

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 251 OF 2024**

1. Joao Noronha, son of late Mr. Mariano Noronha, aged 96 years, Indian National,

2. Menino Noronha, son of Mr. Joao Noronha, aged 67 years, Indian National,

Both residing at House No. 134, Colmorod, Navelim, Salcette, Goa – 403 707.

... PETITIONERS

Versus

1. Margao Municipal Council, through its Chief Officer, having office at Municipal Council Building, Margao-Goa.

2. Office of the Collector & District Magistrate, South Goa, Mathanhy Saldanha Complex, Margao, Goa.

3. State of Goa, through the Chief Secretary, Secretariat, Porvorim, Bardez-Goa.

... RESPONDENTS

Mr. Shivraj Gaonkar, Advocate for the Petitioners.

Mr. Parag Rao with Mr. Akhil Parrikar, Advocates for Respondent No. 1.

Ms. Maria Correia, Additional Government Advocate for Respondent Nos. 2 and 3.

CORAM: BHARATI DANGRE & ASHISH S. CHAVAN, JJ.

DATED: 11th SEPTEMBER 2025

ORAL JUDGMENT: (per BHARATI DANGRE, J.)

1. The Petitioners claim compensation for the land acquired under the Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act of 2013, on account of the land of the Petitioners being acquired for the construction of a road on the existing pathway crossing at Colmorod. The compensation is sought on the premise that the land from Chalta No. 46, P.T. Sheet No. 306 is distinct from the requirement of providing an access road as per the development permission granted by the South Goa Planning and Development Authority (SGPDA) under Section 44 of the TCP Act, as the Petitioners carried out the development on Chalta No. 45, P.T. Sheet No. 306 in the form of a residential complex.

2. We have heard Mr. Goankar, learned Counsel appearing for the Petitioners and Mr. Rao, representing the Margao Municipal Council (MMC) i.e. Respondent No. 1 as well as Ms. Maria Correia representing Respondent Nos. 2 and 3.

Since we are hearing the Petition finally, we deem it appropriate to issue 'Rule', which is made returnable forthwith.

3. The Petition has a chequered history and we find that though the Petitioners did not directly approach the Court, they were impleaded as Respondents in a Petition filed by Mr. Domingoes Barretto in form of Writ Petition No. 367 of 2006 in respect of construction of a public road in Colmorod area, Margao, with reference to a specific statement in the affidavit filed by the

Chief Officer of the Margao Municipal Council (MMC) in an earlier Petition i.e. Writ Petition No. 311 of 2004.

The Petitioner, Mr. Barretto, resident of Colmorod, invoked the jurisdiction of the Court, complaining about the inaction and failure on the part of Respondent No. 1 i.e. MMC, to complete the construction of a public road constructed in the Colmorod, Navelim, Salcette area, in view of the statement made by the Chief Officer in an affidavit dated 15.10.2004 in Writ Petition No. 311 of 2004, alleging that more than 21 months have elapsed since the filing of the affidavit, but no development has been carried out from point D to E as per the site plan submitted along with the affidavit and hence, the intervention of the Court was sought.

Referring to a resolution passed by the MMC where on 29.04.1994, it was resolved to acquire land at Colmorod for the construction of a road through P.T. Sheet No. 301, resolving that since it serves the public interest, the road in question is necessitated, as it will cater to many houses in the locality.

The Petition also made a reference to the construction raised by Respondent No. 2 and his wife (the present Petitioners) within the setback area of the public road, and it was also alleged that Respondent No. 1 has failed to remove the obstruction of the construction done in the setback area.

In the affidavit filed by the Chief Officer on 16.03.2005, it was clearly admitted that the construction of the building of Respondent Nos. 3 and 4 was an encroachment in the required

setback area from the centre line of the road by 1.5 metre and the construction license was in fact, obtained by misrepresentation of facts i.e. without showing the road on the southern side of the property and pursuant to this, a show cause notice was issued under Section 184 of the Municipalities Act to the Respondent, Mr. Joao Noronha and as a result of it, the construction license was suspended. The Respondents were advised to stop the ongoing construction and directed to show cause as to why the license should not be cancelled, and with this direction, the Petition was disposed of.

4. The background facts were clearly highlighted in Writ Petition No. 367 of 2006 and pursuant to the various directions issued in this Writ Petition, the proceedings ultimately culminated in a judgment dated 18.10.2023 when the Contempt Petition filed by Mr. Domingoes Barretto came to be disposed of along with the Application filed by the MMC in Writ Petition No. 367 of 2006 and we will be referring to the same a little while later.

At this juncture, continuing the sequence of events, we must refer to the follow-up of the show cause notice issued against the present Petitioners, Shri Joao Noronha and Smt. Amelia Noronha, now represented by her son, on 22.12.2005, as the show cause notice had alleged that the construction license was obtained on the setback area and therefore, why it should not be suspended.

5. In the order placed at Annexure-P6 colly by the Petitioners themselves, refer to the meeting of the MMC, which was attended by all the parties including the technical staff and it is recorded that an understanding is reached between the parties, whereby the licensee i.e. Mr. Noronha has agreed to construct a pacca asphalted road of carriage way 3.50 meters in the 6.0 meter wide road upto point E as per the plan annexed, in which, a change in alignment of the road has been proposed and which has been agreed upon by all the parties. It is also recorded that he agreed that the road shall be asphalted by the licensee by 15.01.2006.

It is this undertaking which formed the basis of Writ Petition No. 367 of 2006.

