

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.
WRIT PETITION NO. 341 OF 2023.

FOMENTO RESORTS AND HOTELS LTD incorporated under the provisions of the Indian Companies Act, 1956, having its office at Cidade de Goa Vainguinim Beach, Dona Paula, Goa 403004 represented through its authorized signatory MR. SAVITO ARAUJO, son of Shri. Raul Araujo, age 36 of years, married Assistant Manager Corporate, Indian National, resident of H. No. 261, Seraulim, Verna, Salcete – Goa 403722

...Petitioner.

VERSUS

1. STATE OF GOA, Through its Chief Secretary, Having office at Secretariat, Panaji – Goa.
2. DEPUTY COLLECTOR (REV) AND LAND ACQUISITION OFFICER, having office at Collectorate Panaji – Goa.
3. SMT. CLOTILDES ALIAS CLOTINA FERNANDES, (Since deceased), Represented herein by SMT. KSHAMATA DESAI, Residing opposite NIO Guest House, Dona Paula – Goa

...Respondents.

Mr J. E. Ceolho Pereira, Senior Advocate with Mr Sagar Rivankar,

Mr Pancham R. Phadte, Advocate for the petitioner.

Mr Devidas Pangam, Advocate General with Mr Nehal Vernekar, Addl. Govt. Advocate for the respondent nos.1 and 2.

**CORAM: BHARAT P. DESHPANDE, &
VALMIKI SA MENEZES, JJ.**

**Reserved on : 2nd February, 2024
Pronounced on: 9th February, 2024**

JUDGMENT : (Per BHARAT P. DESHPANDE,J)

1. Rule. Rule is made returnable forthwith.
2. Heard finally with the consent of the parties.
3. Heard Mr J. E. Ceolho Pereira, learned Senior Counsel with Mr S. Rivankar, learned Counsel for the petitioner and Mr D. Pangam, learned Advocate General with Mr N. Vernekar, learned Addl. Govt. Advocate for the respondent nos.1 and 2.
4. Petitioner claiming to be a tenant of house No.E-372 situated in the property bearing survey no.254/1(part) belonging to respondent no.3, challenged the impugned award dated 28.5.2009 and all corresponding actions in connection with the said award.
5. In nutshell it is the contention of the petitioner that respondent no. 3 somewhere in August 1978 created a lease in favour of the petitioner in connection with house no.E-372 for a

monthly rent of Rs.700/- which was increased from time to time. Respondent no.3 then filed eviction proceedings against the petitioner which was compromised by drawing a decree somewhere in June 1991 wherein respondent no. 3 admitted the petitioner as a tenant of the said house.

6. It is the contention of the petitioner that somewhere in August 2022 in Writ Petition No.325 of 2010, a statement was made that the petitioner would be joined as one of the respondents and accordingly notice was issued to the petitioner somewhere in October 2022. On receipt of such notice from this Court in Writ Petition No.325 of 2010 which was taken along with PIL Writ Petition No.45 of 2019, petitioner became aware of the acquisition proceedings conducted way back in the year 2009-10. Thus, present petition is filed claiming a right of the petitioner to be heard before passing of the said award.

7. Mr J E. Coelho Pereira, learned Senior Counsel appearing for the petitioner contended that the petitioner is an interested person as defined under Section 3(b) of the Land Acquisition Act, 1894 (for short “the Act”) and, therefore, he was required to be given notice by acquisition officer personally before passing an award. Mr Pereira

would then submit that admittedly the award was passed after the period of two years from the date of Section 4 notification and thus in accordance with Section 11-A, such award becomes a nullity. Mr Pereira would then submit that somewhere in August 1997 Government published a notification under Section 4 of the Act, proposing to acquire the land for providing parking facilities and rehabilitation of stalls at Donapaula junction which includes the house wherein the petitioner is a tenant. He submits that being a tenant in the house situated in the property, the petitioner becomes an interested person and therefore, any preliminary notification published under Section 4 of the Act ought to have been served on the interested persons personally. He would submit that such notice is necessary in order to raise objections by the persons interested in any land as provided under Section 5-A of the Act, which is prior to issuance of notification under Section 6 of the Act.

8. Mr Pereira would submit that since the petitioner being a person interested, was entitled to receive notice personally as per Section 9 of the Act. Thus, he submits that since no notice was served on the petitioner, though he is interested in the land being a tenant of the house existing on the said land, entire acquisition

proceedings could be challenged by the petitioner and that too after he had knowledge of such acquisition.

