

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION No. 818 OF 2015**

Ms. Jacinta Mascarenhas e Fernandes,
wife of late Mr. Antonio Fernandes,
major/senior citizen, r/o. H. No. 46,
Bendwada, Sanguem, Goa.

.... Petitioner.

Versus

1. State of Goa,
through the Secretary (Revenue),
Government of Goa,
Revenue Department,
Secretariat, Alto Porvorim, Goa.
2. The Collector,
Office of the Collector of South Goa,
Land Acquisition Branch,
South Goa District, Margao, Goa.
3. Special Land Acquisition Officer,
having office at L. A. Cell, SIP,
Water Resources Department,
Gogol, Margao, Goa.
4. The Public Works Department,
Government of Goa,
represented herein by its
Principal Chief Engineer,
Altinho, Panaji, Goa.
5. The Executive Engineer,
having office at XVIII (R),
P.W.D., Ponda, Goa.

... Respondents.

Mr. A. F. Diniz, Advocate with Mr. Ryan Menezes, Advocate for the
Petitioners.

Mr. P. Dangui, Additional Government Advocate for the Respondents.

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

PRONOUNCED ON: 11.01.2017

JUDGMENT : (Per F.M. REIS, J.)

Heard Shri A. F. Diniz, the learned Counsel appearing for the Petitioners and Shri P. Dangui, learned Additional Government Advocate appearing for the Respondents.

2. The above petition, inter alia, seeks to quash and set aside the notification dated 31.01.2013 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to 'the said Act') as well as the report dated 07.01.2014 under Section 5A of the said Act prepared by the Special Land Acquisition Officer as well as the declaration under Section 6 of the said Act dated 29.01.2014 and the consequent Award dated 08.07.2015.

3. Upon hearing both the learned Counsel, the basic contention of the Petitioner is the objection to the acquisition of land admeasuring an area of 170sq.mts in the property under Survey No. 163/2 on the ground that the acquisition is not genuine or bonafide, nor that the land is acquired for a genuine purpose. It is further pointed out that the predicates under Section 5A of the said Act had not been followed and, consequently, the whole acquisition stands vitiated.

4. With regard to the contention of the Petitioner that the acquisition is not for a public purpose, whilst disposing the Writ Petition No. 235 of 2015 by Judgment passed today, we have come to the conclusion that the subject acquisition was for a public purpose as it was required for the approach road to the proposed new bridge. The contention as such that the subject acquisition is not bona fide has not been accepted. For the reasons stated in the Judgment, we reject such contention of the Petitioner in the present petition.

5. With regard to the contention of the Petitioner that there was no appropriate hearing given on the objections raised by the Petitioner, we find that the Petitioner who had appeared before the Land Acquisition Officer chose to file this Petition only after the Award has been passed. The Award, as such, is barred by laches and on this ground alone the Petition deserves to be rejected.

6. Apart from that, on perusal of the order sheets placed on record by the Respondent alongwith the affidavit, we find that the Petitioner was given a hearing though she contends that notice was served on a wrong person. The Petitioner has further requested for reducing the width of the road atleast by 2 metres instead of 6 mts so that the business premises could be saved. Similar objections were raised by the Petitioner in Writ Petition No. 235 of

2015 which were found to be not acceptable. The Land Acquisition Officer has also considered the report submitted by the Acquiring Department, inter alia, that the alignment of the road to the bridge is extremely necessary. In such circumstances, we are not inclined to accept the contention of the petitioner that the acquisition proceedings are vitiated on account of the failure to comply with the provisions of Section 5A of the said Act.

7. For the reasons stated in the Judgment passed in Writ Petition 235 of 2015 declared today, we find that the contention of the Petitioner that the notification under Section 6 of the Land acquisition Act, 1894 (hereinafter referred to 'the said Act') stands vitiated, cannot be accepted.

8. The contention sought to be raised by the Petitioner to challenge the acquisition and the report submitted under Section 5A of the said Act are similar to the ones raised by the Petitioner in the said Writ Petition 235 of 2015. The Petitioner is questioning the purpose of the proposed acquisition and we have already noted that the genuineness of such acquisition cannot be faulted. The main objections of the Petitioner is that the width should be reduced from 6mts to 2mts which has been duly considered by the Land Acquisition Officer as stated in the affidavit in reply as factually it was found that the proposed road widening would be at a distance of a minimum 1mt from the western side of the corner of the Petitioner's house. It is also

pointed out that the distance from the acquired land and the house of the Petitioner is almost 2 metres and that one metre side bridge would be constructed. In such circumstances, we find that the allegation of the Petitioner that the report stands vitiated as the objections have not been duly considered cannot be accepted. We find no basis to interfere in the report submitted by the Land Acquisition Officer under Section 5A of the said Act. The public purpose also cannot be disputed as the requirement of constructing an approach road to the new parallel bridge is also shown to be of an urgent requirement. As such, we find that there is no justification for the Petitioner to file the above petition on the grounds raised therein. Hence, the petition stands rejected. The Petition stands disposed as per the directions in the said Judgment passed today.

9. Rule stands disposed off accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

msr.