

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

***WRIT PETITION NO.245/2018 and
WRIT PETITION NO.1187/2018***

WRIT PETITION NO.245/2018

Mr. Shane Francisco Dias,
residing at House No.531/2,
Lima Vaddo, Soccoro,
Bardez, Goa.

.... Petitioner

V/s.

1. Union of India, through
Ministry of Home Affairs,
New Delhi.
2. Custodian of Enemy Property
with office at Kaiser e Hind
Building, Currimbhoy Road,
Ballard Estate, Mumbai 400 001.
3. Collector of South Goa District
Collectorate, Margao, Goa.
4. Mamlatdar of Salcete with office at
Collectorate, Margao, Goa.

.... Respondents

Mr. J.A. Lobo, Advocate for the Petitioner.
Mr. Mahesh Amonkar, Central Government Standing Counsel for
Respondent No.1.

Mr. A.P. Wachasundar, Special Counsel for Respondent No.2.

Mr. Deep Shirodkar, Additional Government Advocate for Respondents No.3 and 4.

WITH
WRIT PETITION NO.1187/2018

1. Maria Costa alias Marianinha
da Costa, widow of Vincent Rodrigues,
aged 81 years, housewife.

2. Damiao Antonio rodrigues
son of Vincent Rodrigues,
aged 91 years, service and his wife
through Power of Attorney.

3. Argelia Godinho e Rodrigues
daughter in law of Vincent Rodrigues,
all residents of House No.89,
Utorda, Majorda, Salcete Goa.

.... Petitioners

V/s.

1. Union of India, through the Secretary,
Ministry of Home Affairs,
New Delhi.

2. Custodian of Enemy Property
with office at Kaiser e Hind
Building, Currimbhoy Road,
Ballard Estate, Mumbai 400 001.

3. Collector of South Goa District
Collectorate, Margao, Goa.

4. Deputy Collector, with office at
Collectorate, Margao, Goa.
5. Mamlatdar of Salcete with office at
Collectorate, Margao, Goa. Respondents.

Mr. M.B. D'Costa, Senior Advocate with Ms. K. Betquecar, Advocate for the Petitioners.

Mr. Mahesh Amonkar, Central Government Standing Counsel for Respondent No.1.

Mr. A.P. Wachasundar, Special Counsel for Respondent No.2.

Mr. V. Sardessai, Additional Government Advocate for Respondents No.3 to 5.

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

Reserved on:- 19th November, 2019

Pronounced on:- 26th November, 2019

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

Heard the learned Counsel for the parties.

2. The learned counsel for the parties agree that both these petitions involve substantially common issues of law and fact and

therefore, the same may be disposed of by a common Judgment and Order. Accordingly, both these petitions are taken up for disposal by a common Judgment and Order, but by treating Writ Petition No.245/2018 as the lead petition, for the sake of convenience.

3. Writ Petition No.1187 of 2018 was also tagged along with these two petitions. However, Mr. A.P. Wachasundar, special counsel for respondent no.2 points out that there may be some difference on the factual aspects. Accordingly, Writ Petition No.1187 of 2018 is now detagged and will be dealt with separately.

4. The facts as pleaded in Writ Petition No.245/2018 lie in a very narrow compass. The petitioner claims to be an Indian National owning property surveyed under No.23/3, at Camurlim, Salcete, Goa. The petitioner pleads that this property originally belonged to late Natividade Luis Manoel Dias, who is the grandfather of the petitioner. The petitioner has then made reference to Consent Decrees dated 29.09.1909 and 26.02.1998 in inventory proceedings to explain how the said property was inherited by him. The petitioner has clearly averred that even his grandfather late Natividade Dias was an Indian National throughout his life. Based upon the consent decrees, the petitioner claims to have applied for mutation in the survey records sometime in January, 2018. The petitioner claims that whilst

preparing the application seeking mutation, the petitioner realised that the name of Natividade Dias, which had throughout appeared in the survey records, was deleted and in his place, the name of the custodian of Enemy Property for India i.e. respondent no.2 herein was found entered. Aggrieved by such summary deletion, without notice or without compliance with even modicum of natural justice, the petitioner instituted the present petition, *inter alia*, impleading Union of India as respondent no.1 and the custodian as respondent no.2.

