

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 416 OF 2017

Rui Manuel Da Costa Araujo	...Petitioners
<i>Versus</i>	
The State of Goa	...Respondents

Mr Nigel Da Costa Frias, Advocate for the Petitioner.
Ms Susan Linhares, Additional Government Advocate for the
Respondent No. 1.
Mr JJ Mulgaonkar, Advocate for the Respondent No. 3.
Mr Nitin Sardessai, Senior Advocate, with Mr Ryan Menezes, Ms
Neha Shirodker and Ms C Rebeiro, Advocates for Respondent
No.4.

CORAM: G.S. PATEL &
NUTAN D. SARDESSAI, JJ

DATED: 19th September 2017

ORAL ORDER (per GS Patel J)

1. Mr. Nigel Da Costa Frias for the Petitioners has given a copy of his rejoinder to the other Advocates.

2. The Petitioner invokes our discretionary powers under Article 226 of the Constitution of India for a declaration that the lease of a plot ad-measuring about 14136 square metres in Survey No. 7/1 of Village Chicalim, Mormugao Goa, by the 3rd Respondent, the Comunidade of Chicalim, to Respondent No.4,

an educational society, is illegal. According to the 1st Petitioner, a former Attorney of this very Comunidade, that lease could not have been granted without an auction. It is also alleged in the petition that the 4th Respondent society has obtained this land at a gross under evaluation.

3. We understood the argument on behalf of the Petitioners to be that contrary to Articles 331, 332 and 334A of the Code of Comunidades, it was the State Government, which has at best only a supervisory or a controlling power, that 'determined' the lease rate. It is alleged that the determination of the rate is a matter solely within the province of the Comunidade itself, and that having obtained a valuation, the Comunidade is bound to proceed on that valuation.

4. There is no dispute that the land in question given to the 4th Respondent is zoned in the 'P' zone. Permissible uses in this zone are restricted. We note this because there is, in our view, a fundamental misconception to this entire Petition, viz., that there was a plenitude of choice before the Comunidade, and that there were any number of people offering to take this very land within the permissible uses at much higher rates. Of this, there is no evidence whatsoever.

5. As a matter of fact the rate proposed and offered to the Comunidade by the 4th Respondent was Rs.1800/- per square metre. Mr. Da Costa Frias argues that the valuation report at exhibit D to the Petition, concludes that the market value was Rs.2950/-.

The difficulty which accepting this proposition is, first, that this is a report that is in our view only a recommendation because it is done by a surveyor and not by a valuer. Further, it was the 1st Petitioner as the Comunidade's attorney, who appointed that surveyor. It is difficult to understand even otherwise how an absolute or immutable rate can be fixed. Surely in any fair valuation there must be a range provided because even within the command area of a Comunidade, land values will vary widely and this, we know, depends on a variety of factors: access, development, whether it is converted or not converted, topography, proximity to major roads and transport systems and so on. Not all land is equal. It is also entirely conceivable in a given case, that at a particular value a Comunidade might find no lessee at all. We find it difficult to conceive that Articles 331 and 332 tie the hands of any Comunidade in the manner suggested. In fact Article 334A, newly inserted in 1985, specifically permits a Comunidade to grant land without an auction *inter alia* to a public, charitable or religious institution and for certain other purposes. Whether an educational institution falls within the description of a 'public purpose' is a matter we need not examine in any greater detail. We note this only to say that there is no absolute restriction on the choices that are available to a Comunidade in the matter of leases.

6. We are also not persuaded of the correctness of the submission that the Comunidade must lease the land only at some rate either obtained on a valuation or otherwise and that it has no discretion in the matter. Logically, this would mean that if there are not takers for the land at that rate, the Comunidade must go without a lessee and the land must remain as-is; for how long is

unknown. We do not think that such a reading is even remotely in the interest of the Comunidade. Maintaining land in this fashion costs the Comunidade too, and we will not, at the instance of a brace of Petitioners like this, constrain the discretion of a Comunidade in matters relating to its transactions with its property. In fact Article 332, *prima facie*, seems to us to indicate that even in the Code there is scope for disagreement and for revaluation. This is clear from sub-clauses 1, 2, 3 and 4 of Article 332.

7. Article 334 speaks of lands being put up for a public auction. The essence of a public auction, is necessarily, a determination not of a fixed price, though a reserve or upset price may be fixed, for in a fixed-price scenario no auction would ever be necessary, but for determination of the best possible price. Again, this is predicated on there being several offers for that particular purpose for that particular land.

