

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.680 OF 2014**

- 1 Mrs. Maria Platilda Afonzo e Dias,
Widow of late Venancio A.Y.T. Dias alias
Ivo Dias,
Aged 65 yers,
Resident of House No.13, Tondwado,
Betalbatim, Salcete – Goa.
 - 2 Mr. Alves Antonio Rodrigues
son of late Placintino Rodrigues
Aged 81 years, Resident of House No.
353, Tondwado, Betalbatim, Salcete Goa.
 - 3 Mr. Abel M.P. Gustavo Noronha
son of late Cubertino Noronha,
Aged 63 years,
Resident of House No.82,
Ranwado, Betalbatim, Salcete – Goa. Petitioners
- Versus
- 1 State of Goa
Through the Secretary (Revenue)
With his office at Secretariat Complex,
Porvorim, Bardez- Goa.
 - 2 The Deputy Collector and Land
Acquisition Officer, Government of Goa,
South Goa District, Margao – Goa.
 - 3 The Executive Engineer,
Works Division VI (R-S), Public Works
Department, Fatorda, Margao – Goa. Respondents

Mr. S.D. Lotlikar, Senior Advocate with Mr. T. Sequeira, Advocate for the petitioners.

Mr. Sagar Dhargalkar, Addl. Government Advocate for Respondent-State.

**Coram:- M. S. SONAK &
SMT. M. S. JAWALKAR, JJ.
Reserved on :- 17th March, 2021
Pronounced on :- 23rd March, 2021**

JUDGMENT (Per Smt. M. S. Jawalkar, J)

Heard Mr. S.D. Lotlikar, learned Senior Advocate with Mr. T. Sequeira, learned Advocate for the petitioners and Mr. Sagar Dhargalkar, learned Additional Government Advocate for Respondent-State.

2. The challenge in this petition is to the Notification dated 21st March, 2013 issued under Section 4 and the Notification dated 21st April, 2014 issued under Section 6 of the Land Acquisition Act, 1894 (the said Act) proposing to acquire 345 m² of the Petitioner No.1 property bearing survey Nos.121/2 of Village Betalbatim, Salcete, Goa, 65m² and 55m² of the plots of the petitioner No.2 bearing survey No. 121/4 and 121/6 respectively and 75 m² and 15m² of Survey No. 121/5 and Survey No. 121/7 respectively of the plots belonging to the petitioner No.3 for the purported public purpose of construction of road at Thonwado, Bhimwado, Gonsua in Betalbatim village (Addl. Area) of Salcete Taluka.

3. Upon coming to know of the Notification under Section 4 the petitioners filed their objections to the proposed acquisition under Section 5A of the Land Acquisition Act (hereinafter referred as 'the said Act'). By the said objection following contentions were raised that the proposed acquisition was not in the public interest but was intended to serve private interest of one Mrs. Ramila Cecilia Gerson Rebelo e Barros, wife of Mr. Agnelo Regis Barros, who was an Assistant Engineer attached Public Works Department, Fatorda, Margao.

4. That there was not a single house standing alongside the proposed road. That the proposed road would pass along the cultivable low line paddy field and in the process it would create an ecological disaster in the area as the said road was proposed in ecosensitive area, as proposed in the regional plan of village Betal Batim, Salcete Taluka

5. It was pointed out by learned Senior Advocate for the petitioner Shri Lotlikar that while recommending the land of the petitioners for construction of the road as proposed the Land Acquisition Officer had stated that the same was required in order to complete filling of a gap between the existing road and the land already acquired and in the possession of the acquiring department and would also benefit the public who residing in the locality. While strongly recommending dropping of the proposed acquisition of the property bearing survey no. 157/10([part) 157/11(part) of village Betalbatim the LAO referred to a

“Note” received from Francisco Xavier Pacheco, the MLA of the Goa Legislative Assembly dated 05/07/2013 stating that the stretch of the road passing through the said plot did not serve the public purpose, and in fact was contrary to the circular bearing No. 22/17/2001-RD(LA) dated 07/04/2003 issued by the Revenue Department. As such LAO recommended to drop acquisition in respect of several survey numbers mentioned in the Notification under Section 4 on the ground that it did not serve any public purpose and he recommended to acquire the land of the petitioners for construction of the proposed road.