5. In the return filed on behalf of respondent no.1 and 2, the substitution of the entry in the survey record was sought to be justified on the basis of an order dated 08.10.2010 issued by the custodian purportedly under Sections 5 and 24 of the Enemy Property Act, 1968 (E.P. Act). The affidavit, which was made by Patricia C. Fialho, Assistant Custodian of Enemy Property for India (CEPI) contains an averment that the copy of the order dated 08.10.2010 was served on the occupants of the suit property through the concerned Mamlatdar of Margao, South Goa, vide Letter No.10-01-84/2812 dated 08.10.2010. The affidavit also contains a statement that Natividade Dias, the grandfather of the petitioner was found to be a resident of Pakistan during the crucial vesting period from 10.09.1965 to 26.09.1977 and therefore, the properties owned by him were automatically vested in the custodian of enemy property. The affidavit

pleads that the petition is barred by delay and laches, since, the same was instituted in the year 2018, when the order made by the custodian was dated 08.10.2010. On these grounds respondent no.1 and 2 urged the dismissal of the petition.

6. Curiously, to the affidavit filed by Patricia Fialho on 17.12.2018, although, several irrelevant documents were appended, including copies of notifications, enactments or case law, the crucial order dated 08.10.2010, was not annexed.

7. By our order dated 28.01.2019, we took cognizance of the clear statement made by Patricia Fialho in her affidavit dated 17.12.2018 filed on 21.12.2018 that the custodian had made an order on 08.10.2010 and same was served to the occupants through the concerned Mamlatdar of Margao, South Goa and required Ms. Patricia Fialho to produce proof of service. This was on the basis of statement made by Ms. Fialho that such proof of service was indeed available and would be produced if some time is granted.

8. On the next occasion, i.e. on 07.02.2019, Ms. Fialho filed an affidavit in which, she attempted to renege upon her clear statement that proof of service of the order dated 08.10.2010 was available with her by even going to the extent of distorting what transpired in this

Court on 28.01.2019, which was clearly recorded in our order dated 28.01.2019. Ms. Patricia Fialho attempted to state that she had only informed the Central Government Standing Counsel that such proof may be available and not that such proof was actually available. On 28.01.2019, in fact, Ms. Fialho had not stated that the proof of service may be available but upon the repeated queries from the Court had asserted that proof of service is in fact available. Later on however, apology was tendered by Ms. Fialho and it was virtually conceded that the statement made before this Court on 28.01.2019 was made without verification or for that matter, with any regard to the factual position.

9. The respondents no.3 and 4 to this petition i.e. the Collector of North Goa and Mamlatdar of Salcete who are alleged to have served the order dated 08.10.2010 made by the custodian upon the occupants have not bothered to file any affidavit. However, the learned counsel for respondents no.3 and 4 have quite candidly stated that they have no records whatsoever with regard to the service of order dated 08.10.2010 made by the custodian, upon the occupants of the property or for that matter any other person.

10. The respondents no.1 and 2 have also not produced on record any documents to indicate proof of service of the order dated

08.10.2010 upon the occupants. However, after considerable delay, respondents no.1 and 2 produced on the record of this Court the copy of the order dated 08.10.2010. The same is part of the paper book in Writ Petition No.245 of 2018 at Exhibit 14, page no.106.

11. The perusal of the copy of the order dated 08.10.2010 made by the custodian indicates that the copies of the same were directed to be served upon one Piedade Dias and Anant Bandodkar, Delwado, Camurlim, Salcete through the Mamlatdar of Salcete, Margao, South Goa.

12. The petitioner has pleaded that Piedade Dias and Anand Bandodkar have no nexus whatsoever with the property in question and in any case they have no nexus with the petitioner. The order dated 08.10.2010 also offers no explanation whatsoever as to the nexus of the said persons with the property in question or the basis on which this order was directed to be served upon the said two persons. All this is to a certain extent not relevant because there is no proof whatsoever that the order dated 08.10.2010 was served either upon the petitioner, whom, the respondent no.1 and 2 admit as being the grandson of Natividade Dias or upon said Piedade Dias and Anant Bandodkar, whatever the status of these persons might be. In the absence of any proof of service whatsoever of the order dated 08.10.2010 upon either the petitioner or even the so called occupants, it is quite unfortunate

that the respondents no.1 and 2 have sought to oppose this petition on the ground of delay and laches. There is absolutely no question of any delay and laches involved in the present petition, particularly because it is quite clear that the order dated 08.10.2010 was never served either upon the petitioner or upon the so called occupants referred to in the said order.

