
(2001) 02 BOM CK 0063
In the Bombay High Court
Case No : Writ Petition No. 318 of 1996

Anthony S. Vaz and Others	Vs	APPELLANT
State of Goa and Others		RESPONDENT

Date of Decision : 07-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4(1), 5, 9

Citation : (2001) 3 BomCR 607

Hon'ble Judges : D.G. Deshpande, J; D.D. Sinha, J

Bench : Division Bench

Advocate : M.B. D'Costa, for the Appellant; A.N.S. Nadkarni and F.N. Tavora, A.G.P., and S.D. Lotlikar, Sr.A. and Ashwin Bhobe, for the Respondent

Final Decision : Dismissed

Judgement

D.D. Sinha, J.—Heard Shri D'Costa, the learned Counsel for the petitioners, Shri Nadkarni, the learned Advocate General for the respondents Nos. 1 and 2, and Shri Lotlikar, the learned Counsel for the respondents Nos. 4 and 5.

2. The writ petitioners have challenged the validity of the notification dated 20th June, 1996, and further, sought direction against respondents Nos. 1, 2 and 3 to withdraw the impugned notification.

3. It is contended by Mr. D'Costa that the proposed land acquisition proceedings are totally mala fide and undertaken in colourable exercise of power. It is further contended that the road proposed to be constructed is a road which will link the proposed bridge to the Rawanfong-Navelim road. It is further contended that the acquisition of land for the link road will be a sheer waste of public money. Petitioners are the owners in possession of the landed property situated primarily in the Village Panchayat of Aquem-Baixo which forms subject-matter of notification dated 20th June, 1996 issued under sub-section (1) of section 4 of the Land Acquisition Act. Besides, it is contended by Mr. D'Costa that with the sole motive of providing access to respondents Nos. 4 and 5, the respondents

Nos. 1, 2 and 3 have proposed construction of a bridge. The site chosen by respondents Nos. 1, 2 and 3 is clearly aimed at exclusively benefiting respondents Nos. 4 and 5. The site also is at variance with the one proposed by the Village Panchayat of Aquem-Baixo. It is further submitted that the site proposed by the Village Panchayat of Aquem-Baixo, in fact, reduces the distance between Firgulem and Navelim. In short, the contention of the Counsel for the petitioners is that the entire acquisition proceedings undertaken by the respondent State is not only in colourable exercise of power, but the same is only to benefit respondents Nos. 4 and 5. It is, therefore, contended that the respondents Nos. 1, 2 and 3 may be directed to withdraw the notification issued pursuant to section 4 of the Land Acquisition Act.

4. The respective Counsels appearing for the respondents supported the impugned notification and also the action of acquisition undertaken by the State Government. It is totally denied by the State Government that the action is a motivated one and is and colourable exercise of power. On the other hand, it is submitted that, taking into consideration the convenience of the people and the public purpose in mind, the State Government issued notification under sub-section (1) of section 4 of the Land Acquisition Act. It is further contended that during the enquiry u/s 5-A, no specific objection in this regard was raised. It is stated that no stay to the proceedings of the land acquisition case was granted by this Court though the possession was protected. Hence the land acquisition proceedings went on during the pendency of the petition and finally culminated in Award. The Land Acquisition Officer has passed the award on 8th May, 1998. It is also brought to our notice on the basis of the record that the petitioner has refused to accept the notice u/s 9 of the Act.

5. We have considered the contentions raised by the respective Counsels as well as the grounds mentioned by the petitioners in the petition. It is not in dispute that land acquisition proceedings initiated by the respondent in view of notification u/s 4 are completed and the Land Acquisition Officer also passed an award. Though the petitioners had approached this Court before passing of the award, this Court refused to stay the land acquisition proceedings. Hence, the same continued and finally culminated in award.

6. The petitioners have not brought anything on record to show that during the course of enquiry u/s 5-A of the Land Acquisition Act, they had raised specific objections and were not considered by the authority. It appears that the petitioners for the first time raised these objections before this Court. Similarly, the challenge in respect of notice u/s 9, in our opinion, in the facts of this case, will not survive since the notices issued by the respondent u/s 9 were refused by the petitioners. It is well settled that once the award is passed by the Land Acquisition Officer, it is difficult to go into the adequacy or inadequacy of the award on the procedural aspect of the matter. In the instant case, even on the factual aspect of it, it will not be possible for us to reopen the issue, particularly when the land acquisition proceedings are over and the award is already passed.

7. Taking into consideration the facts and circumstances of the present case and for the reasons stated hereinabove, the petition is devoid of substance. Petition is dismissed with no order as to costs. Interim relief, if any, stands vacated.

8. All the original record submitted by the State Government and is in the custody of this Court should be returned forthwith to the authorized officer of the State Government.