

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.246 OF 2014

Shamsunder V. Kamat

aged 53 years, married,

businessman, r/o H.No. 15,

St.Pedro, Tiswadi, Ribandar-Goa.

... Petitioner

Versus

1. State of Goa

Through the Chief Secretary

Secretariat, Porvorim, Goa.

2. Dy. Collector (REV) and

Land Acquisition Officer,

Panaji Goa.

3. Corporation of City of Panaji

Through the Commissioner,

Panaji Goa.

... Respondents

Mr. R.G. Ramani, Senior Advocate with Mr. Pranav Kakodkar,
Advocate for the Petitioner.

Mr. Pravin Faldessai, Additional Govt. Advocate for Respondents
No.1 and 2.

Ms. Kalpa Govekar, Advocate for Respondent No.3.

WITH

WRIT PETITION NO.362 OF 2015

1. M/s Prithvi Consultants (P) Limited

a Company incorporated under the

Companies Act, 1956, (Act) 1 of 1956),

having its Registered office at 407,

Shiv Towers, Fourth Floor, Patto Plaza,
Panaji, Goa, represented herein by its
Duly constituted Attorney Mr. K.P. M. Rajan.

2. M/s Rani Constructions Pvt. Ltd.
(formerly known as Rani Infrastructure
Development Limited a Company incorporated
under the Companies Act, 1956 (Act) 1 of 1956),
having its Registered office at 407,
Shiv Towers, Fourth Floor, Patto Plaza,
Panaji, Goa, represented herein by its
Duly constituted Attorney Mr. K.P.M. Rajan,

3. Rani Housing Development Company Limited
a Company incorporated under the
Companies Act, 1956, (Act) 1 of 1956),
having its Registered office at 407,
Shiv Towers, Fourth Floor, Patto Plaza,
Panaji, Goa, represented herein by its
Duly constituted Attorney Mr. K.P.M. Rajan,

4. Mr. Kizhakethil Punnoose Mathew Rajan,
Son of K.M. Punnoose, aged 64 years,
Occupation Consultant,
residing at 33, Goa Housing Board Colony,
Porvorim, Goa.

... Petitioners.

Versus

1. State of Goa
Through the Chief Secretary
Secretariat, Porvorim, Goa.

2. Dy. Collector (REV) and
Land Acquisition Officer,
Panaji, Goa.

3. Corporation of City of Panaji
Through the Commissioner,
Panaji, Goa.

... Respondents.

Ms. R. Rawool, Advocate for the Petitioners.

Ms. Sapna Mordekar, Addl. Govt. Advocate for Respondents No.1
and 2.

Ms. K. Govekar, Advocate for Respondent No.3.

WITH
WRIT PETITION NO. 624 OF 2015

1. SMT. SHASHIKALA P. KAKODKAR,
80 years of age, r/o
Bandodkar House, Altinho,
Panaji, Goa.

2. SHRI YATIN G. KAKODKAR,
major of age, r/o Bandodkar
House, Altinho, Panaji,
Goa.

3. SHRI SAMIR G. KAKODKAR,
major of age, r/o Bandodkar
House, Altinho, Panaji,
Goa.

4. SHRI ABHAY G. KAKODKAR
major of age, r/o Bandodkar
House, Altinho, Panaji,
Goa.

5. SMT. USHA SHARAD
VENGURLEKAR,
Major of age, wife of Shri
Sharad Vengulekar, and her
husband

6. SHRI SHARAD VITHAL
VENGURLEKAR,
major of age,

both residents of 133A,
Sion West, Mumbai,
Maharashtra,

All Indian Nationals,
represented herein by their
duly constituted Attorney
Shri Eknath P. Prabhu
Gaonkar, 47 years of age,
Indian National, r/o Flat
No. 4, Varsha Building,
Shanti Nagar, Ponda, Goa.

... Petitioners.

Versus

1. STATE OF GOA
through its Chief
Secretary, having office at
Secretariat, Porvorim, Goa.

2. THE DY. COLLECTOR AND LAND
ACQUISITION OFFICER,
Government of Goa, Panaji,
Goa.

... Respondents

1) Greater Panaji Planning and
Development Authority, Thru.
Member Secretary, having office at
1st Floor, Archdiocese Bldg.,
Mala, Link Road, Panaji, Goa.

.... Intervener.

Mr. G. Panandikar, Advocate for the Petitioners.

Ms. S. Kamat, Additional Govt Advocate for Respondents No.1 and
2.

WITH
WRIT PETITION NO. 468 OF 2014

1. JOSE FILIP P. BRAGANZA

Major of age,
r/o. House No. 130,
Angod, Mapusa,
Bardez, Goa.

2. MELBA LIMA BRITTO

Major of age,
r/o of House No. 1376,
Confraria Waddo,
Near Candolim Church,
Candolim Bardez, Goa.

... Petitioners

Versus

1. THE STATE OF GOA

through the Chief Secretary,
Secretariat, Porvorim, Goa.

