

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.846 OF 2009

Mariquinha D'Costa (Since Deceased)
Represented by L.Rs.

a) Mr. Bernard Mendes
S/o Joaquim Rosario Mendes,
Age 63 years,
And his wife

b) Mrs. Caetana Mendes
W/o Mr. Bernard Mendes
Age 55 years,
Both r/o H. No. 27, Vellore,
Deussua, Chinchinim, Goa.

... Petitioners.

Versus

1. State of Goa
by the Secretary (Revenue),
Government of Goa,
Secretariat, Porvorim,
Bardez, Goa.

2. The Deputy Collector and
Land Acquisition Officer,
Collectorate of South Goa,
Margao, Goa.

... Respondents.

Mr. Anacleto Viegas with Mr. Sahil Sardessai, Advocates for the
Petitioner.

Mr. Manish Salkar, Government Advocate for the Respondents.

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

Date: 10th March 2021

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

Heard Mr. Anacleto Viegas learned Counsel for the petitioner and Mr. Manish Salkar learned Government Advocate for the respondents.

2. The challenge in this petition is to the notifications under Section 4 and 6 of the Land Acquisition Act, 1894 (said Act) issued on 01.09.2008 and 23.09.2009 proposing to acquire petitioner's property bearing survey number 115/23p, Deussa, Chinchinim Goa (said property) for construction of a road.

3. By section 4 notification issued on 01.09.2008, the appropriate government declared its intention to acquire land to the extent of 50sqmts out of the property bearing Survey No.115/23P.

4. The petitioner, on 10.10.2008 filed objections under Section 5A of the said Act. Several objections were raised and the same are transcribed below for the convenience of reference:

(a) That the proposal is neither genuine nor bonafide, as it will not serve public purpose, because there is only one residential house to which, there is already road available and used by the said persons.

(b) That the area proposed to be acquired is not minimum and in accurate.

(c) That the proposed road is not benefiting the undersigned and on the contrary it reduces the set back area of the residential dwelling house and touches the outer wall of the house and passes beneath the RCC slab of the roof.

(d) That the boundary wall is required to be demolished incase the proposed road is finalized.

(e) The road could be aligned through property surveyed under Survey No. 107/1 and 107/2 of Deussua Village if at all the same is required.

(f) That instead of acquiring and causing damage to the property surveyed under survey No.115/23 of Deussua Village, of the undersigned, the land could be easily acquired without causing any damage to any one from the approach road connecting to the property surveyed under Survey No. 1077/1 and 107/2 of Deussua Village.

(g) That the property of the undersigned is a small plot of land and incase the proposed road is constructed the said plot will be rendered unfit for further development and that it will lead to accidents, as the free movement of our children outside our house will be restricted, as there will be no place to move and play for our children.

(h) That the proposed acquisition is not falling within the streamline procedure, as laid down in Circular dated 07/04/2003 of Revenue Department bearing No.22/17/2001-RD(LA).

(i) The entire proposed acquisition is beng sought through property surveyed under Survey No.115/23 and adjoining holdings within the setback area of the house of the undersigned and others touching outer

walls of the house with malafide intentions, ulterior motives and on account of political differences.

(j) Grave and irreparable loss and injury will be caused to the undersigned incase, the land from the plot of the undersigned surveyed under survey no.115/23 is acqured, which cannot be compensated in terms of money, as the plot of the undersigned will be reduced in size, thus rendering the same unfit for development.

5. The petitioner also sought a personal hearing before the Land Acquisition Officer at the time of consideration of his objections under Section 5A of the said Act.

6. The petitioner, along with the objections under Section 5A had also annexed a certificate dated 14.11.2008 issued by the E. B. S Kossambe, Consultant Engineer & Government Approved Valuer explaining the impact which the acquisition will have on the said property proposed to be acquired as well as the remaining property of the petitioner.

7. The Land Acquisition Officer made a Section 5A report on 31.08.2009. If the report is perused, though, there is no reference to the objections raised by the petitioner so much so that the Land Acquisition Officer does not even refer to the said property, i.e. the property bearing Survey No.115/23p in which interest is

claimed by the petitioner. There is no recommendation for the acquisition of the said property bearing Survey number 115/23p or even any part thereof. This means that either there is no consideration whatsoever to the objections raised by the petitioner or the said property was recommended to be dropped from the acquisition.

8. As noted earlier the petitioner raised detailed objections and even filed a certificate of a Government Approved Valuer. The minimum that was required in these circumstances was some consideration of such objections. However, the Section 5A report indicates that there was no consideration whatsoever of these objections and consequently, there is not even a reference to the property bearing Survey No.115/23p in the report.

9. Despite the aforesaid, in the notification under Section 6 issued on 23.09.2009, there is a declaration that the petitioner's property to the extent of 10sq.mts is to be acquired by the appropriate Government for the road. Again, Mr. Viegas pointed out that there is no plan and there are no dimensions to indicate which precise property is proposed to be acquired. Mr. Viegas submitted that the acquisition is also contrary to the circular dated 07.04.2003 issued by the appropriate Government itself, particularly when it comes to the acquisition of lands for roads to provide access to households in a Village.

