

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION No. 235 OF 2015**

1. Mr. Menino Jose Fernandes,
son of late Mr. Luis Fernandes,
major of age, Indian National,
resident of House No. 39/40,
Dando, Sanguem, Goa.
2. Mr. Feleciano Luis Jose Fernandes,
son of late Mr. Luis Fernandes,
major, resident of House No. 39/40,
Dando, Sanguem, Goa.
(through his true and lawful
attorney Petitioner No. 3).
3. Mrs. Alice Fernandes,
wife of Mr. Feleciano Fernandes,
major, resident of House No. 39/40,
Dando, Sanguem, Goa.
4. Artemesia Mascarenhas,
wife of Francisco Mascarenhas,
major, resident of H. No. 3,
Bendwaddo, Sanguem, Goa.

.... Petitioners.

Versus

1. The State of Goa,
through the Secretary (Revenue),
Government of Goa,
Revenue Department,
Secretariat, Alto Porvorim, Goa.
2. The Collector,
Office of the Collector of South Goa,
Land Acquisition Branch,
South Goa District, Margao, Goa.
3. Special Land Acquisition Officer,
having office at L. A. Cell, SIP,
Water Resources Department,
Gogol, Margao, Goa.
4. The Public Works Department,
Government of Goa,
represented herein by its
Principal Chief Engineer,
Altinho, Panaji, Goa.

5. The Executive Engineer,
having office at XVIII (R),
P.W.D., Ponda, Goa.

... Respondents.

Mr. A. F. Diniz, Advocate with Mr. Ryan Menezes, Advocate for the
Petitioners.

Mr. P. Faldessai, Additional Government Advocate for the Respondents.

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

PRONOUNCED ON: 11.01.2017

JUDGMENT : (Per F.M. REIS, J.)

The above petition, inter alia, prays for a writ or direction to quash and set aside the Notification No. 23/3/2013-RD dated 31.01.2013 under Section 4 of the Land Acquisition Act, (hereinafter referred to as 'the said Act') and the report under Section 5A of the said Act dated 07.01.2014 of the Land Acquisition Officer as well as the declaration under Section 6 of the Act published in the Official Gazette dated 13.2.2014 as well as the award dated 08.07.2015.

2. Briefly, it is the contention of the Petitioners that the Petitioners by registered a Sale Deed dated 29.12.1995 purchased a portion of land admeasuring about 1040 sq. mts of the property surveyed under no. 31/1 situated at Dando in Sanguem. It is further pointed out that another portion of the property under survey no. 30/0 admeasuring 57sq.mts was purchased by Sale Deed dated 26.03.1999 and by another Sale Deed dated 26.05.1999

an additional portion of the same property admeasuring 5907 sq.mts was purchased by the Petitioner no. 2. It is further pointed out that the Petitioner no. 4 also became the owner of the property under Survey no. 29/1 by Sale Deed dated 12.03.2004. It is further pointed out by the Petitioners that by Notification dated 31.01.2013 under Section 4 of the said Act, a portion of the property was notified to be acquired for the construction of a parallel bridge at the site. Thereafter, the villagers raised an objection to such acquisition and the Petitioners also raised objections on 03.04.2013 in writing to the proposed acquisition. It is further contended by the Petitioners that the Petitioners also filed objections on 14.11.2013 before the Under Secretary (Revenue) of the State Government.

3. It is the main contention of the Petitioners that by the proposed acquisition the residential structures of the Petitioner would be affected, thereby render the Petitioners without any other alternative accommodation. But, however, the Respondent no. 3 submitted the report under Section 5A of the said Act on 31.12.2013 rejecting the objections raised by the Petitioners. Thereafter, the Appropriate Government issued a notification under Section 6 of the said Act dated 29.01.2014 which was published in Official Gazette dated 13.02.2014. Being aggrieved by the said Notification the Petitioners filed the above Petition for the aforesaid reliefs and also prayed for setting aside the award passed thereafter.

