

**IN THE HIGH COURT OF BOMBAY AT GOA.
WRIT PETITION NO. 801 OF 2009.**

1. Mr. John Viegas,
2. Mr. Wilfred Viegas,
both r/o House No. 28,
Deussua, Velhor, Chinchinim,
Salcete, Goa, through their duly
constituted Attorney, Mrs. Filu
Fernandes, r/o House No.
322/2, Zamcotto, Dramapur,
Salcete, Goa. Petitioners.

Versus

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

Mr. A. F. Diniz and Mr. S. Shet, Advocates for the petitioners.
Ms. S. Linhares, Additional Government Advocate for the
respondents.

Coram:-F. M. REIS,
K. L. WADANE, JJ.

Date:-14th July, 2015.

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

Heard Mr. A. F. Diniz, learned Advocate appearing for the
petitioners and Ms. S. Linhares, learned Additional Government
Advocate appearing for the respondents.

2. The above petition inter alia takes exception to an
acquisition pursuant to the notification dated 1.9.2008 under

Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") whereby an area of 50 square metres was intended to be acquired from the property surveyed under no. 116/5 of Deussua Village. It is the contention of the petitioners that objections were raised under Section 5A of the Act opposing the said acquisition from the property of the petitioners inter alia on the ground that the acquisition was malafide, not for a public purpose and that the alignment of the road was not correct and it could be aligned through the property surveyed under no. 107/1 and 107/2. The other objections raised by the petitioners were that property of the petitioners is a small plot and incase a portion was acquired it would render the plot unfit for development and that it was also contrary to Government's circular issued by the State Government. Thereafter a notification came to be issued under Section 6 of the Act on 24.9.2009 whereby the area intended to be acquired from the property of the petitioners was reduced to 2 mtres only from the property surveyed under no. 116/5.

3. Petitioners being aggrieved with the said acquisition, filed the above writ petition inter alia seeking to quash the acquisition by the respondents.

4. Mr. A. F. Diniz, learned counsel appearing for the petitioners points out that the acquisition itself is not for a

public purpose, and the specific objections raised by the petitioners under Section 5A of the Act, before the Land Acquisition Officer, ("the LAO" for short) were not examined while submitting the report. The learned counsel further submits that by the proposed acquisition the toilet and kitchen of the residential house of the petitioners would be demolished and consequently this would cause great and irreparable damage to the property of the petitioners, as according to him, the plot of the petitioners could not be used for any development. The learned counsel further submits that the acquisition itself was meant to benefit only one residential house and as such was contrary to the circular issued by the State Government. The learned counsel has thereafter taken us through the report under Section 5A of the Act to point out that all the objections raised by the petitioners have not at all being considered by the LAO. The learned Counsel further submits that the petitioners have also suggested an alternate road which also has not been considered by the LAO while submitting the report. The learned counsel, as such, points out that the report itself is vitiated, and consequently the acquisition proceedings deserves to be quashed and set aside. In support of his submission learned counsel appearing for the petitioners has relied upon the judgment of the Division Bench of this Court reported in **2012(6) Bom. C. R. 844 in the case of Estefania Dias e Pereira and another vs. State of Goa and others and**

2014(2) Bom. C. R. 552 in the case of Savio Torcato Pereira and anr. Vs. State of Goa and ors. The learned counsel, as such, submits that the reliefs sought by the petitioners be accordingly granted.

5. On the other hand, Ms. Linhares, learned Additional Government Advocate appearing for the respondents has submitted that the contention of the petitioners that part of the residential house consisting of the toilet and kitchen was likely to be demolished is totally false, as according to her, in the affidavit filed by the respondents there is a specific averments to the effect that only the compound wall of the petitioners would be demolished. The learned Additional Government Advocate further points out that the report of the LAO has clearly taken note of the objections raised by the petitioners to come to the conclusion that there is no other alternative road. Learned Additional Government Advocate further submits that the road which has been constructed will service 7 others residential houses and that the acquisition also includes tarred portion existing at the site which also had not been acquired. The learned Additional Government Advocate further points out that the residential houses abutting the said tarred portion would also be benefited by such road which leads to the public water tank which has to be maintained from time to time as otherwise in the absence of the motorable access such exercise

became very difficult. The learned counsel thereafter has taken us to the report under Section 5A of the Act to point out that all the objection raised by the petitioners have been duly taken care of. According to the learned Additional Government Advocate infact in view of the said objections, the area which was intended to be acquired vide notification under Section 4 of the Act which was 50 square metres was reduced to only 2 square metres. The learned counsel further submits that this has been deliberately not been noted by the petitioners while raising their contentions that the toilet and kitchen would be demolished. The learned Additional Government Advocate, as such, submits that the petition be rejected.

6. We have considered the submissions of the learned counsel appearing for the respective parties and we have also gone through the records.

7. No doubt, the LAO while submitting the report under Section 5A of the said Act has to consider all the objections raised by the petitioners. But, however, in the present case, the objection raised by the petitioners is that the acquisition itself is not for a public purpose. On going through the notification the purpose of the acquisition is for the construction of a public road which apparently would service as a road to the houses adjoining such road. Apart from that it is an admitted position

that the road would lead to the public water tank which has to be maintained from time to time. On perusal of the report under Section 5A of the Act, we find that all these aspects have been duly taken note by the LAO while submitting the report. Apart from that LAO has also taken note of the fact that as the water tank has to be maintained from time to time, it would require a motorable access to carry out the maintenance work. All these observations of the LAO would clearly suggest that the acquisition is for a public purpose.

8. With regard to the contention of Mr. Diniz that there is an alternate access, we find from the material on record prima face, that there is nothing to suggest that there is such access road at the site. Mr. Diniz, learned counsel further points out that the dotted lines shown on the plan as an alternate access. On perusal of the said plan it appears that it cannot be a motorable access as required for the present acquisition. Perusal of the records reveal that the portion which has been tarred has also been acquired and in such circumstances the houses which were earlier using such access would also be benefited by the acquisition in the present case. As such, the contention of Mr. Diniz, that the acquisition would be for the benefit of only one person cannot at all be acceptable. Apart from that this Court has already taken a view that the circular issued by the State Government is only

directory and not mandatory. Besides the area acquired from the petitioners is only 2 square metres and the learned Additional Government Advocate has submitted that only a portion of the compound wall would be affected and not the toilet and kitchen as contended by the petitioners. In such circumstances, taking note of the fact that the road would lead to the public water tank, we find that the contention of Mr. Diniz do not deserve any consideration. The judgments relied by Mr. Diniz, the learned Counsel for the petitioners, as such, would not be applicable to the facts of the present case.

9. In view of the above, we find no merit in the above Writ Petition. Hence, Writ petition stands dismissed.

10. Rule stands discharged.

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