

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.218/2022

1. MATANGEE BUILDERS PVT.LTD.,
a company incorporated under the
provisions of the Indian Companies Act,
1956, with registered office at U-6, Green
Park, New Delhi.

2. M.L.S. Marketing Pvt. Ltd., a
company incorporated under the
provisions of the Indian Companies Act,
1956, with registered office at M-48
Market, Greater Kailash II, New Delhi.

3. UNITED REALTECH PVT. LTD.,
company incorporated under the
provisions of the Indian Companies Act,
1956, with registered office at 129-A
Qutub Plaza, DLF Phase I, Gurugram,
Haryana.

All three companies represented by their
constituted attorney Raees Ahmed Khan,
son of late Abdul Gani Khan, aged 50
years, resident at present at T-4 Darius
Residency, Caranzalem, Tiswadi Goa.

... Petitioners

Versus

1. UNION OF INDIA, Ministry of
Home Affairs, Office of Custodian for
Enemy Property for India, 1st Floor, East
Wing, Shivaji Stadium, Connaught Place,
New Delhi 110001.

2. CUSTODIAN OF ENEMY PROPERTY FOR INDIA, Kaiser 1, Hind Building, Currimbhoy Road, Ballard Estate, Mumbai 400 038.

3. STATE OF GOA, through the Chief Secretary, Secretariat, Porvorim, Goa.

4. MAMLATDAR OF BARDEZ, with office at Govt. Complex Building, Morod, Mapuca, Bardez, Goa.

5. DEPUTY COLLECTOR (REVENUE) NORTH GOA, Collectorate Building, North Goa, Mapuca, Goa.

... Respondents

Mr. M. B. D'Costa, Senior Advocate with Ms. Karishma Betquecar, Advocate *for Petitioners*.

Mr. Raviraj Chodankar, Central Government Standing Counsel *for Respondents No.1 and 2*.

Mr. Siddhesh Patkar, Additional Government Advocate *for Respondent Nos.3 to 5*.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED: 16th NOVEMBER 2022

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

1. Heard learned Counsel for the parties.

2. Rule. The Rule is made returnable immediately at the request and with the consent of the learned Counsel for the parties.

3. The petitioners challenge the order and certificate, both dated 27.09.2010 under Sections 5 and 24 of the Enemy Property Act, 1968 (EPA) and the mutation order in respect of property surveyed under No.97/3, Marra Village, Bardez Goa, effected based on the impugned order and certificate under the EPA.

4. The predecessors in title of the petitioners purchased the above property (said property) in 1996 after issuing a public notice at the time of purchase. The present petitioners purchased the said property in the year 2006. They applied for mutation in the survey records, and based upon such application; the Talathi issued public notices in the newspapers having circulation in the locality. In the absence of any objections from any parties or authorities and based on the sale deed of 2006, the necessary mutation was carried out.

5. The petitioners' names were included in the survey records (Form I & XIV) on 11.11.2006. On 15.11.2006, NOC was granted for amalgamation and construction of buildings in the

said property. On 06.12.2006, the concerned Deputy Collector issued a Conversion Sanad and Village Panchayat issued a construction license. The petitioners have pleaded that on 10.03.2021, the petitioners paid the infrastructure tax for the building after completing an assessment. On 07.03.2022, the petitioners even sold a portion of the said property after issuing a public notice dated 03.09.2021, duly published in the newspapers having circulation in the locality.

6. At this stage, when the petitioners applied for survey records (Form I & XIV), the petitioners were shocked and surprised to note that by Mutation Case No.79488, in December 2021, the petitioners' names were deleted and substituted with the name of "Custodian of Enemy Property" in the occupant's column. The petitioners have pleaded that this mutation comprising the deletion of the petitioners' names and the inclusion of the Custodian's name was effected without any notice to the petitioners or the minimum compliance with the principles of natural justice and fair play. Based on this, the petitioners instituted the present petition.

7. After the petition was instituted, the petitioners were supplied with copies of the order and certificate dated 27.09.2010 under Sections 5 and 24 of the EPA, based upon which the

mutations were carried out. The petitioners have pleaded that neither the petitioners nor their predecessor in the title were heard before such order was made, nor was such order ever served upon the petitioners or their predecessor in title. Accordingly, the petitioners amended the petition and challenged the order and certificate dated 27.09.2010.

