

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO. 595 & 546 OF 2019

WRIT PETITION NO. 595 OF 2019

1. Mrs. Dumena Gomes
w/o Philipe Colaco
aged 84 years,
Through her POA,
Mr. Menino Colaco,
s/o Mrs. Dumena Gomes,
major of age, both r/o. House No. 78,
Davorlim, Navelim,
Salcete-Goa.

2. Francisco Xavier Gomes,
major of age,
s/o Piedade Gomes,
R/o. H. No. 650, Ravora, Navelim,
Salcete-Goa.

.... Petitioners

Versus

1. The State of Goa,
Through its Chief Secretary,
Secretariat,
Porvorim-Goa.

2. Directorate of Sports and Youth Affairs,
Through its Director,
Government of Goa,
Campal-Panaji,
Goa.

3. The Collector South Goa,
Mathany Saldanha Building,

Margao,
Salcete-Goa.

.... Respondents.

Mr. Nigel Da Costa Frias, with Ms. Laxmi Sawant, Advocate for the
Petitioners.

Mr. D.J. Pangam, Advocate General with Mr. Tukaram Gawas,
Additional Govt. Advocate for the Respondents.

WRIT PETITION NO. 546 OF 2019

Inacinho Fernandes,
s/o. Olareco Fernandes,
aged 74 years,
r/o. House No.618,
Ravara, Navelim, Salcete-Goa.

.... Petitioner.

Versus

1. The State of Goa,
Through its Chief Secretary,
Secretariat,
Porvorim-Goa.

2. Directorate of Sports and Youth Affairs,
Through its Director,
Government of Goa,
Campal-Panaji,
Goa.

3. The Collector South Goa,
Mathany Saldanha Building,
Margao,
Salcete-Goa.

.... Respondents

Mr. Nigel Da Costa Frias, with Ms. Laxmi Sawant, Advocate for the Petitioner.

Mr. D.J. Pangam, Advocate General with Mr. Shivdatta Munj, Additional Govt. Advocate for the Respondents.

CORAM : PRADEEP NANDRAJOG, CJ.,
M.S. SONAK, J.

OCTOBER 07, 2019

ORAL JUDGMENT :- (Per Pradeep Nandrajog, CJ.)

Reply filed by Respondent No.2 in Writ Petition No.595/2019 is taken on record.

2. Rule. Rule is made returnable forthwith. Heard learned Counsel for the parties.

3. This is the second round of the litigation, which the two writ petitioners of Writ Petition No.595/2019 and the sole writ petitioner of the accompanying Writ Petition No.546/2019, are fighting. For reasons unknown, all the three joined in a common action when they filed Writ Petition No.510/2017, but have separated today, to file the two captioned writ petitions.

4. The case pleaded in Writ Petition No.510/2017, as well as the instant writ petitions, is that the writ petitioners are the recorded owners of the lands referred to in the pleadings of Writ Petition

No.510/2017. Their grievance was to the second Respondent, without the consent of the writ petitioners, trespassing upon their lands and on part thereof, commencing construction of a sports complex and on the remainder dumping construction material. It was pleaded that the said lands were not acquired.

5. The second Respondent and the State Government admitted the fact that the subject lands were not acquired and started negotiating with the three writ petitioners of Writ Petition No.510/2017 who, as noted above, are the writ petitioners in the two captioned writ petitions.

6. Consent between the parties was recorded in Writ Petition No.510/2017. The same was minuted and in terms of the consent order dated 13/9/2017, incorporating written minutes of the agreement, disposing of Writ Petition No.510/2017 was passed.

7. The consent order required Respondents No.1 and 2 to purchase the lands comprised in sub-division nos. 1(part), 2(part), 3(part), 15, 16, 17(part), 18, 19, 20 (part), 21(part) of Chalta No.57 of P.T. Sheet No.301 and land surveyed under sub-division No.5(part), 6(part), 7(part), 8(part), 10(part) of Chalta No.9 of PT. Sheet No.291 of Margao City. The compensation agreed to be paid, was @ Rs. 8000/- per sq. metre. The date, by which the

compensation had to be paid was noted.

8. It is obvious that the remaining land trespassed upon by the Respondents had to be vacated.

9. The grievance in the two writ petitions is that the lands, detailed in paragraphs 24 and 25 of Writ Petition No.595/2019 belonging to the first and the second petitioners, respectively, have not been vacated and wrongful occupation continues.

10. The material dumped on said lands has prevented the two writ petitioners from cultivating paddy on the lands. Further grievance is to a compound wall continuing to exist through the lands of the two petitioners referred to in paragraph 22 of the writ petition.

11. In the accompanying Writ Petition No.546/2019, the grievance is to the continuous illegal occupation of the lands described in paragraph 21 of the writ petition, thereby preventing the said writ petitioners from cultivating the paddy.

12. It is not in dispute that the trespass commenced in April, 2017.

13. Since the Respondents do not dispute the ownership of the

Petitioners *qua* the lands pleaded in the two writ petitions, we see no reason why the Respondents be not directed to remove whatever material they have dumped at the site and restore the lands to their original condition before the next season to grow paddy commences, which we note would be the month of April, 2020. Further, we see no reason why Respondents No.1 and 2 be not directed to pay interim compensation to the writ petitioners for unauthorisedly trespassing and holding onto the authorised possession of the subject lands. We see no reason why the writ petitioners be not permitted to approach the Collector to determine the compensation to be paid for illegal occupation of their lands on the principles applicable to requisitions of private property by the State.

14. Thus, we dispose of the two writ petitions, directing Respondents No.1 and 2 to remove whatever construction material they have dumped on the lands detailed in paragraphs 24 and 25 of Writ Petition No.595/2019 and para 21 of Writ Petition No.546/2019. The material dumped would be removed latest by 15th March, 2020. We further direct Respondents No.1 and 2 ensure that the said lands are restored to the original condition, rendering the land fit for cultivation of paddy. We further direct Respondent No. 2 to pay, by way of interim compensation, to the Petitioners of both Petitions a sum of Rs.50,000/- each, for the reason the writ

petitioners have been deprived of profits from paddy cultivation spread over three *kharif* and three *rabi* seasons. The compensation shall be paid within six weeks, failing which the same shall be paid with interest @ 9% per annum reckoned from six weeks herein after, till the date of payment. We further declare that the three writ petitioners shall be entitled to file applications before the third Respondent, laying a claim for compensation on account of deprivation of their right to their property. The compensation shall be assessed by the third Respondent in accordance with law. The interim compensation paid would be adjusted from the final compensation. The said exercise shall be completed, by the third Respondent, within six months of receipt of applications seeking compensation to be determined. The writ petitioners are held entitled to costs in the sum of Rs.10,000/- each. Meaning thereby, the costs payable in Writ Petition No.595/2019 is Rs.10,000/-. The costs payable in the accompanying petition is Rs.10,000/-. The costs shall be paid by the second Respondent.

M.S. SONAK, J.

CHIEF JUSTICE