13. After the order dated 08.10.2010 made by the custodian was placed on record by the respondent no.2, the petitioner applied for and was granted leave to amend the petition and challenge the same. Accordingly, the petitioner, has applied for a Writ of Certiorari or any other appropriate Writ, order or direction to quash the order dated 08.10.2010 made by respondent no.2, which, as stated earlier, is placed at Exhibit R(14) of the petition.

14. In the first place, we find that the impugned order dated 8th October, 2010 has been made against a dead person *i.e.* late Natividade Dias who expired on 5th March, 1989 as per the death certificate produced by the Petitioners on record. Clearly, therefore, the impugned Order dated 8th October, 2010 is a nullity and the same could not have been acted upon. On the basis of an order which is, in fact a nullity, the Respondents were not justified in effecting any changes in the Survey Records.

15. Secondly, the Respondents could have never acted on the basis of the impugned order dated 8th October, 2010 without communicating such an order to the parties to whom it was intended to affect. As noted earlier, late Natividade Dias has already expired by the time the impugned order was made. Admittedly, no efforts were made to trace the legal representatives of late Natividade Dias, which would include the Petitioners herein and to serve the order upon them. The order appears to be addressed to Natividade Dias and Anant Bandodkar. There is absolutely no material placed on record by any of the Respondents to either show the connection between the said persons and late Natividade Dias, or the said persons and the property in question. In any case, there is absolutely no material produced on record by any of the Respondents to indicate that the impugned order dated 8th October, 2010 was even served upon these persons. In absence of any communication or service, it cannot be said that the impugned order was made effective or that the impugned order could have been acted upon. Therefore, based upon such uncommunicated order, none of the Respondents were justified in making any changes in the Survey Records relating to the property in question.

16. On the aspect of service of the impugned order dated 8th October, 2010, as we have noted earlier, Respondents No.1 and 2 claimed that such an order was required to be served by Respondents

No.3 and 4. Respondents No.3 and 4 have not denied the averments in the Petition that such an order was never served upon either the Petitioners or for that matter, the persons to whom the said order was addressed. Respondents No.3 and 4, despite opportunity, have produced no material whatsoever to indicate any proof of service. Ms. Razaq and Mr. Shirodkar, learned Counsel for Respondents No.3 and 4 have, in fact, very candidly admitted that there is nothing on record showing service of the impugned order dated 8th October, 2010 upon any of the parties. Clearly, therefore, the impugned order dated 8th October, 2010 could not have been acted upon in the absence of any valid service upon the parties whose interest, the impugned order was intended to affect.

17. Thirdly, we note that the foundation of the impugned order is the finding that late Natividade Dias was a resident of Pakistan during the period from 10.09.1965 to 26.09.1977, and therefore, qualified to be described as '*enemy*' in terms of Section 2(b) of the E.P. Act. We find that this crucial finding is totally perverse inasmuch as it is based upon no material whatsoever. In the affidavit filed on behalf of the Custodian, all that is stated is that the District Authorities had verified and found that late Natividade Dias was a resident of Pakistan and, therefore, his property became enemy property. In paragraph 42 of the affidavit filed on behalf of the

Custodian, the affiant has asserted that the order dated 8th October, 2010 is based on the fact of his residence in Pakistan during the crucial vesting period i.e. 10.09.1965 to 26.09.1977.

18. Now, if the affidavit is perused, there is no verification clause to the same. Therefore, it is not at all clear as to whether the aforesaid averments in the affidavit in relation to late Natividade Dias are based upon personal knowledge of the affiant Ms. Patricia Fialho or, whether the same are based on record. Obviously, the assertions in the affidavit cannot be said to be based upon personal knowledge of the affiant. Therefore, Respondents No.1 and 2 can, at the highest, claim that such a statement in the affidavit is based on record. Despite several opportunities, no record has been produced, on the basis of which the Respondents could satisfy this Court that late Natividade Dias was, in fact, the resident of Pakistan and consequently, qualified to be described as '*enemy*' in terms of Section 2(b) of the E.P. Act.

