

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.659 OF 2019**

Andre Antonio Agnelo da Piedade
Pereira @ Andre Antonio Pereira,
aged 65 years, r/o. H. No.113,
Down Mangor, Vasco-da-Gama,
Mormugao, Goa.

.... Petitioner

V/s.

1. The State of Goa,
Rep. by its Chief Secretary,
having office at Secretariat,
Alto Porvorim, Bardez - Goa.

2. Union of India,
Ministry of Defence,
Rep. by its Defence Estates Officer,
Office of Defence Estates Officer,
Swami Vivekanand Road,
Tiswadi, Panaji, Goa.

3. The Flag Officer Commanding,
FOGA, INS Gomantak,
Vasco-da-Gama, Mormugao, Goa.

.... Respondents

Mr. Andre Antonio Agnelo da Piedade Pereira, Advocate in person.

Mr. Manish Salkar, Government Advocate for the respondent no.1.

Mr. Mahesh Amonkar, Central Government Standing Counsel for
the respondents no.2 and 3.

**Coram : M. S. SONAK &
C.V. BHADANG, JJ.**

Date : 05th November, 2019.

Oral Judgment: (Per M.S. Sonak, J.)

Heard Mr. Andre Antonio Agnelo da Piedade Pereira, the petitioner in person and Mr. Mahesh Amonkar, Central Government Standing Counsel for the respondents no.2 and 3.

2. By this petition instituted under Articles 226 and 227 of the Constitution of India, the petitioner seeks the following reliefs:

“a) A Writ of Mandamus or any other Writ, Order or Direction be issued on concerned Respondents to clear and vacate the land under plot no.1 to 32 notified under Notification issued in terms of Section 6 of the Land Acquisition Act, 1894 situated in absolute private Village of Mormugao, covered by Award dated 05/03/1969 passed by in Land Acquisition Case no.LAO 5/1967.

b) A Writ of Mandamus, or any other Writ, Order or Direction be issued on concerned respondents to remove the locked iron gated erected on the free access to petitioner and family of which existence is observed by the respondent no.3 in terms of the Order passed on 09.01.2014 in Writ

Petition No.545/2012.

c) That pending the hearing and final disposal of the present petition, by appropriate Order the respondents no.2 and no.3 be directed to remove all and every other impediments placed on the existing free access of the petitioner and family proceeding to their severed absolute private land holdings and property situated Bimbvel and of which marginal part has been acquired under Land Acquisition Case No.LAO 5/1967.

d) For an ad interim ex-parte relief in terms of prayer (c) above.

e) For such other relief as this Hon'ble Court may deem fit and proper under the given circumstances.

3. Insofar as the first substantive relief is concerned, it is clear that the petitioner seeks to question acquisition of property, which acquisition, has attained finality sometime in the year 1969 – 1970. This petition has been instituted only on 15.7.2019, i.e. after almost 49 years. The petition is barred by gross delay and laches. By merely alleging that the acquisition is vitiated by a constitutional fraud or by alleging that since the acquisition is vitiated by a constitutional fraud, there is no vesting or there is no finality attached to such acquisition, the petitioner cannot seek to overcome the

apparent delay and laches involved in the institution of this petition.

4. In **State of Maharashtra Vs. Digamber** 1995 4 SCC 683, challenge was to the Government taking away the petitioner's property. The petition instituted after 20 years was allowed by the High Court and compensation was awarded to the petitioner. However, the Hon'ble Apex Court, set aside the Judgment and Order of the High Court and quoting with approval the observations of *Sir Barnes Peacock*, the Court stated:

“(W)here a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement for such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily.”

5. Similarly, in **State of Rajasthan Vs. D.R. Laxmi** (1996) 6 SCC 445, a petition was filed under Article 226 of the Constitution to challenge acquisition of land, which acquisition had long ago been finalised. Even the possession taken and award made. The challenge was on the ground that such acquisition was *void ab*

initio. The High Court allowed such petition. However, the Hon'ble Supreme Court allowing the appeal set aside the Judgment of the High Court and dismissed the petition on the ground of delay and laches. The Hon'ble Apex Court made the following observations:

“Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void.”

6. In the present case, there is really no explanation in regard to the inordinate delay of over 49 years in questioning the acquisition, which attained finality sometime in the year 1969-70. Therefore, applying the principles set out in the aforesaid decisions, it will not be possible to entertain the present petition insofar as the first substantive relief sought for therein.

7. The second substantive relief seeks writ, order or direction to the concerned respondents to remove the locked iron gate erected on the free access of the petitioner and his family as noted by the respondent no.3 in the Order passed on 9.1.2014 in

Writ Petition No.545/2012. If it is the case of the petitioner that such access has already been granted to him by the Order dated 9.1.2014 in Writ Petition No.545/2012, then, there is no question of the petitioner maintaining yet another writ petition for the same purpose. However, the petitioner, claims that he and his family members have some easementary right to the access in question. He claims that the access is in fact through a public road. The averments in the petition are quite verbose and there is no clarity on the issue.

8. According to us, the matter will involve adjudication into the disputed questions of fact, particularly since the petitioner alleges that he and his family members have easementary right to such access. Such issues cannot be ordinarily adjudicated in the exercise of extraordinary adjudication jurisdiction under Article 226 of the Constitution of India. The reliance placed by the petitioner on the decision of the Hon'ble Apex Court in **H.P. State Electricity Board and others Vs. Shiv K. Sharma and others, (2005) 2 Supreme Court Cases 164**, is quite misconceived.

9. In the aforesaid decision, the issue involved was whether an easement of necessity stands extinguished by the reason of acquisition. That was a case which had in fact originated with the institution of the civil suit by the respondents before the Sub-Judge,

Nalagarh for a mandatory injunction ordering the appellant Board to remove the barbed wire fencing blocking the access to their land and for a permanent injunction to restrain the appellant from obstructing the access to their land. The Trial Court dismissed the suit but the First Appellate Court allowed the appeal and decreed the suit. The Second Appeal instituted by the Board under Section 100 of CPC was dismissed thereby confirming the finding recorded by the First Appellate Court that the respondents indeed had acquired easement of necessity over the suit land. Based upon such finding of fact recorded in a suit, the Hon'ble Apex Court held that this was not a fit case to go deeper into the larger issue of law but in the peculiar facts and circumstances of the case, the distinction drawn by the High Court about non-extinguishment of the right of easement arising out of necessity was held to be justified both on the principle and precedent.

10. Therefore, it is apparent that in the case of **H.P. State Electricity Board and others** (supra) the party claiming easementary right had in fact instituted a civil suit therein, obtained a finding that it had an easement of necessity in respect of the access in question. The decision is therefore not an authority for the proposition that issues relating to easement of necessity or otherwise can be decided for the first time in a petition instituted, under Article 226 of the

Constitution of India. Accordingly, we do not deem it appropriate to entertain the present petition, even insofar as the second substantive relief claimed by the petitioner.

11. For the aforesaid reasons we dismiss this petition, however, leaving it open to the petitioner to invoke other remedies as may be available to him under the law for redressal of his alleged grievances, in relation to the issue of access.

12. In facts of the present case, however, there shall be no order as to costs.

C.V. BHADANG, J. M. S. SONAK, J.

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