
(2009) 01 BOM CK 0127
In the Bombay High Court
Case No : Writ Petition No. 267 of 2008

Shri Paul D'Souza and Others

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 3, 4, 4(1), 5A(3)
Municipal Solid Wastes (Management and Handling) Rules, 1999 — Rule 6, 6(2)

Citation : (2009) 01 BOM CK 0127

Hon'ble Judges : P.B. Majmudar, J; N.A. Britto, J

Bench : Division Bench

Advocate : A.A. Agni, for the Appellant; S.S. Kantak, General and M. Salkar, A.G.A. for Respondent Nos. 1, 4, 5 and 6, A.N.S. Nadkarni and H.D. Naik and S.N. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—Rule. By consent heard forthwith.

1A. This Writ Petition is filed by some of the villagers for and on behalf of the residents of Village Cunchelim which is located within the limits of Respondent No. 2-Mapusa Municipal Council. The Petitioners' challenge in this petition is twofold. Firstly, the Petitioners challenge the acquisition of land admeasuring about 32050 sq. meters belonging to the Comunidade by virtue of notification dated 6-3-1998 issued u/s 17(1), and, after the filing of the petition, notification dated 30-6-2008, issued u/s 6 of the Land Acquisition Act. Secondly, they also challenge the provisional approval dated 29-3-2007 given by the Respondent No. 3-GSPCB.

2. Before referring to the case of the Petitioners, it would be relevant to take note of the past events which have led to the filing of the present petition.

3. The Municipal Solid Waste (Management and Handling) Rules, 2000 (Rules, for short), framed under the relevant provisions of the Environment (Protection) Act,

1986 came into force on or about 3-10-2000 and as per the said Rules setting up of waste processing facilities were to be completed by 31-12-2003 or earlier and identification of land fill sites by 31-12-2002 or earlier. However, nothing appears to have happened in that regard and the dumping of solid wastes, as opposed to segregation, processing and disposal, continued to take place in South Goa within the limits of Margao Municipal Council which made Claudio Fernandes and others approach this Court in Writ Petition No. 417/2002 which came to be decided by a Division Bench of this Court on 30-7-2003 reported in 2004 GLR 377. In disposing off the said Writ Petition, the learned Division Bench took note of Almitra H. Patel and Another Vs. Union of India (UOI) and Others, wherein the Apex Court had directed constitution of a committee to submit its report to it in respect of cities having population of over one lakh of people. The Division Bench also took note of a decision taken by the State Government to set up two garbage disposal sites and/or plants, one in village Bendurdem in South Goa and the other in Colvale in North Goa and it appears that even a notification for acquisition of the said sites dated 30-7-2003 was issued. The Division Bench after hearing the State Government issued certain general directions and some specific directions. As regards the general directions, this Court observed that as the Rules had already come into force the Director of Municipal Administration, as the specified authority, was directed to see that all the Municipal Councils in the State of Goa took steps to implement the said Rules within a period of six months. Amongst the specific directions, the Court directed that every Municipal Council appoint a MSW Officer, specially in charge of garbage management within a period of three months. The Court also noted that the site for disposal and/or treatment of garbage had to be approved by the Board as also the operator. The Writ Petition was therefore disposed off with the said directions, amongst others.

4. Nothing of consequence appears to have happened inspite of the said directions to the Director of Municipal Administration who was required to implement the Rules within a period of six months and the problem of dumping of garbage continued unabated which made one Floriano C. Lobo to approach this Court in PIL Writ Petition No. 3/2005 followed by Writ Petition No. 28/2003 filed by Saligao Civil and Consumer Cell which pertained to non compliance of the provisions of the Rules by Respondent No. 2-MMC. Writ Petition No. 28/2003 pertained to two Village Panchayats who were party Respondents. In PIL Writ Petition No. 3/2005, it was alleged that Respondent No. 2-MMC had pushed 371 trucks of garbage into the river and fields causing irreparable damage to the environment and to the residents of the area. The Chief Officer of Respondent No. 2-MMC had filed an affidavit dated 17-10-2005 stating that private contractors collected the garbage from the hotel owners around Mapusa, coastal areas and other Panchayat areas and as they did not have their own sites for disposal of wastes the said garbage was haphazardly dumped along the National Highway. This Court by Order dated 5-12-2005 noted that it was the joint responsibility of the State Government as well as the local authorities to ensure that one and all must comply with the provisions of the Rules and no Municipal

Council/Chief Officer can avoid to take action against the persons private or otherwise as per the Rules. The Chief Officers were directed to ensure strict compliance of 2000 Rules by one and all.

