
(2014) 01 BOM CK 0214
In the Bombay High Court
Case No : Writ Petition No. 638 of 2013

Savio Torcato Pereira

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 5A, 6, 6(1)

Citation : (2014) 2 ABR 37 : (2014) 4 ALLMR 780 : (2014) 2 BomCR 552 :
(2014) 2 MhLj 722

Hon'ble Judges : R.S. Dalvi, J;F.M. Reis, J

Bench : Division Bench

Advocate : Agnelo F. Diniz, Advocate for the Appellant; V. Rodrigues, Additional Government Advocate and C. Fernandes, Advocate for the Respondent

Final Decision : Allowed

Judgement

R.S. Dalvi, J.—Rule. Made returnable forthwith. The petitioners are the owners of the property under survey No. 85/3 of Village Utorda, Salcete Goa. A part of the land on the southern side of the property of the petitioners is being acquired. It consists of a road, four metres in width. Earlier the proposal was to acquire a six metres width road. In a fresh affidavit, the respondents desired to acquire only four metre wide road because that road joins the another footpath which is two metres wide on the southern side of the road. There is a nalla on the east of the road proposed to be acquired. Hence, a two metres wide culvert had been constructed. The acquisition of the further road would necessitate the construction of another culvert or broaden the existing culvert.

2. The road from the petitioners' property continues south and later towards the west to join the main road on the west. There are a number of houses in that patch. The construction of such road would benefit the public having structures in survey No. 85.

3. It is the contention of the petitioners that the road to be acquired on the south

of their property would benefit only one structure under survey No. 88/10. The plan produced by the parties show that it would benefit only that structure and two other structures of survey No. 89/1. This would constitute only three structures. The remaining structures are closer to the other internal road which is also sought to be constructed upon the acquisition of that property. That road would meet the road to the south or the main road to the west of the property of the petitioners. Hence, the public purpose sought to be met, as contended on behalf of the respondents by the acquisition of the petitioners' property, is indeed for the use of only three structures.

4. It is contended on behalf of respondent No. 4, who owns the structure on survey No. 88/10 to the east of the petitioners' property that he has given an access from his property to the owner of the structure on survey No. 88/8 and hence that structure would also benefit from the acquisition. However, the survey map shows that the structures in survey No. 88/8 would be closer to the other internal road sought to be constructed which meets the main road on the east.

5. Prima facie the three structures alone which would have access to the land being acquired may not constitute "public" for the expression public purpose. It is also seen that all the structures other than these three structures would get the benefit of other roads sought to be acquired. Counsel on behalf of the petitioners has meticulously shown that the proposed internal road to the west of survey No. 85/8 would benefit all the structures to the west and south of that survey number as also the structures in that survey number and that the internal road to the east of survey No. 88 would benefit all the structures to the east of the aforesaid three structures of survey No. 88.

6. The main argument on behalf of the petitioners is that the costs of the acquisition would not be commensurate with the public purpose for giving broader road to the aforesaid three structures who would benefit therefrom.

7. Reliance upon the judgment in the case of *Sesa Goa Ltd., v. The State of Goa & two others*, 1989 (2) GLT 27 in which the costs of the construction of State guest house upon the acquisition of one property was considered by this Court. It was observed in para 19 of the said judgment that the owner of the property could raise an objection that the proposed acquisition would become unfruitful because to prepare the property for the public purpose for which it was acquired would cost a large amount. It was held that such objection was relevant and germane to the decision making process of the Government. Though it was argued that even if another property was acquired, the costs of the construction would have to be met for the construction of the State guest house, it was held that such costs will be a necessary factor to be considered at the time of the acquisition. In this case, there is no other road to be acquired and similar costs to be involved. It would entail only the costs of the construction of road on the southern side of the petitioners' property or no construction of any road there yet. The SLAO has not considered the petitioners' objection that the cost of construction of the road and the consequent culvert over the nalla would not be

commensurate with or be far in excess of the public purpose claimed to be achieved. Hence, prima facie, the costs of the construction would be far in excess for the public purpose sought to be met.

