

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 664 OF 2010

Mr. Agostinho Agnelo Sanches,
Major of age, resident of House
No.MHN 625, resident of Vadem,
Near Lake, Vasco Da Gama,
Goa.

... Petitioner

V e r s u s

1. State of Goa,
Through the Secretary (Reveue),
Government of Goa, Secretariat,
Porvorim, Goa.

2. The Deputy Collector/SDO,
LAO, Mormugao, Vasco-da-Gama,
(Goa).

3. The Deputy Collector &
S.D.O./LAO, Margao-Goa.

4. Mr. Jose Philip D'Souza,
Minister for Reveue & Civil
Supplies, Government of Goa, r/o.
Vasco (Goa).

... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Kenny, Advocate
for the Petitioner.

Ms. Susan Linhares, Additional Government Advocate for the
Respondent nos.1 to 3.

Coram :- M. S. SONAK &
M. S. JAWALKAR, JJ.

Date : 16th December, 2019.

ORAL JUDGMENT (*Per M. S. Sonak, J.*)

1. Heard Mr. S. D. Lotlikar, the learned Senior Advocate for the petitioner and Ms. Linhares, the learned Additional Government Advocate for the respondent nos.1 to 3. Respondent no.4, though served, neither present nor represented.

2. The challenge in this petition is to the notifications dated 01.07.2009 and 17.06.2010 issued under Sections 4 and 6 of the Land Acquisition Act, 1894, (for short, the said Act), for acquisition of petitioner's property bearing chalta no. 28 (Part) of P.T. Sheet No.68 admeasuring 65 square metres and property bearing chalta no. 29(part) of P.T. Sheet no.68 admeasuring 100 square metres, (for short, the said property), for the purpose of construction of internal road near Vaddem Lake in Vasco Constituency.

3. On 27.09.2010, while granting ad-interim relief, we made the following order :

“Heard learned Senior Counsel for the petitioner. Learned Addl. Govt. Advocate waives service for the respondents No.1 to 3. It is alleged in the petition that no inquiry as is contemplated under Rule 4(2) of the Goa, Daman and Diu Land Acquisition Rules, 1972 was held. In view thereof, the respondents are directed to file an affidavit stating whether inquiry was held and if yes, the details thereof and also produce for inspection of the Court the original file relating to the inquiry.

2. In the meanwhile, by way of an ad interim relief, we direct that the petitioner shall not be dispossessed of his property until further orders. S.O. to 11th October, 2010.”

4. Thereafter, on 25.10.2010, whilst issuing Rule, we observed that, prima facie, arguable case is made out. Liberty was granted to the respondents to proceed with the land acquisition.

However, there was a restraint upon taking of possession of the said property till the disposal of the petition. This position has continued till date. In fact, though there was no bar to proceed with the land acquisition, the land acquisition in fact has not proceeded any further.

5. Mr. S. D. Lotlikar, the learned Senior Advocate for the petitioner, pointed out that the proposed acquisition is entirely malafide. He submits that the acquisition is intended to benefit Natalina Sanches and Ms. Tereza Baretto Manzrekar, the supporters of the respondent no.4, who was then the Minister for Revenue of Civil Supplies. He pointed out that these two persons are also the election workers of the respondent no.4 and office bearers of the local Mahila Mandal. He pointed out that the petitioner had in fact instituted a suit against the said Natalina Sanches who was obstructing the petitioner from constructing the compound wall. He submits that after temporary injunction was obtained in the said suit, the acquisition proceedings came to be

initiated soon thereafter. He submits that if the acquisition is permitted to proceed, the petitioner's compound and the ancestral house will have to be demolished. He, therefore submits, that the impugned notification should be quashed on the ground of malafides particularly now that respondent no.4 has not even bothered to file any affidavit and to contest the pleadings of malafides, specifically made in the petition.

6. In the alternative, Mr. Lotlikar, the learned Senior Advocate for the petitioner, submits that Section 6 notification issued on 17.06.2010 is required to be quashed and set aside because there was no hearing offered to the petitioner by the Land Acquisition Officer who has made the 5-A report dated 15.03.2010. He submits that the Goa, Daman and Diu, Land Acquisition Rules, 1972 (For short, the said Rules of 1972), contemplates a detailed enquiry as well as a personal hearing. He submits that in the present case, no such enquiry was held and no such personal hearing was offered to the petitioner. He submits that the

statement in the 5-A report that all parties were heard on the spot and their objections and says were noted in the said inspection memorandum, is patently false and, in any case, cannot be considered as hearing in terms of the said Rules of 1972. He submits that enquiry under Section 5-A is of utmost importance in such matters and in the absence of an appropriate enquiry in the said Act under Section 5A, the further acquisition must be quashed. He relies upon *Women's Education Trust vs. State of Haryana* reported in (2013) 8 SCC 99 and *Usha Stud & Agricultural Farms Private Limited vs. State of Haryana & Ors.* reported in (2013) 4 SCC 210 in support of these propositions.