6. It is submitted that both the Notifications will cause great prejudice to the petitioners if the same are allowed to stand. It is submitted that Notification under Section 4 published in the official gazette on 28/03/2013 and notice was issued on 16/04/2013. In view of the matter the Notification under Section 6 published in the official gazette on 24/04/2014 is beyond the period of one year. However, this submission was not pressed. It is seen that public notice was issued on 16/04/2013 and the same was published on the Notice Boards of the Mamlatdar of Salcete and Village Panchayat of Betalbatim and the site in question on 03/05/2013 and Notification under Section 6 issued on 21/04/2014, which appears to be within one year from last publication.

7. It is further the contention of the learned Senior Counsel for the petitioner that the said Notification issued under Sections 4 and 6

are vitiated as they constitute colourable exercise of power of acquisition by the Government. The proposed road does not serve any public purpose but acquisition is for a private purpose to provide an access road to the property of Mrs. Ramila Cecilia Gerson Rebelo e Barros, wife of Mr. Agnelo Regis Barros, Assistant Engineer in PWD.

8. The proposed acquisition is clearly in breach of circular bearing 22/17/2001-RD(LA) dated 07/04/2013 issued by the Revenue Department of Government of Goa. As per this circular for three metre wide road atleast 10 households needs to be benefited. For a four metre wide road there atleast 20 households will be beneficiaries. In case it is beyond four metres it has to be approved by Town and Country Planning Department. In the present matter six metre wide road is proposed for a single house. Moreover, the proposed road will pass through the low line paddy field and would lead an end up with the paddy field. In the background of earlier dropping of the acquisition no public purpose going to be served since the proposed acquisition of the petitioners property was supposed to be in continuation of the other stretches of road which are now been dropped there is no justification whatsoever for acquisition of the petitioners property for construction of the road. The proposed acquisition would be entailed submerging the low line agricultural land therefore will result in ecological imbalance.

9. The learned Counsel for the State Shri Sagar Dhargalkar

vehemently argued that the said acquisition is in the interest of public at large. While deciding objections under Section 5A LAO has considered all the objections in its proper prospective and none of the objection were remained to be considered. After considering the objections only many of the acquisitions were dropped.

10. Considered rival contentions of the parties. The record indicates that the Government Circular dated 07/04/2003 is precisely to deal with such acquisitions for roads.

11. The Circular begins by stating that in the past the Government has issued several instructions to streamline the procedure of land acquisition and to ensure better and effective administration of land acquisition matters. In supercession of all earlier instructions now a fresh set of consolidated instructions with additional points are issued.

12. The Circular, at the very outset provides that all proposal sent by the Acquiring Department should be genuine and bonafide serving public purpose and clear statement as to the benefit has to be indicated in the proposal itself. In so far as the issue of road access is concerned, clause 1(iv) of the Circular provides for fulfillment of certain conditions.

13. Clause 1(iv) of the Circular dated 07/04/2003 reads as

follows :-

“(iv) In case of road access following conditions are to be fulfilled:-

a) At least 10 households be benefited in respect of 3 metres wide road and length of less than 200 metres.

b) At least 20 households should be the beneficiaries for 4 metres wide road and length of less than 200 metres

c) Any road beyond 4 metres width or of length more than 200 metres should not be recommended unless approved by Town and Country Planning Department.”

14. The Circular dated 07/04/2003 concludes by stating that the instructions therein will be applicable with prospective effect and have to be strictly complied with. Any breach would be viewed seriously and the officers/officials held responsible will have to face disciplinary action. The Circular itself states that the same has been issued with the approval of the Hon'ble Chief Minister.

15. It is also true that the Circular of this nature cannot be regarded as absolutely mandatory, in the sense of admitting no deviation therefrom under any circumstances whatsoever. The State Government has itself set out in the very Circular that the instructions therein will have to be strictly complied with. The State Government itself has set out in the Circular that any breach would be viewed seriously and the officers/officials held responsible will have to face disciplinary action. The Circular, reflects the policy of the State Government when it comes to initiation of acquisition proceedings on behalf of the Acquiring

Departments. Therefore, it is not as if the Government own Circular dated 07/04/2003 is to be completely ignored or breached.

