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IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.316 OF 2008
WITH
MISC. CIVIL APPLICATION NO.598 OF 2022 (F)
IN
WRIT PETITION NO.316 OF 2008**

FRANKY MONTEIRO AND 4 ORS.

... Petitioners

Versus

STATE OF GOA THROUGH
CHIEF SECRETARY AND ORS.

... Respondents

Ms. Aditi Saxena with Mr. Ryan Menezes, Mr. N. Fernandes and
Ms. Gina Almeida, Advocates *for the Petitioners*.

Mr. A.D. Bhobe with Ms. S. Shaikh, Advocates *for Respondent
No.2*.

Mr. P. Faldessai, Additional Government Advocate *for Respondent
Nos.1, 5 and 6*.

Mr. Surendra Desai, Senior Advocate with Mr. N. Takkekar,
Advocate *for Respondent No.7*.

Mr. S. Karpe with Mr. A. Shirodkar, Ms. Siddhi Parodkar, Ms.
Gabe Mendes and Ms. S. Vaingankar, Advocates *for Respondent
No.8*.

**CORAM: G.S. KULKARNI &
BHARAT P. DESHPANDE, JJ.**

DATED: 13th October, 2022

ORAL ORDER: (Per G.S. Kulkarni, J.)

1. The petitioners, who claim to be public spirited persons from Goa,
who believe in good governance and transparency and fair play in

administrative action have approached this Court by filing the present Petition by praying the following substantive reliefs:-

“(a) issue a writ, order or direction in the nature of certiorari quashing the allotments made in respect of M/s K. Raheja Corporation Pvt. Ltd., M/s Paradigm Logistics and Distribution Pvt. Ltd.; M/s Inox Mercantile Company Limited; M/s Planet View Mercantile Company Pvt. Ltd.; Maxgrow Finlease Private Limited in Verna Phase IV;

(b) issue a writ, order or direction in the nature of Mandamus directing the respondent 1 and 2 to take back the possession of the land from the respondent No-3 to 8 and revert it back to the original owners from whom the land was acquired;

(c) have the entire process of allotment enquired into by an independent body like the CBI or have a commission of enquiry headed either by a High court or a Supreme Court Judge to look into the irregularities in the entire allotment procedure including the possibility of irregular graft and recommend action against the people responsible for these illegal allotments;” (emphasis supplied)

2. This Petition was adjudicated by a Division Bench of this Court by an extensive judgment and order dated 26.11.2010 passed by the Division Bench of this Court (A.S. Oka J., and F.M. Reis, J., as Their Lordships then were). Insofar as the prayer clause (a) is concerned, the petition was

partly allowed inasmuch as this Court set aside the allotment of lands in question and subject matter of the impugned orders of allotment made by the Goa Industrial Development Corporation (for short “the GIDC”). The operative order as passed by the Division Bench of this Court is required to be noted, which read thus:

“(i) The allotment of lands made By the GIDC to the said companies (the Petitioners in Writ Petition Nos. 349 of 2008, 380 of 2008, 436 of 2008, 437 of 2008, 438 of 2008 and 501 of 2008 and 507 of 2008) is illegal. The allotments as well as the Lease Deeds executed on the basis of the orders of allotment are quashed and set aside.

(ii) Accordingly, rule issued in Writ Petition nos.310 of 2008, 314 of 2008 and 316 of 2008 is made absolute in terms of prayers (a) thereof.”

3. The petitioners had assailed the said judgment and order passed by this Court in proceedings before the Supreme Court being Civil Appeal No. 9710/2013. The said Civil Appeal came to be disposed of by Supreme Court by an order dated 14.02.2022 inter alia relegating the petitioners to this Court on a limited issue regarding the return of the acquired land to the original owners as prayed in the petition. It is recorded in paragraph 1 of the orders passed by the Supreme Court that

the petitioners are the original land owners. It appears that in such context the Supreme Court accepted the petitioners' case and passed the order relegating the issue to be addressed by this Court. The orders of the Supreme Court are required to be noted, which read thus:

“This appeal is filed by the original land owners against the judgment and order dated 26.11.2010 passed by the High Court of Bombay at Goa in Writ Petition No. 316 of 2008.

The limited grievance in this appeal is that the writ petition filed by the appellants explicitly sought relief of reverting the subject lands to the original owners. That fact has been taken note of in paragraph 50 of the impugned judgment. However, no issue in that regard has been framed in paragraph 51 of the impugned judgment nor the High Court has dealt with the said aspect at all.

