

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 295/2015**

1. Dilip Anant Khobrekar,
son of Anant Nanu Khobrekar,
39 years of age, unmarried,
fisherman, resident of
House No.353/1, Near Colaco Bar, Katem,
Baina, Mormugao, Goa,
for himself and representing
the common interest of Petitioners No.2 and 3
and the parties listed at Annexure A.

2. Rukma Tandel, son of Ganpat Tandel,
39 years of age, married, fisherman,
resident of House No.81/GL/10,
Near Colaco Bar, Katem, Baina,
Mormugao, Goa.

3. Smt. Vithalbai Shankar Lamani,
widow of late Shankar Devlappa Lamani,
45 years of age, fisherwoman,
resident of House No.81/GL/96,
Near Colaco Bar, Katem, Baina,
Mormugao, Goa.

..... Petitioners.

V/s.

1. State of Goa,
through the Chief Secretary,
with Office at Secretariat,
Alto-Betim, Bardez, Goa.

2. The Collector,
South Goa District,
with Office at Mathani Saldanha Complex,
near Margao Bus Stand, Margao, Goa.

3. Deputy Collector,
South Goa District,
with Office at Mathani Saldanha Complex,
near Margao Bus Stand, Margao, Goa.

4. Mamlatdar of Mormugao Taluka,
with Office at Mormugao Municipal
Council Building, Mormugao, Goa. Respondents.

Shri J.E. Coelho Pereira, Senior Advocate with Shri V. Braganza,
Advocate for the petitioners.

Shri A. N. S. Nadkarni, Advocate General with Shri M. Salkar,
Government Advocate for respondents.

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

Date : - 17th June, 2015.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Shri J.E. Coelho Pereira, learned Senior Counsel
appearing for the petitioners and Shri A.N.S. Nadkarni, learned
Advocate General appearing for the respondents.

2. Rule. Heard forthwith, with the consent of the learned
Counsel. Learned Government Advocate waives notice.

3. Upon hearing the learned Counsel appearing for the

respective parties, and on perusal of the record, it was pointed out to the learned Advocate General appearing for the respondents that though there were contentions raised by the petitioners in their replies before the respondent No.4 that their alleged occupation of the disputed structures is for more than 30 years, there was no specific finding in the impugned orders of the date when the alleged occupation of the disputed structures by the petitioners started. It was also pointed out to the learned Advocate General that there was some material produced at the instance of some of the petitioners in support of their said contentions. The learned Advocate General, at this stage, pointed out that in order to give more effective consideration to the said contentions raised by the petitioners, this Court may examine to quash and set aside the impugned orders passed by the respondent No.4 and direct the respondent No.4 to pass a fresh reasoned order, after examining all the contentions, upon giving a hearing to the petitioners and other affected persons.

4. Shri J.E. Coelho Pereira, learned Senior Counsel appearing for the petitioners, however, points out that the petitioners have also challenged the constitutional validity of the Goa Land (Prohibition on Construction) Act, 1995 (for short “the Act of 1995”) and, in case,

this Court is inclined to direct the respondent No.4 to pass a fresh order, all contentions of the petitioners, on merits and with that regard, be left open.

5. On the last date of hearing, in fact, whilst examining the extension of the ad interim relief granted by this Court, it was clearly observed that the respondents, if so desire, are at liberty to take action under any other law besides the said Act of 1995.

6. In the peculiar facts and circumstances of the case and in the interest of justice as *prima facie* all the contentions raised by the petitioners have not been duly examined by the respondent No.4, we find it appropriate, without going into the merits of the rival contentions, to quash and set aside the order dated 31st December, 2014, final notices/orders dated 10th April, 2015, passed by the respondent No.4 and direct the respondent No.4 to pass a fresh reasoned order based on the subject-notices issued to the petitioners, after giving the petitioners an opportunity of being heard and to produce any additional material, if they are so advised.

7. In view of the above, we pass the following :

O R D E R

(I) The impugned order dated 31st December, 2014, and final notices/orders dated 10th April, 2015, passed by the respondent No.4 are quashed and set aside.

(II) The respondent No.4 is directed to pass fresh reasoned orders on the notices issued to the petitioners in the light of the observations made herein above, in accordance with law.

(III) All contentions of both the parties, on merits, and other challenges by the parties, are left open.

(IV) The petitioners are directed to appear before the Respondent No.4 on 23rd June, 2015 at 10.00 a.m. for appearance and abide with further directions to proceed with hearing.

(V) Needless to say, the respondents, if so desire, are at liberty to take action under any other law, other than the said Act of 1995, in accordance with law.

(VI) Rule is made absolute in the above terms.

K.L. WADANE, J.

F.M. REIS, J.

ssm.