

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.494/2014

1. Mrs. Maria Silvia Pinho (deceased),
Through her Legal Representatives:

(a) Mr. Caetano I, De Souza Pinho,
aged 45 years, bachelor,
resident of House No. 559,
Poreibhat, Verna, Salcete, Goa.

... PETITIONER

(b) Louella De Souza Pinho da Costa,
aged 51 years, married,
Gaspar Housing Co-op. Society,
Opp. People's High School,
Fontainhas, Panaji, Goa.

(c) Tarzan D'Costa,
aged 65 years, married,
Gaspar Housing Co-op. Society,
Opp. People's High School,
Fontainhas, Panaji, Goa.

(d) Emidio De Souza Pinho,
aged 39 years, married,
H. No. 128, Corte De Oiteiro,
Emidico Garcia Road, Panaji, Goa.

(e) Andryusha D'Costa e Pinho,
aged 38 years, married,
H. No. 128, Corte De Oiteiro,
Emidico Garcia Road, Panaji, Goa.

Versus

(1) THE STATE OF GOA
Through Secretary (Revenue)
Having his office at Secretariat
Porvorim, Bardez Goa.

(2) THE SPECIAL LAND ACQUISITION
OFFICER S.I.P, WRD,
Gogol, Margao, Salcete, Goa.

(3) THE EXECUTIVE ENGINEER,
Division VI (Roads South) PWD,
W.D.VI/SD II, Fatorda, Margao,
Salcete, Goa.

...RESPONDENTS

Mr. Ryan Menezes, Advocate *for the Petitioners*.
Mr. D. Shirodkar, Additional Government Advocate *for the State*.

WITH
MISCELLANEOUS CIVIL APPLICATION NO.115/2020

1. MRS. MARIA ANTONETA MENEZES,
Age 37 Years, Indian National,
D/o. Cipriano Menezes,
R/o. House No. 97/B, Porie Bhat,
Verna, Salcete-Goa.

2. MR. REMEDIOUS J. PEREIRA,
S/o. Late Joao Pereira,
Age 80 Years, Indian National,
R/o. House No. 88/B, Porie Bhat,
Verna, Salcete-Goa.

3. MR. JOAO ANTONIO ALVARES,
S/o. Late Caetano Alvares,
Age 69 Years, Indian National,
R/o. House No. 92, Porie Bhat,
Verna, Salcete-Goa.

4. RAYMOND M. D'SILVA

S/o. Late Caetan D'silva,
Age 48 Years, Indian National,
R/o. House No. 593, Porie Bhat,
Verna, Salcete-Goa.

5. GABRIEL M. E. FERREIRA

S/o. Late Joaquim S.E. Fernandes,
Age 46 Years, Indian National,
R/o. House No. 91/D, Porie Bhat,
Verna, Salcete-Goa.

6. MARIA J. P. RODRIGUES,

D/o. Late Jose Rodrigues,
Age 65 Years, Indian National,
R/o. House No. 91/C, Porie Bhat,
Verna, Salcete-Goa.

7. RESURREICAO M. FERREIRA,

S/o. Late Joaquim S.E. Fernandes,
Age 43 Years, Indian National,
R/o. House No.162, Porie Bhat,
Verna, Salcete-Goa.

8. INACIO CRUZ,

S/o. Late Sebastiao Cruz,
Age 79 Years, Indian National,
R/o. House No. 582, Porie Bhat,
Verna, Salcete-Goa.

9. MARIANIE CRUZ,

W/o. Late Joao Cruz,
Age 86 Years, Indian National,
R/o. House No. 94, Porie Bhat,
Verna, Salcete-Goa.

10. MATHEW CRUZ,

S/o. Late Sebastio Cruz,
Major of Age, Indian National,
R/o. House No. 94/1, Porie Bhat,
Verna, Salcete-Goa.

11. FRANCISCO FURTADO,
S/o. Late Severina Furtado,
Age 85 Years, Indian National,
R/o. House No. 97, Porie Bhat,
Verna, Salcete-Goa.

12. INACINA FURTADO,
W/o. Late Antonio Furtado,
Age 44 Years, Indian National,
R/o. House No. 97/D, Porie Bhat,
Verna, Salcete-Goa.