8. On perusal of the objections filed by the petitioners u/s 5A of the Land Acquisition Act, 1894, we find that there were specific contentions raised by the petitioners with regard to the expenses which would be incurred for constructing a road through the property belonging to the petitioners surveyed under No. 85/3 of Village Utorda. There were also objections to the effect that the alleged public purpose was in fact a private purpose for the benefit of two brothers occupying one structure in the property adjoining the existing nalla. The petitioners also raised the contention that such road would serve only the said two persons and nobody else. On going through the report of the Land Acquisition Officer u/s 5A of the said Act, we find no consideration of these aspects nor any reasons given by the Land Acquisition Officer for rejecting such contentions of the petitioners. The Apex Court in the judgment reported in *Women Education Trust and Another Vs. State of Haryana and Others*, has observed at para 6 thus:

6. It is unfortunate that despite repeated judicial pronouncements, the executive authorities entrusted with the task of acquiring private land for any specified public purposes have time and again exhibited total lack of seriousness in the performance of their duties under the statute. Often they do not comply with the mandate of Section 5A of the Act, which is sine qua non for making a valid declaration u/s 6(1) of the Act. This batch of appeals is illustrative of the malady that has afflicted the State authorities who are keen to acquire private lands in the name of planned development of various urban areas, but do not bother to comply with the relevant statutory provisions and the rules of natural justice.

9. A Division Bench of this Court in the judgment reported in *Mrs. Estefania Dias e Pereira and Mr. Inacio Pereira Vs. State of Goa*, by the Secretary (Revenue), Government of Goa, Secretariat, Porvorim, Bardez, Goa, The Deputy Collector and Land Acquisition Officer, Collectorate of South Goa, Margao, Goa, Mr. Santos Viegas and Mr. Luciano Viegas, (in which one of us Mr. F.M. Reis, J. was a party) has observed at paras 15 and 16 thus:

15. The report in this case does not meet this fundamental requirement. For instance, the petitioners contend that the acquisition is only for the benefit of two houses, whereas the authorities contended that it would benefit five houses. The report merely states that the acquisition will improve the accessibility in the village and will "add a long way towards the benefit of the public" and that the acquisition is required for the construction of the motor-able road "to the residents of the Deussua village". This is merely a conclusion. There is absolutely nothing to indicate any application of mind on the rival contentions as to why the Collector preferred one version against the other. The Collector has a duty not merely to hear and note the objections, but to make a recommendation about the same to the Government. A recommendation posits a view being taken on

the objections and the response thereto. The report must therefore indicate what prompted him to make a recommendation. It must disclose his mind.

16. It was obvious during the course of hearing that an attempt was made to support the order on the basis of affidavits filed in this Court and submissions advanced only during the hearing of this writ petition. In other words, we were invited to discharge functions of the Land Acquisition Officer u/s 5A of the Act. We are not inclined to do so, especially in the facts and circumstances of the present case. Had the matter been clear and uncomplicated, we may have done so with a view not to delay the acquisition proceedings. We, however, find that the nature of the objections are such that they require consideration and possibly a further inquiry. It is essential that the objections and the answers thereto are considered by the authorities.

10. Considering the ratio laid down in the aforesaid judgments, we find that the report of the Land Acquisition Officer u/s 5A of the said Act and the consequent Notification u/s 6 of the said Act qua the property of the petitioners only stand vitiated for non consideration of the said objections raised by the petitioners and as such deserve to be quashed and set aside. In view of the above, we pass the following:

ORDER

(i) The report u/s 5A of the Land Acquisition Officer dated 07.01.2013 and the Notification u/s 6 of the said Act dated 20.03.2013 (as corrected by corrigendum dated 16.08.2013) qua the property of the petitioners only surveyed under No. 85/3 of Utorda Village stand quashed and set aside.

(ii) Rule made absolute in above terms.

(iii) The petition stands disposed of accordingly.