9. Mr Pereira would then submit that somewhere in September 1997, Government published notification invoking provisions of Section 17 of the Act thereby exempting the provisions of Section 5-A of the Act. Similarly in January 1998 Government published a notification in the official Gazette making a declaration under Section 6 of the Act. However, while making such declaration under Section 6 of the said Act, the petitioner was not shown or named as interested party. No notice was given to the petitioner in that regard. He would further submit that in February 1998 symbolic possession of the land in question was taken. However, such panchanama nowhere shows that in fact officer visited the spot and even intimated the petitioner about taking possession of the said land. Somewhere in March 1998 letter was addressed to respondent no.3 by the Land Acquisition Officer in connection with taking over possession. However, no notice was issued to the petitioner.

10. Mr Pereira, would then submit that in fact respondent no. 3 was not in possession of the tenanted house which is in possession of the petitioner and therefore, respondent no.3 could not have handed

over such possession of the structure. Petitioner is still in possession of the said structure and the same has not been taken away from the petitioner by any authority. He would submit that while writing such letter in March 1998 neither officer of the acquiring department nor respondent no. 3 visited the site to handover actual possession of the land and the house existing therein.

11. Mr Pereira would submit that award was actually passed on 28.5.2009 which is beyond the period of two years from the date of notification issued under Section 4 of the said Act. Even though award was passed, no compensation was awarded to the petitioner and he has not been shown as party interested. Even respondent no. 3 did not accept the compensation. He would therefore submit that such award passed beyond the period of two years is a nullity and the petitioner is entitled to challenge it even after lapse of so many years on the premise that the petitioner was not aware about such award.

12. Mr D. Pangam, learned Advocate General appearing with Mr N. Vernekar learned Addl. Govt. Advocate would submit that first of all petition itself is bad for gross delay and laches on the part of the petitioner. He submits that notification under Section 4 of the Act was published in the Government Gazette as well as in local daily

news papers widely circulated in the said areas. Such notification published in the Gazette and the news papers is itself a notice to the public in general and the owners or persons interested in particulars.

13. Learned Advocate General would then submit that no personal notice is contemplated under the Act as tried to be projected. He would submit that on publication of notification under Section 4 of the Act, any person interested in any land which is notified under Section 4 may object to such acquisition by filing his objection within the specified period, to the Collector and only such person has a right to be heard. Collector shall give an opportunity to the objector and after making such inquiry if any, decide such objection which shall be final.

14. Learned Advocate General would then submit that notice to a person interested as contemplated under Section 9 of the said Act is in different context and not at the stage of Section 4 notification or even at the time of Section 6 notification. He submits that on issuing declaration under Section 6 of the intended acquisition, Collector has to take order for acquisition of land as provided under Section 7 of the Act. Only thereafter land is required to be marked, measured and planned as provided in Section 8 of the Act. Only thereafter

provisions of Section 9 comes into play when the Collector after causing public notice stating government intends to take possession of the land disclosing the particulars of the land so needed and shall require all persons interested in the land to appear personally or through the agent. In this context, notice to interested person as provided under Section 9(4) is required to be served but not otherwise.

15. Learned Advocate General would further submit that there is inordinate delay in challenging the acquisition i.e. around 26 years from the date of Section 4 notification which has not been explained at all. He submits that the petitioner cannot be considered as interested person since first of all no such objection was raised before the Collector or Land Acquisition Officer and therefore, petition needs to be dismissed.

16. Rival contentions fall for determination.

17. Two basis submissions were advanced by learned Senior Counsel Mr Pereira for the petitioner. Firstly, he claimed that petitioner is the person interested being the tenant of the house which is existing in the acquired land. Such person interested ought to have been notified personally. Since it is not done, petitioner is

entitled to challenge the entire award including the ground available under Section 11 of the Act.

18. Secondly, Mr Pereira would submit that no possession was taken from the petitioner of the said house. No compensation has been awarded to the petitioner. Similarly award was passed after a gap of two years from the date of Section 4 notification and thus, the award needs to be quashed and set aside.

