
(2012) 03 BOM CK 0060
In the Bombay High Court
Case No : Writ Petition No. 20 of 2011.

Mrs. Premila Carneiro

APPELLANT

Vs

State of Goa and Two Others.

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 5A, 6

Citation : (2012) 03 BOM CK 0060

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

Bench : Division Bench

Advocate : Mahesh Amonkar, for the Appellant; A. Kakodkar, Addl. Government Advocate for respondents No. 1 and 2 and Mr. S. D. Padiyar, Advocate for respondent No. 3., for the Respondent

Judgement

Dharmadhikari, J.—By this petition under Article 226 of the Constitution of India, the petitioner is praying for a writ of mandamus or any other appropriate writ, order or direction to quash and set aside the Notification u/s 4 and Declaration u/s 6 of the Land Acquisition Act, 1894 ("the Act" for short). She prays that the proposed acquisition of her property be dropped and the property be released from the acquisition. The petition is filed on 15th November, 2010. It is the petitioner's case that the Notification u/s 4 of the Act came to be published on 20th May, 2009 under which the respondents proposed to acquire lands of several persons, including that of the petitioner for a public purpose viz, construction of a road.

2. It is further stated in the writ petition that this notification has been issued at the behest of the Margao Municipal Council-respondent No. 3. The properties which are proposed to be acquired bear chalta Nos. 48/306, 36/306, 43/306, 130/306 and 39/306, situated at Village Colmorod, Navelim, Salcete, Goa.

3. The petitioner is a co-owner of the property bearing Chalta No. 43 of P.T. Sheet No. 306 of City Chalta Margao. The property stands in the name of the

petitioner's father-in-law, viz. Jose Carlos Carneiro who expired on 8th September, 2010. The case of the petitioner is that the interested persons inspected the site plan of the land proposed to be acquired and the alignment of the proposed road kept in the Office of Dy. Collector and S.D.O. Margao for public inspection and what was revealed from the same is that the proposed public road shown in the plan is different, namely it is aligned/routed not in terms of what was envisaged and proposed earlier. The averments in paras 4 and 5 of the writ petition are that the Government has unnecessarily proposed to acquire the part of the land of the petitioner inasmuch as this proposed acquisition will not benefit anybody. It stops in the middle of the property of the petitioner itself and it does not connect any other road to call it a public road and which will be used by the public for their benefit and, therefore, there is no public purpose.

4. The petitioner was orally informed by respondent No. 3 that the road is being planned to provide access to the owners of the property bearing Chalta No. 73 of P.T. Sheet No. 306. Therefore, the portion of the land which is being acquired is not for a public purpose, but it is with malafide intention. The malafides are pleaded and argued as that on the part of the then Chairperson of respondent No. 3. Pertinently, neither this Chairperson is impleaded as the respondent, nor his name is disclosed. It is stated that he was in inimical terms with the petitioner's family and made all attempts to stall the developments of the petitioner's family in other properties.

5. It is not disputed that initially the father-in-law of the petitioner had given his consent for acquisition of the said portion. He was of the view then that the owners of the property bearing Chalta No. 73 of P.T. Sheet No. 306 had no access to go to the main national highway as his land was landlocked. However, subsequently, the said owner purchased the remaining portion of the property and his property now touches the National Highway. He has now direct access to the National Highway and the land is no more landlocked. It is, in these circumstances that a representation was made complaining about the alignment and submitting that the proposed acquisition serves no public purpose. Once the owner of the landlocked property has now available access and his property will be touching national highway, then, all the more this acquisition is unnecessary.

6. An inquiry was held u/s 5A of the Act at which or her objections were not taken on record. However, a report was submitted after the inquiry u/s 5A of the Act concluded. This report dated 17th August, 2010 states that the alignment of the road is as per technical reports and the alignment of the proposed road is made to have an access to maximum number of houses in the said locality and the acquisition would serve larger public interest.

7. Finding that the objections have not been accepted and that the declaration u/s 6 of the Act followed, which came to be issued and prepared on 20th September, 2010, that the instant writ petition has been filed.

8. An affidavit-in-reply has been filed to this writ petition by the Under Secretary

(Revenue), Government of Goa in which all the contentions have been denied. It has been stated that the affidavit-in-reply on behalf of respondent No. 2 would explain as to how the proposed acquisition is for public purpose. What has been argued on the basis of the statements in this affidavit is that the alignment of the road has been approved by the Town and Country Planning Department. The objection of the petitioner that the road ends in the middle of the property has been considered and dealt with in the report, so also all other objections. It is specifically denied that the acquisition is to suit the private purpose, namely that of the then Chairperson of the Margao Municipal Council.

