

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 313 OF 2014

1. Mr. Paul Victor Heredia,
Major of age,
Son of Jose Francisco Heredia,
Represented herein by his father and
Constituted attorney Jose F.Heredia,
r/o House no. 406/25, Plot No. 22,
PDA Colony, Alto Porvorim,
Bardez, Goa. ... Petitioner

V e r s u s

- 1 State of Goa,
Through the
Chief Secretary,
Government of Goa,
with Office at Secretariat,
Porvorim, Goa.
2. The Secretary (Revenue)
with office at Secretariat, Porvorim, Goa.
3. The Land Acquisition Officer,
Deputy Collector & SDO,
Sub Division Panaji,
With office at Collectorate Building,
Panaji, Goa.
4. The Executive Engineer,
Works Division II(R) P.W.D.,
Panaji, Ilhas, Goa.
5. The Village Panchayat of Sao Mathias
Through its Sarpanch
with office at Panchayat Ghar,
Malar, Naroa, Vanxim,
Ilhas, Goa. ... Respondents

Mr. John A. Lobo, Advocate for the Petitioner.

Mr. D. Lawande, Advocate General with Ms. Prachi Sawant, Addl.
Government Advocate for the Respondent nos. 1 to 4.

Coram :- **F. M. REIS,**
PRITHVIRAJ K. CHAVAN, JJ.

Date : **15th June, 2017**

ORAL JUDGMENT

Heard Mr. John Lobo, learned Counsel appearing for the Petitioner and Mr. D. Lawande, learned Advocate General appearing for the Respondent nos. 1 to 4.

2. The challenge in the above Petition is to the Notification under Section 6 of the Land Acquisition Act, 1894, issued by the appropriate Government with regard to a portion of the property belonging to the Petitioner surveyed under no. 61/1 of Malar Village at Divar, running from East to West and located on the northern side of the said property.

3. Mr. John Lobo, learned Counsel appearing for the Petitioner, has pointed out that the land belonging to the Petitioner and other interested parties came to be acquired pursuant to the Notification under Section 4 of the said Act for the construction of a road. Learned Counsel further pointed out that as far as the property of the Petitioner is concerned, it included two arms of the road one leading from north to south and the other from East to West which led to the property surveyed under no. 61/2 belonging to another interest party. Learned Counsel further pointed out that the arm of which run

from East to West, entered into the property surveyed under no. 61/2. Learned Counsel further submits that despite of the objections raised by the Petitioner under Section 5A of the said Act, the Land Acquisition Officer submitted a report to the appropriate Government which came to be accepted and the Notification under Section 6 of the said Act was issued somewhere in October 2012 whereby both the portions of the property belonging to the Petitioner running from north to south as well as from east to west leading into the property surveyed under no. 61/2 were notified to be acquired. It is further pointed out that in the meanwhile, the interested parties of the property surveyed under no. 61/2 made a representation to the appropriate Government, inter alia, stating that the portion of the road located in the property surveyed under no. 61/2 be deleted as such interested party did not require any such road into his property surveyed under no. 61/2. It is further pointed out that in a similar way, the Petitioner also made a representation to the appropriate Government to delete the arm of the road leading from east to west and entering into the property surveyed under no. 61/2. It is further pointed out that as far as the representation of the interested party of the property bearing survey no. 61/2 is concerned, the appropriate Government accepted the representation favourably and in fact issued a Notification dated 21.11.2013 deleting the portion of the road which was intended to be located in the property surveyed under no. 61/2. It is further pointed out that the representation of the Petitioner came to be rejected and, as such, the Petitioner raised a challenge to the refusal of the

said representation as well as to the proposed acquisition of the property belonging to the Petitioner surveyed under no. 61/1 leading from east to west. It is further submitted that once the portion of the road located in the property surveyed under no. 61/2 came to be deleted by the said Notification, the acquisition of the said land in the property of the Petitioner surveyed under no. 61/2 is not at all necessary or required and, as such, the portion of the land located on the northern side of the property surveyed under no. 61/1 and running from east to west deserved to be also deleted. Learned Counsel has thereafter taken us through the plans placed on record as well as the acquisition plan to point out that the proposed acquisition in the land belonging to the Petitioner surveyed under no. 61/1 leading from east to west was essentially for the benefit of the owner of the property surveyed under no. 61/2 which has already been deleted. It is further pointed out that in such circumstances that the proposed acquisition of such arm of the road leading from east to west in the property surveyed under no. 61/1 is useless and not at all required. Mr. Lobo, learned Counsel appearing for the Petitioner with the consent of the learned Advocate General appearing for the Respondent nos. 1 to 4, has placed on record a plan more clearly and particularly identifying the portion of the subject proposed acquisition of the arm of the road leading from east to west in the land acquisition plan which is marked 'X' for identification. The portion has been marked in the said plan by letters 'Y' to 'Y' in the shaded colour. Learned Counsel as such submits that as far as the said portion of the land shown by letters 'Y' to 'Y' in the plan marked

'X' for identification be accordingly deleted.

4. On the other hand, Shri Lawande, learned Advocate General appearing for the Respondent nos. 1 to 4 submits that as the acquisition proposed had already been initiated and in fact Section 6 notice has already been published, the question of the appropriate Government acceding to the request of the Petitioner would not at all be justified. It is further pointed out that the portion of the land belonging to the Petitioners which runs from east to west as shown by letters 'Y' to 'Y' in the plan marked 'X' for identification was in fact for the benefit of the owner of the property surveyed under no. 61/2. Learned Advocate General as such pointed out that necessary orders be passed in accordance with law.

5. We have duly considered the rival contentions. With the assistance of the learned Counsel, we have gone through the records as well as the plans placed on record. On perusal of the plan marked 'X' for identification, the portion of the said property surveyed under no. 61/1 shown by letters 'Y' to 'Y' was essentially of the owner of the property surveyed under No.61/2. On perusal of the proposed acquisition, we find that a portion of the road including the portion reserved for cul de sac for such road was located in the property surveyed under no. 61/2. Once the acquisition of such portion of the land located in the property surveyed under no. 61/2 came to be deleted, there was no justifiable reason for the Respondents to

proceed with the acquisition of the portion of the land shown by letters 'Y' to 'Y' in the plan marked 'X' for identification. As the undisputed facts disclose that such portion of the land shown by letters 'Y' to 'Y' is not at all necessary for the intended public purpose, we find that proceeding to acquire such land at the cost of the public exchequer would not at all be justified. The land which is subject matter of the portion of the road marked by letters 'Y' to 'Y' in the plan marked 'X' for identification is part and parcel of the property of the Petitioner and, as the Petitioner also pointed out that such road is not at all required for any public purpose, we find that the land intended to be acquired by the Respondents from letters 'Y' to 'Y' in the plan marked 'X' for identification is not at all justified. In such circumstances, we find that the Petitioner is entitled for a limited relief in getting the portion of the land surveyed under no. 61/1 of Malar Village to the extent as shown in the plan marked 'X' for identification from letters 'Y' to 'Y' deleted with all the legal consequences.

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

ORDER

(I) The impugned Notification under Section 6 of the said Act to the extent of the proposed acquisition as shown in the plan marked 'X' for identification and identified by letters 'Y' to 'Y' stands deleted with all the legal consequences.

(II) The acquisition proceedings shall accordingly proceed with regard to the land intended to be acquired in terms of the said Notification except for the area referred to herein above.

(III) Rule is made absolute in the above terms.

PRITHVIRAJ K. CHAVAN, J.

F. M. REIS, J.

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