5. Again, nothing of much consequence appears to have happened inspite of the said directions and this only reflects the lack of will on the part of the Councils as well as the State Government. Here it may be noted that the Rules have placed the responsibility for its implementation primarily on the Municipal Councils with overall responsibility on the concerned District Magistrate. The Board is required to monitor compliance of standards. In Writ Petition No. 28/2003 a Division Bench of this Court, by Order dated 3-10-2006 noted that the issue of garbage and waste disposal has been a major problem in the State of Goa and if prompt remedial measures were not adopted, there might be serious health hazard. This Court also noted that there has been no co-ordination between various authorities. Therefore, this Court proceeded to constitute a Committee with the Director of Municipal Administration as its convener. The Chief Officers of each Municipal Councils were made members. The Chief Conservator of Forest, Chief Town Planner, Chairman of the G.S.P.C. Board, Member Secretary of each of the PDA's were the other members, and, further direction was issued to the said Committee to (a) identify sites for wastes disposal in each of the Municipal Councils, and, (b) sites for setting up land fills. The sites were to be selected having regard to the Rules.

6. The disposal of wastes in accordance with the Rules is still being monitored by this Court in Suo Motu Writ Petition No. 2/2007. It has remained a distant dream.

7. The subject site has been selected pursuant to a meeting held on 21-3-2007 and a joint site inspection held by the representatives of the said Committee, appointed by this Court. Earlier, the subject site was indicated by the attorney of Comunidade of Assagao into whose land the Respondent No. 2-MMC was dumping the garbage. In fact, Comunidade of Assagao has filed two writ petitions, first being PIL Writ Petition No. 5/2006 and second being Writ Petition No. 431/2005, to restrain the Respondent No. 2-MMC from dumping the garbage into their property Survey No. 145. The second Writ Petition also challenged the notification dated 28-7-2005 issued u/s 4 of the Land Acquisition Act to acquire some area of Survey No. 145. The site was inspected on 25-7-2007 by the Field Surveyor. As can be seen from the affidavit filed by the Member Secretary of the Board the site was inspected after various authorities were informed of the said meeting. It appears that the Board considered the comments received from Water Resources Department, Town and Country Planning Department and North Goa PDA and thereafter, after taking into account all relevant facts proceeded to give the said initial authorization/N.O.C. to Respondent No. 2-MMC.

8. As far as the first challenge in the Writ Petition is concerned, admittedly, the Petitioners are not the owners of the land, sought to be acquired nor do they have any interest in it. In other words, they have no interest in the subject land and as such have no locus standi to challenge the acquisition proceedings. This

issue is no longer *res integra* as it has been decided by a Division Bench of this Court by Order dated 11-5-2008 in the case of Village Panchayat of Se-Old Goa v. State of Goa. After considering the provisions of Section 3(b) of the Land Acquisition Act which defines the expression "person interested" as well as Section 5A(3) this Court held that a person would have right to object to the acquisition if he possesses the character of the person interested. The learned Division Bench further held that a person, thus, would be in a position to object an acquisition of his own land or any land in the locality provided the said land is also covered by the same notification issued u/s 4, Sub-section (1) of the Land Acquisition Act, 1894 which proposes to acquire the land of the person concerned. The learned Division Bench therefore concluded that the Village Panchayat would have no *locus standi* to challenge the acquisition and therefore the petition came to be dismissed. The same ratio would be applicable to the Petitioners in this petition who have no concern or interest in the subject land.

