
(2013) 12 BOM CK 0036
In the Bombay High Court
Case No : Writ Petition No. 227 of 2013

Hanuman Laxman Aroskar and Others	APPELLANT
Vs	
State of Goa and Another	RESPONDENT

Date of Decision : 05-12-2013

Acts Referred:

Citation : (2014) 1 ABR 508 : (2014) 3 ALLMR 65 : (2014) 2 BomCR 322 : (2014) 2 MhLj 647

Hon'ble Judges : F.M. Reis, J;B.R. Gavai, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.R. Gavai, J.—Rule. With the consent of the learned Counsel for the parties made returnable forthwith and heard. The petitioners have approached this Court praying for quashing and setting aside the notifications dated 17th July, 2012 and 10th January, 2013 issued u/s 6 of the Land Acquisition Act, 1894.

2. The facts in brief giving rise to the present petition are as under: Notification u/s 4 of the Land Acquisition Act came to be issued on 17th July, 2012 in respect of the petitioners' lands, which also covered various other lands. The State Government had initiated proceedings for acquisition of the land for the construction of New International Airport at Mopa in Pernem Taluka. Notification dated 25th July, 2008 under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act") and declaration dated 28th July, 2009 was issued u/s 6 of the said Act were issued by the State Government. The said came to be challenged before this Court by filing various writ petitions. The Division Bench of this Court vide judgment and order dated 7th May, 2012, disposed of the said petitions by the following order:

(122) In the result, Rule is made partly absolute in Writ Petition No. 568 of 2009, Writ Petition No. 510 of 2009 and Writ Petition No. 135 of 2010. Rule is discharged in Writ Petition No. 641 of 2009. As far as our order making the Rule

partially absolute in the above petitions is concerned, we direct that in terms of the undertaking given by the State, it will give a hearing u/s 5-A of the L.A. Act read with the Goa, Daman and Diu Land Acquisition Rules, 1972 within a period of thirty days AGK 143 wp 510-568-641-135-09.doc from the date of receipt of copy of this order. The Notification u/s 4 and declaration u/s 6(1) of the L.A. Act stand quashed and set aside only qua the lands belonging to the petitioners in these petitions. It is only these petitioners who will be heard in the inquiry/hearing u/s 5-A by the Collector/Competent Authority and none others be heard nor the proceedings in relation to acquisition of other lands and qua other villagers shall be re-opened in any case.

3. Subsequent to the aforesaid judgment and order passed by this Court, notification u/s 4 came to be published on 17th July, 2012. The site inspection was done by Special Land Acquisition Officer on 13th September, 2012. Objections were heard by the Land Acquisition Officer u/s 5-A on 14th September, 2012. On 19th October, 2012 a report as required u/s 5-A was submitted by the Land Acquisition Officer to the Government. A declaration as required u/s 6 of the said Act was made on 10th January, 2013 and was published in the Official Gazette on 17th January, 2013. Between that day and the filing of the petition, which is on 15th March, 2013, the hearing as required u/s 9 of the said Act was given with respect to various villages. After filing a petition, on 28th March, 2013, 1st April, 2013 and 3rd April, 2013 awards u/s 12 of the said Act came to be passed in respect of Casarvarem village, Chandel village and Varconda village, respectively. On 8th April, 2013, the possession of the land u/s 16 of the said Act has been taken.

4. The petitioners have basically approached this Court on the ground that the objections raised by them were not considered by the Special Land Acquisition Officer in accordance with law.

5. We have heard Shri Nigel Da Costa Frias, the learned counsel for the petitioners and Shri A.N.S. Nadkarni, the learned Advocate General on behalf of the respondents.

6. It is the contention of Shri Nigel Da Costa Frias that though following substantial objections which were permissible in accordance with sub-rule 2 of Rule 4 of the Goa, Daman and Diu Land Acquisition Rules, 1972 (hereinafter referred to as "the said Rules") are raised, the same have not been considered by the Land Acquisition Officer:

(a) Land proposed to be acquired was far more excessive than the area required for setting up of an international airport;

(b) The existing international airport at Dabolim has sufficient capacity to cater to all the passengers and cargo traffic for Goa;

(c) Dabolim airport was currently upgraded and upon completion of upgradation, the second airport was not at all necessary;

(d) That the close proximity of Dabolim International Airport towards the south and the under construction Chipi airport in the State of Maharashtra and Mopa would raise serious concern about the safety of the air traffic;

(e) Existing Dabolim airport is superior to the proposed airport at Mopa;

(f) The proposed airport at Mopa, if constructed, would have an impact on the environmental aspect and further since it is threatening displacement of 15,000 persons, it will have great impact on socio-economic aspect;

(g) No personal hearing was given to each of the petitioners.

