

IN THE HIGH COURT OF BOMBAY AT GOA

MISCELLANEOUS CIVIL APPLICATION NO.1097/2019

IN

PIL WRIT PETITION NO.45/2019

CLADIA DIAS

.... Petitioner

V/s.

MARGAO MUNICIPAL COUNCIL,
THR. ITS CHIEF OFFICER,
MARGAO AND OTHERS.

.... Respondents

Mr. S. D. Lotlikar, Senior Advocate along with Ms. S. Arur, Advocate for the Applicant.

Mr. S. Padiyar, Ms. S. Bhobe and Mr. P. Shirodkar, Advocates for Respondent No.1.

Mr. P. Rao with Ms. S. Kushawaha, Advocates for Respondent No.2.

Mr. D. Pangam, Advocate General along with Mr. P. Faldessai, Additional Government Advocate for the Respondents No.3 and 5.

Mr. D. Lawande, Mr. P. Dangui and Mr. A. Prabhudesai, Advocates for Respondent No.4.

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

Dated:- 18th December, 2019

P.C.:

Heard Mr. S. D. Lotlikar, Senior Advocate for the petitioner in
PIL Writ Petition No.45 of 2019.

2. In this application, the applicant, has applied for the following reliefs:

“(a) That this Honourable Court may be pleased to pass an appropriate Order directing the Applicant herein to be arrayed as party respondent in the afore captioned PIL Writ Petition and further be granted an opportunity of being heard in the matter after filing an appropriate affidavit-in-reply to the Petition.

(b) In the alternate, the applicant be permitted to intervene in the matter and be permitted to address this Hon'ble Court on material issues in the matter after being given an opportunity of filing an appropriate reply to the petition.

(c) Any other order this Hon'ble Court deems fit and proper in the facts and circumstances of the case.

(d) To stay the operation of the order dated 06.12.2019 passed by this Hon'ble Court till the intervenor is heard in the matter to the extent of the direction at para 5(a) of the order which pertains to storage of Refused Derived Fuel (RDF) in plot of land admeasuring 5000 sq.mtrs. bearing Chalta No.8 of P.T. Sheet No.284, Margao.”

3. In so far as intervention is concerned, since, this is a PIL, there can be no difficulty in permitting the same. Accordingly, the applicant is permitted to intervene in the PIL. Necessary amendment to be carried out by the petitioner within two weeks from today.

4. Mr. S. D. Lotlikar, Senior Advocate for the applicant then points out that till the intervention is heard in details in the main matter, the direction at paragraph 5(a) of our order dated 06.12.2019

which pertains to the storage of Refused Derived Fuel (EDF) in plot of land admeasuring 5000 sq.mtrs. bearing Chalta No.8 of P.T. Sheet No.284, Margao may be stayed.

5. Mr. S. D. Lotlikar pointed out that the applicant is a tenant in respect of this plot. He points out that though this plot was purported to be acquired sometime in the year 2003 and even an award has been made in respect of such acquisition on 15.04.2005, neither any compensation has been paid to the applicant nor has the possession of the said plot been taken over by the applicant. Mr. Lotlikar submits that the applicant has been cultivating the suit plot and was supplying paddy to the Government. Mr. Lotlikar refers to the provisions of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (said Act) and submits that by virtue of the position emanating, the provisions of sub-section 2 of Section 24 of the said Act, the acquisition is deemed to have lapsed. He submits that the GSUDA has no right and authority to use the said plot for storage of RDF. Even otherwise, Mr. Lotlikar points out that the suit plot is not at all a suitable site for storage of RDF, since, according to him, it is a low-lying paddy field.

6. Mr. D. Pangam, Learned Advocate General and Mr. S. Padiyar, learned counsel appearing for the Margao Municipal Council (MMC),

on instructions, dispute the contention raised by Mr. Lotlikar, learned Senior Advocate for the applicant. They point out that the acquisition is legally complete and even the possession has been taken, in terms of the certificate of possession which is very much available on record. They point out that five years earlier even mutation has been taken out of the said plot and the name of GSUDA is reflected in the record. They point out that several lands were acquired in pursuance to the award dated 15.04.2005 and all such lands have been amalgamated and even a consolidated survey number i.e. Chalta No.8 of P.T.Sheet No.284 has been allotted to all these lands. Accordingly, they submit, that there is no lapsing of acquisition in terms of Section 24(2) of the said Act. Even otherwise, they point out that the applicant has not taken out any proceedings to question the acquisition on the alleged ground of lapsing. They point out that the public interest is involved in the storage of RDF on this site, because, if the storage is not permitted at this site, the same, will ultimately, affect the remedial process at the Sonsodo Sump. They point out that for the storage of RDF, necessary clearances/authorizations have been obtained from the Goa State Pollution Control Board (GSPCB) and therefore, it is not correct that the plot in question is not a suitable site. They point out that even the barricading at the site has already commenced.

7. Having considered the rival contentions, we do not feel that any case has been made out for grant of interim reliefs. At this stage, going

back to the statements made by the learned Advocate General for the State and Mr. Padiyar on behalf of the MMC, we cannot say that this is a case where the provisions of Section 24(2) of the said Act are prima facie attracted. In any case, the applicant, has not bothered to take out any proceedings, to seek any declaration that the land acquisition proceedings have already lapsed. The contention of the applicant that no such proceedings are required to be taken out, prima facie, is not accepted.

8. From the aforesaid, it is necessary to note that in respect of acquisition of some adjacent properties under the very same award dated 15.04.2005, parties had claimed for enhancement of compensation. The matter was remanded by this Court to the Reference Court for determination of the appropriate market rate available. The learned Advocate General has pointed out that at this stage, in respect of one of the parcels of the property, the learned Reference Court, by reference to the provisions of Section 24(2) of the said Act, issued a declaration that the acquisition in respect of that particular parcel had lapsed. The said particular parcel, admeasuring 3530 sq.mtrs., and admittedly, did not form part of the plot admeasuring 5000 sq.mtrs. which is the subject matter of this civil application. Even that order of the Reference Court has been stayed by this Court in Civil Application No.261/2015 in First Appeal No.119/2015 by order dated 16.04.2016.

9. The plot on which RDF is proposed to be stored has been cleared by the GSPCB. Mr. D. Lawande, learned counsel appearing for the GSPCB confirms this position. Accordingly, the apprehension expressed by the applicant cannot be accepted at this stage.

10. Ultimately, in such matters, the larger public interest has to prevail. The situation at the Sonsodo Dump, and the need to undertake immediate remediation measures, has been noted by us in our order dated 06.12.2019.

11. For the aforesaid reasons, we decline relief in terms of prayer clause (d) of this application.

12. Since, we have already permitted intervention thereby granted to the applicant, relief in terms of prayer clause (b), nothing survives in this civil application which is accordingly disposed of.

SMT. M.S. JAWALKAR, J.

M. S. SONAK, J.