9. As regards the second challenge to the provisional authorization/N.O.C. given by Respondent No. 3-Board, Smt. A. A. Agni, learned Counsel appearing on behalf of the Petitioners, firstly, submitted that there has been non application of mind on the part of the Board as it has given its authorization only in respect of two chalta numbers admeasuring 975 sq. meters while the subject land admeasures 32050 sq. meters. Learned Counsel further submits that Respondent No. 3-Board did not take into consideration the provisions of Clause 8 of Schedule III of the Rules which require that the land fill site ought to be away from the habitation clusters, forest areas, water bodies, monuments, etc. Learned Counsel therefore submits that the Petitioners who have their houses in close vicinity are bound to suffer in case wastes disposal facility is set up at the subject site. It is stated that the proposed garbage disposal site is in close vicinity of cluster of houses, monuments and is water catchment area, 70% of which is in a valley and there are more than 30% fields occupied in the village and the setting up of the said land fill site at the subject site would affect the natural streams, springs, water bodies and the river and ground water is also likely to be affected. The distance from various houses, temples, churches, etc. have been set out in para 21 of the petition.

10. The Respondents have opposed the petition by filing affidavits. The Member Secretary of Respondent No. 3-Board in para 8 of his affidavit has stated that the subject site does not have any residential houses and has further stated that the nearest is Shree Samarth Ramdas Temple which is at a distance of 300 meters from the northern boundary of the land sought to be acquired. It is stated that from the southern boundary at a distance of about 300 meters there is a Government Primary School, Dattaray Temple and some neighbouring houses. On the western and eastern side it is stated that the houses are located at a distance of more than 300 meters. It is also stated that there are no wells, reservoirs or springs in the said property sought to be acquired and has further stated that the statements made by the Petitioners are based on incorrect facts. It is further stated that there is a nallah on the southern boundary but it does

not have any water flowing there even during monsoon and local inquiries revealed that the nallah was dry, throughout the year. There is no challenge to these statements, particularly as regards the distances, from the part of the Petitioners.

11. Be that as it may, the fears expressed by the Petitioners in the petition appear to be unfounded. The provisional N.O.C. granted by Respondent No. 3-Board appears to be in order, notwithstanding the observations of a Division Bench of this Court in Dada Fire Works Pvt. Ltd. and Another Vs. State of Maharashtra and Others, to the effect that there was no requirement on the Development Authority or the Municipal Authority to take authorization before a Notification u/s 4(1) of the Land Acquisition Act, 1894 was issued. It can be seen from the affidavit filed by the Chief Officer of Respondent No. 2-MMC that the word "dumping" is still in its dictionary when the said word should have been replaced by word "disposal" so much so that it has even been used in the notification issued u/s 4(1) of the Act. Dumping of garbage by the authorities is out of question as long as there are vigilant and concerned citizens who can always approach the Courts to ensure that mere dumping does not take place. Such practices in the past have created serious health and environmental problems which have not been solved till date. The affidavit mentions various places where Respondent No. 2-MMC has been dumping its garbage. First, it dumped its garbage for about 20 to 30 years in the property belonging to the Church authorities at Assagao (Survey No. 145, part of which belongs to the Comunidade), on the outskirts of the municipal limits. Then it started dumping garbage at Ganeshpuri near Marna, Siolim and had to stop because of resentment and objections from the people of the surrounding areas w.e.f. 19-7-2001. Then it went to another adjoining village, namely Colvale and it is rather strange to know that it went there for the purpose of dumping garbage at the instructions of the State Government where it continued dumping garbage till 6-8-2001 till objections were raised by local residents. That Respondent No. 2-MMC was directed to dump its garbage at Colvale, speaks volumes of poor governance in the State, that is to say by telling an authority to do something contrary to the Rules and in spite of earlier directions given by this Court. Then it went with its garbage to Curca from 7-8-2001 and from there to Calangute in the dump yard of Calangute Village Panchayat and then again to Survey No. 145 of Village Assagao where presumably it continues to dump its garbage and in spite of certain orders made by this Court in another Writ Petition. It appears that in 1997 a proposal was made to acquire 30,000 sq. meters of Survey No. 145 of Village Assagao and even a notification was issued on or about 7-2-2000 by invoking urgency clause and which was allowed to lapse. Thereafter it appears that another proposal was mooted to acquire 35000 sq. meters situated between Calangute and Saligao villages which was meant also for Respondent No. 2-MMC but that proposal had also to be given up because of resentment and objections of local people. Thereafter the proposal to acquire part of Survey No. 145 of Assagao village was revived and Respondent No. 3-Board had given in principle

approval and even a notification u/s 4(1) of the Land Acquisition Act, 1894 was issued invoking urgency clause but Respondent No. 3-Board withdrew its approval and requested Respondent No. 2-MMC to acquire alternate suitable site. It appears that Respondent No. 3-Board had withdrawn the said in principle approval, because the Board had not taken into consideration the existence of a residential locality down the hill, existence of a natural spring, etc. In fact, in principle or provisional authorization from the Board is of great help in identifying the land before acquisition for waste disposal site because in case the land is ultimately found to be not suitable unnecessary acquisition can be prevented.

