
(2020) 03 BOM CK 0028
In the Bombay High Court
Case No : Writ Petition No. 99 Of 2010

Dr. Agnelo Lopes And Anr

APPELLANT

Vs

State Of Goa And Ors

RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Land Acquisition Act, 1894 — Section 5A, 6

Citation : (2020) 03 BOM CK 0028

Hon'ble Judges : M.S. Sonak, J;M.S. Jawalkar, J

Bench : Division Bench

Advocate : Joseph Vaz, T. Vaz, P. Faldessai, Nitin N. Sardessai, G. Kamat, S. Phadte, S. Sardessai

Final Decision : Disposed Of

Judgement

M.S. Jawalkar, J

1. Heard Mr. J. Vaz alongwith Mr. T. Vaz, learned counsel for the Petitioners, Mr. N. Sardessai, learned Senior Advocate alongwith Ms. G. Kamat,

learned counsel for Respondent No.4 and Mr. P. Faldessai, learned Additional Government Advocate for Respondent Nos.1 to 3.

2. The challenge in this petition is to the Notification dated 16th December, 2009 issued under Section 6 of the Land Acquisition Act, 1894 (the said

Act) proposing to acquire the Petitioners' property bearing survey Nos.9/14 and 9/20, Deussaua, Salcete Goa for the purported public purpose of

construction of road at 2nd Palvem-Chinchinim under Survey Nos.9/5, 14, 15, 16, 18, 19, 20 in Village Panchayat of Chinchinim â?" Deussua in

Salcete Taluka.

3. Mr. J. Vaz, learned counsel for the Petitioners submits that the proposed acquisition is initiated malafide at the instance of the Respondent No.5 and

involves no public purpose whatsoever. He points out that the earlier acquisition in the same locality was dropped after an unfavourable Section 5A, Land Acquisition Act, 1894 (the said Act) report. Thereafter, this time, an officer from the Ministry that is headed by the Respondent No.5 was appointed as a Special Land Acquisition Officer. This officer has submitted a biased report without application of mind or taking into consideration the objections by at least five out of the alleged thirteen households who are alleged to be benefited by the acquisition and road proposed by the Respondent No.4-Panchayat.

4. Mr. Vaz submits that the proposed acquisition or rather its initiation, is in totally breach of the Government own Circular dated 7th April, 2003 as well as the NOC of the Town and Country Planning Department issued in pursuance of such Circular. He submits that at site, it is conceded, even in the biased Section 5A report that it is impossible to have a road of width of six metres. He submits that the alleged public purpose of linking two main roads is also not possible since, the proposed road ends at a nalla from where the Chinchinim-Orlim Bridge road is at a quite distance. He submits that the houses and the compound walls are bound to be damaged and this includes two ancestral heritage homes of the Petitioners, between whose houses the proposed road is to pass. He submits that all this establishes that there is no public purpose involved in the acquisition but that acquisition is initiated at the behest of the Respondent No.5, who is out to wreck vengeance against the Petitioners and other objectors for they declining to support him during the election.

5. For all the aforesaid reasons, Mr. Vaz submits that this petition is liable to be allowed and the detailed interim order made by this Court on 3rd May, 2010, made absolute.

6. Mr. Faldessai, learned Additional Government Advocate refers to the affidavit of Pandharinath N. Naik, Under Secretary (Revenue) filed on 15th February, 2010 to submit that the acquisition is passed upon proposal of the Respondent No.4-Panchayat and therefore, involves public purpose. He submits that all procedures have been followed and there is no infirmity in the proposed acquisition. He therefore submits that this petition may be dismissed.

7. Mr. Sardessai, learned Senior Advocate for the Respondent No.4-Panchayat

points out that in the year 1990 several residents from the locality including the Petitioners had demanded road in the locality. He submits that the allegations of malafides are totally vague and in any case baseless. He submits that only reason the interim relief granted was because this Court felt that the droppage of property bearing survey No.9/18A would provide no link to the main road, thereby frustrating public purpose. He points out that this droppage was an inadvertent error and subsequently the Government by issuing fresh Notification has also acquired this portion. He therefore submits that this petition is liable to be dismissed and the interim order vacated.

