

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITIONS NO.49 & 50 OF 2015****WRIT PETITION NO.49 OF 2015**

Mr. Suresh Rajaram Anulekar,
son of Rajaram Anulekar,
Aged 56 years,
Resident of House No.323/1,
Godinho Vaddo, Majorda,
Salcete, Goa.

...Petitioner

V/s

1. The State of Goa,
Through Chief Secretary,
Secretariat, Porvorim-Goa 403 012.
 2. The Deputy Director,
Department of Tourism,
Paryatan Bhavan,
Patto-Panaji, Goa-403001.
 3. The Director of Tourism,
Shri Nikhil Desai,
Department of Tourism,
Paryatan Bhavan,
Patto-Panaji, Goa-403 001.
 4. Mr. Peter Rock Samson Gonsalves,
Son of Mr. Jose Maria
Anton Braz Gonsalves,
Aged 42 years,
Resident of House No.220,
Calata, Majorda,
Salcete, Goa. 403713.
- Respondents

AND

WRIT PETITION NO.50 OF 2015

Mrs. Filipina Fernandes,
daughter of late Nazareth Braganza,

Aged 72 years,
Resident of House No.173/2,
Adao Vaddo, Majorda, Salcete, Goa.

...Petitioner

V/s

1. The State of Goa,
Through Chief Secretary,
Secretariat, Porvorim-Goa 403 012.

2. The Deputy Director,
Department of Tourism,
Paryatan Bhavan,
Patto-Panaji, Goa-403001.

3. The Director of Tourism,
Shri Nikhil Desai,
Department of Tourism,
Paryatan Bhavan,
Patto-Panaji, Goa-403 001.

4. Mr. Peter Rock Samson Gonsalves,
Son of Mr. Jose Maria
Anton Braz Gonsalves,
Aged 42 years,
Resident of House No.220,
Calata, Majorda,
Salcete, Goa. 403713.

.... Respondents

Mr. C.A. Ferreira, Advocate for the Petitioner.

Ms. P. Kamat, Additional Government Advocate for Respondents
No.1 to 3.

Mr. Amey Kakodkar, Advocate for Respondent No.4.

CORAM : F.M. REIS, J.

DATE : 31st JULY, 2015

ORAL JUDGMENT :

Both the above Writ Petitions were taken up together as it was

not disputed by the learned Counsel appearing for the respective parties that the issues involved in both the Writ Petitions are identical.

2. Heard Mr. C.A. Ferreira, learned Counsel appearing for the petitioners in both the petitions, Ms. P. Kamat, learned Additional Government Advocate appearing for respondents no.1 to 3 and Mr. A. Kakodkar, learned Counsel appearing for respondent no.4.

3. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the respondents waive service.

4. Upon hearing the learned Counsel appearing for the respective parties, the short point for consideration in the above Writ Petitions is whether the learned Judge by passing an order allowing the respondent no.4 to be impleaded in the suit filed by the petitioners has acted in excess of its jurisdiction, which would call for interference by this Court. The other order challenged in the present petitions is an order dated 15/11/2014, whereby an application filed by the petitioners to recall the said order dated 2/07/2014 came to be dismissed.

5. Briefly, the facts of the case are that the petitioners in both the petitions filed suits against respondents no.1 to 3 challenging the disqualification of the petitioners to use the shacks allotted by the respondent no.3 in their favour in the village of Majorda. In the said suits, the respondent no.4 filed an application to get himself impleaded on the ground that the respondent no.4 was at number 3 on the waiting list and according to him one of the first two of such persons on the waiting list had withdrawn from such list and, as such, he was eligible to be allotted a shack in view of the disqualification of the petitioners. The learned Judge by order dated 2/07/2014 after hearing the petitioners and other concerned parties allowed the respondent no.4 to be impleaded as defendant no.4 in the suits. Whilst coming to such conclusion the learned Judge found that the presence of the respondent no.4 would be essential considering that the respondent no.4 would be eligible to get the shack allotted to him in case the petitioners do not succeed in the suit.