13. GUIA A. FERREIRA,
D/o. Late Joaquim S.C. Ferreira,
Age 47 Years, Indian National,
R/o. House No. 98, Porie Bhat,
Verna, Salcete-Goa.

14. COSTANCIO PINHO,
S/o. Late Remedio Pinho,
Age 68 Years, Indian National,
R/o. House No. 98/B, Porie Bhat,
Verna, Salcete-Goa.

15. ROZA MARIA PINHO,
W/o. Late Albino Pinho,
Age 68 Years, Indian National,
R/o. House No. 98/A, Porie Bhat,
Verna, Salcete-Goa.

16. THOMAS MELLO,
S/o. Joao Mello,
Age 29 Years, Indian National,
R/o. House No. 89, Porie Bhat,
Verna, Salcete-Goa.

17. BERNADO ALVARES,
S/o. Late Santano Alvares,
Age 67 Years, Indian National,
R/o. House No. 97/A, Porie Bhat,
Verna, Salcete-Goa.

18. MARIA COSTA,
D/o. Late Santan Alvares,
Age 60 Years, Indian National,
House No. 97/C, Porie Bhat,
Verna, Salcete-Goa.

19. AGUSTINHO ALVARES,
S/o. Late Santan Alvares,
Major of Age, Indian National,
R/o. House No. 97/B, Porie Bhat,
Verna, Salcete-Goa.

20. MARIA FURTADO,
W/o. Juliano Furtado,
Major of Age, Indian National,
R/o. House No. 97/2, Porie Bhat,
Verna, Salcete-Goa.

21. JACINTO ALVARES,
S/o. Augustinho Alvares,
Major of Age, Indian National,
R/o. House No. 97/B/1, Porie Bhat,
Verna, Salcete-Goa.

22. CONSSANIO PERREIRA,
S/O. Remedious Pereira,
Major of Age, Indian National,
R/o. House No. 104/B, Porie Bhat,
Verna, Salcete-Goa.

... APPLICANTS

IN

MRS. MARIA SYLVIA PINHO,
W/o. Late Ernesto Desouza,
Major of Age, Indian National,
Resident of Porie Bhat, Verna,
Salcete-Goa.

... PETITIONER

Versus

1. STATE OF GOA,
Thr. Chief Secretary (REVENUE),
Having Office At Secretariat,
Porvorim, Bardez-Goa.

2. THE SPECIAL LAND ACQUISITION
OFFICER,
S.I.P, WRD, Gogol,
Margao, Salcete-Goa.

3. THE EXECUTIVE ENGINEER,
Division VI (ROADS-SOUTH) PWD,
W.D.VI/SD II, Fatorda,
Margao, Salcete-Goa.

... RESPONDENTS

Mr. Jitendra Supekar, Advocate *for the Applicants/Intervenors*.

**CORAM: M. S. SONAK &
M. S. JAWALKAR, JJ**

DATED: 22nd September 2021

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

1. Heard Mr. Ryan Menezes for the Petitioners, Mr. Deep Shirodkar learned Additional Government Advocate for the State, and Mr. Jitendra Supekar for the Intervenors.

2. The challenge in this petition is to the following:

(a) Notification bearing No.23/11/2010-RD dated 27.08.2010 under Section 4 of the Land Acquisition Act, 1894 (said Act);

(b) Notification bearing No.23/11/2010-RD dated 17.10.2012 under Section 6 of the said Act;

(c) Report dated 12.04.2012 under Section 5-A of the said Act.

(d) Award dated 27.09.2013.

3. The challenge to the aforesaid is insofar as properties surveyed under Nos.51/5, 60/12, 61/3, and 61/6 of Village Verna Salcete, Goa in which, the petitioner claims an interest.