8. Mr. Sardesai submits that the Government Circular dated 7th April, 2003 is substantially complied with. In any case, he submits that such Circular can never take away powers of the Government to acquire land for public purpose. He submits that if there is conflict between the Circular and the provisions of the Land Acquisition Act, 1894, it is latter which must prevail.

9. Mr. Sardesai submits that the objections of all the objectors have been duly considered by the Special Land Acquisition Officer and in pursuance of the same, the area of the proposed acquisition was reduced from 1045 square metres to only 835 square metres. He points out that even the area from the Petitioners' property has been reduced. He submits that this is indicative of application of mind. Mr. Sardesai submits that even the Petitioners have admitted to the existence of pathway. He submits that during the monsoon, this pathway is rendered difficult for use and therefore, if the Panchayat proposes acquisition and asphaltting, there is no question of any malafides or absence of public purpose.

10. For all the aforesaid reasons, Mr. Sardesai submits that this petition is liable to be dismissed and the interim order made on 3rd May, 2010, vacated.

11. The record indicates that the acquisition in the present case was not initiated by the Government on its own accord but rather initiated on the basis of the proposal of the Respondent No.4-Panchayat. Precisely to deal with such acquisitions, the Government, it appears has formulated a policy which is reflected in its Circular dated 7th April, 2003.

12. The Circular begins by stating that in the past the Government has issued several instructions to streamline the procedure of land acquisition and to

ensure better and effective administration of land acquisition matters. In supercession of all earlier instructions now a fresh set of consolidated instructions with additional points are issued.

13. The Circular, at the very outset provides that all proposal sent by the Acquiring Department should be genuine and bonafide serving public purpose and clear statement as to the benefit has to be indicated in the proposal itself. In so far as the issue of road access is concerned, clause 1(iv) of the Circular provides for fulfillment of certain conditions.

14. Clause 1(iv) of the Circular dated 7th April, 2003 reads as follows:-

â??(iv) In case of road access following conditions are to be fulfilled:-

- a) At least 10 households be benefited in respect of 3 metres wide road and length of less than 200 metres.
- b) At least 20 households should be the beneficiaries for 4 metres wide road and length of less than 200 metres
- c) Any road beyond 4 metres width or of length more than 200 metres should not be recommended unless approved by Town and Country Planning Department.â??

15. Further, clause 1(x) of the Circular dated 7th April, 2003 provides that the proposal to the Collector for acquisition must contain the items specified under clauses (a) to (j). Clause (f) specifically speaks of â??NOC from Chief Town Planner, as applicableâ??.

16. The Circular dated 7th April, 2003 concludes by stating that the instructions therein will be applicable with prospective effect and have to be strictly complied with. Any breach would be viewed seriously and the officers/officials held responsible will have to face disciplinary action. The Circular itself states that the same has been issued with the approval of the Hon'ble Chief Minister.

17. It is true, as contended by Mr. Sardesai that the Circular of this nature, can never fetter the powers of the State Government to acquire lands in accordance with the provisions of the Land Acquisition Act, 1894. It is also true that the Circular of this nature cannot be regarded as absolutely mandatory, in the sense of admitting no deviation therefrom under any circumstances whatsoever. However, the State Government has itself set out in the very Circular that the instructions therein will have to be strictly complied with. The State Government itself has set out in the Circular that any

breach would be viewed seriously and the officers/officials held responsible will have to face disciplinary action. The Circular, reflects the policy of

the State Government when it comes to initiation of acquisition proceedings on behalf of the Acquiring Departments like Panchayats. Therefore, it is

not as if the Government own Circular dated 7th April, 2003 is to be completely ignored or breached, without any sufficient or good reasons but

deviation from the same.

