

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 424 OF 2010

Mr. John Rodrigues,
major, resident of H. No.612,
Near Govt. Primary School,
Uzro, Raia, Salcete Goa.

... Petitioner

V e r s u s

1. Comunidade of Raia,
Through its Managing Committee,
Raia, Salcete Goa.
2. The Administrator of Comunidades
of South Zone,
Office of the Administrator of Comunidades,
Margao Goa.
3. The Deputy Collector,
South Goa,
Margao Goa.
4. Health Officer,
Primary Health Centre,
Lotoulim,
Government of Goa,
Lotoulim, Salcete Goa.
5. Village Panchayat of Raia,
Through its Sarpanch,
having office at Raia,
Salcete Goa.
6. Mr. Gasper A. Rodrigues,
major of age,
r/o Turvaddo,
V.P. Raia, Salcete Goa.
7. The Collector
South Goa,
having office at Collectorate
Margao Goa.

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8. Director of Civil Administration
State of Goa,
Secretariat, Alto Porvorim.

... Respondents

Mr. A. D. Bhobe, Advocate for the petitioner.

Mr. V. Rodrigues, Addl. Government Advocate for respondent nos. 3, 4, 7 and 8.

Mr. J.P. Mulgaonkar, Advocate for respondent no.6.

None for the remaining respondents though served.

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

Date :- 8th April, 2015

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

Heard Mr. A. D. Bhobe, learned counsel appearing for the petitioner, Mr. V. Rodrigues, learned Addl. Government Advocate appearing for respondent nos. 3, 4, 7 and 8 and Mr. J. P. Mulgaonkar, learned counsel appearing for respondent no.6. None for the remaining respondents though served.

2. The above writ petition inter-alia seeks a direction to comply with the final notice dated 21.02.2003 issued by the respondent no.2.

3. The brief facts of the case as pointed out by the

petitioner are that pursuant to a complaint lodged by the petitioner before the local panchayat as well as the authorities under the Code of Communitade with regard to an illegal construction put up by the respondent no.6, a final notice dated 21.02.2003 was issued by the respondent no.2 inter-alia directing the respondent no.6 to demolish the illegal structure. The respondent no.6 initially tried to dispute the correctness of the said order inter-alia contending that the structure in the property of Communitade was regularised. But however, such attempt did not bear fruits as by letter dated 08.09.2004, it was inter-alia pointed out that the structure could not be regularised. The respondent no.6 thereafter, also filed a suit in the Court of the Civil Judge Junior Division, at Margao inter-alia seeking to quash and set aside the said final notice dated 21.02.2003. The suit was ultimately withdrawn on 13.01.2009 on the ground that the respondent no.6 had filed an application before the Communitade/respondent no.1 for regularisation. The suit was accordingly dismissed as withdrawn. The petitioner thereafter by notice dated 26.12.2009 called upon the respondent no.2/ Administrator of Comunidades to comply with the final notice which is the subject matter of the above Writ Petition. In view of the failure to comply with the request of the petitioner, the above Writ Petition was filed inter-alia seeking different reliefs including a direction to the respondent no.2 to

comply with the final notice.

4. Mr. A. D. Bhobe, learned counsel appearing for the petitioner has taken us through the records and pointed out that the final notice dated 21.02.2003 is still in force and has not been complied with and only because of the pendency of the suit filed by the respondent no.6, such directions were not implemented. The learned counsel as such submits that as the petitioner was the complainant and he is affected by the illegal activities being carried out by the respondent no.6 in the disputed structure, the respondent no.2 should be directed to take necessary measures to comply with the said final notice.

5. On the other hand, Mr. Mulgaonkar, learned counsel appearing for the respondent no.6 has raised an objection with regard to the locus standi of the petitioner to maintain the above Writ Petition. The learned counsel has pointed out that the petitioner is not a component of the Comunidade nor has any interest in the property of the Comunidade and consequently, he has no locus standi to file the above writ petition. The learned counsel further submits that the respondent no.6 has also filed an application for regularisation of the disputed structure as according to him the respondent no.6 had already paid the requisite

compensation for such encroachment in the year 1976. The learned counsel further submits that the question of issuing any direction in the above writ petition would not arise.

6. Mr. V. Rodrigues, learned Addl. Government Advocate appearing for respondent nos. 3, 4, 7 and 8 however submitted that the order which is the subject matter of the present petition dated 21.02.2003 is still in force and the authorities would abide with any direction issued by this Court.

7. We have examined the rival contentions of the learned counsel and we have also gone through the records. The fact that the order dated 21.02.2003 passed by the respondent no.2 has not been implemented is not disputed by the parties to the above petition. Apart from that, the fact that the order could not be implemented up to the year 2009 as the respondent no.6 had filed a suit which prevented the respondent no.2 from proceeding to take action in terms of the said final notice has also not been disputed. The petitioner was in fact the complainant pursuant to which the subject final notice came to be passed by the respondent no.2. Apart from that, the attempt made by the respondent no.6 to get the said order set aside by the Civil Court did not bear any fruits as the respondent no.6 chose to withdraw

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the said suit. In such circumstances, it is very late for the respondent no.6 to now challenge the locus standi of the petitioner to get the order implemented which came to be passed at the behest of the petitioner.

8. Taking note of the contention of Mr. Mulgaonkar, learned counsel appearing for the respondent no.6 that the application for regularisation has not been disposed of and further that there was a resolution passed in the year 1976 with regard to the disputed structure, we find it appropriate to direct the respondent no.2 to hear the petitioner as well as the respondent no.6 and all other concerned parties and take a final decision about the implementation of the said final notice dated 21.02.2003 in accordance with law. All the contentions of both the parties on merits with that regard are left open. Rule stands disposed of in above terms with no order as to costs.

K. L. WADANE, J

F. M. REIS, J

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