The learned counsel relies on the following judgments of the Apex Court and the judgment of the Division Bench of this Court passed in Writ Petition Nos. 170 and 460 of 2011:

1. Surinder Singh Brar and Others Vs. Union of India (UOI) and Others, .

2. Usha Stud and Agricultural Farms Pvt. Ltd. and Others Vs. State of Haryana and Others, .

3. Raghbir Singh Sehrawat Vs. State of Haryana and Others, .

7. Shri A.N.S. Nadkarni, the learned Advocate General, on the contrary, submits that the objections which were raised by the petitioners were raised beyond the scope of the judgment of the Division Bench of this Court dated 7th May, 2012 in Writ Petition No. 510/2009 with companion petitions. The learned Advocate General submits that what was permitted to the petitioners by the said judgment was only raising objection qua their individual lands. However, the petitioners instead of raising the objections with respect to their individual lands, had raised objections pertaining to wider issues which already stood concluded in the judgment of the Division Bench of this Court dated 7th May, 2012. He submits that in view of the other issues having already been concluded between the same parties, it was not permissible for the petitioners to raise the said grounds again. The learned Advocate General submitted that the requirement of the present airport is around 81 lacs square metres. He submits that out of that the area of 59 lacs square metres is already acquired. He further states that the land which is subject matter of the present petition is around 22 lacs square meters. It is submitted that the land is in between the lands which are already acquired. He states that the land which is subject matter of the present petition is owned by about 380 persons out of which 300 have not opposed to the acquisition. He states that only 80 persons had filed objections out of which 60 had come for hearing and 55 of them have filed the present petition. The learned Advocate General further states that there are only 15 dwelling houses in the land in question. The learned Advocate General further reiterates his earlier statement that State Government would not take possession of any land on which the dwelling units or houses are constructed unless alternative sites are first provided for dwelling units or houses. He further reiterates that if any of the petitioners or any of the occupants of the dwelling houses or units desire to have

independent dwelling house for their residence, the State would provide for such alternative house or dwelling unit. The learned Advocate General relies on the judgment of the Apex Court in the case of Murari and Others Vs. Union of India (UOI) and Others, and the judgment of the Division Bench of this Court in the case of Ganpat Balaji Parate Vs. State of Maharashtra and others, .

8. It is not in dispute that the petitioners had at an earlier point of time approached this Court. The judgment and order of this Court dated 7th May, 2012 also came to be challenged before the Apex Court. However, the petitioners withdrew the said SLP with liberty to raise their objections u/s 5-A. In this background, we would be required to consider the case of the petitioners. It would be relevant to refer to paragraph 109 of the judgment of the Division Bench dated 7th May, 2012, which reads thus:

(109) We are of the opinion that once the learned Advocate General has conceded that qua the petitioners and their lands, the State would hold the necessary inquiry/hearing and which statement we have accepted as undertaking to this Court, then, it is unnecessary to deal with the rival contentions on this aspect. The State has conceded that the special powers in cases of urgency enumerated by Section 17 could not have been invoked in the given facts and circumstances and the Notification u/s 4 and a declaration u/s 6 must, therefore, fail qua the petitioners and their lands alone. We clarify that save and except the objections as specified above nothing else would be considered in the inquiry/hearing u/s 5-A which the State shall hold and conclude, as provided therein and within a period of thirty days (30) from the date of receipt of copy of this judgment. At such an inquiry /hearing, the petitioners can raise objections in terms of Rule 4 of the Goa, Daman and Diu Land Acquisition Rules, 1972. However, the petitioners shall not be permitted to raise any objection on the competence of the State Government to initiate the subject acquisition proceedings nor can they urge that the notified purpose is not genuinely or properly a public purpose. These issues have been decided and atleast as far as the second aspect is concerned, we find that it is a conceded position even by the petitioners, In other words, the notified purpose is a public purpose.

(Emphasis supplied)

It can thus clearly be seen that the Court had restricted the permissibility of the objections to be raised by the petitioners, only insofar as qua the petitioners" land and the objections as permissible in terms of Rule 4 of the said Rules. It can further be seen that the petitioners were not permitted to raise any objections pertaining to the competency of the State Government to initiate the acquisition proceedings. Equally, the petitioners were not permitted to urge that the notified purpose is not genuinely or properly a public purpose. Not only this, but the Court had gone on record to observe that it is a conceded position given by the petitioners that the notified purpose is a public purpose.