18. Therefore, all that we say in this matter is that even though the Circular or the instructions therein may not be mandatory and deviation therefrom

may be permissible, such deviation ordinarily have to be for good and sufficient reasons. If the deviations are arbitrary or for reasons which are

extraneous, then, coupled with other factors which are involved in the present matter, this Court will have to examine whether the acquisition is indeed

for bonafide purposes or involves genuine public purpose. The extreme contentions of Respondents that the Circular is totally irrelevant will therefore

have to be rejected.

19. The record indicates that there is really no dispute that the acquisition is for the purposes of road access in the village. There is also no dispute that

the proposed road is to have width beyond four metres and in any case the length of more than 200 metres. In such a situation, clause 1(iv)(c) of the

Circular dated 7th April, 2003 requires that the proposals for such acquisition should not be recommended unless approved by the Town and

Country Planning Department.

20. In the present case, the Respondent No.4 being aware of this requirement did apply to the Town and Country Planning Department for such

approval. However, the Town and Country Planning Department, vide communication dated 21st January, 2009 which is to be found at page 18 of the paper book granted only a conditional approval.

21. The aforesaid is clear from the communication dated 21st January, 2009 issued by the Town and Country Planning Department which reads as

follows :-

“To,

The Sarpanch,

Office of Village Panchayat,

Chichinim Deussa,

Salcete Goa.

Sub: Acquisition of land for construction of road at 2nd Palvem, Chichinim Deussa Village Panchayat Salcete Taluka. Ref.:- Y.L. No.VP/CD/2008-09

dt.16/12/08.

Sir,

With reference to the above, this is to inform you that there is no objection from planning point of view for acquisition of land admeasuring an area of

1045.0 sq. mts. located under Deussa village as per survey discription submitted for construction of road subject to following conditions:-

- 1) The right of way of the road shall be minimum 6.0 mts.
- 2) Adequate side drains/cross drains wherever required shall be provided.

The land proposed to be acquired is earmarked as Settlement Zone as per Regional Plan for Goa 2001.

This N.O.C. is issued with approval of the Government.

Yours faithfully,

Sd/

(S. M. Byakod)

Town Planner??

22. The requirement of obtaining an approval from the Town and Country Planning Department in terms of Circular dated 7th April, 2003, in the

circumstances, cannot be regarded as some empty formality which it will be reduced to, if the Panchayat or for that matter the acquisition Authorities

are permitted to proceed in breach of conditions subject to which such approval was granted by the Town and Country Planning Authorities. Again,

we make it clear that all this may not be a mandatory requirement. However, in the absence of good and sufficient reasons or rather, for arbitrary and

extraneous reason, the Authorities, ought not to be permitted to deviate from such conditions.

23. The NOC from the Town and Country Planning Authorities makes it clear that the proposal for acquisition is to be recommended only if the right

of way of the road is to be maintained at minimum six metres and further adequate provision for side drains/cross drains can be provided. In the

present case, there is overwhelming evidence on record and in any case it is even conceded both in the returns filed by the Panchayat as well as

Section 5A report, that at the site it is impossible to have a road having right of way of minimum six metres.

24. At the highest, what is possible at the site, is a road having width of hardly three metres, which again at stretches will be less than three metres.

Further, to construct such a three metres road, the compound walls and in any case two stair cases to the two ancestral and over 100 years old houses

of the Petitioners will certainly have to be demolished. This is clear not only from the documentary evidence placed on record but also photographs

which the Petitioners have placed on record which none of the Respondents have really disputed. Besides, even this three metres road will have to be

virtually touch the houses on each side leaving thereby absolutely no place for any side drains or cross drains. This means that it is virtually impossible

at site to have a road as approved by the Planning Authorities in its approval dated 21st January, 2009. Despite this clear position, the Respondents,

insist upon the proceeding with the acquisition.

