

IN THE HIGH COURT OF BOMBAY AT GOA

**FIRST APPEAL NO. 343 OF 2005
WITH
CROSS OBJECTION NO.1 OF 2007**

1. State of Goa,
rep. by Chief Secretary,
with his office at
Government of Goa,
Secretariat, Panaji.
 2. The Executive Engineer
Public Works Department,
Near Ponto de Linhares(Patto Bridge)
Panaji.
- ... Appellants

versus

1. Mr. Antonio Lobo,
major of age, married,
Advocate, r/o Feira Alta,
Mapusa, Bardez.
 2. Mr. Mario Lobo,
major, married, landlord,
r/o Saligao, Bardez.
 3. Mr. Peter N. Gama,
(Contractor) Senaulim,
Verna, Salcete, Goa.
- ... Respondents

Shri S. Vahidulla, Government Advocate for the Appellants.

Shri V. P. Thali, Advocate for Respondent Nos.1 and 2.

Shri B. Bandekar, Advocate for Respondent No.3.

CORAM : F. M. REIS, J.

DATE : 28TH FEBRUARY, 2011.

ORAL JUDGMENT

The above appeal challenges the Judgment and Decree passed in Civil Suit No.126 of 2004 by the learned Additional District Judge at Panaji on 30-8-2005.

2. It is the case of the respondent Nos.1 and 2 that they are the owners in possession of two properties which are known as “MARTE” and “VADDY” situated at Taleigao within the jurisdiction of Panjim Municipality which are surveyed in the Record of Rights under No.128 of Taleigao village and surveyed under No.1/1 of the village Durgavaddi. Both the said properties are adjoining one another. It is their case that the appellants along with respondent No.3 have encroached in the property of respondent Nos.1 and 2 and constructed a road without any objection nor complying with the provisions of the Land Acquisition Act. Accordingly, for the reasons stated in the plaint, the suit came to be filed. The appellants and respondent No.3 filed their written statement and disputed the claim of respondent Nos.1 and 2. It is their case that there

was a road which was existing and passing through their properties, and according to the appellants they were entitled to the construction of the said road. It is further their contention that as the road was existing there was no case of any acquisition under the Land Acquisition Act. The learned Judge after framing the issues and recording the evidence partly decreed the suit and granted the mandatory injunction as prayed for by the respondent Nos.1 and 2 by directing the appellants to remove the road constructed in the suit property as well as the material dumped therein.

3. Being aggrieved by the said Judgment dated 30-8-2005, the appellants preferred the above appeal and after being duly served, the respondent Nos.1 and 2 filed their Cross Objection and claimed that they prayed for damages to the tune of Rs.1,00,000/-, which were not granted by the impugned Judgment.

4. Shri S. Vahidulla, learned Government Advocate for the appellants has assailed the impugned Judgment and has submitted that they were not putting up any new construction of road but according to

him, there was already an existing road, and as such, the question of proceeding for acquisition under the Land Acquisition Act would not arise. Learned Government Advocate further submitted that the learned Judge has not appreciated the case properly and as such has passed an erroneous Judgment which deserves to be set aside.

5. On the other hand, Shri V. P. Thali, learned Counsel for the respondent Nos.1 and 2 has supported the impugned Judgment. He further pointed out that according to the respondents they had put up a claim for Rs.1,00,000/- which has not been considered by the learned Judge. He further pointed out that there was no evidence adduced by the appellants to substantiate their contention that there was an existing road. The learned Counsel as such submitted that the appeal deserves to be dismissed and the cross objection allowed.

6. Upon hearing the learned Counsel and on perusal of the records, the following points for determination arise in the present appeal:

- (1) Whether the learned Judge was justified to grant the mandatory injunction? and
- (2) Whether the learned Judge was justified to refuse the claim for damages to the tune of Rs.1,00,000/- put forward by the respondent Nos.1 and 2?

7. In support of their contention, the Respondent No.1 in the plaint has stated that there are two properties known as “MARTE” and “VADDY” or “DURGAVADDY” situated at Taleigao which are surveyed under No.128 of Taleigao Village and 1/1 of Village Durgavaddy which are continuous to one another. It is further their case that the substantial portion of the property “VADDY” has been acquired by the Government for the Housing Board in the year 1982 but, however, part of the said property has been left out from the acquisition and continues to be in possession of the said Respondent. It is further their case that on 9-12-2000, they had gone to the suit property, when they noticed that a road was being constructed through the said portion of the property belonging to them. On inquiries, they learnt that the Respondent No.3 herein had initiated the said road in view of the fact that the same was awarded by the Appellant No.2. It is further their case that the total area covered by the said road admeasures an area of

1226.70 sq. meters and that the said portion of the land has not been acquired by the Appellant. Consequently, they interalia, pray for injunction restraining them from interfering in any manner in the suit property. A mandatory injunction was also sought to remove the road constructed in the suit property besides a compensation of Rs.1,00,000/-.

