

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.2513 OF 2021 (Filing No.)

Mario Beraldo Fernandes,
Aged 54 years,
Indian National,
Resident of House No.242-A/1,
Opp. Galaxy Hospital,
Duler, Mapusa.

... Petitioner

Versus

1. The State of Goa,
Government of Goa,
Through the Chief Secretary,
Secretariat,
Alto Porvorim, Bardez Goa.
2. The Under Secretary,
Revenue,
Government of Goa,
Secretariat,
Alto Porvorim, Bardez Goa.
3. The Land Acquisition Officer,
The Office of the Land Acquisition Officer,
PWD (Cell), Altinho, Panaji Goa.
4. The Collector,
L. A. Collectorate,
North Goa District,
Panaji Goa.
5. The Chief Officer,
Mapusa Municipal Council,
Mapusa, Bardez Goa.

6. North Goa Planning and Development
Authority, (NGPDA)
Through its Member Secretary,
Panaji Goa.
7. The Chief Town Planner,
Town and Country Planning Department,
Panaji Goa.
8. The Public Work Department,
Mapusa Goa.
Through Asst. Engineer,
Sub-Div. IV, WDXIII(R)
Mapusa Goa.
9. Landmark Elite Residency,
Co-op. Housing Maintenance Society,
Through its Secretary,
Landmark Elite Residency
Co-op. Housing Maintenance Society,
Mapusa, Bardez Goa. ...Respondents

Mr. Terence Vaz and Ms. S. Poll, Advocates for the petitioner.
Mr. D. Pangam, Advocate General with Ms. Maria Correia,
Additional Government Advocate for respondents Nos. 1, 2, 3, 4, 7,
and 8.

Mr. H. D. Naik, Advocate for respondent No.6.

Mr. A. D. Bhobe, Advocate for respondent No.9.

CORAM: **M. S. SONAK &
R. N. LADDHA,JJ**

DATE : **8th February 2022**

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

1. Heard Mr. T. Vaz, learned counsel for the petitioner. Mr. D. Pangam learned Advocate General appears along with Ms. Maria Correia, learned Additional Government Advocate for respondent Nos.1, 2, 3, 4, 7, and 8, Mr. H. D. Naik, learned counsel for respondent No.6 and Mr. A. D. Bhole, learned counsel for respondent No.9.

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

- (a) Notification issued under Section 4 of the Land Acquisition Act, 1894 (the said Act) dated 30.10.2006 and the corrigendum dated 18.05.2007;
- (b) Report under Section 5-A of the said Act dated 14.03.2008;
- (c) Notification dated 18.06.2008 under Section 6 of the said Act;
- (d) Award dated 30.07.2010;
- (e) Possession certificate dated 21.02.2014;
- (f) Mutation/partition proceedings;
- (g) Demolition order dated 06.09.2021.

3. Though the challenge in this petition is basically to the proceedings under the said Act which commenced from the date of issuance of Section 4 Notification on 30.10.2006 and concluded with the making of the award on 30.07.2010 or in any

case on the date when the possession of the acquired land was taken on 21.02.2014, this petition has been instituted only on 30.11.2021. This means that there is a delay of almost 15 years from the date of issuance of Section 4 notification, there is a delay of 11 years from the date of award and there is a delay of almost 7 years from the date of taking over possession of the acquired land.

4. In the petition, there is no explanation whatsoever for this inordinate delay. The only averment, if at all, is to be found in para 45 of the petition which reads as follows:-

*“45. The Petitioner states it is only thereafter on 06/09/2021, that the Petitioner came to know of the said acquisition of the complex of the Petitioners, when the Petitioner received a notice dated 06/09/2021 from the Respondent No.8, informing the Petitioner that the existing compound wall has been illegally constructed on the acquired land. The Petitioner No.1 replied to the same denying the claim of the Respondent No.8. Hereto Annexed as **Annexure XXIV Colly** is the said notice and reply of the Petitioners.”*

5. The notifications under Sections 4 and 6 are published not only in the Official Gazette but they are also published in two local newspapers and at the site. Therefore, we cannot accept the bare submission that the petitioner came to know about the acquisition only after 06.09.2021.

6. Mr. Vaz disputes the position that the possession of the acquired land was indeed taken. He relies on *Raghubir Singh Sehrawat Vs State of Haryana and others*¹ and some other decisions to explain the proper mode for taking over the possession of the acquired land. He states that the possession certificate does not indicate the adoption of the prescribed procedure.