2. The LAND ACQUISITION OFFICER,

The Deputy Collector(Rev),
Collectorate of North Goa District,
Panaji-Goa.

... Respondents

Ms. Vinita Palyekar, Advocate for the Petitioners.

Mr. Manish Salkar, Government Advocate for the Respondents.

WITH
WRIT PETITION NO. 264 OF 2014

Shamsunder V. Kamat
aged 53 years, married,
businessman, r/o H.No. 15,
St.Pedro, Tiswadi, Ribandar-Goa. ... Petitioner

Versus

1. State of Goa
Through the Chief Secretary
Secretariat, Porvorim, Goa.

2. Land Acquisition Officer
PWD(Cell) Altinho,
Panaji Goa. ... Respondents

Mr. R.G. Ramani, Senior Advocate with Mr. Pranav Kakodkar,
Advocate for the Petitioner.

Ms. Susan Linhares, Additional Govt. Advocate for the Respondents.

WITH
WRIT PETITION NO. 106 OF 2015

MR. SAVIO NUNES,
major of age, Indian National,
r/o H. No. 500/20/1, Philomena
Housing Colony, Alto St. Cruz,
Tiswadi, Goa. ... Petitioner

Versus

1. STATE OF GOA
through its Chief
Secretary, having office
at Secretariat, Porvorim,
Goa.

2. The DY. COLLECTOR AND
LAND ACQUISITION OFFICER,
Government of Goa,
Panaji, Goa.

Mr. G. Panandikar, Advocate for the Petitioner.

Mr. Manish Salkar, Government Advocate for the Respondents.

WITH
WRIT PETITION NO. 819 OF 2015

1. JOSE FILIP P. BRAGANZA
Major of age,
r/o. House No. 130,
Angod, Mapusa,
Bardez, Goa.

2. MELBA LIMA BRITTO,
Major of age,
r/o of House No. 1376,
Confraria Waddo,
Near Candolim Church,
Candolim Bardez, Goa.

... Petitioners.

Versus

1. THE STATE OF GOA,

Through the Chief Secretary,
Secretariat, Porvorim, Goa.

2. The LAND ACQUISITION OFFICER,
The Deputy Collector (Rev),
Collectorate of North Goa District,
Panaji-Goa. ... Respondents

Ms. Vinita Palyekar, Advocate for the Petitioners.

Mr. Manish D. Salkar, Government Advocate for the Respondents.

***Coram : M.S. Sonak &
Smt. Bharati H. Dangre, JJ.***

Date : 9th March, 2021.

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

Heard the learned Counsel for the parties.

2. There is no serious dispute that the issues raised in this batch of Petitions are entirely covered by the decision of the Constitution Bench of the Hon'ble Supreme Court in ***Indore Development Authority vs. Manoharlal and others***¹.

3. In these matters, there was never any dispute that the possession of the acquired land had been taken by the appropriate Government. However, there was some dispute about payment of compensation. The record indicates that even the compensation was

¹ (2020) 8 SCC 129

deposited with the Economic Development Corporation Ltd., which was the specified agency.

4. In any case, a reference is necessary to the conclusions of the Constitution Bench in *Indore Development Authority* (supra), which read as follows :

“ 365. Resultantly, the decision rendered in *Pune Municipal Corpn v. Harakchand Misirimal Solankk*, (2014) 3 SCC 183 is hereby overruled and all other decisions in which *Pune Municipal Corpn.*(supra) has been followed, are also overruled. The decision in *Sree Balaji Nagar Residential Assn. Vs. State of T.N.* (2015) 2 SCC 353, cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In *Indore Development Authority v. Shailendra* (2018) 3 SCC 412, the aspect with respect to the proviso to Section 24(2) and whether “or” has to be read as “nor” or as “and” was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

366. In view of the aforesaid discussion, we answer the questions as under:

366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1-1-2014, the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings

shall continue as provided under Section 24(1)(b) of the 2013 Act under the 1894 Act as if it has not been repealed.

366.3. The word “or” used in Section 24(2) between possession and compensation has to be read as “nor” or as “and”. The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

366.4. The expression “paid” in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the “landowners” as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the

compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.

366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(b).

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1-1-2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24

applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 1-1-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.

367. Let the matters be placed before appropriate Bench for consideration on merits.”

5. In the factual situation which obtained in each of these Petitions, challenges raised are entirely answered against the Petitioners by the Constitution Bench. Therefore, these Petitions will have to be dismissed.

6. Accordingly, we dismiss these Petitions. Interim relief, if any, stands vacated. We, however, leave the parties to bear their own costs.

7. First Appeal No.100 of 2015, was also tagged along with the batch of matters. However, the same will now have to be heard separately. Accordingly, First Appeal No.100 of 2015 is detagged from the batch of these Petitions.

Smt. Bharati H. Dangre, J.

M.S. Sonak, J.