10. Section 5A of the said Act is one of the few safeguards available to a person whose land is to be compulsorily acquired. Therefore the objections raised have to be considered and thereafter disposed of. In a case where the records reveal that there is no consideration whatsoever of the objections raised, it cannot be said that the mandate of Section 5A has been duly complied with. The report under section 5A may not bind the Appropriate Government, but that does not exempt the Land Acquisition Officer from not making such a report or making a report without even considering the objections raised. Even the minimum rights available to a person whose lands are to be compulsorily acquired cannot be defeated in this manner.

11. In this case, on 21.04.2010 this Court, by detailed order had stayed further acquisition proceedings. Our order dated 21.04.2010 reads as follows:

'WRIT PETITIONS NO. 801 & 846/2009

WRIT PETITION NO. 801/2009

CORAM :- S.J. VAZIFDAR &

U.D. SALVI, JJ.

Date :- 21st April, 2010.

P.C. :-

Rule in both the writ petitions.

2. Although the area proposed to be acquired in Writ Petition No.801/2009 is merely 2 sq. metres, it is

important to note that the area proposed to be acquired in Writ Petition No.846/2009 is 10 sq. metres.

3. The reference under Section 5A of the Land Acquisition Act, 1894 proceeds on the basis that only the compound wall in Writ Petition No.801/09 will be demolished. In other words, there is no reference to the structure being affected. We are now told that there is a possibility of the structure being demolished, in part. Thus, the basis of the report, prima facie, at least, would not survive in Writ Petition No. 801/09.

4. Further, in the application under Section 5A of the Act, certain contentions have been taken regarding the effect of the proposed acquisition on the ability of the petitioners to exploit the plot in Writ Petition No.801/09. That aspect has also not been considered in the report under Section 5A.

5. The balance of convenience is in favour of the petitioners.

If the acquisition is implemented at this stage, the petitioners will be irretrievably prejudiced. On the other hand, the purported reasons stated in the report under Section 5A, prima facie, at least do not appear to be correct. In any event, it does not give the entire picture. There is, admittedly, already an access by a road which appears to be of the same width as the proposed road. This road is also tarred.

6. In the circumstances, pending the hearing and final disposal of the Writ Petition, acquisition in both the

writ petitions is stayed, in so far as the land of the petitioners in both the writ petitions, is concerned.

S.J. VAZIFDAR, J.

U.D. SALVI, J. '

12. Now the respondents have not placed on record any material to displace the prima facie observations recorded in the above order staying the acquisition. However, Mr. Salkar points out that in this case the objections of the petitioner were duly considered. He points out that the acquisition was for a public purpose and therefore this Court ought not to interfere with the acquisition. He referred to the decisions in the connected Writ Petition No.801 of 2009 and Writ Petition No.802 of 2009 wherein, according to him, similar challenges were raised but rejected by this Court.

13. According to us, in this case, there has been no consideration whatsoever to the objections raised by the petitioner under Section 5A of the said Act. The objections as noted earlier were quite detailed and also backed by some material. Accordingly, such objections should have at least been considered by the Land Acquisition Officer whilst exercising powers under Section 5A of the

said Act. Besides, as noted earlier, there is no recommendation made for the acquisition of said property or any part thereof.

14. Further, it may not be correct to state that the objections raised by the petitioner in the present petition were similar to the objections raised by the petitioners in Writ Petition No.801 and 802 of 2009. In those cases, the Court concluded that property to the extent of hardly 2sqmts in one case and 10mts in the other case was sought to be acquired and that too after due consideration of the objections of the said petitioner. In this case, also, the extent of acquisition maybe only 10 sq. mts but the acquisition is without considering the objections of the petitioner under Section 5A of the said Act. Besides, no dimensions are also indicated thereby making it impossible for the petitioner to know which portion of his property is sought to be acquired. Therefore, based on the reasoning in the orders dated 14.07.2015 and 30.03.2015 disposing of Writ Petition No.801 of 2009 and 802 of 2009, it will not be proper to dismiss this petition. The facts, in this case, are not the same as the facts in the said two petitions. In those two cases, there was a positive recommendation for acquisition after due consideration of the objections. In the present case, neither were the objections considered nor was any recommendation made for the acquisition of the said property.

15. For all the aforesaid reasons we quash and set aside the impugned notifications dated 01.09.2008 and 23.09.2009 and make

the rule absolute in terms of prayer clause (a) of this petition. The interim order made by us on 21.04.2010 is consequently made absolute. This shall however not preclude the Appropriate Government from initiating fresh acquisition proceedings if found necessary.

16. In the facts of the present case there shall be no order as to costs.

BHARATI H. DANGRE, J

M.S. SONAK, J.

msr.