In the written statement filed by the Appellant, essentially their contention is that there was an existing mud road passing through the property surveyed under No.128 and that the Appellant No.1 had only done soling and tarring of the said mud road at the instance of the Village Panchayat. The fact that the said tender was given to the Respondent No.3 was also not disputed. It is further their case that the ownership of the Respondent Nos.1 and 2 have not been established so as to initiate acquisition proceedings. It is further their case that in case any ownership documents were produced the Appellants would initiate proceedings. The Respondent No.2 filed an affidavit in evidence and reiterated the contention as stated in the plaint and in support of his claim he produced the survey records, the plan showing the construction of the road by the Appellants besides the Will pursuant to which the property belonged in their favour. In his cross-examination, he has categorically stated that the road has been constructed in his property

and disputed the existence of the pathway outside his property. The next witness examined by the Respondent Nos.1 and 2 is Prazeres Gonsalves who is a qualified Surveyor. In his affidavit, he has stated that at the time of inspection he found that a new road has been constructed by using rubble packing and mud and it was also pressed by a road roller. The said road had a width of 4.70 meters and was passing through the property bearing survey No.128 for a length of 214 meters. He has further stated that the total area encroached is 1005.80 sq. meters in the property surveyed under No.128. He has further stated that the area encroached in the property surveyed under No.1/1 is 220.90 sq. meters. He has produced the survey report and he has also identified the plan prepared by him. He denied the suggestion that the dot shown in the survey plan indicated that people were passing in the suit property. The Appellants in support of their defence have examined Padmakar B. Seldarkar. He has stated that before the work of tarring would start the Respondent filed the above suit. He has further stated that there was a pathway in survey No.128 which was used by the villagers and at the request of the public the soling and tarring was conducted. In his cross-examination, he stated that he was not in a position to produce the document to show that the Government decided to construct the road nor any villager had requested

to construct the suit road. He has further stated that his affidavit is on the basis of the written statement and he had not visited the suit site till the date of the deposition. He has further stated that there is no dealing of the road maintained in the department as the suit road is unsurfaced road(not tarred). He has further stated that the department has not started any process of starting construction for the suit road. He has further stated that even the estimates of the road are not available with the department. In further cross-examination, he has stated that his department has not done any tarring in the property. He has submitted that the road is presently tarred.

8. The learned Judge whilst passing the impugned Judgment and after appreciating the evidence on record has come to the conclusion that the road has been constructed by the Appellants without the consent of the Respondent Nos.1 and 2 and it was obligatory on the part of the Appellants to take such consent. The learned Judge has further found that the road has been constructed in high handed manner and as such directed the Appellants to remove the road constructed in the property. The claim for compensation came to be rejected.

9. Having heard the learned Counsel, it is clear that the road which has been constructed by the Appellants was without recourse to the provisions of law. The witness of the Appellants has admitted that no acquisition proceedings has been initiated to acquire the land of the Respondent Nos.1 and 2. The Surveyor examined by the Respondent Nos.1 and 2 has established that the existence of the road was through the property of the Respondent Nos.1 and 2.

10. Shri S. Vahidulla, learned Government Advocate for the Appellants has not disputed the fact that the land through which the road has been constructed has not been acquired by the Appellants. As the facts have been admitted, the question of the Appellants forcefully constructing the road cannot be justified. The learned Judge was justified to hold that the road was constructed without due process of law and grant reliefs as directed. The first point for determination is answered accordingly.

11. With regard to the second point for determination, the Respondent Nos.1 and 2 have failed to establish the claim. Learned Counsel for the Respondent Nos.1 and 2 was unable to point out any

piece of evidence to justify the claim of compensation. No particulars were given with regard to the break-up for such compensation. As such, the question of granting any compensation to the Respondent Nos.1 and 2 in the Cross Objection would not arise. The second point is answered accordingly.

12. In view of the above, there is no merit in this appeal and consequently the Appeal and the Cross Objection are dismissed with no order as to costs.

F. M. REIS, J.

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