19. The affidavit filed on behalf of the Custodian, in fact, states that "*the District Authorities have verified and found that Natividade Luis Manoel Dias was a resident of Pakistan and therefore his property being enemy property was taken over in the year 1972 itself*". This means that according to the affiant, the factual aspect as to whether Natividade Dias was resident of Pakistan or not, has been verified by

the District Authorities. Respondents no.3 and 4, have not filed any affidavit asserting that they have verified this position. They have also not filed any affidavit to produce on record any material to show that late Natividade Dias was indeed, at any time, resident of Pakistan. Ms. Razaq and Mr. Shirodkar, learned Counsel who appear for Respondents No.3 and 4, quite fairly and candidly informed this Court that except for two or three communications, to which we shall advert to, there is no record whatsoever of the District Authorities verifying the status of late Natividade Dias or finding that late Natividade Dias was at any stage the resident of Pakistan during the vesting period of 10.09.1965 to 26.09.1977 or during any period at all. Clearly, therefore, this is a case where the crucial finding of fact that late Natividade Dias was resident of Pakistan at any stage, is a finding, based upon no material whatsoever. In such circumstances, the impugned order dated 8th October, 2010 has absolutely no legs to stand upon and the issuance of the same was entirely an arbitrary and unreasonable exercise of power on the part of Respondents No.1 and 2.

20. The only material which is placed on record by Respondents No.1 and 2 is as follows:-

(i) Communication dated 28.02.1972 addressed by the District Magistrate, Goa to the Custodian of Enemy Property for India;

(ii) Communication dated 02.04.1974 addressed by the Collector and District Magistrate, Goa, to the Custodian of Enemy Property for India; and

(iii) Communication dated 02.05.1974 addressed by the Custodian of Enemy Property for India to the Mamlatdar of Salcete.

21. Communication dated 28.02.1972 addressed by the District Magistrate, Goa purports to enclose a list, in which, at serial no.5 there is a reference to Mr. Felix Dias Natividade Dias. There is also reference to one Piedade Dias and Anand Bandodkar in the column entitled name and address of tenant/occupant who is presently holding the property. The communication simply states that the District Magistrate is enclosing statement of more Pakistan Nationals whose immovable properties have been taken over by issuing notices in forms marked A and B. The communication states that other detailed information is still being collected and will be sent in due course.

22. Communication dated 02.04.1974 again states that a list of the enemy properties taken over is enclosed. There is again similar reference to Mr. Felix Dias Natividade Dias.

23. Finally, communication dated 02.05.1974 addressed by the

Custodian of Enemy Property for India to the Mamlatdar of Salcete purports to authorize the Mamlatdar to take over enemy properties situated within the jurisdiction of the said Mamlatdar and to take such measures as the Mamlatdar considers necessary or expedient for the preservation of such properties on behalf of the custodian. There is absolutely no reference to the property which is the subject matter of the present petition.

24. Based upon the aforesaid three communications, the Respondents could never have concluded that late Natividade Dias was indeed resident of Pakistan, either during the vesting period or during any period at all. Respondents No.1 and 2 admitted that they have no other material other than the aforesaid three communications. Respondents No.3 and 4 are unable to place on record any material, on the basis of which the aforesaid three communications were addressed. In the absence of any material whatsoever, the crucial finding that late Natividade Dias was a resident of Pakistan, either during the vesting period or otherwise, can never be sustained. This is yet another reason to hold that the impugned order dated 8th October, 2010 is arbitrary and unreasonable.

