



Vinita

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 1095 OF 2016.

JOAQUIM VICTOR FERNANDES., ... Petitioner.

V e r s u s

STATE OF GOA, THR. ITS CHIEF
SECRETARY AND 3 ORS. ... Respondents.

*Mr. Vilas P. Thali, Advocate along with Mr Rajdeep Prabhugaonkar
and Mr Rasik Borkar, Advocate for the Petitioner.*

Mr. Pravin Faldessai, Addl. Govt. Advocate for the Respondent no.1.

**CORAM: M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.**

DATE: 16th JANUARY 2025.

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

1. Heard learned counsel Mr V. P. Thali for the petitioner.
2. Our attention is invited to the order dated 11.3.2024 passed by Hon'ble Supreme Court in Civil Appeal No. 4100 of 2024 (Arising out of SLP (C) No. 23466 of 2018) which reads thus:-

"1. Leave granted.

2. The impugned order date 13.11.2017 passed by the High Court of Bombay at Goa, whereby the Writ Petition No. 1095 of 2016 filed by the respondent herein was allowed, is under challenge before this

Court.

3. *Having heard the learned counsel for the appellants and the learned counsel for the respondent and carefully perusing the material placed on record, it appears that the High Court had declared the acquisition proceedings in question as lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. However, it is not disputed by the learned counsels for the parties that in view of the later decision in the case of Indore Development Authority Vs. Manoharlal And Ors. etc. Reported in (2020) 8 SCC 129, the matter is required to be remitted to the High Court for fresh consideration.*

4. *In that view of the matter, the impugned order passed by the High Court is set aside and the matter is remitted to the High Court for fresh consideration in the light of the Judgment in the case of Indore Development Authority (supra).*

5. *It is clarified that all legal contentions are kept open to be raised by both the parties, as may be permissible.*

6. *The appeal stands allowed in above terms.*

7. *Pending applications, if any, also stand disposed of.”*

3. In light of the decision of the Hon'ble Supreme Court in the case of ***Indore Development Authority Vs Manoharlal and Ors. etc. (2020) 8 SCC 129***, we have examined the petition and it is obvious that relief in terms of prayer clause (a) cannot be granted. Mr Thali, learned counsel for the petitioner on instructions candidly submitted that such is the position in the facts and circumstances of the case.

4. So far as the reliefs in terms of prayer clauses (b) and (c) are concerned, our attention is invited to the observation of this Court in paragraphs 17 and 18 of the order dated 13.11.2017 passed earlier in this petition which was the subject matter of challenge before the Supreme Court. Paragraphs 17 and 18 read thus:-

“17 As far as the other reliefs prayed for in the petition namely a direction to restrain the Respondent from interfering with the possession of the property and setting aside the orders of the Administrative Tribunal, Mr. Sardesai, the learned Senior Advocate states that those are not been pressed in the present petition and appropriate proceedings, considering the effect of grant of declaration, would be instituted. We therefore restrict this petition for consideration of a declaration under Section 24(2) qua the Award dated 28 March 1969 alone. It is open for the Petitioner

to take appropriate proceedings in light of the declaration regarding lapsing of acquisition, which proceedings, if adopted by the Petitioner, will be considered on their own merits.

18 In view of the discussion above we allow the Writ Petition by declaring that the acquisition proceedings pursuant to Award dated 28 March 1969 relating to Plot No.34 situated at Dona Paula in Survey No.248/1, stand lapsed. We make it clear that we have not gone into the question of encroachment or otherwise which we have to be considered in the light of the declaration that has been given. Rule is made absolute in above terms. No order as to costs.”

5. Pursuant to the decision of this Court dated 13.11.2017 in Writ Petition No.1095/2016, the petitioner approached learned Single Judge challenging the order passed by the Administrative Tribunal, the very same reliefs in respect of which are prayed for in prayer clauses (b) and (c) of this petition. Writ Petition No.239 of 2018 filed consequent to the observations of this Court in its order dated 13.11.2017 in Writ Petition No. 1095 of 2016 is pending before the learned Single Judge.

6. In this view of the matter, in our opinion nothing further survives for consideration in the present petition, hence the same is dismissed.

7. So far as prayer clauses (b) and (c) in this petition are concerned, as the petitioner has already approached the learned Single Judge by filing Writ Petition No. 239 of 2018 for the very same reliefs, the same shall be decided on its own merits and in accordance with law. We have not expressed any opinion in this regard.

8. The petition stands disposed of. No costs.

NIVEDITA P. MEHTA, J.

M. S. KARNIK, J.