

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1119 OF 2017

Ruby Fernandes

... Petitioner

Versus

The State of Goa, Thr.

The Under Secretary (Revenue)

And 4 Ors.,

... Respondents

Mr. Nigel Da Costa Frias and Ms. Maria S. J. Correia, Advocates for the Petitioner.

Mr. A. Gomes Pereira, Additional Government Advocate for Respondent no. 1 to 3.

***Coram:- N. M. JAMDAR &
PRITHVIRAJ K. CHAVAN, JJ.***

Date:- 3 April 2018

P. C.

On 27 February 2018, after hearing the learned Counsel for the Petitioner and the learned Additional Government Advocate for the Respondents at length, we had passed the following Order:

*“By this petition, the Petitioner has prayed
for the following reliefs:*

(a) For a writ of certiorari or in the nature of certiorari or any other appropriate writ, order or direction quashing the order dated 14 November 2017 passed by the Respondent No.3.

(b) For a writ of mandamus or any writ, order and/or direction to direct and command the Respondent Nos.2 and 3 to refrain from carrying out the demolition of the Petitioners house in Chalta No.20, P.T. Sheet No.45, Fatorda, Margao Goa or any part thereof till the disposal of the present petition.

(c) For interim reliefs in terms of prayer clause (b).

2. As regards the first prayer is concerned, the Petitioner seeks to challenge an order passed by the Deputy Collector dated 14 November 2017 rejecting an application under Section 31(3) filed by the Petitioner dated 23 January 2017.

3. An application was made by the Petitioner on 23 January 2017 pursuant to the observations made by the Division Bench of this Court on 25 October 2016 in Writ Petition No.1019 of 2016. Though the Division Bench had used the word 'apply', Section 31(3) which falls under Chapter V of the Land Acquisition Act, 1894, 'Payment' is regarding the payment of compensation in the Court. The Section 31(3) empowers the Collector instead of awarding monetary compensation to enter into agreement with the owner for alternate land etc., by

approaching the Collector, the Petitioner has sought enhancement of compensation, which is not the purport and ambit of Section 31(3). It is informed that the Award was declared in the year 2012 and the Writ Petition filed by the Petitioner was dismissed. It appears to us that the Petitioner, by indirect method is seeking enhancement of compensation since the reference under Section 18 is now time barred. We are therefore not inclined to entertain the prayer clause (a) of the petition.

4. *As regards the prayer clause (b), which restrains the authorities from demolishing the Petitioner's house is concerned, the Petitioner has filed an additional affidavit placing certain photographs on record. It is not discernable from the photographs whether the Petitioner's house alone is holding up the road widening and whether there are other houses on the same line which are slated for demolition and not yet demolished. The learned Advocate General states that he would take instructions in this regard.*

5. *Stand over to 6 March 2018.”*

2. Therefore, by the order dated 27 February 2018, we had rejected the prayer clause (a) and the matter was, thereafter, adjourned from time to time to find out as to whether the action of demolition of the part of the Petitioner's house affected by road widening needs to be taken immediately or there are other structures which are yet to be demolished. On the last occasion, the learned Advocate General had

placed on record additional affidavit with photographs showing that it is the Petitioner's structure which is holding up the process of road widening. In view of this position, considering the road widening will be to the benefit of all the pedestrians and the commuters, action of demolition of the part of the Petitioner's property cannot be withheld any further.

3. It was put to the learned Counsel for the Petitioner as to whether the Petitioner would himself remove the portion of the structure which would be affected by the road widening and the matter was kept today for him to take instructions. Learned Counsel for the Petitioner, on instructions, states that the Petitioner will not be in a position to remove the portion by herself and it will be appropriate if the Department demolishes the part earmarked for demolition. Learned Counsel requests time till 1 May 2015 in view of the school and college examinations. This request for time till 1 May 2018, is reasonable.

4. Thus, though we are not inclined to interfere in the writ jurisdiction, to give some breathing time to the Petitioner, it is directed that the Respondent Authorities will commence their action of demolition as scheduled, after 1 May 2018.

5. The Writ Petition is, accordingly, disposed of.

Prithviraj K. Chavan , J.

N.M. Jamdar, J.