7. Finally, Mr. Lotlikar, the learned Senior Advocate pointed out that after interim relief was granted in this matter, the respondents not only failed to proceed to take any steps in the matter of acquisition but further the Planning Department has issued permission to one Mrs. Loreta Silvia Cabral e Barreto and

Mrs. Salvacao Costa, the residents from the very same locality to put up huge construction on the proposed road for which the acquisition was initiated in the first place. He points out that such permission has also been granted to the Fabrica de Igreja, Vasco da Gama, to put up a construction on the proposed road. He, therefore, submits that it is now very clear that the so called public purpose for which the acquisition was initiated stands completely frustrated. He submits that this is an additional ground to quash Section 6 of the petition which is included by the petitioner in the present case.

8. Ms. Linhares, the learned Additional Government Advocate for the respondents, submits that the charge of malafides has not been made out by the petitioner. He submits that the 5-A report records that opportunity of hearing was offered to the petitioner and other interested parties in the course of the site inspection and, therefore, there is compliance with the provisions of the said Rules of 1972. She submits that no further proceedings were

undertaken because of the interim relief granted by this Court. She submits that even if the area upon which the construction referred to by Mr. Lotlikar, the learned Senior Advocate, are to be excluded from consideration, still the road can be constructed with width of 2.7 to 3 metres. She, therefore, submits that there are no grounds to grant any reliefs to the petitioner in the present case.

9. Rival contentions now fall for our determination.

10. Although, it is true as contended by Mr. Lotlikar, the learned Senior Advocate, that the respondent no.4 has not even bothered to file any reply to find the allegations of malafides made against him, according to us, in the peculiar facts of the present case, there is really no necessity to go into the issue of malafides. This is because we are satisfied that the petition, insofar as the challenge to the notification dated 17.06.2010 under Section 6 of the said Act is required to succeed on the

ground that there was no proper enquiry under Section 5-A of the said Act.

11. The records indicate that the petitioner had filed detailed objections on 29.07.2009 before the Land Acquisition Officer objecting to the acquisition. His objections have been placed on record and they bear the endorsement of the Land Acquisition Officer dated 29.07.2009. Accordingly, it was incumbent for the Land Acquisition Officer to consider these objections in the course of the Section 5-A enquiry. Besides, the Land Acquisition Officer was duty bound to offer an opportunity of hearing to the petitioner in the course of the enquiry under Section 5-A of the said Act.

12. In the aforesaid regard, reference is required to be made to Rule 4 of the Rules of 1972, which reads as follows :

“4. Procedure for hearing of objection under Section 5-A-

(1) Whenever any notification under Section 4 has

been published, but the provisions of Section 17 have not been applied, and the Collector has issued public notice of the substance of the said notification, and on or before the last day fixed by the Collector in the said Notice, any objection is lodged under Section 5A(2) the Collector shall firstly record the objection in his proceedings, and secondly shall consider whether the objection is admissible according to the provisions of these Rules.

(2) To be admissible, an objection shall have been made within 30 days after the issue of the notification or within such further period as may be fixed by the Collector and shall allege some specific objection such as :- (i) the notified purpose is not genuinely or properly a public purpose;

(ii) the land notified is not suitable for the notified purpose;

(iii) the land is not so well suited as other land;

(iv) the area proposed is excessive;

(v) the objector's land has been selected maliciously or vexatiously; or

(vi) the proposed acquisition will destroy or impair the amenity of historical or artistic monuments and places of public resort or will take away important public rights of way or other convenience or will desecrate religious building, graveyards and the like.

(3) After admitting as objection and after having given the objector an opportunity of being heard, the Collector shall decide whether it is desirable to take oral or documentary evidence, which under Section 1A, or Section 40 he has power to call for. If evidence tendered by the objector is admitted, the Collector shall also afford the other party an opportunity of cross examining it or rebutting it by other evidence. If he admits evidence he shall fix time and place for hearing it and shall hear and record it in his proceedings.

(4) the Collector shall, submit the case with his report and record of the proceeding for the decision of the government under Section 5A, as far as practicable within 45 days after the expiry of the period prescribed for lodging objection or within 15 days after the survey

and investigation under sub-section (2) of Section 4 is completed and report submitted to him whichever is later.”