4. The Respondent no. 3 filed a reply and it is contended that the attempt made by the Petitioners to approach this Court with unclean hands which is an abuse of the process of law. It is further pointed out that there was an absolute necessity to construct a parallel bridge as the existing bridge was 70 years old and had been constructed during the Portuguese regime and was very narrow in nature. It is further pointed out that there is urgency in completing the acquisition as the old bridge is rendered unsafe and there is a need for a new bridge. It is further denied that the subject Notification challenged in the above Petition are illegal, malafide and unconstitutional as alleged. It is further submitted that the old bridge is being used for carrying heavy goods and vehicles as well as heavy mining traffic and is the only means to connect the people from Quepem to Sanguem taluka. It is further pointed out that the father of the Petitioner no. 1 and 2 addressed a letter dated 03.04.2008 to the Respondent no. 5 informing that part of the property bearing survey no. 30 and 31/1 was purchased by the Petitioners no. 1 and 2 and also that it would affect the structural shed for cows of the Petitioners. It was also pointed out in the said letter that adjacent land under Survey no. 32 be acquired and it be allotted to the Petitioners in addition to the compensation. It is further pointed out that the conduct of the father of the Petitioners to claim a plot of land belonging to a private party to be allotted to the Petitioners is untenable and highly intolerable. It is further pointed out that there is no basis in the allegations made in the petition and the facts

alleged by the Petitioners are misleading. It is further pointed out that the welfare of the public has been looked into whilst proposing the land for acquisition. The contention that the Petitioners would be totally deprived of any sort of residence has been expressly denied by the Respondents. It is further pointed out that the Notification under Section 4 was issued on 16.01.2013 and it was published in local newspaper on 24.01.2013 and in the Official Gazette on 31.01.2013 and at the site on 01.02.2013 and, consequently, the last date of publication of Section 4 Notification is 01.02.2013. It is further pointed out that the declaration under Section 6 has been issued on 29.01.2014 which is within one year from the last date of publication of Section 4 Notification. It is further pointed out that, as such, there is no cause of action to file the Petition and consequently the Petition be rejected.

5. A rejoinder was filed by the Petitioners thereafter in support of the contentions raised in the Petition and denying the contents of the reply-in-the-affidavit filed by the Respondents. It is contented that the contentions in the affidavit are unreasonable, whimsical and capricious, unethical and deserve to be rejected. It is further pointed out that the right of effective hearing and due consideration has to be given to the objections raised by the Petitioners which are found wanting in the present case. It is further pointed out that the law recognizes reasons to be given by the Land Acquisition

Officer in the report for rejecting the objections raised by the interested parties which has not been done in the present case. It is further pointed out that the report only reproduced the versions of some of the interested parties and does not show any reasons for rejecting the objections. It is also denied that no prejudice would be caused to the Petitioners in case of proposed acquisition. It is further pointed out that the Petitioners have annexed a plan at Exhibit PR-1 to suggest that the adjacent land can be acquired for the alignment so as to exclude only the portion of the land where the house of the Petitioners no. 1, 2 and 3 is located. It is further pointed out that the width has not been faithfully considered by the Land Acquisition Officer. The Petitioners also produced the plan alongwith their reply.

6. Mr. A. F. Diniz, learned Counsel appearing for the Petitioners has submitted that the residential house of the Petitioners has been affected in view of the proposed acquisition of land and the objections raised by the Petitioners have not been duly considered by the Land Acquisition Officer in the Section 5A Report. The learned Counsel appearing for the Petitioners further submits that though the Petitioners have raised objections there was no adequate hearing given to the Petitioners to substantiate such objections. It is further pointed out that the Petitioners have produced a report to suggest the re-alignment of the proposed acquisition so as to avoid the acquisition of the residential part of the house of the Petitioners. Learned Counsel further

submits that on plain perusal of the report, it clearly reveals that all these objections have not been considered by the Land Acquisition Officer whilst submitting the subject Report. Learned Counsel further submits that an important right conferred on the land owner to raise objections has been defeated by the Land Acquisition Officer without giving an adequate hearing to the Petitioners. The learned Counsel further pointed out that as the objections raised by the Petitioners have not been duly examined by the Land Acquisition Officer, it would vitiate the Report under Section 5A as well as the consequent Notification under Section 6 of the said Act. Learned Counsel further submits that records clearly reveal that the last date of publication of the Notification under Section 4 was 01.11.2013 whereas, the Notification under Section 6 of the said Act was published in the Official Gazette after the period of one year and, as such, according to him, the Notification under Section 6 is bad in law and all the subsequent steps for acquisition of the subject land are illegal and deserve to be quashed and set aside. Learned Counsel as such pointed out that the Notification issued under Section 4 and 6 of the said Act be quashed and set aside.