In the circumstances, we deem it appropriate to remand the matter to the High Court for examining this limited issue regarding return of property to the original land owners, as prayed. That contention will have to be considered on its own merits in accordance with law.

Mr. Colin Gonsalves, learned senior counsel appearing for the appellants submits that there are certain subsequent developments. It will be open to the appellants to amend the writ petition to bring on record those developments asking for

appropriate relief incidental to the issue under consideration, if so advised.

We may not be understood to have expressed any opinion either way on the merits of the issues to be dealt with by the High Court in the remanded proceedings.

We further clarify that the parties are relegated only for examination of the aforementioned limited issue. The rest of the judgment and order is kept intact, as there is no challenge to that part of the order, before us.

*In terms of this order, the writ petition **shall stand restored to the file of the High Court for consideration of the limited relief prayed by the appellants, as noted earlier.***

The parties to appear before the High Court on 08.03.2022, when the High Court may consider the said relief on that day or on some convenient date, while ensuring that the remanded issue/relief is considered and answered by the High Court expeditiously.

The appeal is disposed of in the above terms.

Pending applications, if any, stand disposed of.”
(emphasis supplied)

4. It is on the above backdrop the proceedings are listed before us today. As ordered by the Supreme Court the scope of adjudication of writ petition on remand by the Supreme Court is limited which pertains to the relief as prayed in prayer clause (b) of the writ petition. The Supreme

Court, as noted above, has categorically observed that the said judgment of this Court dated 26.11.2010 pronounced on a batch of petitions including the present petition is in no manner disturbed except for the reconsideration of such limited issue by this Court on remand.

5. At the outset, we would be concerned with the very first paragraph of the orders passed by the Supreme Court wherein the Supreme Court has observed that the appeal filed by the present Petitioners assailing the Judgment dated 26.11.2010 is an appeal filed by the “*original land owners*”. Such assertion of the Petitioners would be an issue, now relevant, in the context of the adjudication and its scope as observed by the Supreme Court. This more particularly for the reason that the Petitioners are praying for return of the land which was acquired and has stood vested with the State Government.

6. On a query made to the learned Counsel for the Petitioners as to whether the Petitioners are the original land owners, it has been pointed out by the learned Counsel for the Petitioners that the Petitioners are not the original land owners in regard to the land which was the subject matter of the acquisition proceedings, and they are only the components of the Comunidade. We also note from the averments as made in

paragraph 3 of the petition that the Petitioners have filed the present Writ Petition in “public interest” which is the interest to protect the land of the Comunidade that was compulsorily acquired. The said averments in the petition is required to be noted which reads as follows:-

“That the petitioners are public spirited petitioners of Goa (India) who believe in Good Governance and “transparency and fair play in Administrative action. They are villagers and components of the comunidade of villages of Verna and Loutolim. The petitioners are interested in protecting the land of the comunidade that was compulsorily acquired and transferred in the most high handed manner by defrauding the public exchequer to the Respondents No-3 to 7 for developing SEZs.”

7. On such backdrop, learned Counsel for the Petitioners, referring to the order dated 14.02.2022 passed by the Supreme Court, would insist that this Court ought to adjudicate the reliefs as prayed for in prayer clause (b) (supra) namely that a mandamus ought to be issued to Respondent Nos.1 and 2 to take back possession of the land and revert it back to the original owners from whom the land was acquired. The learned Counsel for the Petitioners in support of such prayers has made submissions.

8. It is her contention that as a corollary to the relief as granted by this Court in its judgment and order dated 26.11.2010, by which the allotments of the land for Special Economic Zone allottees being set aside, the obvious consequence would be that the lands are required to be reverted back to their respective owners. The reason being that the acquisition itself would be required to be considered to be of no consequence once the allotment of the lands were set aside by the decision of the Division Bench of this Court. Learned Counsel for the Petitioners has supported this proposition by placing reliance on the decision of the Supreme Court on *Kedar Nath Yadav vs. State of West Bengal*¹, wherein the Court was concerned with the acquisition of the land at Singhur in West Bengal for the purpose of setting up a large car manufacturing plant. The questions before the Supreme Court in such case were in relation to the legality of the acquisition proceedings. In such context, the Supreme Court had made observations in paragraph 85 of the judgment as relied on behalf of the Petitioners, that it is the duty of the acquiring authority (State Government) to ensure that the mandatory procedure laid down under the Land Acquisition Act and the Rules made thereunder is followed scrupulously, failing which the acquisition