8. What the Petitioners in the case like this must demonstrate, therefore, is not that there is some other valuation that is more ideal, because we will not substitute our admittedly non-expert view for that of a Comunidade, but that there is a procedural illegality warranting our intervention. We will not address the merits but the decision-making process. In this particular case the Minutes of 29th November 2015 indicate to us that while the so-called valuation on which the Petitioner relies was of Rs.2900/- per square metre, the only offer available to the Comunidade was of Rs.1800/- per square metre from the 4th Respondent. The Comunidade in its plenary wisdom concluded at a properly convened meeting that this

rate was appropriate and consistent with the zoned purpose. This is specifically noted in its Minutes of 29th November 2015. This decision was in any case subject to certain other conditions and we are confident that those conditions will undoubtedly be required to be fulfilled.

9. More troubling in this Petition is what the replies by Respondent no 3 and Respondent no 4 say about the 1st Petitioner himself. The Petition itself gives the impression that the Petitioners are merely components of the Comunidade, although paragraph 2 admits that the 1st Petitioner was its former Attorney. Other than this, the Petition is rather like an official government statistic: what it reveals is merely interesting; what it conceals is vital. Paragraph 12 for instance does not disclose that the 1st Petitioner had any role at all to play in the appointment or selection of the valuer and on whose valuation quite so much reliance is placed. The Petition does not clearly indicate that the Petitioner No.1 was himself a member of the 3rd Respondent-Comunidade at all times when the 4th Respondent made its requests. There seems to be no evidence on record of the Petitioners saying, when the 4th Respondent made its request, that there was a breach of the Code of Comunidades or that the 4th Respondent's proposal could not be accepted for that reason. We find no material to show that the 1st Petitioner, given his position, ever protested that prejudice would be caused. As regards the 2nd Petitioner, again there was no complaint about any flaw at any time. In paragraph 9 at page 64, the 3rd Respondent-Comunidade says that the first Petitioner cannot be heard to complain that the rate offered and accepted of Rs.1800/- per square metre is too low. Not only was the 1st Petitioner very much a

member of the Comunidade when this rate was accepted but he was also at that time an Attorney in the neighbouring Comunidade of Chicholna wherein a similar grant of land was made to St. Andrew School, Vasco Da Gama, on 14th March 2014 at a rate that was less than half of the present rate, i.e., Rs.680/- per square. Of course the Petitioners argue that this is wholly irrelevant. We think not. They say that a neighbouring village is a neighbouring village and therefore of no concern. Again, we think not. We think not for that very reason, precisely *because* it is a neighbouring village, and while land rates may differ, we must also look at the processes followed in both, the role of one of the petitioners in both, and whether the Petitioner has singled out one of the two villages for his particular litigation affections, and not the other. If Rs.1800/- per square metre to the 4th Respondent is low, then Rs.680/- per square metre at about the same time in a neighbouring village at the very least requires a disclosure and an explanation. We have neither.

10. There is also no doubt that the approval of the 3rd Respondent-Comunidade at its meeting on 29th November 2015 was unanimous, subject to certain conditions. It is equally true that the 2nd Respondent-Administrator, far from 'fixing' a rate, required a ratification or approval of the decision. This tells us why the report relied on by the Petitioner was unacceptable. It is of 1st February 2016 at least two months after the decision of the Administrator and three months after the decision of the Managing Committee of the Comunidade.

11. Respondent no 4 has also filed a return. Here too, we find reference to the grant made by the neighbouring village to another

school. More importantly at page 103 there is to our mind an explanation that we must accept. In this Respondent no 4 says that survey no 7/1 of Dabolim is a large tract of land of 1,92,150 square metres. The plot in question is a fraction of that. The remainder beyond the subject plot has been extensively encroached with no consideration whatsoever flowing to the Comunidade. An adjacent survey no 7/10 is said to have been held illegally. These are valid reasons or, at any rate, are not so untenable as would invite us to intercede.

12. Paragraph 4(ii)(e) then at page 104 then makes a direct allegation against Petitioner no 1. It says that he is himself in illegal occupation of three plots of the 3rd Respondent-Comunidade surveyed under survey nos 177/1 and 122/1 of the very Village Chicalim. In response in paragraph 12 of the rejoinder there is a denial and the Petitioner says he has no right or claim to these lands but that his deceased uncle was granted a portion of survey no 127/1 and his legal heirs are now in possession. We notice only because there are evidently, and we put it at its mildest, unstated tensions between the Petitioners and the Comunidade; and, further, these are disputed questions of fact that speak directly to both locus and to *bona fides*. A writ will not issue to a person whose *bona fides* are in doubt.

13. Thus, apart from our not being satisfied on the merits, we are also not satisfied that we should intercede at the instance of these Petitioners.

14. The Petition is rejected. No costs.

NUTAN D. SARDESSAI J.

G. S. PATEL J.