25. Mr. Wachasundar, the learned Counsel who argued on behalf of respondents no.1 and 2 was not at all clear as to whether

principles of natural justice and fair play apply in a matter where a person is declared as “*enemy*” as defined under Section 2(b) of the E.P. Act or whether the property of such person is sought to be divested under the provisions of the E.P. Act. At one stage, Mr. Wachasunder contended that there is no provision for compliance with principles of natural justice and fair play and further, there is no scope for reading into the provisions, any principles of natural justice. He urged that the E.P. Act is a special legislation relatable to Article 253 of the Constitution of India and therefore, there is no question of compliance with principles of natural justice in such matters. He also contended without prejudice that the principles of natural justice apply, only where, some person has been condemned or something very dear to such person is sought to be taken away. He submits that in the present case since no parties are being condemned and since nothing dear to such parties is being taken away, there is no requirement to comply with principles of natural justice or even fair play.

26. At a later stage however, Mr. Wachasundar, the learned counsel for respondents no.1 and 2, changed tact and submitted that since the inquiries and verification was supposed to have been carried out by the district authorities, it was for the district authorities to have complied with principles of natural justice and fair play. Mr. Wachasundar even submitted that the custodian will not be averse to

offering opportunity of hearing to the petitioner, since, Section 11 of the E.P. Act contemplates grant of such opportunity. Mr. Wachasunder was however clear that the impugned order dated 08.10.2010 cannot be withdrawn by the custodian, on the ground that there was failure of natural justice. He even submitted that remedy for the petitioner if at all, is to make representation to Central Government seeking divestation and if at all the Central Government rejects such representation, then, to appeal to this Court in terms of the provisions contained in Section 18-C of the E.P. Act.

27. At least, in the peculiar facts and circumstances of the present case, the Custodian was duty bound to comply with the principles of natural justice and fair play before making the impugned order dated 8th October, 2010. This is because there was ample material on record to indicate that late Natividade Dias was very much living in Goa and expired in Goa on 5th March, 1989. His wife, Maria Dias expired on 9.12.1993. The record, prior to impugned mutation, had always indicated the name of late Natividade Dias. In these circumstances, it was not as if the party who was alleged to be enemy, was actually residing in enemy country, or otherwise not available, for service of notices and the communications. The contention that the impugned order declaring some person as an enemy and on such basis, divesting him of his property, does not involve any condemnation or taking

away of something which is quite dear, is a contention which deserves summary rejection. Obviously, declaring some person as an '*enemy*' and on such basis, divesting him and his legal representatives of their property, undoubtedly involves visiting such person or his legal representatives with serious civil consequences. In such circumstances, there was a clear obligation upon the Custodian to comply with the principles of natural justice and fair play, which obligation, the Custodian, in the present case, has utterly failed to discharge.

28. Assuming that there are no specific provisions made in the E.P. Act, as it then stood, for compliance with principles of natural justice and fair play, even then, looking to the nature of consequences which ensue, such principles will have to be read into the statute, particularly in a case of the present nature where, the Custodian, based upon no material whatsoever, has not only condemned late Natividade Dias as an enemy, but, on such basis, even purported to divest him and his legal representatives of their right in the property. Such drastic orders could never have been made, without minimum compliance with the principles of natural justice and fair play.

29. The principles of natural justice have, by now, been accepted as concomitants of the right of non-arbitrariness as enshrined with Article 14 of the Constitution of India. The fundamental right in

Article 14 of the Constitution of India is available, nor merely to the citizens of India but, all persons, which would include even non-citizens. This was not some case where there was some unimpeachable material available on record with the authorities, on the basis of which the authorities were entitled to conclude that Natividade Dias was indeed a resident of Pakistan and consequently an enemy as defined under Section 2(b) of the E.P. Act. This is in fact a case where there is no material whatsoever in support of such a finding.

30. In *Suresh Chandra Nanhorya vs. Rajendra Rajak and others* the Hon'ble Apex Court has held that natural justice is an inseparable ingredient of fairness and reasonableness. It is even said that the principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. The Hon'ble Apex Court further held that natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

31. In *Mangilal vs. State of M.P.*, the Hon'ble Apex Court has held that even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are

likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See *Swadeshi Cotton Mills v. Union of India* ((1981) 1 SCC 664). Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in

themselves. The principles of natural justice have many facets. Two of them are: notice of the case to be met, and opportunity to explain.

32. In *Uma Nath Pandey and ors. vs. State of Uttar Pradesh and anr.*, the Hon'ble Apex Court has held that the concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression '*civil consequences*' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

33. In *Arthur John Spackman vs. Plumstead District Board of Works*, Lord Chancellor has observed as follows :

“... No doubt, in the absence of special provisions as to how the

person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter, and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice.'

