

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.282 of 2016**

M/s. Resources International,
A partnership firm, duly
registered Under the Partnership
Act, 1932, Having its registered
office at Sesa Goa, 2nd floor,
Entrance III, Patto, Panaji,
Goa. Represented by its partner,
Shri Dipak M. Rajani,
Major of age, Resident of
Dona Paula, Panaji, Goa. .. Petitioner

V/s.

1. Shri John Fillipe Costa,
Major of age,
2. Smt. Malinda Pereira,
Major of age,
Both resident of Panchawadi,
Ponda, Goa.
3. M/s. Sesa Goa Limited,
A company registered under
The Companies Act, 1956,
Having its office at
Sesa Ghor, 20 EDC Complex
Patto, Panaji, Goa. ... Respondents

Mr. J. Godinho, Advocate for the petitioner.

Mr. R. Menezes, Advocate for the respondent nos.1 and 2.

CORAM :- C. V. BHADANG, J.

DATE :- 7th JULY, 2016.

ORAL JUDGMENT :

Rule. Rule, made returnable forthwith. The
learned Counsel for the respondent nos.1 and 2 waives

service. Service to respondent no.3 (original defendant no.2) is dispensed with. Heard finally by consent of the parties.

2. The first and the second respondents had filed a suit for possession and mesne-profits against the petitioner and the third respondent. The suit was decreed in the year 2007, which is the subject matter of challenge in Regular Civil Appeal No.26/2010 before the learned District Judge at Panaji. It appears that an application for amendment of the Written Statement was filed by the petitioner at the appellate stage, which was rejected on 27/02/2014. However, by an order dated 29/11/2014, the Appellate Court reviewed the order dated 27/02/2014 and permitted the petitioner to amend the written statement. That was unsuccessfully challenged by the respondent nos.1 and 2 before this Court in Appeal from Order No.4/2015, which was dismissed on 20/02/2015. A perusal of para 7 of the judgment of this Court shows that this Court had found that the factum of acquisition of the part of the subject matter of dispute in the year 2009, was relevant to be brought on record.

3. After this, the petitioner has filed an

application for production of following documents at the appellate stage :

"(1) Notification issued by the Government of Goa dated 18/09/2006 under Section 4 of the Land Acquisition Act.

(2) Notification dated 10/10/2007 under Section 6 of the Land Acquisition Act.

(3) Award passed in Land Acquisition Case No.10/551/2006/LAO-PWD on 23/10/2009.

(4) Corrigendum dated 22/01/2010 and 26/11/2009 to the Award dated 23/10/2009.

(5) Covering letter addresses by the Land Acquisition Officer, P.W.D. Dated 08/03/2011.

(6) Application made by the Appellant under Right to Information Act, 2005

(7) Chart showing the amount of compensation awarded to the respective persons along with the Survey Number of the acquired.

(8) Form C showing the cheque amount received by the Respondent nos.1 and 2."

4. The production was opposed on behalf of the first and second respondents. The learned Trial Court, by an order dated 08/01/2016, although has noticed in para 7 of the order that the documents are relevant, ultimately came to the conclusion that the production cannot be allowed under Order XLI, Rule 27 of Civil Procedure Code (CPC, for short). The Appellate Court

had also placed reliance on the decision of Hon'ble Apex Court in the case of ***Union of India Vs. Ibrahim Uddin and Anr., dated 17/7/2012***, in order to hold that such an application has to be decided along with the main appeal. The Appellate Court ultimately found that the production cannot be allowed, which order is challenged by the petitioner in this petition.

5. It is submitted by the learned Counsel for the petitioner that once the amendment was allowed, the production of the documents, which pertain to the facts brought on record by virtue of the said amendment, should have been allowed to be produced. The learned Counsel submitted that, strictly speaking, the production was not sought under Order XLI, Rule 27 of CPC as it was in consequence of the application for amendment of the Written Statement. It is submitted that the documents are relevant as they will have bearing, as to whether the part of the decree for possession can be sustained and would also have a relevance on the issue of mesne-profits.

6. The learned Counsel for the first and second respondents, on the contrary, contends that the acquisition is admittedly subsequent to the passing of

the impugned decree of possession and mesne-profits and as such, cannot have a bearing on the controversy involved in the appeal. He submits that the Written Statement was filed by the petitioner only on the point of additional mesne-profits and the subsequent acquisition may not have any bearing on the same.

7. I have carefully considered the rival circumstances and the submissions made.

8. At the outset, it is necessary to mention that this Court has found while deciding Appeal from Order No.4/2015 that the factum of acquisition was relevant to be brought on record. If that be so, it is difficult to envisage as to how the production, as sought in para 2 of the application Exh.30, can be disallowed. In my considered view, the documents as sought only relate to the amendment. The learned Counsel for the petitioner does not press for production of the application made by the petitioner under the Right to Information Act (clause 6) of para 2 of the application (Exh.30). The other documents are pertaining to the amendment, which is already allowed. It is evident that the District Court shall consider the effect of such documents, at the hearing of the

appeal, in respect of which no opinion is expressed at this stage.

9. Subject to this, the petition is allowed. The impugned order is hereby set aside. The application Exh.30 is partly allowed, permitting the production of documents except the document mentioned in para 2(6) of the application Exh.30.

10. Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA