

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 767 OF 2015

Anupma Jai Shankar,
Wife of Herbert Grill,
C/o. Urmila Devi, 9C/274,
Vrindavan Yojna,
Section 9, Rai Bareilly Road,
Near N. K. M. School,
Lucknow (UP) 226025.

... Petitioner

V e r s u s

1. State of Goa,
Through Chief Secretary
Goa State Secretariat,
Alto Porvorim,
Goa -403 521.

2. Canacona Municipal Council
Through its Chief Officer,
Canacona, Goa.

3. South Goa District Disaster Management Authority
Through the Collector,
South Goa, Margao.

... Respondents

Ms. Richa Sharma and Mr. Rajnish Sharma, Advocates for the Petitioner.

Mr. A. N. S. Nadkarni, Advocate General with Mr. Vivek Rodrigues, Government Advocate for the Respondent nos. 1 and 3.

Mr. Deepak Gaonkar, Advocate for the Respondent no. 2.

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

Date : **29th February, 2016**

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

At the request of the learned Counsel appearing for the Petitioner,
leave to implead South Goa District Disaster Management Authority, South Goa,

Margao, as Respondent no. 3.

2. Amendment to be carried out forthwith.

3. Issue notice to the newly added Respondent no. 3. Mr. Vivek Rodrigues, learned Government Advocate waives service on behalf of the newly added Respondent no. 3.

4. Heard Ms. Richa Sharma, learned Counsel appearing for the Petitioner, Mr. A. N. S. Nadkarni, learned Advocate General appearing for the Respondent nos. 1 and 3 and Mr. Gaonkar, learned Counsel appearing for the Respondent no. 2.

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

6. Upon extensively hearing the learned Counsel appearing for the Petitioner and the learned Advocate General appearing for the Respondent nos. 1 and 3, the facts disclose that in fact before filing the above Writ Petition, there was no claim made by the Petitioner in terms of Section 66 of The Disaster Management Act, 2005, (for short " the said Act"), whereby the Petitioner ought to have filed a Petition before such Authority to claim the compensation.

7. Section 66 of the said Act reads thus :

"66. Payment of compensation.—

(1) Whenever any Committee, Authority or officer, referred to in sub-section (1) of section 65, in pursuance of that section requisitions any premises, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:— —

(1) Whenever any Committee, Authority or officer, referred to in sub-section (1) of section 65, in pursuance of that section requisitions any premises, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:—

(i) the rent payable in respect of the premises, or if no rent is so payable, the rent payable for similar premises in the locality;

(ii) if as consequence of the requisition of the premises the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change: Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the thirty days to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine: Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred by the Central Government or the State Government, as the case may be, to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and shall be determined in accordance with the decision of such arbitrator. Explanation.—In this sub-section,

the expression "person interested" means the person who was in actual possession of the premises requisitioned under section 65 immediately before the requisition, or where no person was in such actual possession, the owner of such premises.

(2) Whenever any Committee, Authority or officer, referred to in sub-section (1) of section 65 in pursuance of that section requisitions any vehicle, there shall be paid to the owner thereof compensation the amount of which shall be determined by the Central Government or the State Government, as the case may be, on the basis of the fares or rates prevailing in the locality for the hire of such vehicle: Provided that where the owner of such vehicle being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine: Provided further that where immediately before the requisitioning the vehicle or vessel was by virtue of a hire purchase agreement in the possession of a person other than the owner, the amount determined under this sub-section as the total compensation payable in respect of the requisition shall be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement, in such manner as an arbitrator appointed by the Central Government or the State Government, as the case may be, in this behalf may decide."

8. Learned Advocate General appearing for the Respondent nos. 1 and 3 submits that as the procedure as laid down in the said Act has not been complied with, the compensation was not ascertained. Learned Advocate General further pointed out that the fact that the Petitioner is entitled for compensation in terms of Section 66 of the said Act, cannot be disputed in case entitlement is established. But, however, the amount would have to be determined and the Petitioner would have to establish that they are the persons interested in terms of the said Act.

9. In reply to the said contention, learned Counsel appearing for the Petitioner submits that the Petitioner has brought ample of evidence on record to establish that the subject bungalow belonged to the Petitioner and produced the Sale Deed to that effect.

10. Be that as it may, considering that the Petitioner would be entitled for compensation in terms of Section 66 of the said Act subject to complying with the requirements of law and establishes the entitlement, we find it appropriate to direct the Respondent no. 3 to treat the above Petition as an application for compensation in terms of Section 66 of the said Act and proceed to determine such application after hearing the Petitioner within four weeks from the date of the appearance of the Petitioner. The Petitioner is also at liberty to produce further documents as well as comply with other requirements in terms of law to establish the claim for such compensation. The Respondent no. 3 shall accordingly proceed to determine the said application in terms of Section 66 of the said Act in accordance with law.

11. The Petitioner is accordingly directed to appear before the Respondent no. 3 on 07.03.2016 at 10.00 a.m. along with all the documents and relevant material in the light of the above observations.

12. Rule is made absolute in the above terms.

K. L. WADANE, J.

F. M. REIS, J.

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