

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NOS.722 & 957 OF 2015****WRIT PETITION NO.722 OF 2015**

Shree Vetel Maharudra Saunsthan,
Shirodwadi, Mulgao-Goa,
Post Assnora 403 503,
Through its Attorney,
Mr. Suresh Vasudev P. Sinari,
63 years of age,
Son of Vasudev Sinari,
r/o. Flat No.F-9, Pai Bhavan,
Cranzalem, Goa.

.... Petitioner

V/s.

- 1 State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim-Goa.
- 2 The Deputy Collector & SDO,
Bicholim-Goa.
- 3 Shree Vhadli Vandevta
Sansthan Mahajan's Trust,
Through its President
Having office at Shirodwadi,
Mulgao, PO Assnora,
Goa 403 503.
- 4 Under Secretary (Revenue –
II), Government of Goa,
Secretariat, Porvorim-Goa.

.... Respondents

Shri A.D. Bhohe, Advocate for the Petitioner.

Shri P. Dangui, Government Advocate for the Respondents No.1,2 & 4.

Shri S. Mahambrey, Advocate for the Respondent No.3.

AND
WRIT PETITION NO.957 OF 2015

1 Shri Suresh Kashinath
Mulgaokar, son of late
Kashinath G. Mulgaokar, aged
62 years, Indian National,
resident of House No.343,
Shirodwadi, Mulgao-Goa, 403
503.

2 Shri Parag Prakash Dhond,
aged 42 years, Indian
National, resident of
C/o. Narayan Keshav Dhond,
House No.337, Shirodwadi,
Mulgao-Goa, 403 503.

3 Smt. Laxmi Ravindra
Shirodkar, aged 68 years,
Indian National, resident of
C/o. late Ravindra V.
Shirodkar, resident of House
No.334, Shirodwadi, Mulgao,
Goa -403 503.

.... Petitioners

V/s

- 1 State of Goa,
Through its Chief Secretary,
Having office at Secretariat,
Porvorim, Bardez-Goa.
- 2 The Under Secretary (Revenue
– II), Government of Goa,
Having office at Secretariat,
Porvorim, Bardez-Goa.
- 3 The Deputy Collector of
Bicholim Taluka,

Government of Goa, having
office at Bicholim-Goa.

- 4 Shree Vhadli Vandevta
Sansthan Mahajan's Trust,
Through its President
Having office at Shirodwadi,
Mulgao, PO Assnora,
Goa 403 503.

.... Respondents

Shri D. Pangam, Advocate for the Petitioners.

Shri P. Faldessai, Additional Government Advocate for the Respondents
No.1 to 3.

Shri S. Mahambrey, Advocate for the Respondent No.4.

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

DATE : 19th JULY, 2017

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

Both the above petitions are taken up together as the learned Counsel appearing for the respective parties have pointed out that the issue involved is identical with regard to a Notification for acquisition of land for the construction of the road, which can be conveniently disposed off together.

2. Rule. Heard forthwith with the consent of the learned Counsel.
The learned Counsel appearing for the respondents waive service.

3. The above petitions take exception to the Notification under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the said Act') dated 5/05/2015 whereby a portion of the property surveyed under no.1/13, 1/35, 1/36 and 1/37 of the village Mulgao were intended to be acquired by the respondent/Appropriate Government for the benefit of the devotees of the temple. The said Notification under Section 6 was pursuant to a Notification under Section 4 of the said Act which came to be issued on 12/12/2013. The main grievance of the petitioners is that the proposed intended acquisition was not at all justified and would not meet the purpose for which it was acquired as according to the petitioners, the respondents have an alternative access which according to them was more beneficial to meet the intended purpose. With this background, the parties were called upon to visit the site and explore the possibility of examining whether a viable alternate access was available to meet the intended public purpose as reflected in the Notification under the said Act. After deliberation between the parties and different visits to the site the learned Counsel appearing for the petitioners have brought to our notice that an alternative access can be located in the property surveyed under no.1/13, 1/29, 1/37 & 1/35 which admittedly belongs to the petitioners in Writ Petition no.722/2015. The plan depicting the said proposed access shown in blue colour is

accepted by all the parties and is marked 'X' for identification.

4. The learned Government Advocate appearing for the respondents has submitted that the parties should not raise a grievance that the Appropriate Government did not proceed with the acquisition in terms of the Notification under Section 4 of the said Act for acquiring the land for the public purpose.

5. The learned Counsel appearing for the petitioners and other private respondent have pointed out that no grievance on that count would be raised and in any event it is always open to the respondents to proceed with the proceedings under the said Act.

6. The records also reveal that a stay of this Court was operational with regard to the intended acquisition of the Notification under Section 6 of the said Act. The Rules framed by the State Government clearly provide that the interested parties can suggest an alternative access to meet the intended public purpose and the Land Acquisition Officer is empowered to examine while submitting a report under Section 5-A of the said Act.

7. In such circumstances, considering that the petitioners themselves have suggested an alternate access to meet the intended public purpose through the private property of the said petitioners themselves, we find that the Land Acquisition Officer should be directed to submit a fresh report under Section 5(A) of the said Act of 1894 to enable the respondent no.1 to proceed with a fresh Notification under Section 6 of the said Act in accordance with law. The period of limitation prescribed to issue such Notification under Section 6 of the Act would not be affected as a stay was operating of the disputed Notification.

8. In such circumstances, we find it appropriate and in the interest of justice and with the consent of the learned Counsel appearing for the parties to quash and set aside the said Notification under Section 6 of the said Act dated 5/05/2015 and to direct the Land Acquisition Officer to hold a fresh inquiry under Section 5-A of the said Act, after giving fresh notice to the parties and submit a report to the Appropriate Government within the time prescribed so as to proceed with the further procedure for acquisition as laid down in the said Act.

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

ORDER

(i) The notification issued under Section 6 of the Act dated 5/05/2015 is quashed and set aside.

(ii) The Section 5-A report under the said Act stands quashed and set aside.

(iv) The Land Acquisition Officer is directed to hold a fresh inquiry and submit a fresh report under Section 5-A of the said Act in the light of the observations made herein above and in accordance with law.

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

(iii) Both the petitions stand disposed off accordingly.

NUTAN D. SARDESSAI, J.

F.M.REIS, J.

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