

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 297 OF 2015**

Mrs. Estrelina Eunata Alcacoas,
widow of Joao Filipe Jose Climaco Nunes Alcacoas,
alias Filipino Alcacoas,
resident of Arossim,
Mormugao Taluka Goa,
at present residing at H. No.82/B,
Candelem, Orlim, Salcete Goa.

... Petitioner

V e r s u s

1. Union of India through the
Ministry of Home Affairs,
with Office at Lok Nayak Bhavan,
New Delhi.
2. Custodian of Enemy Property for India
with office at Kaiser-i-Hind Building,
Currimbhoy road,
Ballard Estate,
Mumbai 400 001.
3. Collector of South Goa,
with office at the Collectorate,
South Goa at Margao,
4. Mamlatdar of Mormugao
with office at Vasco-da-Gama, Goa. ... Respondents

Mr. M. B. Da Costa, Senior Advocate with Ms. Ankita Tari,
Advocate for the petitioner.

Mr. M. Amonkar, Central Government Standing Counsel for the
respondent nos. 1 and 2.

Mr. P. Faldessai, Addl. Government Advocate for the respondent nos. 3 and 4.

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

Date:- 23rd February, 2017

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

Heard Mr. M. B. Da Costa, learned Senior Counsel appearing for the petitioner, Mr. M. Amonkar, learned Central Government Standing Counsel appearing for the respondent nos. 1 and 2 and Mr. P. Faldessai, learned Addl. Government Advocate appearing for the respondent nos. 3 and 4.

2. The above petition inter alia seeks to quash the order dated 08.10.2010 passed under Sections 5 and 24 of the Enemy Property Act, 1968 and the certificate dated 08.10.2010 issued under Section 12 of the said Act. It is further prayed to declare that the mutation entries carried out in the survey records without notice to the petitioner from the occupant column are illegal, null and void.

3. Briefly, it is the case of the petitioner that the petitioner's husband had received a letter from the respondent no.2/Custodian of Enemy Property for India requesting for an information about some properties. The petitioner's husband replied by reply dated 08.08.1996, inter alia contending that the properties surveyed under Nos. 27/86 and 28/1 situated at Arossim Village were standing in his name and further stated that Inacio and Guilherme Domingos Nunes were not Pakistani nationals. In support of such stand, the duly promulgated records of the subject properties were also enclosed. After the death of the husband of the petitioner on 16.12.2000, the son of the petitioner received a letter dated 21.07.2005 from the Collector, South Goa, Margao, which was more or less on the same terms. A reply was submitted by the son of the petitioner on 09.08.2005 inter alia contending that a reply was already submitted earlier by his deceased father asserting that the subject properties were belonging to the family of the petitioner. It is further the contention of the petitioner that on 08.10.2010 the respondent no.2 purported to pass an order under Sections 5 and 24 of the

Enemy Property Act and also issued a certificate in terms of Section 12 of the said Act. It is further her case that such order impugned herein was without holding any inquiry or without giving notice to the petitioner or her husband and that no evidence is produced on record by the respondent no.2 to claim that the said two persons were Pakistani nationals. It is further her case that the petitioner learnt about the impugned order only on 09.10.2014 and immediately thereafter filed the above petition for the aforesaid reliefs.

4. The respondent no.2 has filed a reply inter alia contending that there was a civil suit filed for partition which came to be dismissed. It is further their case that earlier there were proceedings initiated by one of the relatives of the said Inacio Domingos Nunes for divesting the properties which did not find favour with the Custodian and came to be rejected. It is further their case that the procedure in terms of law has been duly complied with and as such there is no ground for interference in the impugned order by this Court.

5. Mr. M. B. Da Costa, learned Senior Counsel appearing for the petitioner has pointed out that the said Inacio Nunes was not a Pakistani national and according to him the question of holding that the subject properties were enemy properties is totally misplaced. It is further pointed out that the impugned order passed in the year 2010 was without holding an inquiry in terms of the Rules and as such the impugned order stands vitiated. It is further submitted that the husband of the petitioner had in fact filed his objections way back in the year 1996 and there was no further decision on the claim of the respondent no.2 that the subject properties were enemy properties. It is further submitted that the notice dated 21.07.2005 issued to the son of the petitioner was duly replied by her son and thereafter there was no inquiry held on the claim put forward by the petitioner with regard to the subject properties. It is further submitted that the properties exclusively belonging to the family of the petitioner and no other person has any right to the subject properties including the persons alleged to be Pakistani nationals. It is further pointed out that the impugned order deserves to be

quashed and set aside. The learned Senior Counsel has also submitted that based on such illegal orders, the learned Collector has proceeded to delete the name of the petitioner from the survey records without giving any notice to the petitioner or her husband and such orders also deserve to be quashed and set aside.