Lord Selborne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oftquoted phrase 'justice should not only be done, but should be seen to be done'.

34. In the present case, there is absolutely no dispute that no opportunity of hearing was ever afforded to any parties before the impugned order dated 8th October, 2010 was made by the Custodian. Therefore, applying the aforesaid principles to the facts and circumstances of the present case, we hold that the impugned order dated 8th October, 2010 is void for want of compliance with the principles of natural justice and fair play.

35. Mr. Wachasundar then contends that the duty to hear, if any, is on the District Authorities and not upon the Custodian, who

has to merely make the impugned order on the basis of the report from the District Authorities. Mr. Wachasundar submits that in the present case, the District Authorities must have heard the affected parties and, therefore, there is no breach of the principles of natural justice or fair play.

36. Again, we are unable to accept the aforesaid contention of Mr. Wachasundar. In the first place, there is absolutely no material on record from which it can be discerned that the District Authorities ever offered any opportunity of hearing to late Natividade Dias or to any of the legal representatives of late Natividade Dias or, for that matter, to the two persons referred to in the impugned order, even though the Respondents have not shown us the nexus between the said two persons and late Natividade Dias.

37. In fact Ms. Razaq and Mr. Shirodkar fairly and candidly pointed out that there is absolutely no record of any hearing being afforded by the District Authorities. In any case, since the decision in these matters has to be taken by the Custodian, we cannot appreciate as to how the hearing by the District Authorities will suffice. Normally, the principles of natural justice require that the authority who hears the matter, must decide the matter, or conversely the authority which decides the matter, must hear the parties which might be affected by

the decision. This is an additional ground to hold that in the present case, there has been absolutely no compliance with the principles of natural justice and fair play.

38. Mr. Wachasundar referred to the Enemy Property Rules, 2015 and submitted that these Rules have been given retrospective effect. However, he was unable to point out any provision on the basis of which it could be said that these Rules have been given any retrospective effect.

39. Even, if we were to proceed on the basis of Mr. Wachasundar's submission that the E.P. Rules, 2015 have indeed been given any retrospective effect, then, it is quite clear that the principles of natural justice and fair play are expressly applicable before any person is declared as an enemy or before any property is declared as an enemy property. Rules 3 and 4 provide for a detailed procedure before any property is declared as an enemy property. The authorities, upon *prima facie* satisfaction, are required to issue a show cause notice on the person claiming title to such property or interest, or on any other person or persons whom the Custodian considers having any interest in the property. The manner of service of notices, is also prescribed in some detail. Rule 3(9), in terms, provides that the Custodian or his authorised representative, shall observe the principles

of natural justice by giving sufficient opportunity to the noticees to present their case before the Custodian or his representative. Therefore, if, as contended by Mr. Wachasundar the E.P. Rules, 2015, have indeed been given some retrospective effect, then, surely, the impugned order dated 8th October, 2010 is void, for failure to comply with the principles of natural justice, as provided in the said Rules.

40. The E.P. Rules, 2015, however, make it clear that it was never the intention of the legislature to exclude the application of principles of natural justice to the proceedings under the E.P. Act. As noted earlier, looking to the consequences which follow, observance of the principles of natural justice and fair play are required to be read into the provisions of the said Act or the Rules made thereunder. Therefore, the circumstances that the E.P. Rules, 2015 make such detailed provisions for compliance with the principles of natural justice and fair play in fact makes explicit what was otherwise, always implicit that the principles of natural justice and fair play have to be complied with in matters of this nature.

41. Since, in the present case, there was not even a minimum compliance with the principles of natural justice and fair play, the impugned order dated 8th October, 2010 will have to be declared as void, or even otherwise, set aside.

