

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.794 OF 2012

Benjamin Braganza,
Major of age,
Indian National,
r/o. H.No.22, Dando (Pedda),
Margao, Salcete Goa.
Presently resident of Kuwait,
Through his power of attorney holder
Mr. Agnelo Sebastiao Rosario,
Son of Sebastiao Rosatio,
Son of Sebastiao Rosario,
57 years of age,
Resident of H.No.66,
Telaullim, Salcete Goa.

.... Petitioner

V/s

1. The State of Goa,
Through the Under Secretary
(Revenue – II), Having his
office at Secretariat,
Porvrom, Bardez-Goa.
2. The Land Acquisition Officer,
Deputy Collector, Collectorate,
South Goa, Margao, Goa.
3. The Executive Engineer,
Works Division VI (R-S),
Margao, Salcete Goa.

Shri Nigel Da Costa Frias, Advocate for the Petitioner.

Shri Pravin Faldessai, Additional Government Advocate for the Respondents.

**Coram:- M. S. SONAK &
PRITHVIRAJ K. CHAVAN, JJ.**

Date:- 3rd October, 2019

ORAL JUDGMENT :

Heard Shri Nigel Da Costa Frias, the learned Counsel for the petitioner and Shri Pravin Faldessai, the learned Additional Government Advocate for the Respondents.

2. The petitioner seeks an appropriate declaration that the proposed acquisition of his property vide impugned notification dated 23/11/2010 and 22/12/2011 is illegal and unconstitutional and for consequential orders to quash the same.

3. The record indicates that the petitioner had earlier instituted a Writ Petition No.640/2012 seeking similar reliefs. This petition was disposed of by this Court on 10/09/2012 by making the following order:

“Rule returnable forthwith.

2. Heard by consent.

3. Having regard to the circumstances of the case, the interest of justice could be served if the petitioner is allowed to make a representation which the Government may consider within a period of 15 days after receiving the same. The Government will pass reasoned order there upon. The petitioner shall

be entitled to raise all such objections as may be appropriate.

4. Rule made absolute. Writ Petition stands disposed of.”

4. In pursuance of the aforesaid, the petitioner had made a detailed representation to the Government, which was disposed of by the Government and such disposal was communicated to the petitioner vide communication dated 26/10/2012 addressed by the Deputy Collector (LA), Margao, Goa.

5. From the perusal of the communication dated 26/10/2012, as also the notings which are placed on record at pages 79 to 87 of the paper book, we find that there has been no proper consideration of the petitioner's representation by the Government.

6. The communication dated 26/10/2012 contains no reasons whatsoever, though, by our order dated 10/09/2012, we had directed the Government to pass the reasoned order. Besides, on perusal of the notings, we find that the only reason, if at all for rejection of the petitioner's representation, is that the petitioner had failed to lodge objections under Section 5A of the Land Acquisition Act, 1894 within the prescribed period.

7. At the stage when the petitioner had instituted Writ Petition No.640/2012 and at the stage when we made our order dated 10/09/2012, the position that the petitioner had not filed objections under Section 5A of the Land Acquisition Act, 1894 within the prescribed period was quite clear. Despite that, looking at the peculiar facts and circumstances of the present case, we had given liberty to the petitioner to file a representation and, thereafter, directed the Government disposed of such representation by passing a reasoned order thereupon. Therefore, the representation could not have been rejected once again on the very same grounds and that too without passing a reasoned order.

8. On the aforesaid short ground, we set aside the impugned communication dated 26/10/2012 and the decision which is conveyed thereby and direct the Government once again to consider and dispose of the petitioner's representation dated 12/09/2012 and 01/10/2012 as expeditiously as possible and in any case within a period of 8 weeks from today. In addition, we grant liberty to the petitioner to file an additional representation within one week from today, without seeking any further extension. This time, the Government to pass a reasoned order upon such representation.

9. From the year 2012, there is an interim relief in operation which restrains the respondents from taking over possession of the petitioner's property. We continue this interim relief until the Government disposes of the petitioner's representation. If the representation is rejected, the interim relief to continue for a period of four weeks from the date of communication of such rejection to the petition.

10. The rule in this petition is disposed of in the aforesaid terms. There shall be no order as to costs. All concerned to act on the basis of authenticated copy of this order.

NH PRITHVIRAJ K. CHAVAN, J.

M. S. SONAK, J.