

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 819 OF 2016

SHRI. AGNELO N. FERNANDES., ... Petitioner
Versus
NORTH GOA PLANNING AND DEVELOPMENT
AUTHORITY, REP. HEREIN BY ITS
MEMBER SECRETARY AND 4 ORS., ... Respondents

Mr. Ryan Da Piedade Menezes, Advocate for the petitioner.
Mr. P. Dangui, holding for Mr. D. Lawande, Advocate for the
respondent No.1.
Mr. Deep D. Shirodkar, Additional Govt. Advocate for the
respondents No.5 & 6

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

Date:- 2nd February, 2017

P.C.:

Heard Mr. R. Menezes, learned Counsel appearing for the petitioner, Mr. P. Dangui, learned Counsel appearing for the respondent No. 1 and Mr. D. Shirodkar, learned Additional Govt. Advocate appearing for the respondents No.5 and 6.

2. The petition takes exception to the activities being carried out by the respondents in providing a parking space in an area, admittedly, coming within the road widening of a busy terrain from Calangute to Candolim Villages.

3. Mr. R. Menezes, learned Counsel appearing for the

petitioner submits that the subject area forms part of the property wherein the petitioner has a shop admeasuring 15 sq. metres which came to be purchased by him pursuant to a sale deed executed in the year 2002. The learned Counsel further points out that in terms of the said sale deed all the undivided ideal rights in the property appurtenant to such shop belong in common to the petitioner and other occupants of the building and, as such, according to him, the activities carried out by the respondents would amount to infringement of his proprietary rights over the subject area. It is further submitted that it is well settled that an owner of the land cannot be deprived of his rights to the property without following the due process of law, as Article 300A of the Constitution of India clearly guarantees that persons can be deprived of their lands otherwise than in accordance with law. The learned Counsel further submits that in the present case, a platform was erected on the portion where such parking area has been provided and, as such, without the consent of the petitioner, nor following the due process of law, the respondents proceeded to substitute the pavers at the road level to provide parking space in the locality. The learned Counsel further submits that as the petitioner is an interested person, for any such action to be followed by the respondents, the petitioner has locus standi to file the present writ petition to protect his proprietary rights to the extent referred to herein above, as the action of the respondents is not in accordance with

law. It is further pointed out that as the respondents have not initiated the land acquisition proceedings, the right of hearing/raising objections reserved to the interested party has been denied to the petitioner, and as such, the action of the respondents cannot be sustained in law. In support of his submissions, the learned Counsel has relied upon Judgments of the Apex Court in the cases of Sayyed Ratanbhai Sayeed (D) thr. LRS. and ors. vs. Shirdi Nagar Panchayat and anr. reported in 2016 2 Supreme 207; Hindustan Petroleum Corp. Ltd. vs. Darius Shapur Chenai and ors., reported in 2014 ALL SCR (O.C.C.) 243, Prem Chandra, Panna Lal vs. State of U.P., reported in 2005 4 ALL LR 484, a Judgment of the Andhra Pradesh High Court, in the case of Dr. Tayi V. Subba Rao vs. The Revenue Divisional Officer, Narsapur and ors. reported in 2014 0 AIR (AP) 138 and an unreported Judgment of Allahabad High Court in the case of Shree Narayan Singh vs. State of U.P. through Home Secretary and ors.

4. On the other hand, Mr. P. Dangui, learned Counsel appearing for the respondent No.1 submits that it is not disputed that the subject land comes within the road widening area. The learned Counsel has, thereafter, taken us through para 4 of the affidavit filed by the Authority to point out that there is a specific averment therein that the previous owner of the land had availed of additional F.A.R. on account of such road widening area. In

support of his contention, an area statement has also been produced to show that the earlier owner of the land had, in fact, consumed the additional F.A.R. The learned Counsel further points out that in terms of the Town and Country Planning Act, 1974, depiction of the road widening area in the ODP would itself be a notification under Section 4 of the Land Acquisition Act. It is further pointed out that as the respondents have already widened the existing space for parking vehicles to avoid congestion on the busy road proceeding from Calangute to Candolim Village, no prejudice would cause to the petitioner as, according to the learned Counsel, the petitioner is not an interested party with regard to the subject land. It is further pointed out that the work carried out by the respondent is to provide parking space for the benefit of the locality, which was already in existence and, as such, according to him, there is no case made out to exercise extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

5. Shri Deep Shirodkar, learned Additional Govt. Advocate appearing for the respondents No.5 and 6 has pointed out that in terms of Regulation 2.63(O) of the Building Regulation 2010 the lands which are shown as road widening areas wherein the owners have availed off additional FAR are public roads.

6. Mr. Menezes, learned Counsel appearing for the petitioner, in reply to the said contention, has pointed out that even assuming that the earlier owner had availed of additional FAR, it would not defeat the proprietary rights of the petitioner as, according to him, the petitioner is entitled for compensation. The learned Counsel further points out that the subject construction was put up by the owners somewhere in the year 1995 and, as such, according to him, the Building Regulation 2010 would not hold the field.

7. We have considered the submissions of the learned Counsel. We have also gone through the records. There is no quarrel with the proposition advanced by Mr. Menezes to the effect that the Appropriate Government cannot take over the properties of private owners, without proceeding in accordance with law. But, however, in the present case what has to be examined based on the claim of the petitioner and the stand taken by the respondents is, whether there is any case made out by the petitioner for this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. As pointed out by the learned Counsel appearing for the respondent, para 4 of the affidavit filed by the respondent clearly states that the original owner had availed of an additional FAR while putting up the building and, as such, the land came within the area of road widening. In fact, when such an exercise is permitted, it is the

duty of the owner to transfer such land in favour of the Statutory Authorities. The petitioner while filing his rejoinder has merely denied such contention, without specifically disputing the actual area statement and the averments made in para 4 of the affidavit. In such circumstances, the petitioner has failed to disclose the material facts whether the original owner availed of additional FAR and his claim over the road widening area. As such, we find that on this ground alone the question of this Court interfering in the above writ petition at this stage would not arise.

8. Apart from that, the claim of the petitioner is of an ideal share in the property which was appurtenant to the shop purchased by him. Such a right admittedly is not determinable and cannot stand on its own. Admittedly, it is not in dispute that there are large number of other occupants of the building who had, in fact, not raised any objection with regard to the action being taken by the respondents herein. The learned Counsel appearing for the petitioner is unable to point out whether the original owners are also occupying any portion of the building erected in the property. In such circumstances, as an overwhelming majority of the occupants of the building themselves have not raised any objection, we fail to comprehend how, at the instance of the petitioner who, at the most, has an ideal share in the property which is not determinable can approach this Court seeking relief under Article 226 of the

Constitution of India. In such circumstances, the petitioner, if so advised, is at liberty to file appropriate proceedings to get the claim of compensation or otherwise adjudicated by the appropriate Government with regard to any action taken by the respondents. In the present petition, as the claim of the petitioner itself has not been finally adjudicated, we find that the question of exercising our extraordinary jurisdiction under Article 226 of the Constitution of India would not at all be justified. As such, we find that reserving the right of the petitioner, if so advised, to file appropriate proceeding to get his claim adjudicated, the petition can be disposed of. Needless to say, the observations made herein are only for the purpose of examining whether this Court can exercise its extraordinary jurisdiction and will not influence the Court or any Authority where any claim raised, which shall be decided on its own merits, in accordance with law.

9. The petition stands disposed off accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

ssm.