4. Mr. Menezes submits that in this case there was no effective hearing granted to the petitioner in the course of the inquiry under Section 5-A of the said Act. He submits that the representatives of the petitioner attended the office of the Land Acquisition Officer (LAO) on 10.11.2010, on which date a site inspection was fixed. Thereafter, the petitioners heard nothing further in the matter. He referred to the Goa Land Acquisition Rules, 1972 to point out that a detailed procedure is prescribed for hearing which includes *inter alia* opportunity of leading evidence. He submits that opportunity of effective hearing is a mandatory requirement and in the absence of the same, there is no compliance with the provisions of Section 5-A of the said Act. He relies on *Hindustan Petroleum Corpn. Ltd. v. Darius*

Shapur Chenai and others – (2005) 7 SCC 627 to submit that hearing of objections under Section 5-A of the said Act must be effective and not a mere formality. He submits that even the perusal of Section 5-A report shows that there was no application of mind to the various objections raised by the petitioner. He also relies on *Sukumar M. Khot and others v. State of Maharashtra and others – 2006 (4) Mh. L.J. 328* to point out that the duties which the LAO is enjoined to discharge have not been so discharged in the present case. He submits that all these are good grounds to set aside the impugned notifications and the award made based thereon.

5. Mr. Menezes points out that there was an error in indicating the correct survey numbers of the petitioner's land in the notification published under Section 6 of the said Act in the newspaper. He submits that even this is an error that vitiates the impugned notifications and award based thereon.

6. Mr. Shirodkar learned Additional Government Advocate has placed on record letters addressed by and on behalf of the petitioner herself admitting that there was a hearing of the objections. He submits that such documents were suppressed by the petitioner and a case was sought to be made out as if no hearing was afforded to the petitioner. He relies on *Ramjas*

Foundation and others v. Union of India and others – 1993 Supp (2) SCC 20 to submit that in similar circumstances and having regard to the conduct of the petitioner, the petition, was not entertained.

7. Mr. Shirodkar submits that in any case this petition is barred by delay and laches. He points out that the petition has been filed after the award was made by the LAO and even the possession was taken. He submits that the Stay Order granted by this Court was after the possession was taken and even the Stay Order made it clear that there would be a restraint on taking possession if the possession was already not taken over. He relies on *Andhra Pradesh Industrial Infrastructure Corporation Limited v. Chinthamaneni Narasimha Rao and others – (2012) 12 SCC 797* to submit that belated petitions ought not to be entertained in land acquisition matters.

8. Mr. Supekar learned counsel for the intervenors supports the submissions made by Mr. Shirodkar. He submits that this petition may be dismissed.

9. Rival contentions now fall for our determination.

10. The first aspect to be considered in this petition is that of the delay and laches in the institution of the same. In this case, notification under Section 4 of the said Act was issued on 27.08.2010. The petitioner filed objections on 23.09.2010 and 22.10.2010 objecting to the acquisition on various grounds. On 10.11.2010 petitioner's son along with her advocate remained present for the hearing and the record i.e. the Roznama indicates that the objections were heard and thereafter the matter was posted for site inspection. There is a letter dated 18.11.2010 addressed by the petitioner herself to the Special LAO, in which she admits that her son Advocate Emidio Pinho and her advocate Mr. Tarzan D'Costa remained present for the hearing on 10.11.2010. This letter also records that the objections were heard and the matter was posted for site inspection on 15.11.2010. There was a complaint in the said letter that the Special LAO did not reach the site for site inspection. This letter was not produced by the petitioner along with the petition and the averments made in the petition are that there was no hearing before the Special LAO.

11. On 12.04.2012, the Special LAO submitted his 5-A report to the appropriate Government. Based thereon, notification under Section 6 was published on 17.10.2012. There is no dispute that this notification was published in the

Official Gazette as well as in the newspaper having circulation in the locality. There was indeed some error in the survey numbers stated in the newspaper publication. However, even this error was corrected by issuing a Corrigendum though, the petitioner has not referred to the Corrigendum at all in her petition.

12. Notices were issued to the petitioner under Sections 9 and 10 of the said Act on 12.02.2013. There is no case made out that such notices were never received by the petitioner though, vague allegations are made about the petitioner not knowing anything about the progress of acquisition proceedings. On 27.05.2013, the petitioner applied for a copy of the Section 5-A report, and the same was supplied to the petitioner.

13. On 27.09.2013 an award was made by the Special LAO. There is a certificate of possession by the Special LAO dated 09.06.2014. In the petition as originally filed the petitioner did not refer even to the award dated 27.09.2013 but the same was later on challenged by amending the petition. Again, the petition was filed alleging that the possession is still with the petitioner and even interim relief was sought on the said basis.

14. The interim order made on 06.08.2014 however made it clear that till the returnable date of 19.08.2014 the possession of the land in question shall not be taken, *if already not taken*. The petition was instituted only on 16.06.2014.

