

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-OCW NO. 47 OF 2020

IN

PIL WRIT PETITION NO. 47 OF 2019

Melvin Francis Da Silva & Ors. Applicants

V e r s u s

State of Goa Respondents

Mr S. G. Dessai, Senior Advocate with Mr V. Parsekar, Advocate for the Applicants.

Mr Amey Kakodkar, Advocate for the Original Petitioner in PILWP No.47 of 2019.

Mr A. D. Bhobe and Ms Annelise Fernandes, Advocates for the Respondent no.5.

Mr D. Pangam, Advocate General with Mr S. P. Munj, Additional Government Advocate for the Respondent no.7.

Mr Manish Salkar, Government Advocate for the Tourism Department.

Coram:- DAMA SESHADRI NAIDU &

M. S. JAWALKAR, JJ.

Date: 5th November 2020

PC.

A few residents of a locality filed this Public Interest Litigation, requiring the Court to direct the Government to ensure that the property it had acquired was put to proper use; that is, to ease the traffic congestion and to provide parking space. In that Writ Petition, besides the Government and its officials, a neighbour to the property the Government had acquired joined as the ninth respondent. This Court, over time, has kept

on issuing directions about grievances the petitioners' raised in the Public Interest Litigation.

2. Over time, the ninth respondent came up with this Misc. Application seeking an ad-interim direction or injunction against the Government. He wanted the Government to ensure that a particular portion of the acquired property is used only for accommodating the displaced hawkers or shoppers. And he asserts that it is the intended purpose. Of course, the petitioners and the other respondents have opposed the interlocutory application.

3. In this context, we have proposed to keep the PIL for final hearing after the vacation but to dispose of the Misc. Application. It is because the ninth respondent has insisted that any delay in the matter would prejudice his interest.

4. For the 9th respondent, the learned Senior Counsel Shri S. G. Desai has advanced elaborate arguments. He has taken us through the voluminous records, the civic plans, and also numerous decisions and orders rendered by this Court. To sum up the learned Senior Counsel's submissions, we may note that he focused on the fact that the Government has deviated from its undertaking to this Court that it would be using the lower portion of the acquired property for accommodating the hawkers. True, among other things, the learned Senior Counsel has touched on the inconvenience that would be caused to the ninth respondent if the intended use has changed. But he has consistently focused on the Government's not deviating from its solemn undertaking before this Court and its rehabilitating the hawkers. According to him, if

the Government's adherence to the rule of law enures to the ninth respondent's benefit collaterally, it cannot be avoided.

5. During his submission, the learned Senior Counsel has also pointed out that for decades there existed a water body in the lower portion of the property the Government acquired. Whatever the flood water or the rainwater gathered there, specifically during the monsoons, there remained ducts or outlets to avoid inundation.

6. Now, in utter deviation from the approved plans, the Government has closed those channels, according to Shri Dessai. And the very water body has disappeared. With this development, there is every possibility of flooding, and that may cause grave hardship to the residents around, including the ninth respondent. So, the learned Senior Counsel wanted the Court to injunct the Government from changing the use of the acquired land—especially the lower portion.

7. In response, the petitioner's Counsel, Shri Amey Kakodkar, has submitted that it is unheard of that in a PIL, a third party wants to espouse his personal grievance. If at all the 9th respondent has had any of his rights violated, that presents him with an independent cause of action, and that needs a separate redressal.

8. At any rate, adverting to the ninth respondent's contentions, Shri Kakodkar has submitted that this Court, at a later point, issued directions in Writ Petition No.637/2007, out of which the whole issue originated; PIL WP No. 17 of 2007, which was taken up by this Court Suo Motu; and Writ Petition No. 359 of 2000, another connected proceeding. It was in February 2008.

9. In the above context, Shri Kakodkar stresses that this Court, in its common judgment, dt. 04.02.2008, has left all issues open. In particular, it has preserved the Government's right to use the property for the purposes that best serve the public interest. Therefore, according to him, the ninth respondent cannot be heard saying contrary to what this Court has decided.

10. Shri Ashwin Bhobe, the learned counsel for the 5th respondent, has also drawn our attention to the plans that have been on record, besides adopting the arguments of the other respondents as well as the petitioners in the PIL.