19. In the present matter, government issued notification under Section 4 of the Act which is dated 12.8.1997. Land was intended to be acquired for parking facilities and rehabilitation of the stalls at Donapaula junction in Panaji city. Notification was published in the Government Gazette on 4.9.1997. Similarly said notification under Section 4 was published in two local news papers i.e. Navhind Times dated 26.8.1997 and Gomantak (Marathi) dated 30.8.1997. Apart from these requisites, public notice under Section 4(1) of the Act were issued and published at the concerned places through the Mamlatdar at Tiswadi, Taluka on 16.10.1997. These facts are found mentioned in the award itself and not disputed by the petitioner would clearly goes to show that contention of issuance of Section 4 notification and its publication has been complied with. Thus,

petitioner who claims to be a company and having possession of the house existing in the said property cannot now turn and say that petitioner was not aware of such publication. It is well settled that publication in the Official Gazette of Government of Goa is itself considered to be a notice to all the persons. Similarly publication of such notification in the daily news papers having vide circulation in the State of Goa and publication of such notification at the concerned places through the Magistrate itself is sufficient to comply with the aspect of service of notice of the intention of the Government to acquire such land. Petitioner, therefore, ought to have considered such publication as a notice to a person interested in the land and acted upon for raising their objections before the concerned authority. Having not done, petitioner, cannot, after a period of more than 26 years, be allowed to raise such issue and that too in a writ Court.

20. Secondly, it is also clear from the award that urgency clause was invoked under Section 17 of the Act by the Government vide notification dated 1.9.1997 making provision of Section 5-A as not applicable. Deputy Collector(Revenue) was appointed to perform the functions of the Collector, North Goa for all the proceedings and was

directed under Section 7 to take out the order for acquisition of land.

21. However, upon the issuance of notification under Section 4, some persons lodged their objections within time period. Accordingly, persons interested were heard by the concerned authority on 4.11.1997. Since the objections were found as least importance and not having any weightage so also such objections were from the persons residing in nearby locality, the same were rejected. In the meantime, the Government invoked provisions of Section 17 by issuing declaration and accordingly approval was granted on submitting the report. Notification under Section 6 of the Act was published on 29.1.1998, thereby excluding some areas of mundkarial houses along with access. Acquiring department furnished revised survey plan showing total area to be acquired as 16600 sq. mts.

22. Such notification under Section 6 of the Act for acquisition of 16600 sq.mts which includes the structure claimed by the petitioner, again amounts to notice to the petitioner however, no steps were taken.

23. Definition under Section 3(b) of the Interested person reads thus:-

“The expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.”

24. Careful reading of above provision would go to show that person interested includes all persons claiming an interest in the compensation to be made on account of acquisition of the land. While issuing notification, under Section 4 showing the intend of the Government to acquire a particular land, which is considered as preliminary notification is for the purpose of informing the public in general and owners/persons interested in the land in particulars. It is difficult to accept that while issuing notification under Section 4 of the Act, it is duly of the Government to issue individual notice to the persons interested. Reason is obvious. At this stage, it is difficult for acquiring department or the government to know the name of the person interested in the particular land. Definition of the person interested is no doubt includes various persons which includes the owner of the land, a person having a lease, person in possession of said land or person having easement over the said land. In case of

structure on the proposed land to be acquired, it is also difficult for the Government to know the name of the persons interested in the said building. Thus, the contention of the petitioner that he was supposed to receive notice accordingly of the intention of the Government to acquire the land is unacceptable. Act no where provides such personal notice to be given to the interested persons at the stage of Section 4 notification or even at the stage of Section 6 notification.

25. Learned Advocate General has rightly submitted that personal notice contemplated under Section 9 of the Act is completely in different context. After issuance of notification under Section 6 of the Act as well as order under Section 7 of the Act by the Collector, measurements, marking and planning of the land is required to be carried out as provided in Section 8 of the said Act. Only thereafter notice to the person interested under Section 9 is contemplated wherein Collector shall then cause public notice to be given at the convenient places or the near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him. Such notice shall state the particulars of the land so needed, shall

require all persons interested in the land to appear personally or by agent before the Collector at the time and place mentioned therein. Such notice is required to state nature of respective interest in the land and the amount and particulars of the claims of the persons interested in compensation. It further provides that the Collector shall also serve notice to the same effect on the occupier of such land and all such persons known or believed to be interested therein and or to be entitled to act for the person so interested, as reside or have agents authorised to receive on their behalf, within the revenue district in which the land is situated.

26. Personal notice is contemplated in Section 9(4) of the Act, only when and in case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to the person so interested by post in a letter addressed to him at his last known address of residence or place of business.

