
(2012) 02 BOM CK 0234

In the Bombay High Court

Case No : Public Interest Litigation Writ Petition No. 26 of 2011

Julio Fernandes

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 13-02-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 31(3)

Citation : (2012) 02 BOM CK 0234

Hon'ble Judges : U.V. Bakre, J;S.C. Dharmadhikari, J

Bench : Division Bench

Advocate : A.D. Bhobe, for the Appellant; A. Kakodkar, Additional Government Advocate for respondents No. 1, 2 and 4, Mr. Shivan Dessai, Advocate for respondent No. 3, Mr. A.N.S. Nadkarni with Mr. K. Noorani, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

U.V. Bakre, J.—Rule. Rule returnable forthwith. Heard by consent of the parties.

2. By this writ petition, which is stated to be filed in public interest, the petitioner has prayed for writ of Mandamus or any other order, writ or direction in the nature of Mandamus directing the respondents to forthwith initiate action against the encroachment done in the property bearing Chalta No. 6 of P.T. Sheet No. 96 of Panaji city and to take immediate steps for removal of the illegally constructed tar road in the said property; to remove the debris dumped in the said property and to ensure that the Government property is not encroached upon.

3. The case of the petitioner, in short, is as follows :

The name of respondent No. 2 is recorded in the Form No. D issued by the Directorate of Settlement and Land Records, Panaji, Goa in respect of the said property bearing Chalta No. 6 of P.T. Sheet No. 96 of Panaji city which property admeasures 5950 square metres. In or about June, 2011, the petitioner noticed debris/ construction material being dumped in the said Government property and

also construction of a new tar road being undertaken in the said property. The inquiries made by the petitioner revealed that the construction of the said road was not being undertaken by the Government Authorities nor there was any permission issued to any person/authority for dumping the debris/ construction material in the said property.

4. Upon receipt of the notice, respondent No. 3 has filed its affidavit-in-reply through its Deputy Commissioner. The intervenor i.e. respondent No. 5 has also filed his affidavit-in-reply. Respondents No. 1, 2 and 4 have not filed any reply. The petitioner has filed affidavit-in-rejoinder.

5. Shri A. D. Bhole, learned counsel for the petitioner, submitted that the name of Captain of Ports i.e. respondent No. 2 is figuring in the column "holders in the original of title" in the property card of the property bearing Chalta No. 6 of P.T. Sheet No. 96 and the Captain of ports, vide letter dated 28/06/2011 addressed to respondent No. 3, has stated that no N.O.C. has been issued by Captain of ports in respect of the said property. He further argued that the Captain of Ports was not a party to any acquisition proceedings or to the writ petitions. He invited our attention to the photographs produced by the petitioner, showing the said road and the debris. According to the learned counsel, only after respondent No. 3 was notified about the present petition, the debris lying in the said property, has been cleared. He also argued that nothing is produced by respondent No. 5 to indicate as to when and by whom the said road has been constructed.

6. Learned Senior Advocate Shri A. N. S. Nadkarni, on behalf of respondent No. 5, argued that respondent No. 5 is one of the plot owners in the said property bearing Chalta No. 6 of P.T. Sheet No. 96 of the city of Panaji which plot bears No. 27 and the same was allotted to him as compensatory plot by the Revenue Department, Government of Goa, vide order dated 19/11/1997, by which the Government of Goa granted alternate plots of land to the persons whose lands were acquired by the Government of Goa for the Town and Country Planning Department vide notification No. 22/19/82-Rd, dated 18/02/1985. He pointed out that the persons including respondent No. 5, who were affected by the said land acquisition, had filed writ petitions before this Court and at the time of hearing of the writ petitions, an undertaking was given by the Government before this Court that as provided in Section 31(3) of the Land Acquisition Act, 1894, the Collector instead of awarding money compensation, shall grant alternate plots to the plot owners. The learned Senior Counsel further argued that the said writ petitions were allowed to be withdrawn by the High Court in view of the order dated 19/11/1997 passed by the Revenue Department allotting alternate plots to the persons whose lands were acquired. According to Shri Nadkarni, along with the said order dated 19/11/1997, a plan was annexed which shows the said plots so allotted as well as 8 metres wide access/ approach road up to plot No. 24. He pointed out that in the said order dated 19/11/1997, in clause No. 7(5), it is stipulated that the Parkway Avenue Co-operative Housing Society Limited shall take up the work of preliminary development of land only

