

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 215/2015**

Francisco Nicolau Fernandes,
r/o. Jose Pires Cardoz Complex,
Dovernem, Mercês, Ilhas, Goa.

..... **Petitioner.**

Versus

1. State of Goa,
through the Chief Secretary,
Secretariat, Porvorim, Goa.

2. The Land Acquisition Officer,
Office of the Dy. Collector &
SDO & LAO,
Collectorate Building, Panaji, Goa.

3. Comunidade of Murda,
through its Attorney,
having Office at Bhutem Bhatt,
Mercês, Ilhas, Goa.

4. The Administrator of
Comunidade – Ilhas,
Administrator of Comunidade Building,
Opposite Panaji Church,
Panaji, Goa.

..... **Respondents.**

Mr. E. Dias, Advocate for the petitioner.

Mr. S. Dhargalkar, Addl. Government Advocate for the respondents
No.1, 2 and 4.

Mr. Nigel Costa Frias, Advocate for the respondent No.3.

**CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date : - 05/04/2016.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Mr. E. Dias, learned Counsel appearing for the petitioner, Mr. S. Dhargalkar, learned Additional Government Advocate appearing for the respondents No.1, 2 and 4 and Mr. Nigel Costa Frias, learned Counsel appearing for the respondent No.3.

2. Rule. Learned Counsel appearing for the respondents waive service. Heard forthwith, with the consent of the learned Counsel.

3. We have heard the learned Counsel appearing for the respective parties and we have also gone through the record. The main contention of Mr. Dias, learned Counsel appearing for the petitioner is that the petitioner was not served, nor intimated of the subject acquisition proceedings and, as such, the petitioner was prevented from filing an application for seeking a reference under Section 18 of the Land Acquisition Act, 1894 ("Act" for short) in connection with the subject-acquisition in respect of the properties surveyed under

Nos. 78/7 and 77/10 of Village Murda, Mercas, Ilhas, Goa wherein the petitioner claims to be the tenant.

4. Mr. E. Dias, learned Counsel appearing for the petitioner submits that only on 12th October, 2014, the petitioner came to know about the acquisition proceedings and immediately, after getting the necessary information, the petitioner filed an application for reference under Section 18 of the Act on 17th November, 2014. The learned Counsel further points out that taking note of the date of knowledge pleaded by the petitioner, the application for reference under Section 18 of the Act is within time prescribed. The learned Counsel further points out that the Land Acquisition Officer (LAO), by the impugned order, rejected the application as being time-barred and, as such refused to make the reference under Section 18 of the Act. The learned Counsel has taken us through the impugned order passed by the LAO to point out that this aspect has not at all been examined by the LAO whilst passing the impugned order.

5. On the other hand, Mr. S. Dhargalkar, learned Additional Govt. Advocate appearing for the respondents No.1, 2 and 4, submits that the records reveal that there was no personal service of the notices

to the petitioner either under Sections 9, 10 or under Section 12 of the Act as the petitioner was not available. The learned Additional Govt. Advocate has also brought on record a Panchanama supporting the said contention. The learned Additional Govt. Advocate submits that the notices have been duly published and pasted in terms of the Act and, as such, the notice is presumed to have been served on the petitioner while proceeding to acquire the subject-land.

6. Mr. Nigel Costa Frias, learned Counsel appearing for the respondent No.3, however, submits that the respondent No.3 does not accept that the petitioner is a tenant in respect of the property bearing Survey No. 78/7 of Village Murda, though the respondent No.3 accepts that the petitioner is a tenant of the other property bearing Survey No.77/10 of Village Murda. The learned Counsel, as such, points out that the petitioner is not entitled for any compensation in respect of the said portion of the property bearing Survey No. 78/7 of Village Murda.

7. We have considered the submissions of the learned Counsel and we have also gone through the record. Based on the rival contentions, it is not disputed that the petitioner was not served with

notices in terms of the provisions of Sections 9, 10 or 12 of the Act. The Apex Court, in **(2005) 7 SCC 431**, in the case of ***Parsottambhai Maganbhai Patel and ors. vs. State of Gujarat and another***, has observed at para 7, thus :

“7. This Court, therefore, held that the limitation under the latter part of Section 18(2)(b) of the Act has to be computed having regard to the date on which the claimants got knowledge of the declaration of the award either actual or constructive. This principle, however, will apply only to cases where the applicant was not present or represented when the award was made, or where no notice under Section 12(2) was served upon him. It will also apply to a case where the date for the pronouncement of the award is communicated to the parties and it is accordingly pronounced on the date previously announced by the Court, even if, the parties are not actually present on the date of its pronouncement. Coming to the facts of the instant case the High Court has not rejected the plea of the appellants that they came to know of the award only when compensation was being paid to them in July 1988. They had admittedly no notice under Section 12(2) of the Act. They had therefore filed the application under Section 18 of the Act on 22-9-1988 well within the period of limitation. The Reference Court recorded a finding in favour of the appellants but the High Court has reversed that finding without applying

the principle laid down in *Raja Harish Chanda* (1962) 1 SCR 676 . Moreover, we find from the grounds of appeal filed before the High Court that the assertion of the claimants that they came to know of the declaration of the award only when compensation was being paid to them in July 1988, has not even been challenged.”