¹ 2017 11 SCC 601

proceedings would be rendered void *ab initio* in law. The Supreme Court observed that the compliance of the provisions of the Land Acquisition Act cannot be treated as empty formality by the State Government and that would be akin to handing over the eminent domain power of the State to the 'Executive', which cannot be permitted in a democratic country, which is required to be governed by the rule of law and considering the fact that the acquisition was not conforming to the procedure under the Land Acquisition Act. On such premise, the Supreme Court exercising powers under Article 142 of the Constitution, quashed and set aside such land acquisition proceedings.

9. On the other hand, learned Counsel for the Respondents have submitted that Petitioners cannot make a grievance that the lands are required to be returned to the original owners as the Petitioners themselves are not the owners. It is their common submission that there is an inherent lack of *locus standi* on the part of the Petitioners to assert any such contention. It is submitted that the land in question was acquired by the State of Goa by following the procedure under the Land Acquisition Act. The acquisition was for a public purpose namely for expansion of the Industrial Estate, Phase-IV at Verna. It is submitted that

an award under the Land Acquisition Act was published in a manner known to law, as also the possession of the land was taken over by the Land Acquisition Officer of the Goa IDC. It is hence submitted that as the land free from all encumbrances stood vested with the 'State' as also the possession of which was taken over, even the original land owners cannot maintain a prayer that the possession of the land be divested from the State and handed over to the original land owners, much less to the Petitioners who have no locus whatsoever to maintain such prayer. Our attention in such context is drawn to the details of the acquisition which are set out in the petition itself. Learned Counsel for the Respondents have placed reliance on various decisions to contend that once the land on its acquisition stands vested with the State Government and of which possession has been taken over, a writ petition praying for such relief that the possession be handed over is certainly not maintainable. It is submitted that prayer (b) is opposed to the specific provisions of Section 48 of the Land Acquisition Act, 1894 under which the acquisition had taken place.

Reasons and conclusion

10. Having heard the learned Counsel for the parties and having perused the record, at the outset, from the very averments as made in the

petition, we note that the land was acquired for a public purpose namely for expansion of the Industrial Estate, Phase-IV at Verna by following the procedure as contemplated by the Land Acquisition Act. The Petitioners in paragraph 4(a) to (d) have set out such steps as taken by the Special Land Acquisition Officer to acquire these lands. Paragraph 4(a) to (d) of the petition reads thus:-

“a. That on 3/11/2000 a notification was issued under S.4 read with S. 17(4) of the Land Acquisition Act in respect of 35,88134 sq mts of land at Verna / Loutulim for expansion of Industrial Estate Phase IV at Verna. A true copy of the S.4 notification dated 3/11/2000 is annexed herewith as Annexure P-1.

b. That vide notification dated 20/12/2001, a declaration under S.6 of the Land Acquisition Act was issued and it was also clarified that the provisions of S.17 (4) of the Act would also apply. A true copy of the S.6 notification dated 20/12/2001 is annexed herewith as Annexure P-2.

c. That the award in respect of the said land was made on the 29/9/2003 by the special Land Acquisition Officer. A true copy of the award dated 29/9/2003 is annexed herewith as Annexure P-3.

d. That the possession in respect of the said land was taken over by the Special Land Acquisition Officer Goa IDC.”

11. Thus, from the Petitioners' own showing, a proper land acquisition procedure was followed and a finality to the acquisition was brought about. The possession of the land has been taken over by the State Government. The land stood vested with the State Government.

12. It appears that subsequent to the acquisition which was concluded in the year 2003 to 2006 in view of the policy of the Government of India, the State of Goa considered to utilize the acquired lands for the purpose of setting up a Special Economic Zone (SEZ) in pursuance of the 2006 policy of the Government of India, under which the allotments in question in favour of the private parties came to be made which were the subject matter of challenge in the present proceedings. As noted above, we are not concerned with any issue of allotment as the same was already adjudicated by an exhaustive judgment and order of the Division Bench dated 26.11.2010, rendered on the present petition and the same has attained finality in view of the Petitioners' appeal being disposed of confining only to the issue in regard to the reverting of the subject lands to the original owners.