after obtaining final N.O.C. from the Chief Town Planner and P.D.A. certifying that the preliminary development is complete. Thus, according to the learned senior counsel, the said 8 metres wide road was part of the said preliminary development. He took us through the Deed of Allotment dated 05/02/1999 which has been produced as Exhibit C, by which the Parkway Avenue Co-operative Housing Society Ltd. has allotted plot No. 27 to respondent No. 5. He has also brought to our notice the letter addressed by the Collector, North Goa to the Executive Engineer, W.D.-I(Buildings), PWD, Panaji requesting to depute a representative for handing over the possession of the land on 27/04/1999 to the Mamlatdar of Tiswadi by drawing a panchanama of handing over / taking over possession of the land and it was only thereafter that the land admeasuring 11,818 square metres was given to the Parkway Avenue Co-operative Housing Society Ltd., for allotment to its members, who were Sale Deed holders and Non-Sale Deed holders. Learned Shri Nadkarni further argued that by letter dated 13/07/1999, the Town and Country Planning Department issued No Objection for preliminary development of the land and road and ever since the year 2000, the said 8 metres wide access road is existing at the spot and is being used by the plot owners. According to the learned Senior Advocate, the petitioner has filed the petition without verifying the facts and with malafide intentions and without pursuing the matter with the concerned authorities and in spite of being aware of the order dated 19/11/97. He further argued that this is a bogus petition filed by the petitioner with abetted enthusiasm and the same is abuse of the process of the Court. He relied upon certain judgments of the Hon'ble Supreme Court pertaining to the public interest litigations.

7. Learned Additional Government Advocate Shri Amey Kakodkar, on behalf of the respondents No. 1, 2 and 4 and learned Advocate Shri Shivan Dessai, on behalf of the respondent No. 3 have adopted the arguments of the learned Senior Advocate Shri Nadkarni.

8. In reply, Advocate Shri A. D. Bhobe argued that the intention of the petitioner in filing the petition was to protect the encroachment on Government lands and on the basis of Form D which shows the name of respondent No. 2 as occupant and the letter dated 28/06/2011 which shows that the respondent No. 2 has not given any N.O.C. It is submitted on behalf of the petitioner that he was not aware of the order dated 19/11/97.

9. We have perused the entire material on record in the light of the arguments advanced by the parties.

10. The question which requires consideration in this P.I.L. Writ Petition is as to whether there is encroachment in the Government land.

11. What emerges from the affidavits filed by the respondents No. 3 and 5 and the documents in support thereof, is as follows : Land admeasuring 89,277 square metres comprising of P.T.S/Chalta Nos.81/6, 96/5, 96/4, 96/3, 96/2, 96/1, 100/2, 100/1(part) and 96/6 at Miramar, Panaji was acquired for the Town

and Country Planning Department for parks, recreational and other developments of the area vide notification No. 22/19/82-RD dated 18/2/1985. The subject matter of this writ petition is Chalta No. 6 of P.T.S. No. 96, which is included in the said acquisition. Some of the owners of the plots included in the said acquisition, filed writ petitions bearing nos.485/1993, 548/1993, 255/1993, 589/1993, 590/1993, 699/1993, 6/1994, 9/1994, 10/1994, 11/1994, 12/1994, 18/1994, 122/1994, 123/1994, 124/1994 and 216/1995, challenging the said acquisition. These writ petitions were allowed to be withdrawn by the Division Bench of this Court since the order dated 19/11/1997 passed by the Revenue Department of the State Government along with schedule and annexures, was placed on record. Vide the said order dated 19/11/1997, the Government granted alternative plots along with the road access to the persons, who were affected by the said acquisition of land, at the Campal ground. Respondent No. 5 has been granted the plot No. 27, which is a part of Chalta No. 6 of P.T.S. No. 96. One Smt. Biulah De Sa has been granted the plot No. 29 and she has obtained a licence from the Corporation Of the City Of Panaji to construct residential-cum-commercial building in her plot No. 29. This licence mentions about the existing road. The road of 8 metres width is referred to in the said order dated 19/11/1997. There is a plan annexed to the said order dated 19/11/1997 which shows the plots so allotted along with 8 metres wide access /approach road upto plot No. 24. In this order, it is also stipulated that the Parkway Avenue Co-operative Housing Society Limited shall take up the work of preliminary development of land only after obtaining final N.O.C. from Chief Town Planner and P.D.A. certifying that preliminary development is complete. The Eight metres wide road was part of the said preliminary development.

12. The copies of the order dated 19/11/97, oral judgment in the said writ petitions, development permission dated 29/10/99 given by the North Goa Planning and Development Authority, the Provisional N.O.C. Dated 24/12/99 for sub-Division of the plots, given by the Panjim Municipal Council, approved revised layout plan, N.O.C. dated 17/12/99 for sub-division given by the P.W.D., order dated 4/8/98 made by the Collector of north Goa, releasing the plots(including that of the respondent No. 5) to the Park Avenue Co-operative Housing Society Ltd., etc., are all on record. The copy of the Deed of allotment dated 5/2/1999, by which plot No. 27 has been allotted by the said society to the respondent No. 5 is also on record. Even the copy of the Outline Development Plan of Panaji, showing the said road, is produced by the respondent No. 5.

13. It cannot therefore be held in this Petition that there is encroachment in the Government property. Admittedly, presently, there is also no debris/ construction material lying in the said property. We do not wish to go into the aspect as to who has removed the debris.

14. There is therefore no substance in this Writ Petition, which stands dismissed. Rule is discharged but without any order as to costs.