9. In this background, it will be necessary to refer to sub-rule 2 of Rule 4 of the

said Rules which reads thus:

(2) To be admissible, an objection shall have been made within 30 days after the issue of the notification or within such further period as may be fixed by the Collector and shall allege some specific objection such as:--

(i) the notified purpose is not genuinely or properly a public purpose;

(ii) the land notified is not suitable for the notified purpose;

(iii) the land is not so well suited as other land;

(iv) the area proposed is excessive; (v) the objector's land has been selected maliciously or vexatiously; or

(vi) the proposed acquisition will destroy or impair the amenity of historical or artistic monuments and places of public resort or will take away important public rights of way or other convenience or will desecrate religious buildings, graveyards and the like.

10. In that view of the matter, it can be seen that the petitioners could have raised objections only with regard to the objections permissible under sub-rule (2) of Rule 4 and only qua their lands. Insofar as clause (i) of sub-rule 2 is concerned, the Court has already come to a conclusion that petitioners would not be permitted to raise a ground that it is not genuinely or properly a public purpose. In that view of the matter, the objections in that regard could not have been raised by the petitioners. Insofar as clause (v) is concerned, it is not even the case of the petitioners that their lands have been selected maliciously or vexatiously. As such, the objection under that clause is also not available. Insofar as clause (vi) is concerned, it is not the case of the petitioners that the proposed acquisition will destroy or impair the amenity of historical or artistic monuments and places of public resort or will take away important public rights of way or other convenience or will desecrate religious buildings, etc. As such, it could be seen that the only objection that the petitioners could have taken was regarding the land notified to be not suitable for the purpose, the land is not so well suited as the others and that the area proposed is excessive. The Land Acquisition Officer in his report has observed thus:

At the beginning of hearing, the petitioners present were requested to sign the attendance sheet; however they refused to do so and contended they would sign the attendance only after getting proper explanation to the objections raised by them. The undersigned read out their main objections as mentioned earlier, and informed them that most of their main objections have been already argued at the time of hearing their writ petitions by the Id. advocates of both the parties and Court has already given the finding. As regards to objections the undersigned has given the explanation as under:--

(i) The said total area has been recommended by the experts specially appointed by the Government for the said project.

(ii) The High Court concluded that the State Government will duly and completely comply with the EIA Notification dated 14th September, 2006 and apply for and obtain all prior approvals, clearance and licenses as prescribed by the Environment Protection Act, 1986 and the EIA Notification before undertaking any work of construction and development of the lands as a private international airport. These statements of the State Government may be accepted as undertaking to the Court.

(iii) This project is approved by the Central Government.

(iv) As per the physical site inspection there are only 15 dwelling houses within the proposed area to be acquired and the Ld. Advocate General made a statement in the High Court that the State Government would not take possession of lands on which dwelling units or houses are constructed unless alternate sites are first provided for construction of dwelling units or houses.

(v) The nature of land and type of cultivation will be better explained in the site Inspection Report and the same has been already identified by the Z.A.O. and Forest Department.

(vi) The canal network of Tillari Irrigation project running around the Mopa plateau shall not be affected. If needed, alternative solutions will be provided by re-aligning the canals thereby not wasting the huge investments made.

(vii) Government will make alternative arrangement to provide water.

(viii) The EIA Report will be obtained before the construction of Airport.

(ix) If the dwelling houses are acquired an alternative site would be provided.

However, the petitioners were not convinced with the above explanation and disturbed the proceedings stating that they expected Higher Authorities to attend this type of hearing and give the clear answers to their questions raised thereon. They also demanded that the Government should give in writing about its stand on the objections raised and they also demanded that the Environment Clearance Report should be properly prepared.

After second request also the petitioners refused to sign the attendance sheet and boycotted the hearing proceedings.

During the site inspection conducted by the undersigned, it is observed that there are only 14 dwelling houses/cow sheds are affected under the proposed acquisition and also the land being acquired is mostly scattered cashew and jungle trees rocky area and few rice cultivation area. Since the present notified land is the part and parcel of the earlier acquired land and it is situated in the middle of the earlier acquired land and therefore the objections raised by the petitioners that the loss suffered by them will be far less as compared to the overall benefit accrued to the society at large due to utilization of the land for such a utility project. In the light of the above, I find that the objections raised against the acquisition cannot be allowed in view of the larger public interest

involved. Also the said land has been proposed after appointing a technical consultant and report submitted pertaining to Techno-Economical feasibility study of the Establishment of Goa International Airport by the International Civil Aviation Organization for the Government of Goa including the master plan for the Green Field Airport at Mopa. Also the fresh EIA study is under consideration in view of the new master plan approved by the Steering Committee. In view of the discussion made herein above, I recommend the acquisition of the said land by overruling the objections for an area admeasuring 2263185 sq. mtrs. For construction of the International Airport at Mopa in Pernem Taluka.