7. On the other hand Shri P. Faldessai, learned Additional Government Counsel appearing for the Respondents has supported the acquisition. Learned Counsel has pointed out that the acquisition is for a public purpose as the necessity in constructing the parallel bridge to the existing old

dilapidated bridge has not been disputed. It is further pointed out that constructing a bridge involves a highly technical expertise which has been duly considered by the Respondents while choosing the alignment of the approach road to the new bridge. It is further pointed out that specialized opinion is required to design the bridge and based thereon, the position of the approach roads is fixed by the experts in the field. It is also pointed out that the land which is being acquired at the site is in line with the approach road to the old bridge which is existing. The learned Counsel further pointed out that any prejudice which would occasion to the Petitioners on account of the proposed acquisition of the residential structure and the sheds, as alleged by the Petitioners, is duly compensated in the Award passed in such proceedings. It is further pointed out that in such circumstances, there is no illegality committed by the Respondents whilst issuing the subject Notification. The learned Government Counsel has also taken us through the Report under Section 5A of the said Act to point out that the objections raised by the Petitioners have been duly examined by the Land Acquisition Officer whilst submitting the report. Learned Counsel further pointed out that there is no illegality in the acquisition proceedings and that, consequently, the Petition be rejected.

8. We have considered the submissions of the learned Counsel and have also gone through the records. On considering the rival contentions and

allegations made by the Petitioners, we find that there is no malafide attributed to the Respondents in respect of the subject acquisition. The only contention of the Petitioners is that the objections raised by the Petitioners under Section 5A of the said Act have been rejected without giving any reasons nor an adequate hearing to the Petitioners. The next contention of the learned Counsel appearing for the Petitioners is that the Notification under Section 6 of the said Act is time barred and, consequently, all proceedings initiated subsequent thereto are untenable in law.

9. The main objection raised by the Petitioners is that the Petitioners would be deprived of the residential accommodation on account of the proposed acquisition. It is further pointed out that the Petitioners have a family business, i.e., a bar and rafter business, and by such acquisition the Petitioners would be left high and dry without business and shelter. It was also pointed out that the Petitioner is emotionally attached to the property.

10. With regard to the contention of Mr. Diniz, learned Counsel appearing for the Petitioners that the final report submitted by the Land Acquisition Officer under the said Act stands vitiated as the Petitioners were not given an adequate hearing or that no reasons are given to reject the objections filed by the Petitioners, we find, on going through the Report under Section 5A of the said Act, that the objections were submitted to the Acquiring Department who

have stated that the alignment fixed is very adequate and hence the road alignment cannot be shifted or changed, as the bridge and the road width cannot be reduced as it is a State Highway considering the future 50 years. It is also noted that in case the alignment is changed as proposed by the Petitioner, it would lead to a situation whereby the parallel bridge would get narrowed down and lead to a bottleneck and that the road has been designed so that the geometric of the road engineering are duly complied with. In such circumstances, as the Land Acquisition Officer has duly considered the objections of the Petitioners in the report and found that it would affect the approach road to the subject bridge, we find that there is no case made out by the Petitioners to draw a conclusion that the Report submitted by the Land Acquisition Officer under Section 5A of the said Act stands vitiated as the objections of the Petitioners have not been duly considered. In such circumstances, the Judgment of this Court reported in **2014(5)Bom. C. R. 240 in Writ Petition No. 106/2014** in the case of **Wilson D'Costa & Ors., v/s. State of Goa & ors.**, and **2014(2) Bom.C.R.552 in Writ Petition No. 638/2013** in the case of **Savio Torcato Pereira anr., v/s. State of Goa ors.**, would not be applicable to the facts of the present case.

