

Writ Petition No. 36/1992

The Goa Foundation;

V/s

Fomento Resorts & Hotels; M/s. Sociedade e Fomento Industries Pvt. Ltd.;

The Panjim Planning and Development Authority; State of Goa;

Village Panchayat of Taleigao; Town and Country Planning Board;

Goa State Committee on Environment; The Collector

Issue: In 1983, when the Government acquired two plots of land (Sy No. 246/2 and 245/2) along Vainguinim beach in Taleigao village for the Cidade de Goa hotel, it signed an agreement with Fomento Resorts which contained certain conditions in order to protect the public access to Vainguinim beach. Section 4 Clause (viii) of the Agreement stipulated that ‘the company shall never construct any buildings or structures in the acquired land. Clause (ix) stipulated that, “the public access/road to the beach shall not be affected or obstructed in any manner.” However, Fomento Resorts extended its hotel building on to the acquired plot in violation of the Agreement and further more it closed the traditional pathway to the beach. The Planning Authority and the Village Panchayat regularized the construction on the acquired land and turned a blind eye to the closure of the access. Hence the writ petition, to restore the public access and demolish the construction made in violation of the Agreement. This petition was heard along with two others filed by local residents, namely W.P. No. 141/1992 (Gustavo Renato) and W.P. No. 330/1991 (Miguel Martins).

By interim order the Court directed an alternate access at one end of the property along the nullah to be kept open for the public.

In its final order the Court restored the traditional access and directed demolition of the building.

Fomento Resorts appealed the judgment. The Supreme Court dismissed the appeal and upheld the High court judgment.

Interim Order: 9/4/1992

The Court directed Fomento Resorts to provide an access along the property surveyed under No. 246/2 (Old survey No. 803) and to remove the barbed wire fencing to the extent of one and a half meters in order to ensure that the access is available for public use.

Judgment: 25/4/2000

The writ petitions are allowed with the following order:

1. The constructions which have come up in survey No. 246/2 (old 803) are required to be demolished and the concerned authorities shall take action in this respect, within a period of eight weeks from today and file compliance report within two weeks there from.

2. A notice for resumption of the land as required under proviso to clause 6 of the agreement dated 26.10.83 shall be issued within ten weeks by the Government to the hotel to show cause as to why, in the circumstances, the acquired land should not be resumed. The Government shall then take appropriate decision in accordance with law.
3. The access which is shown in plan Exhibit A colly which is at page 33 of W.P. No. 141 of 1992 shall be kept open without any obstruction of any kind from point A-B in order to come from Machado Cove side from point A to 803 (246/2 new) and then to go to the beach beyond point B.

Supreme Court Judgment: 20/1/2009

The following issues were framed by the Supreme Court for determination and its decision in regard to each are also listed below:

1. Whether land bearing survey Nos. 803 (new No. 246/2) and 804 (new no. 245/2) were acquired under Section 40(1)(aa) or under Section 40(1)(b)?

The land bearing survey Nos. 803 (new No. 246/2) and 804 (new No. 245/2) was acquired under Section 40(1)(aa) because it was acquired for a tourism development project, which is a public purpose.

2. Whether any public access was available to the beach through survey No. 803 (new No. 246/2) before its acquisition by the State Government and whether in terms of Clause 4(ix) of the agreement, appellant No. 1 is required to maintain the said access/road to the beach without any obstruction?

Clause 4(ix) of the agreement is binding on the Company and it is under a statutory obligation to maintain access/road to the beach through survey No. 803 (new No. 246/2) without obstruction of any kind.

3. Whether public access to the beach through survey No. 803 (new No. 246/2) stood extinguished with the vesting of land in the State Government under Section 16 of the 1894 Act?

It is neither proper nor justified for this Court to deny the people their traditional right of access to the beach through survey No. 803 (new No. 246/2) which goes to Dona-Paola-Bambolim Road by using the roads provided in survey No. 792 (new No. 242/1)(Machado's Cove).

4. Whether construction of hotel building on a portion of survey No. 803 (new No. 246/2) is contrary to the purpose of acquisition and is in violation of the prohibition contained in Clause 4(viii) of the agreement dated 26/10/1983 and the High Court rightly directed demolition thereof in accordance with Clause 6 of the agreement?

We hold that the High Court did not error in its holding that the extension of the hotel building on 1000 sq. mts. of survey No. 803 (new No. 246/2) is illegal and

directing its demolition following the procedure prescribed under Clause 6 of agreement dated 26/10/1983.

5. Whether denial of the facilities and amenities created by appellant No. 1 in survey No. 803 (new No. 246/2) to the members of public is contrary to the purpose acquisition and is also in violation of the agreement and this could be made a ground for resumption of the acquisition of land?

Fomento's application for acquisition of the land dated 15/11/1978 makes it clear that it the sports facilities it intended to set up on the acquired land would be open for use by non-residents on a membership basis. The Agreement dated 26/10/1983 is silent on the issue of making facilities free for the public. Therefore, the facilities and amenities created by the appellant do not need to be made available to the general public for free.

As a result the appeals are dismissed. Since execution of most of the directions given by the High Court remained stayed during the pendency of these appeals, we deem it proper to issue the following directions:

1. Fomento Resorts is allowed three months' time to demolish the extended portion of the hotel building which was constructed on 1000 sq. mts. of survey No. 803 (new No. 246/2) and, thereafter report the matter to the Development Authority which shall, in turn, submit a report to that effect to Goa Bench of the Bombay High Court.
2. If Fomento fails to demolish the building within the time specified in directions No. 1 above, the concerned authority shall take action in accordance with paragraphs (a) and (b) of the operative part of the High Court's order.
3. The access shown in plan Exhibit-A attached to Writ Petition No. 141/1992 shall be kept open without any obstruction of any kind from point 'A' to 'B.' If during pendency of the litigation, appellant No. 1 has put up any obstruction or made construction to block or hinder access to the beach through survey No. 803 (new No. 246/2), then the same shall be removed within one month from today.

Subsequent Developments:

Within a month of the Apex court judgment the State Government amended the Land Acquisition Act first by Ordinance, later passed unopposed by the Assembly so as to delete the clause prohibiting construction on the acquired plot. The company did not demolish the building within three months. The GF challenged the amendment and also filed contempt petition in the Apex Court. The matters are pending.