11. It can be seen that the objections of the petitioners were basically on the ground that since an airport exists at Dabolim, it was not necessary to have a second airport at Mopa and the land sought to be acquired was far in excess than the requirement. It is to be noted that the project has been approved by an International Civil Aviation Organizations. It is also included in the Master Plan to build the airport. The Central Government has also approved the said project. The Division Bench of this Court while delivering the judgment has considered the said report which has taken into consideration the expansion of the airport at Dabolim, the passenger inflow, the capacity to handle the passengers and after considering all these aspects, has found the second airport at Mopa to be necessary. In any case, the requirement to have a second airport, the suitability of the land, the area to be needed for the construction of the airport, are all subjects within the domain of experts. When a body of experts after considering all these aspects, has found the second airport to be necessary and the proposed land to be suitable for the construction, it is not permissible for this Court while sitting in its jurisdiction under Article 226, to sit in an appeal over the decision of the experts. In that view of the matter, we find that the objections have been correctly considered by the Land Acquisition Officer.

12. Insofar as the impact of the environmental aspects are concerned the said issue has also been considered by the Division Bench in its earlier judgment and, as such, the petitioners could not have been permitted to again reopen the said issue.

13. Insofar as the socio-economic impact is concerned, the Land Acquisition Officer has found that there are only 14 dwelling houses during his site inspection and has also found that the land acquired is mostly having scattered cashew and jungle trees rocky area and few rice cultivation area. In that view of the matter, the authority has also taken into consideration the socio-economic impact of the project. In any case, the question regarding socio-economic impact has already taken care of by the State Government.

14. The following statements made by the learned Advocate General have been taken on record by this Court in an earlier order:

(i) That the Government will not take the possession of any land on which the dwelling units or houses are constructed unless alternative sites are first

provided for dwelling units;

(ii) That if any of the petitioners or any of the occupants of the residential dwelling units or houses desire to have independent dwelling house or unit for his residence, the State would provide him such alternative house or dwelling unit;

(iii) The State will not dispossess any of the petitioners or the occupants residing in the residential houses or will not demolish the house till the alternative house is provided and the persons concerned are put in possession thereof;

(iv) This will not prejudice the said persons from claiming compensation for acquisition of their land and even objecting to the compensation offered, by taking recourse to Section 18 of the said Act;

(v) That the State will provide employment opportunities to the petitioners and the affected occupants of residential structures or those carrying on any plantation or agricultural operations and activities by providing them jobs in the project undertaken namely, construction and development of the land for putting up of international airport;

(vi) That such person would be handed over first letter of appointment and will then be dispossessed from his land or house.

We find that in view of the aforesaid categorical statements recorded by this Court, the 2014 (II) AIR Bora R/33 State has taken sufficient care of socioeconomic impact that may have on account of the acquisition of the petitioners' land.

15. Insofar as the contention raised by the learned Counsel for the petitioners that no individual hearing was given to each of the petitioners is concerned, the perusal of the record would reveal that the objections raised by the petitioners are of stereotype. The objections are general in nature. Though the petitioners were required to raise the objections restricted to their land nothing of that sort has been done. It is pertinent to note that 60 persons were present in response to the notice and it is not anybody's case, that though any of the petitioners had sought an individual hearing, the same was denied to them by the Land Acquisition Officer. In that view of the matter, we find that the said contentions are without any substance.

16. Insofar as the judgment of the Apex Court in the case of Surinder Singh Brar and Others Vs. Union of India (UOI) and Others, . In the said case, the Court had come to the conclusion that the Land Acquisition Officer had not visited the spot for inspection and created false record thereof. In that view of the matter, the said judgment will not be applicable to the facts of the present case.

17. Insofar as the judgment of the Apex Court in the case of Usha Stud and Agricultural Farms Pvt. Ltd. and Others Vs. State of Haryana and Others, is concerned, the Court had come to the conclusion that the State Government had

not applied its mind to the objections raised by the objectors and the report made by the Collector u/s 5-A(2). Apart from that, in the said case, the Court had also found that the petitioners were given discriminatory treatment as against similarly circumstanced persons. As such, the said judgment would also not be applicable to the facts of the present case.

