

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 802 OF 2009.

Mr. Pedro C. D'Mello, House No.361,
Secreawaddo, Chinchinim, Salcete,
Goa by attorney Shru Lucio De
Mello. Petitioner.

Versus

- 1 State of Goa by the Secretary
(Revenu), Government of Goa,
Secretariat, Porvorim, Bardez,
Goa.
- 2 The Deputy Collector and Land
Acquisition Officer, Margao,
Goa. Respondents.

Mr. A. F. Diniz, Advocate for the petitioner.
Mr. V. Rodrigues, Additional Government Advocate for the
respondents.

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

Date:-30th March, 2015.

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

Heard Mr. A. F. Diniz, learned Advocate appearing for the
petitioner and Mr. V. Rodrigues, Additional Government
Advocate appearing for the respondents.

2. The above Writ Petition inter alia seeks to quash and set
aside the acquisition proposed by the respondents for
construction of road on the ground that there was no effective

hearing of the objections raised by the petitioner in the inquiry under Section 5A of the Land Acquisition Act, 1894(hereinafter referred to as “the said Act” for short.)

3. Briefly the facts of the case are as under:-

Pursuant to the notification dated 1.9.2008 published in Official Gazette under Section 4 of the said Act, land belonging to the petitioner amongst other owners was intended to be acquired for the construction of a road. Land which was belonging to the petitioner proposed for acquisition was admeasuring 145 sq. mts from survey no. 29/5 and 120 square metres from survey no.29/9 of Dessua village. It is further contention of the petitioner that on 7.10.2008, objection under Section 5A of the said Act were raised by the petitioner on different counts inter alia that the land which was being acquired was not required for the proposed acquisition and further that even in case the respondent wants to acquire the land, such exercise could be done after acquiring a portion from the petitioner property and remaining half from the adjoining land owners on the opposite side of the proposed road. It is also the case of the petitioner that the whole exercise of the acquisition is malafide, and, as such, the acquisition deserves to be set aside.

4. The respondent after receiving the report from the Land

Acquisition Officer, ("the LAO" for short) under Section 5A of the said Act proposed to issue a notification under Section 6 of the said Act inter alia reducing the area proposed to be acquired from 145 square metres to 81 square metres from the property surveyed under no.29/5 and an area of 33 square metres in respect of the property surveyed under no. 29/9 of village Dessua.

5. Being aggrieved by the said notification, the petitioner has filed the above writ petition inter alia seeking to quash the acquisition initiated by the respondent.

6. Mr. Diniz, learned counsel appearing for the petitioner has pointed out that the petitioner has raised three objections under Section 5A of the said Act. The first objection was with regard to the fact that the acquisition is not at all required as it would benefit only three houses and further that in case the respondent desire to acquire the land, such acquisition should be restricted to only to half area from the land of the petitioner and remaining half from the adjoining owners of the land on the opposite side. The learned Counsel for the petitioner has pointed out that the LAO while preparing the report under Section 5A of the said Act did not even examine veracity of the said objection nor disclosed any reasons why such objections were not considered. The learned Counsel

further submits that the acquisition was carried out at the behest of the then MLA of the locality and, as such, the whole exercise of acquisition itself is malafide. The averments in the report are arbitrary, erroneous as according to him, the report goes on the basis of an existing pathway when on the contrary the record reveal that the path way is not at all being used nor existing at the site as noted in the report under section 5A of the said Act. The learned counsel for the petitioner further points out that the objections raised by the petitioner have not at all being considered by the LAO. In support of his submission learned Counsel has relied upon the judgment of the Division Bench of this Court passed in Writ Petition No. 170/2011 and 460/2011 which was decided on 1.11.2012. The learned counsel has gone through the observations in the said judgment to point out that in similar circumstances, this Court has taken a view that non consideration of the objection would vitiate Section 5A Report and consequently quash and set aside the Acquisition.