9. What we have on record is the affidavit of the Additional Collector-I of South Goa and presently holding charge as the Chief Officer of Margao Municipal Council. In his affidavit, what he has stated is that with a view to provide access to the residents of the locality, the Margao Municipal Council proposed construction of a road on the existing pathway through fields at Colmorod. In its meeting held on 29th April, 1998 and by resolution No. 2845 the Municipal Council resolved to acquire land at Colmorod for the construction of a road through P.T. Sheet No. 301. Certain other properties, surveyed under chalta numbers, more particularly mentioned in para 4 of this affidavit, were also affected. In such circumstances, the owners of these properties were requested to grant no objection certificates. A communication in that behalf was addressed to all of them and what was decided was that the road would be constructed for the time being only through the properties in respect of which NOCs were obtained by the Council from the owners though the proposal was to take the proposed road through various properties in the locality. Only katcha mud road was constructed by the Council from the main road, passing through the aforesaid properties. A portion of the said mud road later on came to be developed and asphalted. In spite of the NOCs given by certain owners, writ petitions were filed in this Court and details of such writ petitions, the stand of the Council therein and the orders passed are mentioned in paragraph 5.

10. Therefore, in a meeting held on 28th April, 2005, the Council adopted resolution No. 3482 to acquire land from various properties for construction of 6 metres wide public road in Colmorod area, including that from Chalta No. 43 belonging to the petitioner. A meeting was held further to realign portion of the road between certain points and a revised plan came to be prepared. Once again there was a litigation in the form of a writ petition by one Domingos Barretto who instituted Writ Petition No. 367/2006, seeking enforcement of the resolution passed and the decision taken on 21st December, 2005. There was a demand for a motorable road and in these circumstances the Council made its stand clear by filing affidavits. All this entailed further time and the Town and Country Planning Department communicated its NOC somewhere in the year 2007, administrative approval was obtained and a decision was taken to acquire portion of the petitioner's property, in public interest and for public purpose, namely to provide access to the properties. The petitioner has, therefore, falsely alleged, according to respondent No. 3, that the acquisition is malafide inasmuch as her father-in-

law had consented to the acquisition.

11. In paras 16 and 17 of this affidavit, this is what is stated :

16. I say that though in the present land acquisition proceedings the proposed acquisition of petitioner's land is shown till the middle of his property, the Municipal Council has already initiated proceeding for acquiring the remaining portion of Petitioner's land so that the proposed road touches property under chalta no. 73, P.T. sheet No. 306. I say that vide resolution no.3796 dated 19/02/2010, Municipal Council has resolved to acquire additional land from property surveyed under chalta no.43 (part) of P.T. sheet no.306. The necessary NOC has been approved from the office of the Senior Town Planner, Town and Country Planning Department.

17. I further say that administrative approval has been requested for such balance land acquisition from the Directorate of Municipal Administration. Hereto annexed and marked Exhibit R-4 (colly) are the copies of the NOC dated 07/01/2010 given by the office of the Senior Town Planner, Town and Country Planning Department and the site plan for the acquisition.

12. It is on the basis of this material, that we have heard Shri Amonkar, appearing on behalf of the petitioner in this writ petition, Mr. Kakodkar appearing for respondents No. 1 and 2 and Mr. Padiyar for respondent No. 3. We have perused the affidavits placed on record and the entire petition, with annexures thereto, with their assistance.

13. Mr. Amonkar argued that the whole acquisition is for the benefit of certain private persons and no useful purpose will be served by making the road through the portion of the petitioner's property, particularly when there are no further properties or houses beyond the property of the petitioner and in such circumstances, no purpose, much less, public purpose can be spelt out from the notifications that are referred to in the writ petition.

14. In addition, he submits that if certain other properties which are alleged to have been developed for last more than one decade, have been directed to retain the traditional access and abutting only 3 metres" wide road, then, providing 6 metres wide road through out is not for the benefit of the public. He submits that all the properties have now proper access to the national highway. It is in these circumstances that the acquisition cannot be said to be for public purpose even if it is affecting a portion of the petitioner's property.

15. Mr. Amonkar sought to rely upon a plan depicting the location of the property of the petitioner and as to how the proposed road would be cutting a portion of it. He buttresses his argument by producing a document, viz. a permission to develop a property by M/s. Reliance Industries which has only 3 metres wide road, as an access to it. For all these reasons, he submits that the acquisition be set aside.

16. On the other hand, Mr. Salkar and Mr. Padiyar made an attempt to support

the acquisition in question. Upon clarification being sought by this Court as to whether Margao Municipal Council still proposes to go ahead with the acquisition of the portion of the property of the petitioner or not, Mr. Padiyar produces a report which is a true copy of the proceedings which envisage and demonstrate that the ordinary meeting of the Margao Municipal Council was held on 15th September, 2011 at 4.00 p.m. Agenda item No. 3 was the subject of the land acquisition in respect of Colmorod road. That subject was discussed at length and it was unanimously resolved to form a committee to carry out the inspection of the sites, so as to convey the view of the Council to the Deputy Collector. The Committee Members were nominated, details of constitution of the said Committee have been set out, which included the Municipal Engineer, and the Chief Officer of the Council. Site inspection was carried out and it was decided to maintain the proposed road in Chalta No. 36 of P.T. sheet No. 306 as it is benefiting the people of the locality. As far as Chalta No. 43 of P.T. Sheet No. 306 is concerned, the decision was to maintain the proposed road as it benefits the people of the locality and to omit/drop the proposed acquisition of road in Chalta No. 48 of P.T. Sheet No. 306, since it is not benefiting the local people.

