

Maria S.

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.123 OF 2023**

Christabel Maria De Menezes

... Petitioner

Versus

State of Goa, thr. Chief Secretary,
Govt. of Goa And 2 Ors.

...Respondents

Mr Parag Rao, Advocate with **Mr Abhishek Sawant,**
Advocate for the Petitioner.

Mr Geetesh R. Shetye, Additional Government
Advocate for the Respondents.

**CORAM:
DATED :**

**PRAKASH D. NAIK, J
10th AUGUST 2023**

ORAL ORDER:

1. The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India challenging the impugned order dated 30.06.2020 passed by the Deputy Collector (Rev.)/LAO, Panaji-Goa, rejecting the application dated 13.03.2020 preferred by the petitioner under Section 18 of the Land Acquisition Act, 1894.

2. Learned advocate for the petitioner submitted that the impugned order is cryptic and sans any reasons. The order only makes reference to Section 18 of the Act and the concluding paragraph of the order mentions that the petitioner's reference has been filed beyond the stipulated time and it cannot be

considered. It is further submitted that the opportunity of hearing was not given to the petitioner which could have enabled the petitioner to point out that there was no delay in making such reference. It is further submitted that the authority was required to provide reasons while adjudicating the said application and for lack of any reasons the impugned order is required to be set aside with directions to the authority to rehear the application by giving opportunity of personal hearing. Learned counsel has relied upon the decision of the apex Court in the case of ***Kranti Associates Private Limited & Anr v/s. Masood Ahmed Khan & Ors***¹ and in another decision of this Court in the case of ***Super Construction Company v/s. The State of Maharashtra & Ors***².

3. Learned advocate for respondents submitted that it would be futile exercise to reconsider the application again as the application was time barred.

4. The question that arises for consideration is whether the impugned order which was passed by the Deputy Collector without assigning any reason for rejecting the application is tenable in law. The order is cryptic. Except quoting Section 18, reason is assigned as to how there is delay and what was the quantum of delay in making such reference. Except stating that the reference has been filed beyond stipulated time, no other reason is stipulated in the impugned order.

¹ (2010) 9 SCC 496

² 1995 (2) BOM CR 436

5. Reference can be made to the observation of the apex Court in the decision of **Kranti Associates Private Limited & Anr v/s. Masood Ahmed Khan & Ors** (supra) in paragraph 47 which reads as follows:

'47. Summarizing the above discussion, this Court holds:

(a). In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b). A quasi-judicial authority must record reasons in support of its conclusions.

(c). Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d). Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e). Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f). Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g). Reasons facilitate the process of judicial review by superior Courts.

(h). The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision making justifying the principle that reason is the soul of justice.

(i). Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to

demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j). Insistence on reason is a requirement for both judicial accountability and transparency.

(k). If a judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l). Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

(m). It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor)³.

(n). Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Toriza v. Spain⁴, and Anya vs. University of Oxford⁵, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o). In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

³ (1987) 100 Harvard Law Review 731-737)

⁴ (1994) 19 EHRR 553 at 562 para 29

⁵ 2001 EWCA Civ 405 (CA)

6. Similarly, on the point of hearing this Court in the case of ***Super Construction Company v/s. The State of Maharashtra & Ors*** (supra) in paragraph 5 has observed as follows:-

'5. Moreover, even in a case where the Special Land Acquisition Officer comes to a prima facie finding that the reference application is barred by limitation, it is incumbent on his part, before dismissing the application on that ground, to give an opportunity of hearing to the claimant to show cause as to why it should not be rejected as barred by limitation. In that event, the claimant may get an opportunity to satisfy the officer concerned that on a proper interpretation of the provisions of the Act dealing with the period of limitation, the reference application is within time or in the alternative may file an application showing cause for the delay and praying for condonation thereof. It may be mentioned here that the controversy whether the provision of the Limitation Act including section 5 thereof applies to proceedings under the Land Acquisition Act or not is no more res integra in view of the latest Full Bench decision of this Court where it has been held that the said provisions are applicable to the proceedings under the Land Acquisition Act also.'

7. Considering the aforesaid circumstances, the impugned order can be set aside with direction to the authority to reconsider the application after giving personal hearing to the petitioner.

ORDER

1) The impugned order dated 30.06.2020 passed by the Deputy Collector (Rev.)/LAO, Panaji-Goa is set aside.

2) The respondent No.2 is directed to reconsider the application dated 13.03.2020 preferred by the petitioner under Section 18 of the Land Acquisition Act by giving a personal hearing to the petitioner.

3) The application will be decided expeditiously and as far as possible within a period of 6 months from the date of receipt of this order.

(PRAKASH D. NAIK, J.)