13. It is a settled principle of law that the Land Acquisition Act is a code in itself. It is clearly seen that to acquire the land in question for the

purpose of expansion of Industrial Estate, Phase-IV at Verna, a notification under Section 4 of the Land Acquisition Act came to be issued on 03.11.2000 read with Section 17(4). Section 6 notification was issued on 20.12.2001 clarifying that the provisions of Section 17(4) of the Land Acquisition Act would also apply. After following the procedure, the Special Land Acquisition Officer, Goa IDC published an award dated 29.09.2003. A copy of the award is annexed to the petition as “Annexure P-3”. Consequent thereto, the possession of the land was also taken over by the Special Land Acquisition Officer, Goa IDC on which there is no dispute. It is thus required to be observed that once the acquisition is complete and the possession is taken over, the owner of the land would not have any right to make a claim that the land be returned considering the provisions of Section 48 of the Land Acquisition Act. Section 48 reads thus:-

“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. ❀

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of

compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.”

(emphasis supplied)

14. A claim for return of the land necessarily would be a claim that the land stands withdrawn from the acquisition. It is thus clear that except in the case provided for in Section 36, the Government is at liberty to withdraw from the acquisition of any land of which possession has not been taken, and if the Government withdraws from any such acquisition, the Collector is required to determine the amount of compensation due for the damage suffered by the owners in consequence of the notice or any proceedings thereunder and is required to pay such amount to the person interested with all costs reasonably incurred by him in the prosecution of the proceedings under the Act in relation to the land in question.

15. When a prayer for the land to be reverted to the original owner is made, it thus necessarily implies that the Government would be required to withdraw from the acquisition proceedings and it can withdraw from

the acquisition proceedings only when the possession of the land has not been taken over. This is certainly not the situation in the present proceedings. There is nothing on record even to remotely suggest that in respect of certain lands, the possession was not taken over and that the provisions of Section 48 were invoked by the land owners. Thus, on the face of it, a prayer for return of the land or its reversion to the original owners would not be maintainable.

16. There is something more significant which we need to address and which in our opinion would go to the root of the present proceedings namely that the land acquisition proceedings itself were never assailed by the Comunidade, including by the Petitioners who are mere components of the Comunidade. Thus, in the absence of any challenge to the land acquisition proceedings or the Petitioners in any manner demonstrating any foundation in the writ petition for any such relief to be granted, the present proceedings asserting return of land are being pursued by the Petitioners and in our opinion too casually, and that too stated to be in public interest.

17. We are at a loss to understand as to when the land acquisition itself was never questioned, how the Petitioners in public interest without

assailing the land acquisition can maintain such prayers. The land acquisition proceedings as noted above are of the year 2000-2003 despite which it appears that the Petitioners in February 2022 asserted even before the Supreme Court that they being the land owners they are entitled for a relief of reversion of the lands.

18. We are afraid that on the aforesaid conspectus, any such relief of reversion can at all be even considered in the present proceedings by the Court, much less granted. Once the land acquisition proceedings have attained finality and the lands have stood vested in the State Government, a writ petition for prayers that the possession be returned to the land owners is certainly not maintainable. The settled principle of law can be seen from the following decisions of the Supreme Court:- (1) *C. Padma and others vs. Dy. Secretary to the Govt. of T.N. and others*²; (2) *Senjeevanagar Medical & Health Employees' Cooperative Housing Society vs. Mohd. Abdul Wahab and others*³; (3) *Chandragauda Ramgonda Patil and another vs. State of Maharashtra and others*⁴; (4) *Lilawanti and others vs. State of Haryana and others*⁵; (5) *Vishnu*

2 (1997) 2 SCC 627

3 (1996) 3 SCC 600

4 (1996) 6 SCC 405

5 (2012) 1 SCC 66

*Namdeo Kumar vs. State of Maharashtra & others*⁶; (6) *Sulochana Chandrakant Galande vs. Pune Municipal Transport and others*⁷; (7) *Ganesh Rangnath Dhadphale vs. Special Land Acquisition Officer (I)*⁸.

19. In *C. Padma and others* (supra), the Supreme Court has held that the acquired land having vested in the State and compensation paid to the predecessor in title to the claimants, the claimants are not entitled to restitution of possession on the ground that the public purpose had ceased to exist or the land could not be used for any other purpose.