7. In this case, there is a possession certificate dated 21.02.2014 on record. There is no serious infirmity or breach of procedure pointed out. At this point in time, we cannot permit the petitioner to go into such stale issues. The petition to challenge the acquisition proceedings after 11 to 15 years without any proper explanation for the delay is not required to be entertained.

8. In *Andhra Pradesh Industrial Infrastructure Corporation Ltd. v. Chinthamaneni Narasimha Rao & others*², the validity of the declaration under Section 6 was challenged two years after its issuance and after the possession had been taken. The notification under Section 4 had been issued on 27.08.1993, the declaration under Section 6 was made on 07.08.1996, the award was made on 07.01.1998, and possession

¹ (2012) 1 SCC 792

² (2012) 12 SCC 797

was taken on 09.03.1998. The acquisition was challenged in November 1998. In these facts, the Hon'ble Supreme Court after considering its earlier precedents on the issue of delay and laches in challenging the land acquisition proceedings held that if the landowners were aggrieved by the land acquisition proceedings, they had to challenge the same at least before an award was made and the possession of the land was taken by the Government authorities. The Hon'ble Supreme Court held that there was a gross delay in challenging the validity of the acquisition proceedings and the petition under Article 226 of the Constitution of India was quite correctly not entertained by the High Court.

9. Following the aforesaid decision, we are obliged to hold that the petition is barred by inordinate and unexplained delay and laches and is required to be dismissed on the said ground alone.

10. There is yet another ground that warrants the dismissal of this petition. In this case, Section 4 notification was issued on 30.10.2006. After this notification was issued, the petitioner, on 28.12.2006 entered into an agreement to purchase the land admeasuring 400 square metres which is now the subject matter of the acquisition. The petitioner then executed the sale deed for

the actual purchase and acquired land on 05.04.2007. From these facts which are not disputable, it is quite clear that the petitioner claims to have acquired an interest in the acquired land after the issuance of Section 4 notification.

11. Learned Advocate General relying on *V. Chandrasekaran and another Vs Administrative Officer and others*³ submitted that a subsequent purchaser has no locus standi to challenge the acquisition proceedings.

12. Mr. Vaz, however, submitted that in this case there was a delay between issuance of Section 4 and Section 6 notifications and further, there was a delay between issuance of Section 6 notification and making of the award. Based on this, he submitted that the acquisition proceedings were void or in any case, the award and the Section 6 notification were void. Based on this submission, he further contended that if the award and the Section 6 notification were void then the petitioner cannot be regarded as some subsequent purchaser.

13. He relied on *Padma Sundara Rao and others Vs State of T.N.*⁴, to submit that once a notification under Section 6 lapses, the State has no option other than to issue a fresh notification if it

³ (2012) 12 SCC 133

⁴ (2002) 3 SCC 533

is seriously intended to proceed with the acquisition. He also relied on *Dharmala Venkata Reddy and others Vs Government of A. P. and others*⁵, to submit that an award if not made within two years from the date of Section 4 lapses and further the proceedings are void. He also relied on certain other judgments and fairly pointed out that they lay down the similar proposition of law as laid down in *Padma Sundara Rao* (supra) and *Dharmala Venkata Reddy* (supra).

14. The aforesaid decisions cannot assist the petitioner because of the inordinate and unexplained delay in instituting this petition and the further fact that the petitioner is also not a proper relator to institute this petition. The record bears out that the petitioner claims to have acquired an interest in the subject land only after the issuance of notification under section 4 of the said act. Such acquisition of interest is of no consequence and based thereon a subsequent purchaser cannot challenge the validity of the acquisition proceedings.

15. Mr. Vaz also relied on the decision of this Court in *Prakash Vishwanath Khute Vs Special Land Acquisition Officer, Buldhana*⁶. The facts in the said case are distinguishable. Even there, this Court after concluding with the acquisition

⁵ 2007 SCC OnLine AP 812

⁶ 2006(6) Mh. L.J. 295

proceedings declined to interfere because the land had already been put to use which is proposed to be acquired. According to us, even this judgment is not of any assistance to the petitioner particularly because there is no reason to disbelieve the possession certificate. Merely because the petitioner, without appreciating that the sale deed executed by him was void *ab initio*, proceeded to put up a compound wall, no benefit can be claimed by the petitioner for such an act which has no authority of law.

16. Learned Advocate General has pointed out that there is no infirmity whatsoever in the issuance of Section 6 notification or making of an impugned award. He points out that possibly the petitioner has gone by the date of the Gazette publication thereby ignoring other matters. Be that as it may, the learned Advocate General submitted that it is indisputable that the petitioner is a purchaser who claims to have acquired interest after the issuance of Section 4 notification.