13. The record does not bear or that the enquiry was held in terms of Rule 4 of the said Rules of 1972. The 5A report dated 15.03.2010 merely states that all the interested parties were heard on the spot and their objections and say were noted in the inspection memorandum in witness to which the parties have signed the memorandum of inspection. The 5-A report states that the petitioner initially signed the same and later on cancelled his signature and thereafter refused to sign.

14. If the memorandum of inspection which is produced on record is perused, then, it is clear, that there is no such record in the inspection memorandum. In any case, such perfunctory hearing on the spot or the record of objection in inspection memo can hardly be regarded as any compliance under the procedure prescribed in Rule 4 of the said Rules. The procedure adopted hardly constitutes any hearing as contemplated by

Section 5-A of said Act. The 5-A report makes no reference or in any case no serious reference to the several objections raised by the petitioner. In quite a cursory manner, the Land Acquisition Officer has concluded that the proposed road is feasible at the site and serves a public purpose. The Land Acquisition Officer has also observed that the ancestral house of the petitioner is in a dilapidated condition and is in any case comes within the alignment and no way can it be saved. The 5-A report also refers to existing traditional access/pathway. There is however, absolutely no reference to the litigation referred to by the petitioner, in which, the petitioner had secured an injunction. There is no reference to the several other objections raised by the petitioner in his objections filed on 29.07.2009. There was really no hearing as contemplated under the law offered by the Land Acquisition Officer before making the 5-A report.

15. In *Women's Education Trust* (supra), the Hon'ble Supreme Court has observed that the rule of *audi alteram partem*

engrained in the Scheme of Section 5-A of the Land Acquisition Act, ensures that before depriving any person of his land by compulsory acquisition, an effective opportunity must be given to him to contest the decision taken by the State government/competent authority to acquire the particular parcel of land. Any person interested in the land, which has been notified under Section 4(1) of the Land Acquisition Act, can file objections under Section 5-A (1) of the Act and show that the purpose specified in the notification is really not a public purpose or that in the guise of acquiring the land for a public purpose the appropriate Government wants to confer benefit upon private persons or that the decision of the appropriate Government is arbitrary or is vitiated due to malafides. In response to the notice issued by the Land Acquisition Officer under Section 5-A of the said Act, the objector can make all possible endeavours to convince the Land Acquisition Officer that the acquisition is not for a public purpose specified in the notification issued under Section 4(a) of the said Act; that his land is not suitable for the

particular purpose and that other more suitable parcels of land are available which can be utilised for execution of the particular project or scheme. The Land Acquisition Officer is duty bound to objectively consider the arguments advanced by the objector and make recommendations duly supported by brief reasons, as to why the particular piece of land should or should not be acquired and whether the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Land Acquisition Officer should reflect objective application of mind to the entire record including the objections filed by the interested persons.

16. In *Usha Stud* (supra) the Hon'ble Apex Court has held that Section 5-A(2) of the Act which represents the statutory embodiment of the rule of *audi alteram partem*, gives an opportunity to the objector to make an endeavour to convince the Land Acquisition Officer that his land is not required for public purpose specified in the notification issued under Section

4(1) of the said Act or that there are other valid reasons for not acquiring the same. Section 5-A(2) also makes it obligatory for the Land Acquisition Officer to submit report(s) to the appropriate Government containing his recommendations on objections, together with the record of the proceedings held by him so that the Government may take appropriate decision on the objections. Section 6(1) provides that if the appropriate Government is satisfied, after considering the report, if any, made by the Land Acquisition Officer under Section 5-A(2) that particular land is needed for specified public purpose then a declaration should be made. This necessarily implies that the State Government is required to apply its mind to the report of the Land Acquisition Officer and take final decision on the objections filed by the land owners and other interested persons. Then and then only, a declaration can be made under Section 6(1) of the said Act.

17. Applying the aforesaid principles to the facts of the present case, it will have to be held that in the present case, there has neither been any appropriate enquiry as is contemplated by Section 5-A of the said Act nor is this a case where the petitioner was offered hearing as contemplated by Section 5-A of the said Act and Rule 4 of the said Rules of 1972. On a perusal of the 5-A report, it is very apparent that there has been no consideration of most of the objections raised by the petitioner. In any case, it is apparent that there has been no objective consideration of the arguments advanced by the objector. The 5-A report does not reflect objective application of mind to the entire record including the objections filed by the interested parties and which includes the petitioner. On this short ground, the report under Section 5-A dated 15.03.2010 and the consequent notification under Section 6 of the said Act dated 17.06.2010 are required to be set aside.

18. During the pendency of this petition, the petitioner made a grievance that on the proposed road, for which the acquisition was initiated, two huge structures are coming up. Mr. S. D. Lotlikar, the learned Senior Advocate submitted that if such structures are come up with the permission from the Planning Authorities of the respondents, it is very apparent that the so called public purpose for which the acquisition was initiated, no longer survives.

