

Suchitra

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO.204/2021**

CURCHOREM CACORA MUNICIPAL  
COUNCIL, Thr. its Chief Officer,  
Ajay R. Gaude, 33 years of age, having  
office at Curchorem, Goa.

... PETITIONER

***Versus***

1. LUIS TELES DSILVA (Since  
deceased through his LR's)

1a) Joseph Teles De Silva,  
major of age, Son of late Luis Teles da  
Silva,

1b) Maria Sarita Elsa Ferrao e Silva,  
major of age, daughter of Mr.  
Crisologo Ferrao, both residents of  
House No.880(2) Vauxem of  
Loutulim, Salcete, Goa.

1c) Edna Agustilia de Lourdes Teles de  
Silva, major of age, daughter of late  
Luis Teles da Silva, resident of House  
No.880(2) Vauxem of Loutulim,  
Salcete, Goa.

2. STATE OF GOA,  
Through Chief Secretary,  
(Sachivalaya Panaji),  
Porvorim, Goa.

3. THE COLLECTOR OF SOUTH  
GOA, Office of the Collectorate of  
South Goa, Margao, Goa.

... RESPONDENTS

Mr. Ashwin Bhobe, Advocate *for the Petitioner*.

Correction  
carried out as  
per Order dtd.  
17.06.2022.

Mr. Manohar <sup>Lavu</sup> ~~Lavi~~ Karekar, Chief Officer of the Petitioner  
Council.

Mr. Valmiki Menezes and Ms. S. Narvekar, Advocates *for  
Respondent Nos.1.1, 1.2 and 1.3.*

Mr. D. Pangam, Advocate General with Ms. S. P. Munj,  
Additional Government Advocate for the State.

**CORAM: M. S. SONAK, J.**

**DATED: 10<sup>th</sup> June 2022**

**ORAL ORDER:**

**1.** Heard Mr. Ashwin Bhobe for the Petitioner, Mr. Valmiki Menezes with Ms. S. Narvekar for Respondent Nos.1.1, 1.2, and 1.3, and Mr. D. Pangam, learned Advocate General who appears along with Mr. S. P. Munj, learned Additional Government Advocate for the State.

**2.** The petitioner - Municipal Council challenges Order dated 22.02.2021 passed by the District Judge-3, South Goa at Margao (Executing Court) attaching its property to execute the Judgment

and Decree dated 10.12.1997 in Special Civil Suit No.54/1994/A.

3. In the Suit, the decree holders, whose legal representatives are now represented by Mr. Valmiki Menezes, had alleged that the petitioner had taken over their property without the authority of law to provide a road. Further, the allegation was that the plaintiffs were not paid any compensation. Accordingly, the plaintiffs had prayed for an award of compensation of ₹2,65,000/- or in the alternate for a direction to the Council to take necessary steps to acquire plaintiffs' property admeasuring 1810 sq. mtrs. by following the due process of law.

4. The learned Trial Judge vide the above Judgment and Decree dated 10.12.1997 rejected the prayer for compensation. Still, it decreed the Suit by directing the Council to take necessary steps for acquiring the plaintiffs' property by following the due process of law within a period of six months.

5. Since the Council took no effective steps, the decree holders applied for execution. In the execution, the Executing Court has made the impugned Order dated 22.02.2021, the operative part of which reads as follows:

" **ORDER**

*i. The application at exhibit D-38 is hereby allowed.*

*ii. The judgment debtor no.3 is hereby restrained from transferring or charging the property namely new administrative building at Curchorem Goa as per the provisions in order 21 Rule 54 of Code of Civil Procedure.*

*iii. This Order shall be proclaimed at the places described in sub Rule (2) of Rule 54 of order XXI CPC.*

*iv. The judgment debtor no.3 shall appear through authorized officer before this Court on next date of hearing i.e. 8<sup>th</sup> March 2021 at 2.30 p.m. for settlement of terms of proclamation of sale as per the provisions in order 21 Rule 1 (1-A) CPC.*

*v. Issue warrant of attachment in Form No.24, Appendix E of CPC.*

*vi. In view of this order similar and identical application at Exhibit D-26 colly is hereby disposed."*

**6.** This matter was heard on several occasions and the different benches suggested that the parties should explore the possibility of settlement. Learned counsel for the parties also made attempts in this regard.

7. Mr. Bhobe has produced an extract of the minutes of the ordinary council meeting held on 08.03.2022 on this very issue. The minutes record that if the relief of compensation in an amount of ₹2,65,000/- were to be granted, the amount payable to the decree holders would come to approximately ₹8,77,000/-. Similarly, the resolution records that if the compensation were required to be paid at ₹225/- per sq.mtr., which was the rate in terms of the sale statistics of 1997, then the compensation payable would come to approximately ₹13,47,000/-.