20. In *Senjeevanagar Medical & Health Employees' Cooperative Housing Society* (supra), the Supreme Court has held that since possession of the land in question in the said proceedings was already taken over and the land having stood vested in the State free from all encumbrances, the High Court was not justified in interfering with the acquisition of land, and hence there was no question of the land being returned to the land owners.

21. In *Chandragauda Ramgonda Patil and another* (supra), again the Supreme Court held that once possession of land was taken over and land

6 2002 SCC OnLine Bom 491

7 (2010) 8 SCC 467

8 1979 Mh.L.J. 786

stood vested with the Municipality free from all encumbrances, restitution of surplus land to the owners cannot be ordered. The relevant observations in that regard have to be noted which read thus:-

“2. We do not think that this Court would be justified in making direction for restitution of the land to the erstwhile owners when the land was taken way back and vested in the Municipality free from all encumbrances. We are not concerned with the validity of the notification in either of the writ petitions. It is axiomatic that the land acquired for a public purpose would be utilised for any another public purpose, though use of it was intended for the original public purpose. It is not intended that any land which remain unutilised, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification. Under these circumstances, the High Court was well justified in refusing to grant relief in both the writ petitions.”

22. A similar view was taken in ***Lilawanti and others*** (supra). It was held that any prayer for return of the land by the original land owners would be contrary to the language of Section 16 of the Act in terms of which the acquired land vests in the State Government free from all encumbrances, it was observed that it was settled that the land acquired

for a particular purpose can be utilized for any other public purpose. In such context, the Supreme Court referred to the earlier decision in *State of Kerala vs. M. Bhaskaran Pillai*⁹ and *Govt of A.P. vs. Syed Akbar*¹⁰, observed that the land cannot revert back to the original owners once it was acquired and accordingly vested with the State Government and the same can be used for a purpose different from the purpose for which it was acquired.

23. A Division Bench of this Court in *Vishnu Namdeo Kumar vs. State of Maharashtra & others* (supra) had an occasion to consider a similar prayer as made by the Petitioners in the present proceedings. In such case, the contention of the Petitioners was to the effect that the Petitioners' land has not been utilized for the purpose for which it was acquired and hence, they were entitled to restoration of their lands. Referring to the decision in *M. Bhaskaran Pillai* (supra), it was held that such a relief cannot be granted. The observations of the Court in regard to the settled position of law in that regard are required to be noted and read thus:-

“Thus, the legal position is no more res integra and it is settled that an expropriated owner cannot insist on restoration of the

9 (1997) 5 SCC 432

10 (2005) 1 SCC 558

land even if the land has not been utilized for the purpose it was acquired or for other purpose. If the land has not at all been used, the land of the Government should be sold through public auction and not to the expropriated owner. In view of this legal position, the Government Resolution dated 10th October, 1973 cannot be enforced. The petitioners are, thus, not entitled to restoration of land as claimed by them on the basis of Government Resolution dated 10th October, 1973.”

24. In a recent decision of the Supreme Court in ***Sulochana Chandrakant Galande*** (supra), on a survey of the position in law in such context, as also referring to the decisions as noted above, the Supreme Court again reiterated that once the land stood vested in the State, it could not be divested and the State had the authority to change the user. It was observed that the Appellant cannot be heard raising a grievance on either of these issues. Accordingly, it was held the Appellants therein were not entitled to the reliefs of restoration of the land.

25. Thus, advertent to the above position in law, in our opinion, the contention of the Petitioners that the land be reverted to the original owners is wholly untenable. In any event as observed above, such a prayer is being pressed knowing well that the Petitioners are not the owners of the land as also knowing well that the land had stood vested with the

State Government. Also the context in which such prayer is made does not arise from any challenge to the land acquisition proceedings but the allotment of the land under the SEZ which is subsequent to the land acquisition proceedings attaining finality. Thus, on none of the counts such a prayer was maintainable. We, accordingly, hold that the Petitioners are not entitled to maintain such a prayer that the lands be reverted to the original owners. The prayer is accordingly rejected.

26. In the facts and circumstances, the relief cannot be rejected simplicitor, it is rejected by directing the Petitioners to deposit cost of ₹25,000/- with the Goa Legal Services Authority.

27. Miscellaneous Civil Application would not survive and is accordingly disposed of.

BHARAT P. DESHPANDE, J.

G.S. KULKARNI, J.

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