12. That is the long and short of the entire controversy leading to the selection of the subject site, and its acquisition for setting up of waste disposal and land fill site for Respondent No. 2-MMC, which has now culminated in an award dated 8-12-2008, though upon a statement made by the learned Advocate General possession has not been taken over by the Government. As pointed out on behalf of the Board what has been granted thus far is only in principle authorization and which as can be seen on the very face of it, is conditional and requires a number of conditions to be complied with.

13. Shri S. N. Joshi, learned Counsel on behalf of Respondent No. 3- Board has submitted that the site will be re-examined before final approval is given. Indeed, it has been noted by a Division Bench in the case of Claudio Fernandes and Ors. v. State of Goa and Ors. 2004 G.L.R. 377 that the site has to be approved by the State Pollution Board as also the operator, considering the provisions of the Rules. That is the requirement of Rule 6 of the Rules.

14. Although the past history of the authorities as regards the management of municipal solid waste has been rather dismal, it cannot be taken for granted that it will be so.

15. We are unable to accept the submission of the learned Counsel of the Petitioners that N.O.C. is given only for 975 sq. meters. The N.O.C. is for Survey Nos. 8 and 9 of P.T. Sheet No. 3 of Cunchelim Village which in terms of the notification as well as site inspection report has an area of 32050 sq. meters. Therefore the N.O.C. granted has got to be considered for the entire area. After the enforcement of the Rules no place or site can be used for dumping of waste. It can be used only for storage, segregation and disposal. A land fill site is meant for inert, non biodegradable and residue waste, and, if precautions are taken and specifications provided under the Rules are followed there will be no room for complaints from the point of view of environment or health hazards. It is high time the officers of Respondent No. 2 wipe out the expression "dumping" from their mindset and that is what they have been doing, and use the site only for storage, segregation and disposal of garbage/solid waste, and if this is done as per the Rules, there will be no problems worth complaining. If municipal solid waste is dealt with in a manner which is required to be done in terms of the Rules then we do not see any problems to be faced by the residents of the locality. Their apprehension has been due to the past conduct of Respondent No.

2-MMC who instead of complying with the provisions of the Rules have been using the available open sites for the purpose of only dumping the same. We have made clear by our Order dated 3-3-2008 in Writ Petition No. 2/2007 that no acquired site will be used unless the disposal facilities are put in place. Eternal vigilance is said to be the price of democracy. With Right to Information Act in place and vigilant and public spirited citizens, like the Petitioners and others always being there, the authorities can always be compelled to comply with the provisions of the Rules.

16. The entire responsibility for the implementation of the provisions of the Rules as regards collection, segregation, storage, disposal, etc. is entrusted to the concerned Municipal Councils and the overall responsibility for the enforcement has been entrusted to the District Magistrate of the concerned District. The responsibility of monitoring has been entrusted to the Board and Sub-rule (2) of Rule 6 requires it to grant authorization for setting up waste processing and disposal facility including land fills after receipt of application in form I from the Municipal authority or the operator. In case the municipal waste is collected, stored, processed and disposed of as required by the Rules then there is no question at all of any health or environment hazards taking place or the well being of the people in the locality being affected. Although the past experience in the management of solid waste has been rather dismal we still have hope that the authorities concerned will hereinafter adhere to the provisions of the said Rules to the benefit of all concerned. There is no dearth of public spirited citizens like the Petitioners who can always insist that Municipality complies with the provisions of the Rules for the benefit of public health and preservation of environment.

17. In the above view of the matter, we find that there is no merit in this petition and therefore we hereby dismiss the same with no order as to costs. Rule discharged.