11. Finally, the learned Advocate General, Shri Devidas Pangam, has submitted that the ninth respondent has been relying on a plan which in fact was revised. According to him, the Government has come up with a fresh plan, which has not been challenged by any person concerned. And that plan contemplates providing sufficient parking facilities in the vicinity, given the location of Dona Paula Jetty, a famous tourist spot.

12. The learned Advocate General has also drawn our attention to this Court's interim direction on 13.12.2019. According to him, until the PIL is disposed of, this Court wanted the Government to use the property only for parking purposes. Now, any deviation from that direction would amount to the Court's contradicting itself at different stages. Therefore, he too has urged this Court to dismiss the ninth respondent's Misc. Application.

13. Indeed, earlier a handful of hawkers were displaced in the vicinity when the Government demolished their temporary vending structures. Later, in April 1994, the Government acquired a piece of

property, ostensibly, to rehabilitate those hawkers. But, then, there arose certain objections about the suitability of that piece of property. So, through a new notification, in August 1997, the Government acquired another piece of property. That property is the eye of this litigious storm.

14. Geographically speaking, the property has two divisions: upper and lower divisions. According to the ninth respondent, the Government initially intended to use the upper portion for parking purposes and the lower portion for rehabilitating those hawkers. In fact, when the Government had tried to go back on its commitment or dragged its feet on the proposal, the affected hawkers have repeatedly come to this Court, filed contempt petitions, as well as writ petitions, and secured directions. Later, it seems, the Government wanted to use the acquired property for a different purpose. And that prompted the residents of that area to come up with this present PIL Writ Petition.

15. True, in this Writ Petition, on 13.12.2019, this Court wanted the Government to ensure that, pending the PIL, it should use the acquired property for a public purpose; that is, for providing parking space to the tourists and other commuters.

16. In this PIL Writ Petition, we now need to consider the ninth respondent's interlocutory application on two counts: (a) whether it would defeat the Writ Petition, which has the public interest at its core; (b) whether the steps now being taken by the Government, allegedly though, affect any civil rights of the ninth respondent.

17. To our specific query in this regard, the learned Senior Counsel for the ninth respondent has submitted that more than his personal interest, the ninth respondent is espousing the cause of displaced

hawkers. In that context, he has submitted that in a PIL, any person can ventilate the grievance of another person, especially when that grievance already stood redressed through judicial directives and those judicial directives stand violated. Impressive as the plea is, it may not sustain the judicial scrutiny.

18. First, we cannot redress the petitioner's personal grievance in this Writ Petition. Second, the initial judgments and directions from this Court, at different stages, aimed to alleviate the suffering of the displaced hawkers. But none of those 54 hawkers has come before this Court complaining that the Government has violated the Court's directions or that their grievances have still remained unredressed.

19. Besides, while disposing of the displaced persons' writ petition and other connected matters, including a *suo motu* PIL, this Court preserved the Government's freedom to use the acquired property for the use that best subserved the public interest. Now, this Court cannot take a different stand and review its orders collaterally in a Misc. Application that has nothing to do with the core controversy.

20. Of course, in this context, the learned Senior Counsel for the ninth respondent has drawn our attention to the last part of the judgment, dt. 04.02.2008. It does clarify that the Court has not gone into the merits of the controversy. True, this Court did not go into the merits of the controversy in those writ petitions. But it has expressly preserved the Government's right to use the property for a public purpose as it felt right.

21. We, however, hasten to add that the issue about in what manner the Government should use the property has not been foreclosed. The PIL Writ Petition is still pending.

22. At this stage, we only express our decision to issue any directions in the ninth respondent's favour thus scuttling the whole judicial that originated in the public interest and introduce an extraneous element: the redressal of the ninth respondent's personal grievance in the name of helping hawkers. To our specific query about which right of the ninth respondent stands violated, there is no answer. Nor any of the alleged hawkers is present before us. The ninth respondent's pleadings reveal that without judicial intervention, he faces hardship, and his business may suffer. No further details are available.

23. The petitioners in the PIL complain of traffic chaos and congestion; the ninth respondent complains of personal inconvenience. His placing the gun on the hawkers' shoulders cannot make him a better marksman. He has missed his mark.

24. We, therefore, reject the ninth respondent's contentions. As a result, we dismiss this Misc. Civil Application.

No order on costs.

M. S. JAWALKAR

DAMA SESHADRI NAIDU, J.

arp/*