8. The minutes after that record the resolution of the Council bearing no.204 which reads as follows:

" **RESOLUTION NO.204**

*Council have already unanimously proposed and resolved to take into consideration the land rates (Rs.225/- per square meter) of Sy. No.118/4 as per the sales statistics of the year 1997 market rate available with the Office of Mamlatdar of Quepem, at Quepem, as under:-*

*Area of land – 1810 m<sup>2</sup>*

*Principal amount-1810 m<sup>2</sup> x 225 - Rs.4,07,250.00*

*This amount of Rs.4,07,250/- (Rupees Four Lakh seven thousand two hundred and fifty only) shall not carry interest since we are proposing to pay the market rate of land prevailing in the year 1997, which is higher than either (i) the compensation of Rs.2,65,000/-, excluding the interest accrued thereon, claimed by the Plaintiff in the said*

*suit or (ii) the land rate of Rs.30/- per square meter awarded by the Land Acquisition Officer for acquisition of land in Curchorem Village in the year 2011.*

*Therefore, Council hereby unanimously resolve to deposit the said compensation hereby proposed in accordance with the Land Acquisition Act (Old).*

*Council hereby resolve to make a representation to this effect to the Director of Municipal Administration for the purpose of seeking approval to sanction the proposed compensation.*

*Council also hereby resolve and undertake to furnish the documents sought by the Office of the Dy. Collector at the earliest and not later than a week from the date hereof, if at all the need arises for acquisition of the said land.*

*Proposed by Shri Vishwas P. Sawant, Chairperson*

*Seconded by Miss. Rucha Subhash Vasta, Vice-Chairperson."*

9. The decree holders no doubt have a decree in their favor. Still, if the Council, at this stage, is required to initiate acquisition proceedings under the 2013 Act, then the Council will have to involve the State Government in this process. This process will be highly time-consuming and will delay the execution substantially. At the same time, if the Council is required to proceed in terms of the 2013 Act, then the liability for payment of compensation will also be much higher than the compensation of ₹13,47,000/-

assessed by the Council itself. Besides, such exercise will benefit neither the Council nor the decree holders but will only contribute to the pendency of the execution proceedings for some substantial period, if not an indefinite period.

**10.** Learned Advocate General also submitted that it would be in the interest of all the parties if the matter is amicably sorted out and the decree holders agree to accept some reasonable compensation. Mr. Bhobe, based on instructions from Mr. Manohar Lavu Karekar, the Chief Officer of the Council, also submitted that the Council would be agreeable to pay some suitable compensation as may be determined by the Court in the full and final settlement.

**11.** Accordingly, the matter was adjourned to enable Mr. Menezes, learned counsel for the decree holders, to obtain instructions on the issue of acceptance and the possible quantum of compensation.

**12.** Mr. Menezes has secured instructions from the decree holders and reported that the decree holders are prepared to accept a lumpsum compensation of ₹10,00,000/- in the full and final settlement.

**13.** As noted earlier, even the resolution of the Council refers to compensation between the range of ₹8,77,000/- and ₹13,47,000/-. However, suppose the Council, in terms of the decree is now required to undertake acquisition under the 2013 Act, apart from the difficulties involved in such acquisition, the compensation amount will be substantially higher than ₹13,47,000/- referred to in the resolution of the Council.

**14.** Taking into consideration these factors and also the factor that this matter has been pending since the year 1994, the interests of justice will be met if the Council, by way of compensation, pays the decree holders an amount of ₹10,00,000/- in full and final settlement of all disputes between the parties. Such payment will amount to the complete satisfaction of the decree in question, and upon such payment, the execution proceedings can stand disposed of.

**15.** Mr. Bhobe states that the Council will deposit an amount of ₹4,00,000/- in this Court within ten days from today. He states that the balance amount of ₹6,00,000/- will be deposited on or before 10.09.2022 in this Court. These statements are made based on instructions from the Council Chief Officer, who is present in the Court today. These statements are accepted.

Corrections  
carried out as  
per Order dtd.  
17.06.2022.

**16.** Mr. Menezes, on instructions, has made it clear that upon the deposit of ₹10,00,000/- by the Council in this Court, the decree holders will have no claim in respect of the suit property admeasuring 1810 sq. mtrs. from the portion of Survey No. <sup>118/3</sup>~~18/3~~ and <sup>118/4</sup>~~18/4~~ of Curchorem Village. Such property will then be deemed to have vested in the Council.

**17.** Once the compensation amounts are deposited, the decree holders will be at liberty to withdraw the same in full and final settlement and satisfaction of the decree. Upon depositing these amounts, the Execution Application No.42/2004 pending in the Court of the District Judge-3, South Goa at Margao, will be disposed of. Upon the deposit, the Council should file a formal application before the Executing Court along with proof of deposit. Based on that, the Executing Court will formally dispose of the Execution Application No.42/2004.

**18.** Upon depositing the amount of ₹10,00,000/- by the Council, the Registry shall pay 50% of such amount to respondent no.1(a) who shall receive such amount on his own behalf and on behalf of respondent no.1(b). The balance amount will have to be paid to respondent no.1(c). This apportionment is made at the request of the decree holders themselves. The decree

holders to furnish the bank details of respondents no.1(a) and 1(c) so that the Registry can transfer this amount directly into their bank accounts.

**19.** The impugned Order dated 22.02.2021 shall remain stayed for four months from today. However, upon depositing the entire amount of ₹10,00,000/- by the petitioner Council, the impugned Order shall stand set aside without any further reference to this Court.

**20.** If there is any default in the deposit of ₹4,00,000/- within ten days from today and the balance amount of ₹6,00,000/- on or before 10.09.2022, this petition shall be deemed to have been dismissed without any further reference to this Court. After that, execution will have to proceed in accord with the law.

**21.** This Court appreciates the reasonable stance adopted by all the parties and their learned counsel in this matter.

**22.** The petition is disposed of in the terms mentioned above. Accordingly, there shall be no order for costs.

**M. S. SONAK, J.**

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