

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 59 OF 2015**

Shri Vijay Gauns,
of major age,
Indian National,
r/o H. No.11/08,
Near Ghateshwar Temple,
Mapusa, Goa.

.... Petitioner

V e r s u s

1. State of Goa,
through the Chief Secretary,
having office at Secretariat,
Porvorim, Goa.
2. The Mamlatdar of Bardez Taluka,
having office at Mapusa, Goa.
3. The Dy. Collector and SDO,
In-charge of Demolition Squad,
North Goa District,
Panaji Goa.
4. Shri Shashikant Garad,
r/o Ghateshwar Temple,
Khorlim, Mapusa,
Bardez Goa.

.... Respondents

Mr. Parag Rao, Advocate for the petitioner.

Mr. S. S. Rebello, Additional Government Advocate for respondent nos. 1 to 3.

Mr. J. J. Mulgaonkar, Advocate for respondent no.4.

**Coram:- F. M. REIS &
K. L. WADANE, JJ**

Date :- 29th July, 2015

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. P. Rao, learned counsel appearing for the petitioner, Mr. S. S. Rebello, learned Additional Government Advocate appearing for respondent nos. 1 to 3 and Mr. J. J. Mulgaonkar, learned counsel appearing for respondent no.4.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. The learned counsel appearing for the respective respondents waive service.

4. We have heard the learned counsel appearing for the respective parties and on the basis of the submissions advanced before us, we find that the point for consideration is as to whether the directions issued by the respondent no.2 to demolish the obstruction in the Comunidade lane situated in Chalta No.1 of P. T. Sheet No. 117, City of Mapusa would also include the temporary shed existing in such lane.

5. Mr. P. Rao, learned counsel appearing for the petitioner has pointed out that in the show cause notice issued to the

respondent no.4, it was clearly mentioned that all the obstructions to the Comunidade lane would also include the disputed tin sheets structure which was intended to be demolished. The respondent no.4 opposed by filing a reply to the said show cause notice and ultimately the respondent no.2 passed an order directing the petitioner to clear the lane by removing the rubble stones and other material as well as trees obstructing the movement on the said Comunidade lane. The order passed by the respondent no.2 was assailed before this Court in Writ Petition No. 18 of 2012 which came to be disposed of by judgment dated 09.02.2015, wherein it was inter-alia held that the direction to remove the trees would not come within the powers exercised by the respondent no.2 in terms of the relevant Act and consequently, confirmed the removal of the obstructions by clearing the Comunidade lane as shown in the black colour in the plan produced by the respondent no.4. According to the respondent no.4, it was contended that his residential house would be demolished based on the said direction of the respondent no.2, but this Court clarified on the basis of the said plan that the apprehension of the respondent no.4 is not justified as the house was not shown to be in the Comunidade lane as depicted in lane shown in black colour in the said plan.

6. Mr. Mulgaonkar, learned counsel appearing for respondent no.4 however points out that the tin sheets structure is a part of the residential house and as such according to him as this Court has protected the demolition of the house, the tin sheets structure is also protected as it is a part of such residential house. The learned Additional Government Advocate has also pointed out that the directions were only to remove the debris and rubble stones from the disputed lane and as such according to him the order passed by the respondent no.2 has been duly complied with.

7. On perusal of the records and order passed by the respondent no.2, we find that the obstructions in Comunidade lane were ordered to be removed includes other materials therein. In such circumstances, a temporary extension to the residential house consisting of poles and tin sheets cannot be considered to be a part of the residential house of the respondent no.4 as any extension in the Comunidade lane as shown in the black colour stands covered by the order passed by the respondent no.2 based on the show cause notice which clearly indicates that there was an impediment to the user of the said lane by the said structure therein. The respondent no.2 has also filed an additional affidavit inter-alia pointing out that in fact the tin sheets structure with

poles is located in the Comunidade lane in view of the inspection carried out by the respondent no.2 on 28.07.2015.

8. In such circumstances, we find that the respondent no.2 will have to take steps to identify the structure located in the said Comunidade lane shown in the black colour and proceed to take action in accordance with law based on the plan produced by the respondent no.4 showing the lane in black colour therein within two months. Rule stands disposed of in above terms. The petition stands disposed of accordingly.

K. L. WADANE, J

F. M. REIS, J

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