42. The contention raised by Mr. Wachasundar that the E.P. Act is a special legislation, relatable to Article 253 of the Constitution of India, neither arises for consideration in the present petition, nor does the same detract in any way from the view which we have taken in regard to the impugned order dated 8th October, 2010. Mr. Wachasundar contends that right to property, is no longer a right in India, however, cannot be accepted, having regard to the provisions in Article 300A of the Constitution of India. In any case, the Petitioners have succeeded in demonstrating that the impugned order is unreasonable and arbitrary and thereby violates the mandate of Article 14 of the Constitution of India. Admittedly, the rights guaranteed by Article 14 of the Constitution of India, apply not merely to the citizens of India, but also to other persons. Accordingly, we are unable to accept the contention raised by Mr. Wachasundar on the aspect of maintainability of this Petition on the ground that no right of the Petitioners has been violated.

43. The contention that the Petitioners had an alternate remedy under Section 18 of the E.P. Act, also deserves no acceptance in the peculiar facts and circumstances of the present case. The remedy under Section 18 of the E.P. Act may be resorted to in a case where there is proper and legal vesting of the property in the Custodian. In any case, where an order is patently arbitrary, unreasonable and made

in total violation of the principles of natural justice and fair play, the bar of alternate remedy will not apply.

44. Based upon the impugned order, which is a nullity, or which, in any case, deserves to be set aside, the Revenue Authorities were not at all justified in deleting the name of late Natividade Dias from the survey records. Prior to such deletion, even the Revenue Authorities failed to comply with the principles of natural justice and fair play.

45. We, therefore, have no hesitation in declaring the impugned Order dated 8th October, 2010 as a nullity, or in any case, quashing and setting aside the same. We, however, clarify that this will not preclude Respondents No.1 and 2 from initiating fresh proceedings in terms of the provisions of the E.P. Act and the E.P. Rules, 2015 if they are satisfied that there exists any material or grounds for doing so. If any decision is taken to initiate fresh proceedings in relation to the property which is subject matter of this petition, then, needless to observe, that the Respondents will have to abide by the detailed procedure prescribed under the E.P. Rules, 2015, including, in particular, the procedure prescribed in Rules 3 and 4 of the E.P. Rules, 2015.

46. The facts and issues of law which arise in Writ Petition

No.1187 of 2018 are, in no manner, different than the issues and facts of law which arise in Writ Petition No.245 of 2018, which was treated as the lead petition. Accordingly, for the aforesaid reasons, even Writ Petition No.1187 of 2018 will have to be allowed.

47. Accordingly, we dispose of Writ Petition No.245 of 2018 by making the following order:

(a) We declare the impugned order dated 8th October, 2010 made by the Custodian of Enemy Property of India at Exhibit R(14) (page 106) is a nullity and, in any case, we quash and set aside the same;

(b) We direct the Respondents to restore the name of Natividade Luis Manoel Dias in the survey records relating to property bearing Survey No.23/3 at Camurlim, Salcete, Goa within a period of four weeks from today;

(c) We grant liberty to the Respondents to take fresh steps in relation to the property which is subject matter of the present petition in terms of E.P. Act, 1968 and E.P. Rules, 2015 should, in the opinion of the Respondents, there exist grounds for taking such steps;

48. We also dispose of Writ Petition No.1187 of 2018 by

making the following order:

(a) We declare the impugned order dated 8th October, 2010 made by the Custodian of Enemy Property of India at Exhibit P(8) (page 45) is a nullity and, in any case, quash and set aside the same;

(b) We direct the Respondents to restore the names of Maria Costa alias Marianinha da Costa, Damiao Antonio Rodrigues and Argelia Godinho e Rodrigues in the survey records relating to property bearing Survey No.85/8 at Utorda, Salcete, Goa within a period of four weeks from today;

(c) We restrain the Respondents from fixing any board in the property bearing Survey No.85/8 at Utorda, Salcete, Goa or attempting to forcefully enter thereon, on the basis of the impugned order dated 8th October, 2010, which order we have hereby set aside.

(d) We grant liberty to the Respondents to take fresh steps in relation to the property which is subject matter of the present petition in terms of E.P. Act, 1968 and E.P. Rules, 2015 should, in the opinion of the respondents, there exist grounds for taking such steps;

49. In the peculiar facts and circumstances of the present case, we make no order as to costs in both these Petitions.

50. All concerned to act on the basis of an authenticated copy of this Judgment and Order.

C. V. BHADANG, J.

M. S. SONAK, J.

ssm/ss