8. Though the respondents have filed their returns, there is no denial of the fact that the impugned order and certificate dated 27.09.2010 were passed without the issue of any show cause notice or any other notice to the petitioners or their predecessor in title. Further, there is no record of communication/ service of these order/certificate to the petitioners or their predecessors in title. The basis for declaring the said property as the enemy property is also far from clear.

9. Similarly, there is no denial of the fact that before mutation was effected in the survey records, no notice was issued, or there was no compliance with the principles of natural justice and fair play. Mr Patkar learned Additional Government Advocate only submitted that the mutation authorities complied with the request made by the Custodian based upon the impugned order/ certificate dated 27.09.2010.

10. The petitioners are companies incorporated under the Indian Companies Act 1956. The order declaring their property as enemy property or deleting their names from the survey records visits the petitioners with serious civil consequences. Therefore, before such orders could be made or change effected, the concerned authorities were duty-bound to comply with the principles of natural justice and fair play. Admittedly, there was no such compliance in the present case.

11. The issues raised in this petition are substantially covered by at least three decisions of this Court in *Shane Francisco Dias vs. Union of India*¹, *Natalina Gonsalves, through Legal Heirs & Ors. vs. Union of India*² and *Nagaraj Avaghan vs. State of Goa & Ors.*³. All contentions raised in the counter filed on behalf of respondents no.1 and 2 were duly considered by the Division Benches of this Court and orders under the EPA or the consequent mutations made in breach of principles of natural justice and fair play were quashed and set aside.

12. Mr Chodankar, however, pointed out that the petitioners have an alternate and efficacious remedy available under Section 18 of the EPA. He submitted that the petitioners can always file

¹ (2020) 1 Bom CR 186

² 2021 SCC OnLine Bom 458

³ Writ Petition-Stamp Number Main No.1606 of 2020 decided on 31.01.2022

a representation to the Central Government against declaring their property as enemy property. Further, if such representation is rejected, the petitioners have the remedy of instituting an appeal to this Court. He submitted that this petition may, therefore, not be entertained.

13. As noted earlier, at least three Division Benches of this Court considered and rejected similar contention based on the availability of alternate remedies. To the specific query as to whether any of the decisions had been challenged, Mr Chodankar learned Standing Counsel for the Central Government replied that they had not been challenged. In any case, where the impugned order/certificate has been made in a flagrant breach of principles of natural justice and fair play, a petition under Article 226 of the Constitution of India can be entertained despite the petitioners having an alternate remedy available. This is a well-accepted exception to the convention based on alternate remedies.

14. In the present case, by 2010 when the impugned orders were made under the EPA, the survey records clearly indicated the petitioners' names as occupants. The petitioners have pleaded how at every stage, i.e. at the stage of purchase, mutation or obtaining permissions from various statutory authorities, notices had been published in the newspapers. In such circumstances,

there was no justification for making the impugned order/certificate without even minimum compliance with the principles of natural justice and fair play. Further, there was no justification for not communicating the impugned order/certificate to the petitioners. Until the institution of the present petition, the petitioners have pleaded that they were not even aware of the impugned order/certificate.

15. For all the above reasons and the reasoning in the three decisions of the Division Benches that we have referred to above, we quash and set aside the impugned order/certificate dated 27.09.2010 under Sections 5 and 24 of the EPA. Further, we also quash and set aside Mutation No.79488 and order deletion of the name of the Custodian and restoration of petitioners' names in the survey records concerning the said property bearing Survey No.97/3, Marra Village, Bardez, Goa. Such mutation is to be carried out within two months from today.

16. However, we grant liberty to the respondents to take fresh steps in relation to the said property in terms of the EPA, 1968 and Enemy Property rules, 2015 should, in the opinion of respondents no.1 and 2, there exist grounds for taking such steps. However, such steps should include adequate notice to the

petitioners so that there is no complaint of breach of principles of natural justice and fair play.

17. The Rule is made absolute in the above terms.

18. There shall be no order for costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

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