18. Insofar as the judgment of the Division Bench of this Court in Writ Petition Nos. 170 & 460 of 2011 is concerned, the Court came to the conclusion that the Collector had not taken into consideration the objections raised by the objectors at all. As such, the said judgment will also not be applicable to the facts of the present case.

19. Insofar as the judgment of the Apex Court in the case of Raghbir Singh Sehrawat Vs. State of Haryana and Others, is concerned, the Court came to the conclusion, that the notices for hearing objections were not served upon the appellant before the Apex Court and his wife and their signatures in the list of objections were forged in the proceedings of hearing before the competent authority. In that view of the matter, the said judgment would also not be applicable to the facts of the present case.

20. We have also perused the map which was produced for perusal of the Court by the learned Advocate General. The perusal of the map would reveal that the lands which are subject matter of the present acquisition are in the middle of the other lands which are already acquired. It would be relevant to refer to the following observations of the Apex Court in the case of Murari & Ors. v. Union of India & Ors. (supra):

Mr. Sanghi, learned counsel appearing for some of the appellants urged that the concerned appellant had developed a sports complex providing modern amenities therein and if the same is demolished there would be great national waste. It was, therefore, urged that such complexes and built up areas should be deleted from the acquisition. It may be pointed out that in the master plan the land indicated in green colour is reserved for recreational facilities. The recreational facilities are also part of the planned development of Delhi and it cannot be disputed that recreational amenities are also part of the life of the people and an important feature of a developed society. Therefore, no legitimate objection can be made in the acquisition of such land which are shown in green colour. So far as the structures and constructions made on the land are concerned there is no material to show that they were made before the issuance of notification u/s 4 of the Act. It is also not clear whether such constructions were raised with or without necessary sanction/approval of the competent authority. No grievance therefore can legitimately be raised in that behalf as the same would be regarded as unauthorised and made at the risk of the land owners. Here a reference of a decision of this Court in the case of State of U.P. Vs. Smt. Pista Devi and Others, may be made with advantage, para 7 of which reads as under:

It was next contended that in the large extent of land acquired which was about

412 acres there were some buildings here and there and so the acquisition of these parts of the land on which buildings were situated was unjustified since these portions were not either waste to or arable lands which could be dealt with under S. 17(1) of the Act. This contention has not been considered by the High Court. We do not, however, find any substance in it. The Government was not acquiring any property which was substantially covered by buildings. It acquired about 412 acres of land on the outskirts of Meerut city which was described as arable land by the Collector. It may be true that here and there were a few superstructures. In a case of this nature where a large extent of land is being acquired for planned development of the urban area it would not be proper to leave the small portions over which some superstructures have been constructed out of the development scheme. In such a situation where there is real urgency it would be difficult to apply S. 5-A of the Act in the case of few bits of land on which some structures are standing and to exempt the rest of the property from its application.

(Emphasis supplied)

In the present case also a large extent of land measuring thousands of acres has been acquired and, therefore, it would not be proper to leave out some small portions here and there over which some structures are said to be constructed out of the planned development of Delhi. We may, however, add here that during the course of the arguments Shri Goswami learned counsel appearing for the respondents-State made a statement that the Government will consider each of the structures and take a decision in that respect. We, therefore, leave this issue to the discretion of the respondent.

(Emphasis supplied)

21. The facts in the present case are almost identical. Vast area of land has already been acquired by the State for construction of the airport. The area which is subject-matter of the present acquisition is some pockets which are coming in between the area which is already acquired. It is thus clear that if the land acquisition is not acquired the project itself may not be workable.

22. It will not be out of place to mention what has been observed by the Division Bench in its judgment dated 7th May, 2012 in the earlier round of litigation, which is as under:

(67) Ordinarily, one would have expected this matter to come to an amicable end in view of the statements made by the learned Advocate General on instructions and particularly that the State is still willing to consider the objections of the petitioners by holding an inquiry/hearing u/s 5-A of the Land Acquisition Act, 1894 qua the petitioners' lands. However, despite this and other assurances of the learned Advocate General and persuasive efforts of Mr. Sonak and other counsel, we were informed that the petitioners would like to pursue the petitions and not accept these statements and undertakings of the State. The impression that we get from all this is that some cause or interest other than that of the

petitioners" livelihood, shelter or rehabilitation is being pursued now. When majority of the landowners or persons having interest are not objecting to the acquisition on any grounds and land from five villages has vested in the State, then, one fails to understand what is the complaint or what is at stake as far as these objectors are concerned.

In that totality of circumstances, we find that the petition is devoid of substance. Hence, dismissed. Rule discharged. However, in the facts and circumstances, no order as to costs.