
(2010) 07 BOM CK 0026
In the Bombay High Court
Case No : Writ Petition No's. 741 of 2009

Shri Michael Mendonsa

APPELLANT

Vs

The State of Goa and Anr

RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2010) 07 BOM CK 0026

Hon'ble Judges : F.M. Reis, J;A.S. Oka, J

Bench : Division Bench

Advocate : M.S. Joshi in Writ Petition Nos. 741 of 2009 and Mr. M.B.D" Costa, with Mr. John A. Lobo in Writ Petition No. 800 of 2009, for the Appellant; Vivek Rodrigues, Addl. Government Advocate for Respondent nos. 1 and 2, Mr. A.N.S. Nadkarni and Mr. H.D. Naik, Advocate for Respondent No. 3., for the Respondent

Final Decision : Dismissed

Judgement

1. Heard the learned Counsel appearing for the parties. The challenge in these three Writ Petitions is to the same notification u/s 4 and 6 of the Land Acquisition Act, 1894, (hereinafter referred to as "the said Act").

2. The learned Senior Counsel appearing for the Petitioner in Writ Petition No. 800/2009, has taken us through the averments made in the Petition and the averments made in the rejoinder filed by the Petitioner. The Notification u/s 4 (1) of the said Act, was issued on 20th June, 2008, in which various lands including the lands of the Petitioners were notified for acquisition. The purpose of acquisition was for construction of a road from Taleigao Bazar to Agapito Gomes House at Bondiem, Taleigao. After objections were submitted and heard, the Notification under 6 of the said Act was issued on 15th September, 2009.

3. The learned Senior Counsel appearing for the Petitioner in Writ Petition No. 800/2009 submitted that there is no public purpose involved in the acquisition of the land of the Petitioner. He pointed out that the acquisition has been initiated as the proposed road is for the benefit of the bungalow of an influential political

figure and a Member of Legislature Assembly, who is a cabinet Minister. His submission is that road is sought to be constructed only for the benefit of the said political figure. He invited our attention to the report u/s 5-A of the said Act. He has invited our attention to various photographs and plans annexed to the affidavit in rejoinder. He pointed out that from the plans and photographs, it is very clear that the acquisition is only for the benefit of making available a road to the political figure. He stated that a four metre wide road has been forcibly built through the land of the Petitioner, which goes to the house of Agapito Gomes and about 80 percent of the four metre wide road has already been partly tarred. He submitted that in view of the existence of the said road, the proposed acquisition of the land for ten metre wide road is clearly malafide.

4. The learned Senior Counsel appearing for the Petitioner submitted that though the proposed road is shown in the Outline Development Plan, the inspection of the Outline Development Plan was never given to the Petitioner. He contended that the Petitioner had no opportunity to file objections to the said Outline Development Plan. He submitted that the construction of the proposed road is for benefit only the Town and Country Planning Minister. He submitted that even under the provisions of the Goa Town and Country Planning Act, 1974, (hereinafter referred to as "the said Act of 1974"), acquisition proceedings cannot be initiated unless a real public purpose exists.

5. We have heard the learned Senior Counsel appearing for the third Respondent (the North Goa Planning and Development Authority). He pointed out that the Outline Development Plan has been brought into force after following the procedure. He submitted that there is no challenge by the Petitioner to the Outlined Development Plan. He submitted that power u/s 41 of the said Act of 1974, has been exercised for initiating the acquisition proceedings. The learned Senior Counsel appearing for the Petitioner in Writ Petition No. 800/2009 reiterates that existence of a public purpose is a *sine qua non* for initiation of acquisition proceedings. The learned Counsel appearing for the Petitioners in Writ Petition No. 741/2009 and 743/2009, has adopted the submissions made in the Writ Petition No. 800/2009.

6. We have given careful consideration to the submissions. It is not in dispute that the proposed road is shown in the Outline Development Plan. There is no dispute that approval has been granted by the Government to the said Plan in exercise of powers u/s 36 of the said Act of 1974 and the Plan has come into operation in accordance with Section 37 of the said Act of 1974.

7. Section 41 of the said Act of 1974 reads thus :

41. Power to acquire land under the Land Acquisition Act, 1894,-Any land required, reserved or designated in a Development Plan shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894, and may be acquired in accordance with the provision of that Act.

8. Section 32 of the said Act of 1974 provides that a comprehensive

Development Plan shall indicate, define and provide for complete road and street pattern and traffic circulation pattern for the present and future requirements. A Comprehensive Development Plan shall also indicate major road and street improvements. After approval of the Development Plan u/s 34 of the said Act of 1974, the Planning and Development Authority is required to publish a notice indicating therein the places where copies of the same may be inspected. The notice has to be issued for inviting objections in writing to the Development Plan. Sub-Section (2) of Section 35 of the said Act of 1974 provides that publication of Notification under sub-section (1) thereof shall notwithstanding anything contained in the said Act be deemed to be a notification made u/s 4 of the said Act. The further stage is of approval of the Outline Development Plan by the Government. An Appeal u/s 38 of the said Act of 1974 has been provided which is available to any person aggrieved by any provisions contained in the Outline Development Plan.

9. As of today, there is no challenge by any of the Petitioners to the Outline Development Plan. The land which is sought to be acquired is admittedly reserved for public road in the Outline Development Plan and, therefore, in view of legal fiction created by Section 41 of the said Act of 1974, the land shall be deemed to be a land needed for public purpose within the meaning of the said Act. In view of the aforesaid legal position, we find that there is no scope to interfere with the acquisition proceedings. There is no merit in the Petitions and the same are rejected.