27. Thus even notice under Section 9(1) and (2) is not individual notice to the person interested but it is a public notice given at convenient places or near the land to be acquired. Even otherwise person who raise objections to the acquisition on noticing preliminary notification under Section 4, is to be considered as

person interested. It is difficult for the government to identity any other person being interested if he is not coming forward to raise objection to the notification under Section 4 and showing his particular interest only for the purpose of receiving compensation.

28. In the present matter since the Government invoked Section 17 of the Act which is urgency clause, provision of section 5-A were suspended. Besides, it is difficult to digest the contention of the petitioner that he was not aware about the said acquisition or the entire proceeding including taking possession of the land.

29. Respondent no.3 claiming to be owner of the said land challenged the acquisition by filing petition bearing No.325 of 2010. Said petition was taken over along with PIL WP No.47 of 2019 and was decided on 7.10.2022 by Coordinate Bench of this Court in which one of us(B. P. Deshpande, J) is a party. While deciding both these above petitions, a statement was made on behalf of the respondent no.3/Petitioner therein that she would not have any further cause to be pursued in the said petition. Accordingly, said petition was dismissed as not pressed. However, a statement was made on behalf of respondent no.3 that she is in possession of only a smaller structure wherein the bigger structure is in occupation of one

Gomantak Land Development Private Limited and the present petitioner. Even a statement was made that the said larger structure is in dilapidated condition. With these statements present petitioner was joined as respondent in the said matter only to decide over the matter i.e PIL WP No.47 of 2019 which was filed by persons for implementation of the said project.

30. Record further show that Writ Petition No.359/2000 was filed by *Shri Inacio Albano Lourenco Vs State of Goa and others* thereby challenging the present acquisition on the ground that such land cannot be acquired for allotment to the hawkers. Vide order dated 25.3.2008, said petition was dismissed on the ground that acquisition was for public purpose including parking for the tourist.

31. In the present case, there is delay of around 26 years in challenging the acquisition proceedings which has not been explained at all by the petitioner. Simply saying that he did not receive individual notice of the notification of acquisition, is an excuse and nothing else since such notifications were published in the Government Gazette as well as in the local daily news papers which itself amounts to public notice. Delay and laches in challenging the acquisition proceedings are so inordinate and

unexplained and therefore, such reasons cannot be accepted.

32. Mr. Pereira placed reliance in the case of *Raisunna Begum and others Vs Premsukhai Jain and others*, ¹. In that matter question which was referred to the Full Bench was whether in case of acquisition of land by municipal authorities, for road widening, on consent of the landlord of a shop any notice is necessary to be given to the tenant in the shop?

33. In that context, Full Bench observed that since the provisions of Hyderabad Municipal Corporation Act, 1955 comes into effect and that corporation were trying to evict the tenant only on the basis of consent given by the landlord, it was observed that tenant has right to raise objection to such eviction. Said matter is only with regards to taking over possession of the land for road widening which includes portion of shop in possession of the tenant was under consideration. In that context, Full Bench observed that individual notice to the tenant was must before evicting him since there is no land acquisition compensation to the tenant or other proceedings under the Act but simply a no objection by the landlord for getting some concession from the municipal authority in the FAR or other facilities. Such decision of the Full Bench, will not help the petitioner

¹ AIR 2016 Hyd 100(FB)

in anyway, since in the present matter notifications were issued and published in the Gazettes as well as in the news papers. Award was passed determining the compensation. At the most the petitioner who is claiming to be having interest in one structure, could be considered as entitled for compensation and nothing more.

34. Mr Pereira, while placing reliance in the case of *Rajeev Kumar and others Vs The Executing Engineer and others*², claimed that due process for award of compensation has not been followed by the acquiring department and therefore delay and laches will not be considered as fatal to the present petition. In this respect he claimed that since the main grievance of the petitioner is of non compliance of due process as applicable to the land acquisition proceedings, the petitioner cannot be thrown away only because he approached this Court after the gap of 26 years.

35. In the case of *Rajeev Kumar and others* (supra) it was basic contention that the land has been taken away without complying due process of land as stipulated under the Land Acquisition Act and without paying compensation. Said case turns on its own facts and cannot be considered as helpful to the petitioner as in this case due process has been followed wherein compensation is already

2 Writ Petition No. 1430 of 2022 decided on 5.1.2024.

deposited in the Court. The question whether such compensation has been claimed or received by the owners is totally different. Once it is shown that all the provisions of the Act have been complied with, the question of delay and laches will have to be looked into.