15. The only explanation for the delay is to be found in paragraph 24 of the petition which reads as follows:

“(24) The Petitioner is of advanced aged, and has been ailing for a long time, besides suffering from various ailments, like cardiac disease and diabetes, and more recently was suffering from stones in the gall bladder and intestinal obstruction for which she has finally recently undergone surgery. The Petitioner, being an independent woman, was pursuing the matter on her own, for some time, being desirous of not being a burden on her children. However, on account of the constraints of age and illness, she found herself unable to take matters forward, realizing that she would not found herself in a position to attend to matters herself. When her son, who is ordinarily resident in Mumbai, came down to Goa, to visit her, on account of her surgery, she discussed the matter with him, and requested him to look into the matter for her. Accordingly a power of attorney has been executed authorizing him to agitate her cause, and to file the present writ petition to that end. The Petitioner, who has a good case on merits, in respect of the relief sought herein, is therefore not barred by delay and/or laches, and is entitled to have this petition heard and decided on merits.”

16. The explanation as aforesaid hardly inspires confidence because the records clearly indicate that the petitioner's son is an advocate and the petitioner had also engaged another advocate to represent her interest. This is evident from the petitioner's letter dated 18.11.2010 addressed by her to the Special LAO. This letter was not produced by the petitioner along with the petition. The same reads as follows:-

“ *Dated:18" November 2010.*

To

The Special Land Acquisition officer

SIP, WRD, Gogol

Margao – Goa.

Madam,

By notice No. SLAO/SIP/533/2010 - 211/211 dated 25th October 2010 you had directed me to remain present in your office on the 10/11/2010 at 11.00 am for the hearing of the objection under section 5 (A) of the Land acquisition Act 1894.

Accordingly my son Adv. Emidio Pinho and my Advocate Tarzan D'Costa remained present for the hearing on the 10/11/2010.

The objections were heard by you and you had fixed the matter for site inspection on the 15th November 2010 at 12.00 pm. Accordingly my son and Adv. Tarzan D'Costa

went to the site at about 11.45 am and waited for you till 12.45 pm.

I therefore request you to inform me, when you will come and hold the site inspections so that we could be present and show you the alternative route proposed by us.

Thanking you

Yours sincerely

Maria Silvia Pinho”

17. After the aforesaid letter was produced, the matter was adjourned because Mr. Menezes, learned counsel for the petitioner stated that he would require instructions from the petitioner as to whether such letter was addressed by the petitioner to the Special LAO. On the adjourned date Mr. Menezes, on instructions, did not dispute that such letter was indeed addressed by the petitioner to the Special LAO but submitted that the petitioner is an old lady and since, some papers may have been with her son, the same was not referred to or annexed to the petition. Even if this explanation is to be accepted, it is clear that the petitioner was not acting by herself but was assisted by her son who is an advocate, and another

advocate Mr. Tarzan D'Costa. The explanation in paragraph 24 can therefore not be accepted.

18. In any case, even the explanation, is not sufficient to explain the delay and laches involved in the institution of this petition. The petitioner's main grievance was the alleged absence of hearing at the stage of compliance with the provisions of Section 5-A of the said Act. Therefore, soon after 18.11.2010, it was the duty of the petitioner to make inquiries or take some steps if she genuinely believed that any further hearing was required in the Section 5-A proceedings. Section 5-A report, in this case, was submitted on 12.04.2012 and the petitioner applied for a copy of the Section 5-A report only on 27.05.2013. This was immediately furnished to the petitioner but the petition was instituted only on 16.06.2014 and that too after the award was made on 27.09.2013 and the possession of the acquired property was taken on 09.06.2014. There is no explanation whatsoever for the period between 27.05.2013 and 16.06.2014, during which period not only the award was made but even the possession of the acquired land was taken. There is also no explanation why the petition was not filed no sooner than the notices under Sections 9 and 10 of the said Act dated 12.02.2013 was served upon the petitioner. It does appear that the petitioner has not disclosed the documents which might prove to be inconvenient

along with her petition. Such non-disclosure may not be deliberate as urged by Mr. Menezes but the documents now produced make it clear that this petition is hit by delay and laches and for which there is no proper explanation forthcoming.

