

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.186 OF 2017

Shri Bhavani Shankar Rao,
Son of Narayan Rao,
Age 49 years, Occupation business,
Proprietor of Meera Ventures,
Ashutosh Building, SF/2,
Curchorem, Goa.

... Petitioner

Versus

The Chief Officer,
Curchorem – Cacora Municipal Council,
with its office at Curchorem, Goa..

... Respondent

Shri Sudesh Usgaonkar, Advocate for the petitioner.

Shri A. D. Bhobe, Advocate for the respondent.

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

Date:- 26th April,2017.

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

Heard Shri S. Usgaonkar, learned Advocate for the
petition and Shri A.D. Bhobe, learned Advocate for the respondent.

2. Rule.

3. Heard forthwith with the consent of the learned Advocate
appearing for the respective parties.

4. Shri A.D. Bhobe, learned Advocate waives service of notice on

behalf of the respondent.

5. The above petition inter alia takes exception to an order dated 20/12/2016 whereby the construction licence issued by the respondent was kept in abeyance. Mr. S. Usgaonkar, learned Advocate for the petitioner has pointed out that the petitioner had obtained all requisite permissions from the statutory authorities and pursuant thereto that have also initiated the development in the subject property and have put up a construction which has reached up to the third floor. The learned Counsel further points out that all of a sudden unexpectedly, by the impugned order the respondent chose to keep the construction licence in abeyance merely because a complaint was lodged by the Water Resource Department claiming that a portion of the property which belongs to the petitioner and survey no. 354/8 of Cacora village was the subject matter of the land acquisition in the year 1985-86. The learned counsel further points out that as far as the knowledge of the petitioner, there was no such acquisition of land of plot no.22 and as such the alleged complaint lodged is without any basis. The learned counsel further points out that as according to the petitioner, the acquisition of the land was for the purpose of the construction of the Salaulim Irrigation Project in plot nos.17. The learned Counsel further points out that the acquisition which had taken place was not the subject matter of any of the plot as the sub-division was carried out excluding the area acquired. The

learned counsel further points out that the petitioner also sought information under the Right to Information Act to find out such information from the concerned Department and in fact there was no response or information submitted to show that there was another acquisition other than the one showed in the sub-division plot. The learned Counsel further pointed out that the action on the part of the respondent in keeping the construction licence in abeyance is arbitrary and without any justification in law. The learned counsel further points out that the delay in completing the construction is causing grave and irreparable loss to the petitioner and as such the impugned order passed by the respondent deserves to be quashed and set aside,. The learned Counsel as such points out that as the Water Resource Department has failed to show that any portion of the land which was the subject matter of plot no.22 was subject matter of an required for acquisition in the past years.

6. On the other hand, Shri A.D. Bhobe, learned Advocate for the respondent disputed the said contention. It is pointed out that the joint inspection was conducted by the respondent to find out the alleged claim of the Water Resource Department and in fact the petitioner do not accept the location as shown of the subject acquisition by the Engineer of the Water Resource Department. The learned Counsel further points out that the parties were

directed to initiate proceedings for demarcation and as such the department has in fact filed an application before the concerned authorities for such demarcation. The learned Counsel further points out that as the Water Resource Department had claimed that a part of the land where the construction is being put up by the petitioner is Government land, the respondent is justified to keep the construction licence in abeyance until and unless the dispute between the petitioner and the Water Resource Department is resolved. The learned Counsel further states that there is no substance in the petition and as such the petition deserves to be dismissed.

7. We have considered the submissions of the learned counsel and we have also gone through the records. The rival claim as to whether any portion of the subject plot no.22 is the subject matter of the alleged acquisition as claimed by the Water Resources Departments is a matter which cannot be decided in the present Writ Petition under Article 226 of the Constitution of India.

8. Be that as it may, the only aspect which can be examined in the above petition is whether the action of the respondent in keeping the Construction Licence in abeyance wherein such licence has been issued and acted by the petitioner by putting up a construction consisting of ground plus three floors merely because

the Water Resource Department has raised an objection claiming that part of the land is acquired.

9. In the present case, there is no material produced on record to prima facie show that any portion of the subject plot no.22 was subject matter of the land acquisition. The Water Resource Department no doubt claimed that a portion of such land has been acquired but however the dispute between the petitioners and the Water Resource Department cannot be adjudicated by the respondent. Such dispute if any would have to be decided in an appropriate Forum in accordance with law. In such circumstances, the respondent is not justified to keep the construction licence issued to the petitioner in abeyance merely because a dispute has been raised by the Water Resource Department. In such circumstances, based on the material produced before the respondent, it is incumbent upon the respondent to take a decision with regard to the construction licence in accordance with law. The question of deferring a decision until a final adjudication of the dispute raised by the Water Resource Department would not be justified specially when the petitioner claimed that he has already put up a construction consisting of ground plus three floors in the subject plot no. 22.

10. Shri Bhobe, learned Advocate for the respondent, upon

instructions of the Chief Officer, states that a decision on the complaint filed by the Water Resource Department to the construction licence issued to the petitioner would be taken within six weeks from today.

11. In view of the above, we dispose off the above petition by directing the respondent to take a decision with regard to the construction licence issued to the petitioner after hearing the petitioner and all other concerned parties in accordance with law.

12. Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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