36. Learned Advocate General relying in the case of *State of Gujarat Vs Panch of Nani Hamam's Pole and others*³ submitted that grievance raised by the petitioner is clearly negated by the Supreme Court in the said decision. In the said case of *State of Gujarat* (supra) grievance was that no notice was given to the interested party personally under Section 4 and Section 9(3) of the Act and that they were not aware of the proceedings till their landlord told them that possession of the land were to be handed over to the Government. Interested parties were claiming to be tenants of the landlord in respect of acquired land and who raised structures thereupon. Such interested parties being tenants in the said acquired land claimed that they were entitled to individual notice under Section 4(1) and Section 9(3) of the Act and in absence of such notice they claimed that entire proceedings are vitiated. While answering this submission, Section 4 has been quoted in paragraph 10 and thereafter in paragraph 11, the Apex Court

³ (1986) 1 SCC 566

observed that such provision contemplates notification to be published in the official Gazette indicating the intention of the State Government of acquisition for a public purpose and it further requires that the Collector shall cause a public notice of the substance of such notification to be given at a convenient places in the same locality. The purpose of this second part of Section, of giving a notice by the Collector by notifying it at a convenient place in the locality appears to be to intimate to the persons affected by the acquisition. In such context, it is clear that by reading section 4(1) that Rule (1), it could not be interpreted to mean that personal notice to each and every interested person is the requirement of Section 4 and in absence of such notice the proceedings of acquisition will be invalidated. It does not provide for an individual notice but only requires notice as contemplated under Section 4(1) to the interested persons. The manner in which the notice is to be given is provided in Section 4(1) itself by publication of the substance of the notification at a convenient places in the locality.

37. The above observations of the Apex Court is clear answer to the submissions of learned Senior Counsel Mr Pereira on behalf of the petitioner. There is no need to give individual notice to the

individual interested party and notice as contemplated under Section 4(1) of the Act is sufficient notice for all the interested party. Thus in the present matter, notice under section 4(1) of the Act was published on 12.8.1997. Such notice was also circulated in the daily news paper having vide circulation in the State of Goa. It amounts to clear notice to the person interested, to come forward and raise their objections. Petitioner claiming to be one of the tenants of structure existing in the suit property cannot claim any individual notice. Public notice published in the Gazette and in the news paper is sufficient notice for the petitioner also. Therefore, delay and laches on the part of the petitioner to challenge the acquisition after a period of 26 years will have to be taken into account.

38. In the case of *Mario Beraldo Fernandes Vs The State of Goa and others*⁴, Coordinate Bench of this Court vide its order dated 8.2.2022 considered similar contention. In that petition notification under Section 4 of the Act was published in October 2006, report under Section 5-A was submitted in March 2008 and Section 6 notification was issued in June 2008. Award was passed in July 2010 whereas challenge was raised to such acquisition in the 2021. Similar contention was raised that award was passed beyond period of two

⁴ Writ Petition No. 2513 of 2021(filing) decided on 8.2.2022.

years from the issuance of notifications under Section 4 and 6 of the Act. While answering this contention, it has been observed that such delay and laches certainly will debar the Court from entertaining petition. Reliance was placed in the case of *Andhra Pradesh Industrial Infrastructure Corporation Ltd. Vs Chinthamaneni Narasinha Rao and others.*, (21012) 12 SCC 797.

39. In the present case, admittedly petitioner did not raise any claim showing interest in the property under acquisition. Therefore, till passing of the award and taking possession of the land, no objection was raised by the petitioner showing his interest in the land or the structure. Such party cannot be allowed to challenge the acquisition even on the ground that there is violation of provisions of Section 11-A of the Act. In this matter, admittedly, there was one more petition filed vide Writ Petition No. 359 of 2000 and by interim order dated 27.11.2000 respondents therein i.e. Department of Tourism and State of Goa were directed to maintain status-quo. Said petition was disposed of vide order dated 25.3.2008. Thus, contention that there was delay in passing the award cannot be accepted. Even otherwise, petitioner who himself is responsible for such lapses cannot be allowed to challenge the award on such ground

when the land owner has already withdrawn the petition and handed over possession of the said land.

40. For all the above said reasons, we dismissed this petition. However, we impose no cost upon the petitioner.

41. Rule stands discharged accordingly.

42. Writ Petition stands disposed of.

VALMIKI SA MENEZES, J

BHARAT P. DESHPANDE, J