19. In *Andhra Pradesh Industrial Infrastructure Corporation Limited (supra)*, declaration under Section 6 of the said Act was challenged two years after its issuance and after possession of the land has been taken. The Hon'ble Supreme court after referring to several earlier decisions held that if the landowners are aggrieved by acquisition proceedings, they must challenge it at least before an award is made and possession of land is taken by government authorities. The Hon'ble Supreme held that landowners should have challenged proceeding immediately after the declaration under Section 6(1) was made and the delay of two years was gross and the petition should be dismissed on the grounds of delay and laches itself.

20. In the facts of the present case also the Section 6 notification was issued way back on 17.10.2012 and the petition was instituted only on 16.06.2014. In the meanwhile, the award has been made by the Special LAO and even possession of the acquired land has been taken. Therefore, this petition is liable to be dismissed on the grounds of delay and laches.

21. On the second aspect of hearing under Section 5-A, reference is necessary to the communication dated 18.11.2010 addressed by the petitioner herself to the Special LAO. This is the communication that the petitioner, did not refer to in her petition or enclose along with her petition. There is no dispute that this communication is signed by the petitioner and was addressed by her to the Special LAO. This communication records that the petitioner's son Advocate Emidio Pinho and the petitioner's Advocate Mr. Tarzan D'Costa remained present for the hearing on 10.11.2010. This communication further records that “*objections were heard by you and you had fixed the matter for site inspection on 15.11.2010 at 12.00 p.m.*” From this, it is quite clear that a proper hearing was granted to the petitioner and the same was availed of by the petitioner through her advocate son as well as her advocate.

22. The contents of the aforesaid letter dated 18.11.2010 are corroborated by the Roznama produced by the learned Additional Government Advocate which also records that the objections of the petitioner were heard on 10.11.2010. The petitioner relied upon the inward-outward register and submissions were made that this is itself the Roznama of the proceedings before the Special LAO. Based on the entries in this register, it was suggested that there was no hearing opportunity

granted to the petitioner. Again, this is not at all proper and it was the duty of the petitioner to have annexed the correct Roznama along with the petition.

23. Therefore, even if every possible allowance is granted to the petitioner having regard to her age, no case is made out to hold that no effective opportunity of hearing was granted to the petitioner in the proceedings under Section 5-A of the said Act. Mr. Shirodkar submits that the age of the petitioner, to a great extent, is irrelevant because the matter was pursued by her advocate son as well as the advocate engaged by her.

24. Be that as it may, there is no case made out to conclude that there has been a breach of Section 5-A of the said Act or that no full and effective hearing was granted to the petitioner in the inquiry under Section 5-A of the said Act. The report considers the objections raised and this cannot be said to be a case of non-application of mind. Therefore, the decisions relied upon by the petitioner, which turn on the incomparable factual aspects, cannot assist the case of the petitioner. In *Hindustan Petroleum (supra) Corpn. Ltd. (supra)* the Hon'ble Supreme Court has explained the importance of hearing under Section 5-A of the said Act. In this case, since such hearing was

granted to the petitioner, this decision will not be of much assistance to the case of the petitioner.

25. *Ramjas Foundation (supra)* is an authority for the proposition that the person invoking an equitable extraordinary jurisdiction under Article 226 of the Constitution of India should come with clean hands and should not conceal the material facts. This decision was rendered precisely in the context of a claim by the petitioner that no proper opportunity of hearing was granted in the inquiry under Section 5-A of the said Act. Even in this case, the issue of delay and laches in filing the petition to question the acquisition proceedings was involved. As noted earlier, even if we hold that there was no wilful suppression on the part of the petitioner, no case is made out to warrant interference.

26. For all the aforesaid reasons this petition is liable to be dismissed and is hereby dismissed.

27. It is clarified that since the Stay was granted after possession has been taken and further since the Stay Order dated 06.08.2014 had itself made it clear that the possession of land in question was not to be taken, if already not taken, there is no further necessity to vacate the Stay. In any case, as a matter of

abundant caution, we clarify that the said order will not survive the dismissal of this petition.

28. There shall be no order as to costs.

29. The Miscellaneous Civil Application No.115/2020 does not survive and is accordingly disposed of.

M. S. JAWALKAR, J.

M. S. SONAK, J.