6. On the other hand, Mr. M. Amonkar, learned Standing Counsel appearing for the respondent nos. 1 and 2 has submitted that there was a suit for partition which came to be dismissed. It is further pointed out that based on the averments therein, it cannot be disputed that the subject properties were enemy properties and it belongs to the Pakistani nationals. It is further submitted that in the affidavit filed by the respondent no.2 there is a clear averment therein to the effect that the said Inacio Nunes has expired in the year 1957 and that he being a Pakistani national, the properties in terms of the said Act are enemy properties which automatically vest upon the Custodian. The learned counsel has also pointed out that the challenge is to the order passed in the year 2010 and as such according to him the

petition is barred by laches. The learned counsel as such submits that the petition be accordingly rejected.

7. Mr. P. Faldessai, learned Additional Government Advocate appearing for the respondent no.3 and 4 has pointed out that the records reveal that in fact the husband of the petitioner was issued a notice to file his reply. It is further pointed out that the petitioner is raising inconsistent stand. On the one hand she is claiming to contend that she is not aware whether the said Inacio and his wife were Pakistani nationals and on the other hand she is claiming that the properties are not enemy properties. The learned counsel further submits that the petitioner has not disclosed all the relevant material before the Custodian and as such the question of granting any relief to the petitioner in the above petition would not at all be justified. It is further pointed out that the petitioner is not entitled for any relief as according to him there was an opportunity given to the petitioner to raise her objections before the impugned order came to be passed.

8. We have considered the submissions of the learned counsel and we have also gone through the records. Taking into consideration the view which we propose to take in the above petition, we do not find it necessary to examine the correctness or otherwise of the rival claim of the petitioner and the respondent no.2 as to whether the subject properties are enemy properties or not. This is an aspect which will have to be examined after giving an opportunity to the parties of being heard with regard to their respective stands. In the present case, we are only considering whether the impugned order dated 08.10.2010 passed under Section 5 of the said Act and the consequent certificate issued under Section 12 of the said Act stand vitiated being in breach of the principles of natural justice.

9. On perusal of the notice issued to the son of the petitioner dated 21.07.2005, we find that the said notice has substantially complied with Form I as provided in the Enemy Property Rules. The said Rules further provide that after such notice to the person claiming to be an occupant of the subject

property an enquiry has to be held by following the principles of natural justice. On perusal of the reply filed by the petitioner there are different contentions raised therein inter alia that the subject properties were in possession of the petitioner wherein the house is occupied by their family. It is not disputed that the Custodian has not taken any charge of the subject properties up to this date. However, the survey records produced have been duly promulgated disclosing the name of the husband of the petitioner in the occupant column of the subject properties. In such circumstances, on perusal of the impugned order, we find that there is no consideration of the contentions raised by the petitioner in the impugned order. There is nothing on record to show that after the reply was filed to the said show cause notice, any hearing was given in terms of the said Rules. The very fact that the petitioner was not given an adequate opportunity of being heard on the objections raised by the petitioner would vitiate the impugned order passed by the respondent no.2 being in breach of the principles of natural justice. As such, the impugned order cannot be sustained on this ground alone. The consequent

certificate issued under Section 12 of the said Act also stands vitiated and deserves to be quashed and set aside.

10. As far as the claim of the petitioner on the mutation entries, Mr. Faldessai, learned Addl. Government Advocate appearing for the State Government was unable to dispute the correctness of the stand of the petitioner that no notice was issued to the petitioner before the mutation entries were carried out. In any event, such mutation entries apparently were carried out on the basis of the impugned order passed by the respondent no.2 which has been held to be in breach of the principles of natural justice and as such unsustainable in law.

11. In view of the above, we find that the impugned order passed by the respondent no.2 under Sections 5 and 12 of the said Act deserves to be quashed and set aside. The mutation entries carried out by the Collector in the survey records based on such order are also quashed and set aside.

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

ORDER

- (i) The impugned order dated 08.10.2010 passed under Section 5 and the certificate issued under Section 12 of the said Act are quashed and set aside.
- (ii) The mutation entries carried out in the survey records by the learned Collector based on the said order are quashed and set aside.
- (iii) The respondent no.2 is at liberty to proceed with the notice issued to the husband of the petitioner dated 26.07.1996 after giving an opportunity to the petitioner and other concerned persons of being heard by following the principles of natural justice and in accordance with law.
- (iv) It is made clear that we have not examined the merits of the rival contentions and as such all contentions of both the parties on merits are left open.
- (v) Rule is made absolute in the above terms.
- (vi) The petition stands disposed of accordingly.

NUTAN D. SARDESSAI, J.**F. M. REIS, J.****at***