6. In the meanwhile, as the petitioners got information from the concerned departments that the respondent no.4 was the person eligible to get the shack, in case the petitioners do not succeed in the suits, the petitioners filed an application to recall the said order which

came to be dismissed by the subsequent impugned order dated 15/11/2014. Being aggrieved by the said orders the petitioners filed the above petitions.

7. Mr. C.A. Ferreira, learned counsel appearing for the petitioner has pointed out that the respondent no.4 has no right to the property in dispute as according to him no rights have crystallized in his favour and, as such, unless and until such respondent has nexus with the subject matter of the disputed property, the learned Judge was not justified to pass the impugned order directing the impleadment of the respondent no.4. The learned Counsel further points out that the petitioner has produced information to establish that the respondent no.4 was not the person otherwise entitled to be allotted the disputed shack, in case the petitioner does not succeed in her challenge in the Court. The learned Counsel points out that the petitioner has produced documents under the Right to Information Act in support of such contention. The learned Counsel has relied upon the judgment of the Apex Court reported in *1992 (2) SCC 524* in the case of *Ramesh Hirachand Kundanmal V/s. Municipal Corporation of Greater Bombay & Ors.* in support of his contention that unless there is an interest established by the parties which is not merely

commercial interest the question of allowing the impleadment of such party is not justified.

8. On the other hand, Mr. A. Kakodkar, learned Counsel appearing for respondent no.4 has supported the impugned order. The learned Counsel points out that the question of exercising jurisdiction under Article 227 of the Constitution of India does not arise at all in the present case, as according to him, the order dated 2/07/2014 has become final without any challenge and, as such, merely because the petitioners have filed a subsequent application to recall the said order would not justify interference to an order passed on 2/07/2014. The learned Counsel has thereafter taken me through the impugned order disposing of the application and pointed out that the learned Judge has erroneously rejected the application on the ground that the application produced by the respondents in support of their contention were incomplete. The learned Counsel further submits that the concerned party who has withdrawn from the waiting list has in fact filed an affidavit in the Court inter alia stating that she has withdrawn from the waiting list to obtain such shack. The learned Counsel has also taken me through the observations in para 15 of the said judgment in the case of ***Ramesh Hirachand Kundanmal*** (supra) to

point out that even the persons who have interest in the final outcome of the suit can also be treated to be necessary party to be impleaded. The learned Counsel, as such, submits that the petition be accordingly rejected.

9. I have considered the submissions of the learned Counsel and have also gone through the records. The first impugned order is dated 2/07/2014. Admittedly, the petitioner did not challenge the said order and in fact acted upon such order whereby the petitioner permitted the respondent no.4 to intervene in the proceedings and, on subsequent date of hearing, the respondent no.4 appeared in the suit filed by the petitioner. In such circumstances, challenging the said order in the year 2015 would itself be a ground to reject the challenge to said orders dated 2/07/2014 under Article 227 of the Constitution of India on the ground of laches.

10. The only aspect, as such, is to examine whether the learned Judge was justified to pass the subsequent order dated 15/11/2014, whereby the application filed by the petitioners to recall the order came to dismissed. On perusal of the said order, I find that the learned Judge has noted that the documents relied upon by the

petitioners were incomplete documents and, as such, did not accept the contention of the petitioner with that regard. Mr. C.A. Ferreira, learned Counsel has however disputed the said finding as according to him there is no other material on record to take any contrary view on that aspect. But, however, Mr. A. Kakodkar, learned Counsel appearing for respondent no.4 has brought to my notice an affidavit filed by the concerned person inter alia stating that she has withdrawn from the allotment of the shack in the subject property. In such circumstances, this disputed question of fact in respect of the veracity of the documents to get the earlier order dated 2/07/2014 recalled cannot be a matter to be examined by this Court under Article 227 of the Constitution of India. The veracity or authenticity and/or affidavit relied upon by the respondent no.4, are matters that the learned Judge will have to examine on its own merits whilst deciding the suit on merits.

11. Be that as it may, for the reasons stated herein above, I find that there is no justification for any interference in the impugned orders challenged in the above petition under Article 227 of the Constitution of India. Hence both the petitions stand rejected. Rule stands discharged. Parties are directed to appear before the learned Judge on

31/08/2015 at 2.30 p.m.

F.M. REIS, J.

NH/-