25. The Special Land Acquisition Officer, in his Section 5A report, which will be referred to in some detail latter has stated that about 13 households

will be benefited by the proposed road. However, the material on record, speaks otherwise. In any case, the Special Land Acquisition Officer has

purported to take into consideration the houses of five objectors who can hardly be said to be beneficiaries of the road but rather, can be styled as

victims of the proposed acquisition.

26. The Circular dated 7th April, 2003 makes it clear that when it comes to the proposal for acquisition of road access, the Acquiring Department

should ensure that at least 20 households should be benefited for four metres wide road with length of less than 200 metres and at least 10 households

to be benefited in respect of three metres wide road and length of less than 200 metres. Even this condition stands prima facie breached though it is

correct that this condition applies to roads having length of less than 200 metres. In respect of road having length of more than 200 metres or width of

more than four metres, the Authorities have to go by the approval of the Town and Country Planning Department. There are no reasons forthcoming

as to why the acquisition is insisted upon despite breach of these conditions.

27. The Petitioners, in the petition, have pointed out that in the past the acquisition was proposed in this very locality vide Notification dated 29th March, 1995. However, the Land Acquisition Officer from the Land Revenue Department which is normally the Department which handles the acquisition after hearing the objections under Section 5A made a report dated 1st July, 1996, in which, he recommended dropping of the acquisition, particularly because the same would involve demolition of the houses and compound walls. On that occasion, even the Petitioners were heard by this Land Acquisition Officer.

28. In Section 5A report dated 1st July, 1996 the Land Acquisition Officer cited the following reasons to propose dropping of acquisition proceedings.

â??(a) Not feasible as no space is available on various stretches between the houses of both the sides.

(b) The cost of the acquisition will be considerably increased as the parties will claim severance charges and will not be comensurate to the utility of this road.

(c) The objector had also shown an alternate site which is indicated in the plan marked as â??Bâ? (now attached). However, this diversion or new alignment is not also feasible as it will not serve the purpose of serving the population living at the site.â??

29. The State Government on that occasion, accepted Section 5A report and did not insist for proceeding with the acquisition. This time however, the regular Land Acquisition Officers from the Revenue Department were not assigned duties in relation to the present acquisition but rather, an officer from the Water Resources Department of which the Respondent No.5 was the Minister was appointed as â??Special Land Acquisition Officerâ??.

30. In paragraph 21 of the petition, the Petitioners, have made the following allegations of malafides against the Respondent No.5, in relation to appointment of this Special Land Acquisition Officer.

â??The Petitioners states the Petitioners received a report under Section 5(A) of the Land Acquisition from the said Florina Collasso e Fernandes dated 10/11/2009 hereto annexed as Annexure XIII is the said report. It is a clear case of abuse of the public office by the concern Minister Respondent No.5 by having a person from his department appointed as a Land Acquisition Officer to a department that does not belong to his ministry

with malafied intentions and file a report perhaps because other officers from the Land Acquisition Office were not willing to tone the line of the concern minister which is against the public interest.â??

31. Significantly, despite such allegations the Respondent No.5 has chosen not to file any response to this petition, though this petition was instituted in the year 2010 and even the interim order was made therein on 3rd May, 2010.

32. In the return filed by the Under Secretary (Revenue), all that is stated is that this appointment of the Special Land Acquisition Officer was made

â??after looking into the work load on each Land Acquisition Officer and an endeavour is made to distribute the work equally among the officersâ??.

33. According to us, the allegations in paragraph 21 of the petition ought to have been denied by the person against whom such allegations were made

and not by the Under Secretary. In any case, the denials by the Under Secretary are also quite vague. The response does not state that the other

Land Acquisition Officers who regularly handle such acquisitions were overburdened or that this Special Land Acquisition Officer had any experience

in handling such matters and was, in the past, assigned such duties. This was important, because we find that the Special Land Acquisition Officer in

the present case has, addressed irrelevancies whilst refusing to address serious objections raised not only by the present Petitioners but also other

objectors to this acquisition.