17. Mr. Padiyar on being called upon by the Court, has filed an affidavit ,in which the Chief Officer has maintained that the road which cuts across a portion of the petitioner's property would have to be developed, so as to establish proper and full connectivity. It must reach a point where it touches the property bearing Survey No. 73 of P.T. Sheet No. 306. Therefore, the acquisition has to be taken ahead, so as to touch this property. That portion does not fall within the petitioner's property. The affidavit is filed by the Chief Officer in which he has given an undertaking that if the balance land cannot be acquired for any reason, then, the Municipal Council shall move the Government for withdrawal of the acquisition of the present portion, sought to be acquired from the petitioner's property bearing Chalta no.43 of P.T. Sheet No. 306. This statement is made on oath in the affidavit dated 14th March, 2012, which is taken on record. Para 2 of the same reads thus :

2. I say that the balance land acquisition from the Petitioner's land has been taken up so that the proposed road touches the property under chalta no.73, P.T. sheet no.306. I say that if for any reason, such balance land acquisition does not materialize, then the Municipal Council shall move the Government for withdrawal of the present land acquisition in so far as the Petitioner's land is concerned.

18. After this affidavit was filed and a copy of the same was given to the petitioner's Advocate, we sought to know from him whether the petitioner is present in the Court or not. The petitioner is indeed present and with regard to the two suggestions from the Court as to whether the petitioner would forgo and surrender the portion of the land belonging to her, so as to enable the Council to make 3 metres" wide road, at least in the first instance, the petitioner was unwilling to do so. The second suggestion as to whether the petitioner is satisfied

with the statement and the undertaking of the Council, through the Chief Officer and which is made on oath, equally the petitioner's Advocate sought instructions, but the petitioner was not willing and was not satisfied with the undertaking and persisted with the stand that the entire acquisition with regard to the petitioner's land must be dropped.

19. Upon perusal of the entire material which is placed before us, we are of the view that there is no substance in any of the contentions of Shri Amonkar. Firstly, as far as malafides are concerned, the malafides are alleged on the part of the Margao Municipal Council. At least that is what appears, because although the Council is impleaded as respondent No. 3, in parts of the petition it is stated that the then Chairperson of the Council was hostile and in inimical terms with the petitioner. This chairperson of the Council has not been named. Today, we do not have any particulars with regard to the chairperson, his tenure, his acts of allegedly harassing the petitioner in developing her other properties. Equally, we cannot reconcile this allegation of the daughter-in-law of the original owner, when the original owner throughout maintained that he had no objection to the portion of the land being acquired for the proposed road. Her father-in-law nowhere complained that the purpose is not a public purpose or that for a private motive or for private intent and private purpose that the present road has been proposed, particularly to cut through the petitioner's property.

20. On the other hand, a plan which has been produced on record, which was duly signed by the petitioner's father in law and which demanded an access for the owners of the other property. In this view of the matter, the allegation of the petitioner that the acquisition is for private purpose or that it is wholly malafide, cannot be accepted.

21. There is bound to be some discontent and disapproval when even portions of the properties are being acquired by the State. But, when a larger public purpose is sought to be achieved and from the planning point of view the Authorities are satisfied that the acquisitions of the properties are necessary and in public interest they are to be acquired, then, we cannot substitute their views, as we are not experts either in planning or construction of roads or their expansion or development. In this view of the matter, when the affidavits placed before us indicate that there was sufficient application of mind and that there were inspections undertaken and site plans prepared, based upon which the acquisition is proposed and decisions are taken, then, really we cannot say that the Authorities from diverse fields are bent upon harassing the petitioner and acquiring the petitioner's property. This is a matter where planning for the future and projection for years to come, is a relevant and germane factor and that must go in the decision making. We are satisfied that the acquisition is for public purpose as demonstrated from the materials produced on record and that it is not malafide, as alleged.

22. Additionally, to show their bonafides the Authorities have clearly undertaken that even if the portion of the petitioner's property is to be acquired, the

acquisition will not go ahead and would be concluded only if they acquire the balance portion so that the road which is cutting through the portion of the petitioner's property touches Chalta No. 73 of P.T. Sheet No. 306 and thereafter the national highway. It is also for proper connectivity with the entire area and within the village that the motorable roads are proposed and if such an undertaking is given, then, we do not feel that this is a fit case for interference in writ jurisdiction.

23. Accepting the statements of the Chief Officer of Margao Municipal Council in the affidavit dated 14th March, 2012 and particularly treating them as undertakings to this Court, we dispose of this writ petition.

24. Needless, therefore, to state that the further notification as envisaged by the Act culminating in vesting the petitioner's property to the extent indicated, in the State, will not be issued, unless the statements accepted as undertakings by us are duly complied with. The writ petition is disposed of in these terms, with no order as to costs.