In the sequence of events, we must also mention that on 20.05.2009, the Government of Goa issued a notification under Section 4 of the Land Acquisition Act, since the land was needed for public purpose for construction of a road at Colmorod, Navelim, Margao, Goa and this covered two properties of the Petitioners, Mr. Noronha, including P.T. Sheet No. 306/45P to the extent of 200 square meters and 800 square meters from P.T. Sheet No. 306/46 P. This was followed by a notification issued under Section 6, where the properties were reduced to 140 and 675 square meters respectively. It is not in dispute that these proceedings attained finality as the Petition filed by one of the co-owners of the property i.e. the co-owner of property no. 306/43P, which was sought to be acquired under Section 4 notification,

before the Court raising a challenge to the notification, had upheld the acquisition proceedings.

6. It is also not in dispute that time and again, the MMC in the Contempt Petition filed by Mr. Domingoes Barretto assured the Court that it will take necessary steps for construction of the road and shall initiate the process of land acquisition for the purpose of construction of the road in respect of the lands covered under the declaration of Sections 4 and 6 of the Land Acquisition Act, despite the fact that it had earlier lapsed and this statement is recorded in the order passed by the Division Bench on 02.12.2019 in Contempt Petition No. 20 of 2019.

7. What is relevant to note is the further proceedings which came to be initiated as a continuation of these background facts, being the filing of a Contempt Petition by Mr. Domingoes Barretto and a Miscellaneous Civil Application by the MMC seeking clarification.

In order to understand the observations in the said order, we have before us a plan tendered by the learned Counsel Mr. Gaonkar, showing the land utilised for the road to the project of the Petitioners and the additional land utilised by MMC for extension of the road for public use.

From a perusal of the said plan, it is not in dispute that the project of the Petitioners is located on Chalta No. 45 P.T. Sheet

No. 306 and down below the said project is property bearing Chalta No. 46 of P.T. Sheet No. 306, which also belongs to the Petitioners.

8. According to Mr. Gaonkar, the permission which was granted in favour of the Petitioners when it undertook the project in Chalta No. 45, Condition No. 15 of the permission granted under Section 44 clearly read thus:-

“The applicant should construct the road with drainage facilities from the main road upto the boundary before applying for completion certificate.”

The plan placed before us by Mr. Gaonkar include a road from point A to point E, but his specific contention before us today is that what was contemplated by Condition No. 15 was only the construction of a road from point A to point D, which was a road leading to his property. He would submit that as far as the construction of the road from point D to E is concerned, his land has been acquired, for which the Petitioners deserve compensation.

This plea being specifically raised before the Court when the Contempt Petition, as well as the Miscellaneous Civil Application filed in Writ Petition No. 367 of 2006, was heard and the Application/Petition being adjudicated, we have noted that the rival contentions focused upon the asphaltting of the road from

point D to E. The Court clearly observed that when the previous orders were passed, Condition No. 15 which was an essential and integral part of the permission granted under Section 44 was not brought to the notice of the Court and this specifically made reference to the order dated 30.04.2007, when the MMC as well as the SGPDAs, who had granted the necessary permission to the Petitioners for a mega project had imposed a condition which included stretch between point D and E.

9. Mr. Gaonkar has sought to urge before us that what was covered by Condition No. 15 was only a road to point A to D. But upon, Mr. Rao placing before us the approved south side site plan of the Petitioners' project, clearly reflecting the area statement as well as the access road which was contemplated by Condition No. 15, it becomes evidently clear to us that it also extends to, point D to E and Mr. Rao has also placed before us the photographs, which clearly reflect that if at all the permission was granted by the Planning Authority under Section 44, which necessarily has to be in accordance with the Act of 2008 and Regulation of 2010, contemplate a 6 meter wide access road up to the property. The photographs reflecting point C to D, point D as well as point D to E, clearly reflect this access being made available to the project, which is constructed by the Petitioners on the property bearing Chalta No. 45, P.T. Sheet No. 306.

This is what is appreciated by the Division Bench in its detailed order dated 18.10.2023, when it found that as far as the Contempt Petition is concerned, it merely pertained to the asphaltting of the road between point D and E. But as far as the issue of compensation is concerned, since the Petitioners were duty bound to provide the access road as per the condition, subject to which the permission of construction was granted by SGPDA under Section 44 and this also included point D to E, it is recorded that there is no merit in the contention of the Petitioners, at this stage, regarding the non-payment of compensation.

We find that this detailed order has been upheld by the Hon'ble Apex Court when the SLP filed by the Petitioners came to be dismissed on 01.12.2023 with an observation that the Court is not inclined to interfere with the impugned judgments and orders passed.

10. In the background of the facts, it is evidently clear to us, and in particular, by reference to the order dated 22.12.2005, passed by the MMC, which had initiated proceedings against the Petitioners, in respect of the construction activity being carried out in the setback area of the proposed public road and when the license was suspended, and the consensus is arrived at with an undertaking recorded on part of the Petitioners to construct the asphalted road of carriage clearly up to "point E", we are sure that even the Petitioners were aware of the stipulation in the

development permission accorded in its favour under Section 44, and that is why it gave an undertaking, agreeing to asphalt the said road.

In any case, since the Petitioners have also availed the benefit of FAR of 97.76 square meters, in the wake of the area of road widening and has utilised the benefit while constructing the project on Chalta No. 45, P.T. Sheet No. 306, we are unable to accept the contentions of the Petitioners, as it would amount to unjust enrichment as they would be benefiting twice in respect of the land, for which the Petitioners have already enjoyed the FAR. Apart from the fact that it was a duty cast upon him while the permissions were granted for him to develop this property, he is not entitled for any compensation.

In any case, apart from the aforesaid finding of ours, we find that the issue has been put to rest by the Division Bench by its judgment dated 18.10.2023, which has attained finality as a Special Leave Petition filed by the Petitioners against this order/judgment has been dismissed.

Finding no merit and substance in the Petition, we dismiss the Petition and discharge the Rule.

ASHISH S. CHAVAN, J.

BHARATI DANGRE, J.