34. To the objections of the Petitioners that the NOC of the Town and Country Planning Department is for road having minimum width of six metres

and the fact that it is impossible to have such a road at the site, the Special Land Acquisition Officer accepts the case of the Respondent No.4-

Panchayat that â??if the objectors still wish to have a 6 metres wide access, then let it be done at a later stage by razing down the structures and

other properties of the public for which a secondary proposal would be made by the acquiring department based on the wants and wishes of the

objectors.â??

35. In our interim order made way back on 3rd May, 2010, the aforesaid portion from the report of the Special Land Acquisition Officer has been

highlighted prompting the Division Bench to make the following observations at paragraph 7.

â??7. While we do not wish to express a final opinion as to the effect of this

blatant threat by the Village Panchayat and the acquiring department to use their power to acquire the petitioners' property by a subsequent acquisition and then to raze it, we deprecate the same. It was certainly a point that the petitioners were entitled to take without being met by such a threat from the authorities. Such an attitude of avoiding an answer to a case on merits and meeting the same with a threat, leaves us wondering whether the allegations of mala-fides are unfounded.

The same did not warrant a threat on the part of the Village Panchayat to the petitioners to exercise the powers of the State by demolishing the structures in the subsequent acquisition proceedings. Why was the threat not meted out in respect of the earlier proceedings ? The affidavit does not give any explanation regarding the same. This coupled with the other contentions of malafides, such as the choice of the LAO, persuades us to consider the matter further.â??

36. In the absence of any affidavit from the Respondent No.5 and the affidavits on record placing no further material, there is really no case made out to permit the Respondent to proceed with the acquisition of this nature. Rather, case is made out to make our interim order dated 3rd May, 2010, absolute.

37. No doubt, in making the interim order, the Division Bench of this Court, in paragraphs 8 to 10 had considered the effect of dropping of property bearing survey No.9/18 or 9/18A from the impugned Notification. However, this was not only consideration which prompted the Division Bench of this Court to grant interim relief. This was one of the considerations. Therefore, merely because the acquisition in relation to survey No.9/18A may now have taken place, is not a ground to vacate the interim relief.

38. Besides, in the course of final arguments, Mr. Sardesai handed in a plan which was taken on record and marked 'X' for the purpose of identification. This plan was handed in to submit that the proposed acquisition serves public purpose of linking two main roads in the locality. However, from the perusal of this plan, we find that the proposed acquisition which is shown in orange lines ends at a nalla where No.â?14â? appears. From this point, Chinchinim-Orlim Bridge road is at a substantial distance and therefore, we fail to understand as to how it is contended that the proposed acquisition will afford as link between two main roads.

39. To our query, Mr. Sardessai only pointed out that the Panchayat has resolved to undertake further acquisition and such resolution is forwarded to the appropriate Government. There is absolutely no material before us in this regard. That apart, we fail to understand as to why, if real purpose of acquisition was to link the two roads, no acquisition was provided for, in the first instance so that the linkage is complete. The proposed acquisition in the present case abruptly halts at point indicated by No.14 and the nalla in the plan handed in by Mr. Sardessai which we have marked 'X' for the purposes of identification. In these circumstances, we feel that Mr. Vaz, learned counsel for the Petitioners is right that there is no real or genuine public purpose involved in this matter. The existence of genuine public purpose, being sine qua non for valid acquisition, this acquisition must fail and will have to be quashed.

40. The Special Land Acquisition Officer, in his Section 5A report also concedes that not only that a road having width of six metres is not possible at the site but further that to even lay a road of three metres width, the stair-cases to the Petitioners' two houses will have to be demolished. The Special Land Acquisition Officer however adds that this damage can always be repaired by the Panchayat by re-doing the steps with cement mortar and steel. There is no consideration of approval from the Town and Country Planning Department with regard to the road width and providing for side drains.