11. As already pointed out hereinabove, the land acquired is for a public purpose which is not in dispute and the requirement of constructing a parallel bridge is also not in issue. The fact that the road is part of the State Highway

has been clearly stated by the Respondents in the affidavit. As such, this Court cannot sit in appeal on the findings rendered in the Section 5A report as the records reveal that the Petitioners were given a hearing and the objections duly considered whilst submitting such report.

12. The Apex Court in the judgment reported in *(2011)5 SCC 413* in the case of *Brij Pal Bhargava and others V/s State of Uttar Pradesh and others* has observed at paras 8 and 9 thus :

“8. Shri Vikas Singh, learned Senior Counsel appearing on behalf of Mathura Vrindavan Development Authority (Respondent 3) relied on the decision in *Jayabheri Properties (P) Ltd v. State of A.P.* The observations made in SCC para 42, where this Court had specifically held that the contention raised on behalf of the appellants about hearing not afforded to the objectors was refuted on the ground that the objections filed were duly considered by the Special Deputy Collector and rejected by his order dated 21.07.2006.

9. Since we have seen the original report in this case, we are of the opinion that not only was the

hearing afforded, but all the objections have been specifically considered. The counter-affidavit shows a document where the objectors have been invited for the hearing on a fixed date i.e. 17.09.1991. We are of the clear opinion that not only the objectors were heard, but their objections were also decided. This contention raised on behalf of the appellants is rejected.”

As pointed out herein above, the objections raised by the petitioners were duly examined by the Land Acquisition Officer. We are, accordingly, unable to accept the contention of Mr. A. Diniz, learned Counsel appearing for the Petitioners, that the final report submitted by the Land Acquisition Officer under the said Act stands vitiated as the Petitioners were not given an adequate hearing or that no reasons are given to reject the objections filed to the acquisition by the Petitioners.

13. With regard to the next contention of Mr. Diniz, learned Counsel appearing for the Petitioners, that the proceedings Notification under Section 6 of the said Act itself stands vitiated, it would be appropriate to note some of the dates which are undisputed. The Notification under Section 4 of the said Act is issued on 16.01.2013 and published in Official Gazette dated

24.01.2013. The Notification was also publicized in local newspapers on 24.01.2013 and on the notice board of the Mamlatdar on 01.02.2013. The effective date of publication as such is 01.02.2013. The date of declaration under Section 6 is stated to be 29.01.2013 and published in the official gazette on 13.02.2014. It is the contention of the Petitioners that the Notification has been issued one year and 12 days after the Notification under Section 6 of the said Act which vitiates such Notification issued under the said Act. In the present case, it is the contention of the Petitioner that as the Notification was published in the official gazette on 13.02.2014 though the declaration was made on 29.01.2013, the Section 6 Notification, according to the Petitioner, is time barred and has no legal effect. On plain reading of the proviso II of Section 6(1) of the said Act, the time prescribed of one year from the date of the publication of Notification under Section 4 of the said Act is to the date the Section 6 Notification is issued. The Apex Court in the Judgment reported in *(2011)5 SCC 553 in the case of Radhy Shyam v/s. State of U.P.*, has clearly observed that the proviso II of Section 6(1) of the said Act significantly only provides a time limit for a declaration and not for publication as it has been incorporated under section 6(1) Notification of the said Act. In such circumstances, as there is nothing on record to dispute the correctness of the contention of the Respondents that the Notification under section 6 of the said Act was issued on 29.01.2014, we find that the contention of the learned Counsel appearing for the Petitioners that such

Notification is time barred cannot be accepted.

14. Mr. Ryan Menezes, learned Counsel appearing for the Petitioners, however, points out that the Petitioners are prepared to accept the alternate plot in lieu of the part of compensation awarded as their premises are being affected by the proposed acquisition. In case such an application is filed within a period of four weeks from today, the Land Acquisition Officer shall proceed to consider such application in accordance with law.

15. Subject to the above liberty granted, we find no merits in the above petition which stands accordingly rejected. Rule stands discharged.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

msr.