This Court, in a Judgment dated 16th August, 2013, in Writ Petition No.620 of 2012, in the case of ***Mr. Valmiki Faleiro vs. Special Land Acquisition Officer and another***, has observed at para 7 thus :

“ 7. Without going into the merits of the contentions raised by the petitioner, I find it appropriate in the interest of justice to quash and set aside the impugned order dated 02.02.2012 and direct the learned Judge to decide the issue of limitation if at all arises in the matter after framing such issue and hearing the parties in accordance with law. This view is supported by the judgment of the Division Bench of this Court in the case of ***Mr. Sadanand Vishnu Shirgaokar V/s State of Goa & Ors.***, passed in Writ Petition No. 123 of 2006 dated 27.06.2006 wherein it has been observed at paras 6, 8 and 9 thus :

“6. In our opinion, the judgment in Supreme Court in Sharda Devi's (supra) case makes it clear that a person who was not represented in the acquisition proceedings or who had no notice of the acquisition proceedings is also covered by

section 30 of the said Act. In this connection, the following observation of the Supreme Court may be quoted :

“S. 30 is not confined in its operation only to persons interested. It would, therefore, be available for being invoked by the ‘persons interested’ if they were neither present nor represented in proceedings before the Collector, nor were served with notice under S.12(2) of the Act or when they claim on the basis of a title coming into existence post award.”

Since no notice was served on the petitioner and he was not present nor was he represented in the proceedings, his case would be covered by section 30 of the said Act. The first submission of learned counsel for respondent 4 must fail.

8. Submissions were also advanced before us on the question of limitation. So far as the aspect of limitation is concerned, in Meher Rusi Dalal’s case (supra), the Supreme Court has observed that it is well settled that a reference under section 30 of the said Act has to be made within a reasonable time. The following observations of the Supreme Court may be quoted :

“Even in Sharda Devi’s case (supra) this Court has held that even though no limitation is provided for making a reference under Section 30, the power had

to be exercised within a reasonable period. This Court has held that what is the reasonable period would depend upon the facts of each given case. It appears to us that in cases where the parties have notice of the acquisition proceedings, even presuming, they can apply for a reference under Section 30, the reasonable time would be the period prescribed under Section 18. We immediately clarify that where parties do not have notice of the acquisition proceedings and/or their rights come into existence subsequent to the acquisition proceedings the starting point of limitation may be postponed but the reasonable time would be the time set out in Section 18 from the date of the knowledge or from the date they acquire rights, whichever is later.”

9. In view of the statement made by the learned Advocate General, which we have recorded, in our opinion, nothing survives in this petition. Needless to say that the question of limitation is kept open and the reference court will deal with it in the light of the judgment of the Supreme Court in Meher Rusi Dalal’s case (supra)”

Taking note of the said observations and as it is undisputed that no notice was issued to the petitioner, we find that the limitation to file a reference would begin from the date of knowledge of such award.

8. The fact that the petitioner came to know about the Award only on 12th October, 2014 stands uncontroverted, as the statements to that effect in the petition have not been disputed by the respondents. As has been pointed out herein above, the respondents also accept the position that individual notices were not duly served on the petitioner. On the basis of these factual aspects, we find that the LAO was not justified to refuse the relief sought by the petitioner to make a reference under Section 18 of the Act to the Reference Court. On perusal of the impugned order, we find that the LAO has not given any finding to the effect that the petitioner was personally served with any of the notices or that the petitioner had, in any way, participated in the acquisition proceedings. As such, we find that the impugned order passed by the LAO dated 17th December, 2014 deserves to be quashed and set aside and the respondent No. 2 be directed to make a reference under Section 18 of the Act, to the Reference Court. Needless to say, the contentions of the respondent No.3 and the dispute raised with regard to the alleged claim of the petitioner is to be examined by the appropriate Court, in accordance with law.

9. In view of the above, we pass the following :

ORDER

- (I) The impugned order dated 17/12/2014 passed by the respondent No.2 is quashed and set aside.
- (II) The Respondent No.2 is, accordingly, directed to proceed to make a reference under Section 18 of the Land Acquisition Act, 1894, in accordance with law.
- (III) Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J.

F.M. REIS, J.

ssm.