

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 2 OF 2021

XAVIER SOCORROGONSALVES PATRICIO Petitioner

VS

THE STATE OF GOA, THR.ITS

SECRETARY AND 6 ORS

.... Respondents

Mr. D. Lawande and Mr. G. Nadkarni, Advocates for the Petitioner.

Mr. Devidas J. Pangam, Advocate General with Mr. Deep Shirodkar, Additional Government Advocate for the Respondent Nos.1, 4 and 5.

Mr. P. Faldessai, Asst. Solicitor General for the Respondent No.3.

Mr. Ajit R. Kantak, Advocate for the respondent No.6.

**Coram:- M. S. SONAK &
SMT. BHARATI H. DANGRE, JJ.**

Date :- 10th February, 2021

P.C.:

Heard Mr. D. Lawande, learned Counsel for the petitioner.

2. On 2nd February, 2021 we made the following order:

“P.C.:

Heard Mr. Dattaprasad D. Lawande alongwith Mr.Pradosh P. Dangui and Mr. Gauravvardhan A. S. Nadkarni,learned counsel for the petitioner, Mr. Deep Shiroadkar, Additional Government Advocate for the respondents no.1, 4 and5, Mr. Raviraj Chodankar, learned Standing Counsel for Central Government for the respondents no.2 and 3 and Mr. P. Sawant,learned counsel for the respondent No.7.

2. Leave is granted to implead the contractor as respondent. Amendment to be carried out forthwith. Issue notice to the contractor returnable on 10.02.2021.

3. The respondents to take instructions as to the basis on which works are being undertaken in the petitioner's property which, the petitioner claims, is not even proposed for acquisition.

4. Mr. Lawande, learned counsel, on the basis of instructions, has stated that the petitioner will not be

averse to receipt of some compensation for user of the petitioner's property even though, such user is without the authority of law for the present. Accordingly, the respondents, to verify the position and come up with some concrete proposal by the next date particularly since, the work concerns construction of National Highway, it will be in public interest if such work proceeds unhindered.

5. *Mr. Sawant, learned counsel for respondent no.7 disputes that the petitioner is the owner/tenant of the suit property which is the subject matter of this petition.*

6. *Stand over to 10.02.2021.”*

3. Today, Mr. Y. S. Rao on behalf of the respondent No.8 has filed an affidavit. Paragraph Nos.4 to 8 of this affidavit read as follows:

“4. *I say that the contention of the Petitioner that the gate was destroyed is incorrect. The gate was within the area acquired. The Petitioner then insisted that the*

gate be relocated and constructed on his property boundary which was then done by this Respondent.

5. I say that it is incorrect that any land not acquired is being used. In fact the Petitioner with discussions agreed to the RCC Hume pipes being kept in the property. All the Pipes have already been removed. The Petitioner then desired that he be compensated by the construction of a water tank with dimensions 8 x 2 mts. at the place where there was an old dilapidated tank of 2 x 1.5 metres. The water tank was then constructed by this Respondent. There was also erected Fencing poles with barbed wire. The costs incurred for all the works done for the Petitioner was at an approximate cost of Rs. 2.25 lakhs.

6. I say that on one day there was a breakdown of the Excavator machine of the sub-contractor which was then repaired and removed the very next day.

7. I say that it is false and incorrect that any mangoes are robbed or vegetation destroyed. In fact there are no mango trees but only mango saplings. In fact three

cashew saplings were replanted at the location indicated by the Petitioner.

8. *I say that no unacquired area of the Petitioner is presently used for any purpose.”*

4. Mr. Lawande, learned Counsel, on instructions, disputes the averments made in this affidavit. In particular, he points out that there was never any consent granted by the petitioner. He also points out that some tanks in the acquired portion or to be acquired portion were destroyed and some were relocated. He disputes the amount referred to in paragraph 5 of the affidavit.

5. According to us, there are disputed questions of fact which cannot be effectively adjudicated in these proceedings. The petitioners have their own version which is now disputed by the respondent No.8. Accordingly, it will be only appropriate if the parties resort to the ordinary remedies available under the law. These disputes cannot be effectively adjudicated in the exercise of our extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

6. Thus, Without going into merits of the rival contentions and by granting liberty to the petitioner to avail the alternate remedy as available, we dispose of this petition.

7. There shall be no order as to costs.

8. We further clarify that even in so far the acquired portion or to be acquired portion is concerned to rights and contention of all parties including in particular the petitioner herein are kept specifically open to be raised before the appropriate authorities.

SMT. BHARATI H. DANGRE, J.

M. S. SONAK, J.

mv

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VISHAL
BHOIR

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by MEENA
VISHAL BHOIR
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