

LIEWELLYN FURTADO AND ORS.  
v.  
GOVERNMENT OF GOA AND ORS.

SEPTEMBER 10, 1997

[DR. A.S. ANAND AND K. VENKATASWAMI, JJ.]

*Land Acquisition Act, 1894 :*

*Ss.4,6,17—Declaration u/s 6 made after expiry of period prescribed—Acquisition challenged in writ petition before High Court—High Court rejected writ petition in limine—Held, since factual averments were not controverted, their effect was required to be considered by the High Court—Since arguable points had been raised in the writ petition, High Court should have given reasons in support of its order—Matter remitted to High Court for fresh disposal in accordance with law.*

*Constitution of India, 1950 :*

*Article 226—Writ petition—Rejected in limine by High Court—Held, obligation to give reasons introduces clarity and excludes or at any rate minimises the chances of arbitrariness—This Court has been deprived from testing the reasons which might have weighed with the High Court while rejecting the writ petition in limine—Matter remitted to High Court for fresh disposal in accordance with law.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 850 of 1994.

From the Judgment and Order dated 6.10.93 of the Bombay High Court at Goa, in W.P. No. 472 of 1993.

Dhruv Mehta, S.K. Mehta, Fazlin Anam and Ms. Shobha Verma for the Appellants.

Ms. A. Subhashini for the Respondents.

The following Order of the Court was delivered :

This Civil Appeal calls in question an order of the Bombay High Court in Writ Petition No. 427 of 1993 decided on 24th August, 1993. The impugned

A order reads thus:-

“Rejected.

We do not wish to exercise writ jurisdiction in view of return filed by Land Acquisition Officer.”

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Mr. Dhruv Mehta, learned counsel for the appellants, submits that in the writ petition filed in the High Court specific allegations had been made that the acquisition proceedings were vitiated on account of bar of limitation. That it was averred that the declaration under Section 6 of the Land Acquisition Act had been made after the expiry of one year from the date of publication of the Notification under Section 4 which vitiated the declaration as well as the acquisition. According to the learned counsel, the appellants in the writ petition had also raised a plea that there was an unexplained and unreasonable gap of almost one year between the date of the first publication of the Notification under Section 4 and the publication of that Notification in the official gazette later on and keeping in view the fact that emergency provisions under Section 17 of the Land Acquisition Act had been invoked, that gap would defeat the very intention of the Amendment made in 1984. It was pointed out that in the counter-affidavit filed by the respondents in the High Court no specific reply was given to these averments in the writ petition but the Division Bench of the High Court did not examine that aspect of the case and therefore judgment of the High Court cannot be sustained.

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We find force in the submission of the learned counsel. The High Court simply dismissed the writ petition “in view of return filed by Land Acquisition Officer”. We have been unable to appreciate as to what circumstances weighed with the High Court to dismiss the writ petition in limine. Since, in the return filed by the Land Acquisition Officer, factual averments were not controverted, their effect was required to be considered by the High Court. No reasons have been given and this Court has been deprived from testing the reasons which might have weighed with the High Court while rejecting the writ petition in limine. Obligation to give reasons introduces clarity and excludes or at any rate minimises the chances of arbitrariness. Since, arguable points had been raised in the writ petition, the Bench should have given some reasons, howsoever brief, in support of its order. To say the least it was an unsatisfactory manner of disposal of the writ petition. We, therefore, find that the impugned order cannot be sustained and accept this appeal. We set aside the impugned order of the High Court dated 24th August, 1993 and remand the case to the High Court for its fresh disposal in accordance with law. We, request the

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Hon'ble Chief Justice of the High Court to have the petition placed before a Division Bench for an early disposal. A

This Court had granted an order of status quo as regards possession only on 14th February, 1994. That interim direction shall continue to remain in operation till the writ petition is disposed of.

We clarify that nothing said hereinabove shall be construed as any expression of opinion on the merits of the controversy. B

The appeal is allowed in the terms indicated above. No costs.

R.P.

Appeal allowed. C