

IN THE HIGH COURT OF BOMBAY AT GOA

F.A. No. 55 of 2019

Mrs. Shubhada L. Kundaikar,
 wife of Shri Laxmikant S. Kundaikar,
 major aged 53 years, Indian National,
 Resident of House No. 82/4,
 Bainguinim, Old Goa.

..... Appellant

V e r s u s

1. Goa State Infrastructure Development
 Corporation Limited,
 A Company incorporated under the Indian
 Companies Act, 1956, having their office
 at 7th floor, EDC House Dr. A. B. Road,
 Panaji, Goa, through their
 Managing Director.

2. Special Land Acquisition Officer,
 Office of the S.L.A.O, G.S.I.D.C Ltd.,
 7th floor, EDC House, Panjai, Goa.

3. State of Goa,
 Through Chief Secretary,
 Porvorim, Goa.

..... Respondents

Mr. A. R. Kantak, with Mr. R. Kantak, Advocates for the Appellant.
 Mr. M. Salkar, Advocate for the Respondents no.1.
 Ms. P. Kamat, Additional Government Advocate for Respondent no.3

CORAM: DAMA SESHADRI NAIDU, J.
Date: 9th March, 2021.

Oral Order:

The petitioner filed Civil Suit No.36/2018 before the District Court, North Goa, Panaji. He sought the relief of declaration and injunction. In that suit, the respondents no.1 and 2, that is Goa State Infrastructure Development Corporation Ltd., and Special Land Acquisition Officer attached to the first respondent-corporation, applied under Order 7 Rule 11

of C.P.C to have the plaint rejected. The third respondent, that is State of Goa, has not joined the fray. Eventually, through an order dated 4/2/2019, the trial Court allowed the respondents' application and rejected the plaint. Aggrieved, the petitioner has filed this First Appeal.

2. Shri Kantak, the learned counsel for the appellant, has submitted that though the appellant has confined her relief for her property, acquired by the respondents; the trial Court has erroneously concluded that the suit challenge affects the entire acquisition. In other words, the trial Court has erroneously concluded that the appellant wanted to nullify the whole acquisition instead of confining her grievance to her property.

3. As a second limb of his arguments, Shri Kantak has pointed out that section 52 of the Land Acquisition Act requires the appellant to put the respondents on an advance notice of 30 days. But the appellant invoked section 80 sub-section (2) of CPC and sought the exemption from the rigour of prior notice to the State or its instrumentalities. According to him, section 80 requires a notice of 60 days, whereas section 52 of the Land Acquisition Act requires only 30 days prior notice. At any rate, the trial Court allowed the appellant's application under section 80 CPC; thus, a longer period already stands exempted. Therefore, it is idle for the respondents to insist that there is an infraction of section 52 of the Land Acquisition Act. He has, with Therefore, he has urged this Court to allow this First Appeal and direct the trial Court to restore the suit to file.

4. On the other hand, Shri Salkar, the learned counsel appearing for the respondent nos.1 and 2, joined by Ms. P. Kamat, the learned Additional Government Advocate, has submitted that clever drafting cannot confer jurisdiction on a court, nor can it sustain a suit which is otherwise barred. Then, he has contended that section 52 of the Act stands on its own, and it is a complete Code on the Government exercising its power of eminent domain: the land acquisition. Compliance with section 80 CPC, if ever, only amounts to compliance under a different statutory background; and it does

not cure the defect under section 52 of the Land Acquisition Act. Therefore, Shri Salkar contends that the trial Court's finding on that count is unexceptional.

5. In the end, he has submitted that time and again this Court and the Supreme Court have held that any issue arising out of the Land Acquisition Act, 1894, cannot be made subject to adjudication by a civil Court, especially under section 9 of the C.P.C.

6. To support his contentions, he has relied on (i) *Quiteria Fernandes v. State of Goa*¹; (ii) *The Commissioner, Bangalore Development Authority v. Brijesh Reddy*²; (iii) *State of Punjab v. Amarjit Singh*³; (iv) *State of Bihar v. Dhirendra Kumar*⁴.

7. In reply, Shri Kantak, the learned counsel for the appellant, has submitted that section 9 contains no specific limitation on an aggrieved person maintaining a civil suit against an acquisition that has happened behind his back. Such acquisition, according to him, breaches the principles of natural justice, as well. So, he has urged this Court to allow this First Appeal.

8. Heard Shri Kantak, the learned counsel for the appellant; Shri M. Salkar, the learned counsel for the respondent nos.1 and 2; and Ms. Kamat, the learned Additional Government Advocate for the respondent no.3.

9. Indeed, the first limb of the argument is whether a suit relief can be more expansive than what is statutorily permitted. In this context, I may note that the suitor may ask for the moon; but the Court may modulate the relief based on the pleadings the plaintiff has advanced and based on what could be legally granted.

10. In order words, the relief cannot be divorced from the rest of the pleadings. If the relief goes beyond the pleadings, the relief can be

¹2016 (5) ALLMR 315

²(2013) 3 SCC 66

³(2011) 14 SCC 713

⁴AIR 1995 SC 1955

modulated; we need not throw the suit out. An isolated reading of the relief and a conclusion on such a reading is inadvisable.

11. Now, I will come to the second limb: does the plaintiff's failure to comply with section 52 of the Land Acquisition Act stand cured because he has secured exemption under section 80 of CPC. Though this issue has not been directly addressed by this Court, I reckon there are precedents to the effect that an analogous provision under other enactments has been interpreted to mean that section 80 of CPC does not apply once a particular specific enactment, treated as a Code in itself, contains a specific constraint. We cannot bypass that hurdle by taking recourse to a collateral statutory provision. But we need not pronounce anything on that count because the suit, I reckon, cannot be maintained for other reasons.

12. In *Dhirendra Kumar*, the Government issued notice under section 4, later declaration under section 6 of the LA Act, and eventually acquired the land for public purpose, by passing an award of compensation, too. The respondent, then, filed a title suit before Subordinate Judge's Court at Patna. In that suit, he also filed an interlocutory application under Order 39, Rule 1 of CPC for interim injunction. Injunction was granted. On appeal, the High Court modified the order and required the parties to maintain *status quo*. So, the Government appealed to the Supreme Court.

13. So the question in *Dhirendra Kumar* was whether a civil suit is maintainable and whether ad interim injunction could be issued when a piece of land was acquired under the Land Acquisition Act and possession was delivered to the beneficiary. In answer, the Supreme Court has held that "the Act is a complete code in itself and is meant to serve public purpose". According to *Dhirendra Kumar*, by necessary implication the power of the civil court to take cognizance of the case under section 9 of CPC stands excluded. That is, a civil court has no jurisdiction to go into the question of the validity or legality of the land acquisition proceedings. The remedy could be recourse to proceeding under Article 226 of the Constitution.

14. To the same effect are the Apex Court's other judgments in *Brijesh Reddy, Amarjit Singh, and Laxmi Chand v. Gram Panchayat*⁵.

15. And this Court in *Quiteria Fernandes* has relied on the Supreme Court's *Dhirender Kumar* and *Laxmi Chand*. According to it, to find the nature of challenge, we must read the plaint as whole along with the prayer clause. On such a reading, *Quiteria Fernandes* has found that the challenge is essentially to the land acquisition proceedings. "Having regard to the law as laid down by the Hon'ble Supreme Court, the Civil Court lacked jurisdiction and the suit was not maintainable".

Under these circumstances, I am disinclined to interfere with the trial Court's judgment but leave it open for the appellant to explore other remedial avenues statutorily available to her.

DAMA SESHADRI NAIDU, J.

AP/-