16. As such even if there is any deviation to the instructions given in the circular it must be for good and sufficient reason. It has to be examined whether the acquisition is indeed for bonafide purpose or involves genuine public purpose.

17. In the present matter 6 metre wide road is proposed. It also appeared that while dealing with objections nowhere it has come that how many houses are existing there and how many persons are going to be benefited specifically, on the backdrop of serious allegations made in the representation that the said acquisition is only for the benefit of Mrs. Ramila Cecilia Gerson Rebelo e Barros, wife of Mr. Agnelo Regis Barros, Assistant Engineer in PWD. On perusal of report under Section 5A of the Land Acquisition Officer it appears that there were nine objections received out of that five objections were sustained and in many of the Survey numbers land acquisition proceedings were dropped. The only representation supporting this acquisition is of Domingos Da Costa Pires. His request to acquire Survey No. 157/10 and 157/11 was turned down on the ground that no public purpose would be serve in view of the instructions issued by circular no.22/17/2001-RD(LA) dated 07/04/2003, accordingly that acquisition was dropped.

18. The learned Counsel for the petitioner also drawn our attention to the map which is marked as 'X' and part of it is on page 46 of the petition. It can be seen from the said map that the small portion is in the possession of the Government and green portion is a stretch under dispute. The yellow stretch in respect of which the land acquisition is dropped. Thus at any rate it cannot be said that to fill the gap the said acquisition is necessary. It appears that what is in possession of the Government is a small pieces of land admeasuring 148 sq.metres. The said land apparently in possession of the Government pursuant to Notification under Section 6 which has been declared as null and void by this Court vide Judgment and Order dated 18/08/2010 in Writ Petition No.75 of 2010. The said land has continued to remain in possession of the Government as Comunidade whose land admesaruig 135 sq. metres was acquired under the said Notification did not challenged the notification. The owners of the property bearing survey no.113/6 Mr. Agnelo Regis Barros and his wife (alleged beneficiaries) were naturally not interested in challenging these notifications as the said acquisition was for their benefit. As such this piece of land remained with the Government.

19. The special Land Acquisition Officer in his Section 5A report no where disclose that how many households will be benefited by the proposed road. He has dropped many of the acquisitions on the ground that it will not serve the public purpose in view of the circular

dated 07/04/2003 so also in view of the “Note” received from the MLA Shri Francisco Xavier Pacheco in respect of certain plots that they would not serve the public purpose. Accordingly he dropped the said proceedings. Whereas in spite of serious allegations about benefit to only one person by name Mrs. Ramila Cecilia Gerson Rebelo e Barros, the land acquisition officer did not bother to mention how many households are being benefited by proposed road of 6 metres. Therefore, there appears to be merit in Mr. Lotlikar, Senior Counsel's contention that this acquisition is only to benefit Mr. Barros, the wife of Assistant Engineer, PWD, which is the acquiring Department. It is nothing but colourable exercise of powers.

20. The circular dated 07/04/2003 makes it clear that when it comes to the proposal for acquisition of road access, the acquiring department should ensure that atleast 20 households should be benefited for 4 metres wide road with length of less than 200 metres. Here the 6 metre wide road is proposed and there is objection that only one household will be benefited. It appears that the said acquisition will not serve public purpose but the private interest at the cost of Government Exchequer. This is not the way in which the Special Land Acquisition Officer have dealt with serious objections raised by the objector based *inter alia* on the Government own circular dated 07/04/2003.

21. In absence of any material or reference in the 5A report how

many households are going to be benefited by the said acquisition, no case is made out by the Government to proceed with the acquisition of such nature. We fail to understand after dropping of so many acquisitions how the acquisition of this stretch of land will serve the public purpose or fill the gap as claimed. The existence of genuine public purpose, being *sine qua non* for valid acquisition, this acquisition must fail and will have to be quashed. The Notification under Section 6 based on such report had also needs to be quashed and set aside.

22. For all these aforesaid reasons we quash and set aside the impugned Notification under Section 4 of the Act dated 21/03/2013 and Notification under Section 6 of the Act dated 21/04/2014 as also report under Section 5A and make the Rule absolute in terms of prayer clause(i) in the facts and circumstances of the case.

23. In the facts and circumstances of the present case, there shall be no order as to costs.

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.

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