.2007 issued under Section 4 of the Land Acquisition Act, 1894, notification dated 3.1.2008 issued under Section 6 of

the said Act as well as notice dated 21.8.2008 under Sections 9 and 10 of the said Act are quashed and set aside.

- (ii) Rule is made absolute in the above terms with no order as to costs.

K. L. WADANE, J.
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F. M. REIS, J.