7. On the contrary, Mr. Rodrigues, learned Additional Government Advocate has supported the acquisition. The learned counsel has taken us through the acquisition plan on record to point that as per the notification under Section 4 of the said Act, the width of the proposed road was 6 mtres and according to him, an area 145 square metres from the property

surveyed under no.29/5 and an area of 120 square metres from the property surveyed under no. 29/9 of village Dessua was proposed to be acquired. The learned counsel has thereafter taken us through the notification under Section 6 of the said Act and pointed out that the area was in fact reduced to almost half as the proposed acquisition is now reduced from 6 mts to 3 mts. width. The learned counsel has thereafter taken us to the affidavit of the respondents to point out that this exercise of reducing the width of the road from 6 mts to 3 mts is in line with the objections raised by the petitioner wherein the petitioner has contented that half of the area be acquired from the property belonging to the petitioner and remaining half from the property belonging to opposite owners. The learned counsel further submits that the objections raised by the petitioner under Section 5A of the said Act have been substantially accepted and, as such, the grievance of the petitioner in above Writ Petition do not deserve consideration. The learned counsel for the respondents further points out that there was an existing path way and that the proposed acquisition is in line with such pathway. The learned counsel for the respondent further points out that considering the width of the road is reduced to 3 mts, the question of further acquisition in the property of the petitioner at this stage does not arise at all. The learned counsel as such points out that considering that the objections of the petitioner have been substantially redressed,

the petitioner is not entitled for any relief sought in the petition.

8. We have given our thoughtful consideration to the respective contention of the learned counsel. With the assistant of the learned counsel, we have gone through the record. On perusal of the notification under Section 4 of the Act, we find that the area which was proposed to be acquired at that stage has been substantially reduced in the subsequent notification under Section 6 of the said Act. Deduction is roughly to the extent of half which was initially proposed to be acquired. The contention of the petitioner is that the acquisition is at the behest of the local MLA. But, however, this aspect cannot be examined as said MLA is not a party to the petition. Considering the averment in the affidavit of the respondents at paragraph 10, we find that the width of the road as proposed in the notification under Section 4 of the said Act has been reduced from 6 mts to 3 mts on the basis of the objection filed by the petitioner. On perusal of the objections raised by the petitioner, we find that it was the case of the petitioner that only half of the area be acquired from the property of the petitioner and remaining half from the property of other owners on the opposite side of petitioner's property. With the assistant of the learned counsel, we have also gone through the plan on the record and we find that the situation at loco as contended by the petitioner was not feasible taking note of the structures

already shown to be in existence near the cross.

9. In such circumstances, we find that that the objection raised by the petitioner is fully accepted by the respondent, and as, the question of interfering with the acquisition initiated by the respondents on this count would not at all be justified. Though Mr. Diniz, learned counsel for the petitioner would be justify to contend that the inquiry report under Section 5A of the said Act is not happily worded, nevertheless we find that objections raised by the petitioner have been considered by the appropriate authority.

10. The next contention of Mr. Diniz is that the petitioner has suggested that only half area of the property of the petitioner be acquired and no further acquisition be made from the petitioner's property. This aspect could have been considered if the claim of the petitioner that the acquisition malafide at the instance of the local MLA was established. There are no particulars of such malafides in the petition filed by the petitioner. As pointed above, such MLA is also not a party to the petition. In such circumstances, the question of interfering in the notification on the basis of the malafide would not be justified.

11. With regard to the judgment of the Division Bench passed

in Writ Petition Nos. 170/2011 and 460/2011 relied upon by the petitioner, we find that considering that the objections of the petitioner have been substantially redressed, the question of invoking the principles enumerated therein in the present case would not be justified. The Judgment of the Division Bench passed in Writ Petition Nos. 170/2011 and 460/2011 is as such distinguishable on facts, considering the findings herein above.

12. With regard to the contention that the acquisition would benefit only three houses, this Court has held that the Circular issued by the State Government in that connection, are only recommendations to be considered in the facts of each case at loco. The proposed road in the present case will benefit different plots and also a cross as shown in the acquisition plan. As such the said contention of the petitioner would itself not justify the interfere of this Court in the circumstances of the case.

13. In view of the above, we find no merit in the above petition, which stand accordingly rejected.

14. Rule stands discharged.