19. In view of the aforesaid, on 21.11.2019, we made the following order :

“ In this petition, the challenge is to the acquisition of the portion of the Petitioner's property for construction of road. There is an interim order operating in this matter since the year 2010. Today, when the matter was called out, Mr. Lotlikar, learned Senior Advocate appearing for the Petitioner submits that on the proposed road some construction is coming up.

2. Accordingly, we direct the Respondent No.2 to

immediately visit the site and ascertain the position. Respondent No.2 to file an affidavit accompanied by a status report indicating clearly whether any construction is indeed coming up and whether, same is legal and authorized. If such construction is not legal or authorized, affidavit to state the steps taken or steps proposed to be taken in this regard.

3. We clarify that the interim relief granted by us, does not, in any manner affect any of the Respondents in taking action against the illegal construction. In any case, our interim order concerned only taking over the possession of the property of the Petitioner. According to Mr. Lotlikar, the construction which is coming up is not coming up in the property of the Petitioner. Therefore, even otherwise our stay order had no nexus whatsoever with any action against such construction. The aforesaid direction is necessary because if the Respondents have no objections to the construction coming up on the proposed road, then, we will have to consider whether the acquisition of the Petitioner's property is really necessary and will serve any worthwhile public purpose.

4. The aforesaid affidavit to be filed within two weeks from today.

5. We place the matter for directions on 10th December, 2019.”

20. In pursuance of the aforesaid order, the Deputy Collector/SDO/Land Acquisition Officer has filed an affidavit dated 13.12.2019 before us together with a status report.

21. The status report accompanying the affidavit reads as follows :

“On 27.11.2019 at 12 a.m. during the site inspection held on plot bearing chalta no.25-A of P.T. Sheet no.68 and plot bearing chalta nos. 18, 19, 20, 21, 22 & 83A of P. T. Sheet no.68 of Vasco city in the presence of the officials from the Public Works Department, Mormugao Municipal Council and Mormugao PDA, Vasco it was seen that laying of foundation of one construction was going on in the area proposed for the road and close to it another

project had also started which is at the stage of digging for laying the foundation.

The constructions which have began on the proposed road belongs to Mrs. Loreta Silvia Cabral e Barreto & Mrs. Salvacao Costa residents of Diwan Residency, new Vaddem, Vasco da Gama and Fabrica de Igreja de Vasco da Gama alias Fabrica de Igreja de St. Andre, Vasco da Gama.

A notice board on site displayed the permissions granted by the authorities in favour of Mrs. Loreta Silvia Cabral e Barreto & Mrs. Salvacao Costa Fabrica de Igreja de Vasco da Gama alias Fabrica de Igreja de St. Andre, Vasco da Gama.”

22. In the affidavit, it is admitted that during the site inspection it was seen that a foundation of some construction was going on for the area proposed for the road and close to it a construction of another project has also begun. The affidavit admits that the constructions which have begin on the proposed road belong to Mrs. Loreta Silvia Cabral e Barreto and Mr.

Salvacao Costa, residents of Diwan Residency, new Vaddem, Vasco da Gama and Fabrica de Igreja de Vasco. The affidavit also admits that these two parties have obtained requisite permissions from the competent authorities and a notices are displayed at the site. The affidavit then proceeds to state that the concerned Department furnished copies of such permissions issued by the Mormugao Planning Development Authority (MPDA). The affidavit also records that on the basis of the planing permission, the Mormugao Municipal Council has also issued permissions.

23. From the aforesaid, it is very apparent that constructions have now commenced upon the very road which was proposed and for which the acquisition proceedings were initiated. There is no statement in the affidavit that even after excluding the areas occupied by such constructions, some roads having width of 2.70 or 3 metres can still come at the site. In any case, the acquisition was for the proposed road having a width of 6 metres. According

to us, these are substantial objections which are required to be taken into consideration in the present matter.

24. Therefore, even without going into the issue of malafides, we are satisfied that this is a fit case in which the impugned notification dated 17.06.2010 issued by the respondents under Section 6 of the said Act is required to be quashed primarily on the ground that there was no proper enquiry as contemplated by Section 5-A of the said Act. Accordingly, we quash the impugned notification dated 17.06.2010 issued under Section 6 of the said Act.

25. According to Mr. Lotlikar, the learned Senior Advocate, upon the quashing of Section 6 notification, the notification under Section 4 of the said Act would not survive. In this matter, at this stage, we are not really required to go into this issue and, therefore, we leave the same open.

26. The Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

M. S. JAWALKAR
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M. S. SONAK, J.