41. The Special Land Acquisition Officer, in the context with obvious danger to safety if the traffic is permitted on such narrow roads adds that the road once constructed can be permitted â??only for the usage of light motor vehicles and not for heavy motor vehiclesâ??. Earlier Section 5A report, which has recommended dropage of acquisition proceedings in the locality had in fact adverted the aspect of this safety as one of the considerations for not proceeding with the acquisition.

42. One of the objectors Lourenco Pinto and his wife had pointed out that the acquisition will render their property useless and they will be deprived right to build house thereon. To this, the Special Land Acquisition Officer observes â??dreams of these objectors to build the house on their properties which is bound to be completed if the acquisition proceedsâ??.

43. The Special Land Acquisition Officer further proceeds to give a gratuitous

advice to these objectors, in the following words:-

â??Besides this, if the objector is willing to forego the compensation, then they would be eligible to get the benefit of F.A.R. The choice is on the objectors to decide what they wish to benefit fromâ??.

44. The Special Land Acquisition Officer, apart from exceeding the scope of inquiry under Section 5A of the said Act perhaps even failed to realise that at that time there was no scheme by which the Government would offer any benefit of increased F.A.R., particularly to the properties situated in villages. The Special Land Acquisition Officer also failed to realise that once the Section 5A report is prepared, he would perhaps retain no control over the passage of light or heavy traffic on the road.

45. The Special Land Acquisition Officer then refers to benefits to about 13 families/households. This is contrary to the record. In any case, it appears that the Special Land Acquisition Officer ropes in almost five objectors having houses in the locality, which would be affected by the acquisition. This is not the manner in which the Special Land Acquisition Officer would have dealt with serious objections raised by the objectors based inter alia on the Government own Circular dated 7th April, 2003.

46. We are quite conscious that Section 5A reports are not to be construed as judgments and orders made by any judicial authorities. Nevertheless, when there is no reference to most of the objections raised by the objectors and comments are made on the basis of irrelevancies, it cannot be said that the Special Land Acquisition Officer has discharged his duty of making a proper Section 5A report, which could then form basis of the appropriate Government opinion whether or not to proceed with the acquisition. Besides, as noted earlier, the Special Land Acquisition Officer in the present case, is an officer from the Water Resources Department and it is the case of the Petitioners that this Special Land Acquisition Officer was chosen because the Respondent No.5 then, was Minister of the Water Resources Department. Mr. Vaz pointed out that earlier Land Acquisition Officer had given adverse report on account of which the acquisition proceedings in the locality had to be dropped. He therefore submits that on this occasion the Special Land Acquisition Officer from this Department was chosen in order to furnish a favourable report. Such allegations which find reflection in paragraph 21 of the petition have not been denied by the

Respondent No.5 and the denial by the Under Secretary is quite vague and evasive.

47. The representation dated 7th March, 1990 relied upon by the Panchayat no doubt, relates to a road in the locality. However, it is quite clear that the representation does not speak of the road with alignment reflected in the impugned Notification. The representation, appears to concern the road which is shown in colour green in the plan produced on behalf of the Panchayat and marked 'X' for the purposes of identification. As noted earlier, this acquisition was dropped after unfavourable Section 5A report by the Land Acquisition Officer. Therefore, this petition cannot be defeated on the basis that the Petitioner was also a signatory to the representation dated 7th March, 1990.

48. In our interim order dated 3rd May, 2010, we had referred to several circumstances which prompted us to grant interim relief. Even after returns have been filed, there is really no case made out to persuade us to take any different view in the matter. Only one of the circumstances relating to the acquisition of property bearing survey No.9/18A has changed since then. However, this is offset out by circumstance that the proposed acquisition, in any case, will not offer any link between the main road and the Chinchinim-Orlim Bridge road, as urged by the Panchayat.

49. For all the aforesaid reasons, we quash and set aside the impugned Notification dated 16th December, 2009 and make the rule absolute in terms of prayer clauses (i) and (ii) of this petition.

50. In the facts and circumstances of the present case, there shall be no order as to costs.