17. According to us, there can be no dispute that the petitioner claims to have acquired an interest in the acquired land after the issuance of Section 4 notification on 30.10.2006. No doubt, there was a corrigendum issued to Section 4 notification on 18.05.2007 but this corrigendum merely added some other properties in the original notification. The property in which the

petitioner claims interest was specified in the original notification dated 30.10.2006 itself. Even if we were to hold that there were some issues with the section 6 notification, the Petitioner would nevertheless remain a person who had acquired an interest in the subject land after the issuance of the section 4 notification.

18. The precise issue as to whether a writ petition to challenge the acquisition proceedings is at all maintainable by a person who purchases the land after a notification being issued under Section 4 of the said Act arose for consideration in several cases before the Hon'ble Supreme Court including the case of **V. Chandrasekaran** (supra).

19. In the aforesaid context, the Hon'ble Supreme Court at paras 15 to 18 observed as follows:-

“Whether subsequent purchaser can challenge the acquisition proceedings.

15. The issue of maintainability of the writ petitions by the person who purchases the land subsequent to a notification being issued under Section 4 of the Act has been considered by this Court time and again. In Lila Ram v. Union of India, AIR 1975 SC 2112, this Court held that any one who deals with the land subsequent to a Section 4 notification being issued, does so, at his own peril. In Sneh Prabha v. State of Uttar Pradesh, AIR 1996 SC 540, this Court held that a Section 4 notification gives a notice to the public at large that the

land in respect to which it has been issued, is needed for a public purpose, and it further points out that there will be "an impediment to any one to encumber the land acquired thereunder." The alienation thereafter does not bind the State or the beneficiary under the acquisition. The purchaser is entitled only to receive compensation. While deciding the said case, reliance was placed on an earlier judgment of this Court in Union of India v. Shivkumar Bhargava & Ors., (1995) 2 SCC 427.

16. Similarly, in U.P. Jal Nigam v. Kalra Properties Pvt. Ltd., AIR 1996 SC 1170, this Court held that, purchase of land after publication of a Section 4 notification in relation to such land, is void against the State and at the most, the purchaser may be a person interested in compensation, since he steps into the shoes of the erstwhile owner and may therefore, merely claim compensation. (See also: Star Wire (India) Ltd. v. State of Haryana & Ors., (1996) 11 SCC 698).

17. In Ajay Kishan Shinghal v. Union of India, AIR 1996 SC 2677; Mahavir & Anr. v. Rural Institute, Amravati & Anr., (1995) 5 SCC 335; Gian Chand v. Gopala & Ors., (1995) 2 SCC 528; and Meera Sahni v. Lieutenant Governor of Delhi & Ors., (2008) 9 SCC 177, this Court categorically held that, a person who purchases land after the publication of a Section 4 notification with respect to it, is not entitled to challenge the proceedings for the reason, that his title is void and he can at best claim compensation on the basis of vendor's title. In view of this, the sale of land after issuance of a Section 4 notification is void and the purchaser cannot challenge the acquisition proceedings. (See also: Tika Ram v. State of U.P., (2009) 10 SCC 689).

18. In view of the above, the law on the issue can be summarized to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor's title."

20. Thus, from the aforesaid, it is quite clear that the person who purchases the land after the issuance of Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him any title and at the most, he can claim compensation based on the vendor's title.

21. The decision of the Hon'ble Supreme Court in *V. Chandrasekaran* (supra) as also the decisions referred to in paras 15, 16, and 17 above make it clear that the petitioner in the present case has no locus standi to challenge the acquisition proceedings. This is yet another ground for dismissal of the present writ petition.

22. The demolition notice dated 06.09.2021 is only consequential. In terms of this demolition notice, the petitioner is

directed to demolish a portion of the compound wall which is put up by the petitioner on the acquired property. Since the main challenge has failed the challenge to the consequential demolition notice dated 06.09.2021 must also fail. There was no independent challenge raised to the demolition notice dated 06.09.2021.

23. For all the aforesaid reasons, we dismiss this petition. However, we impose no costs upon the petitioner.

24. The Misc. Civil Application No. 19 of 2022 seeking leave to amend the petition and challenge the notification under Section 6 is also disposed of. This is because we have substantially considered the petitioner's challenge to Section 6 notification as well.

R. N. LADDHA, J

M. S. SONAK, J