

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 391 OF 1993
WITH
MISC. CIVIL APPLICATION NO. 551 OF 2000

1. Goa Foundation, being a Registered Society registered under the provisions of the Societies Registration Act, 1860 having its office at Rm.7, Above Mapusa Clinic, Mapusa 403 507, Goa.

Petitioners

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V e r s u s

1. Captain of Ports,
Captain of Ports Building,
Panaji, Goa.
2. State of Goa through its Chief
Secretary, Secretariat, Panaji,
C/o. Advocate general.
3. The Revenue Secretary.
Revenue Department,
Secretariat, Panaji, Goa.
R/o. The Advocate General,
Panjim, Goa.
4. Palm Hotel India Ltd.,
C/o. Hotel La Paz,
Swatantra Path,
Vasco da Gama, Goa.

... Respondents

Mr. Norma Alvares, Advocate for the Petitioners.

Mr. D. Lawande, Government Advocate with Mr. P. Dangui, Addl. Government Advocate for the Respondent nos. 1, 2 and 3.

Mr. R. Dada and Mr. T. N. Subramanian, Senior Advocates with Mr. Firdosh Pooniwala, Mr. Rishit Badiani and Mr. J. Supekar, Advocates for the Respondent no. 4.

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

Judgment Reserved on : **12th February, 2015**

Judgment to be Pronounced on : **29th June, 2015**

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

The above Writ Petition, inter alia, is seeking to recall the Lease dated 30.04.1979 and to rescind such lease. The other relief sought by the Petitioner is for a direction to the Respondent no. 2 to prosecute all the concerned officials involved in the grant of such lease.

2. Briefly, the facts of the case are that it is the contention of the Petitioners that the Indian Ports Act 1908 has been extended and brought into force in Goa on 01.01.1966. It is further their case that the said Act mostly deals with port and port charges payable thereunder and incidental matters covered thereof. It is further their contention that Section 4 of the Act invests powers on the Government to extend the provisions of the Act to any part of any navigable river or channel which leads to a Port. It is further their case that pursuant to sub-section (3) of the said Section, it is permissible to define the line of the port with reference to jetties, landing places, docks, etc. It is further their contention that by Notification dated 29.11.1967, the State Government declared Port of Panaji, Tiracol and Talpona, as Port for the purpose of the Act. It is further their contention that once the limits of the Port have been laid down in terms of Section 4 of the said Act, the Respondent no. 1 has jurisdiction for compliance of the provisions of the Act and Rules framed thereunder and no other authority has jurisdiction over the Port area. It is further their case that the Lease Deed has been executed in respect of the portion of the said area in favour of the private Respondent no. 4 dated 30.04.1979

for the purpose of putting up a hotel project. It is further their case that the provisions of law have been violated and the permission for the hotel has been granted on 29.01.1991 which is the subject matter in challenge in Writ Petition no. 333 of 1993. It is further their case that the Petitioners were trying to get particulars of the said Lease when they first became aware that some construction was being put up from April 1993. It is further their case that complaint was lodged before the Respondent no. 1 dated 15.04.1993 and letter has been addressed on 07.05.1993 to the Planning Authorities and others asking that the said construction be halted. It is further their case that the said Lease is contrary to law and that the Respondent no. 1 has not acted to protect from wrongful obstruction and damages. It is further their case that the said area falls in CRZ Zone and there is additional duty on the Respondent no. 1 to monitor the beach and see that it is kept clear from all developments.

3. The Respondent nos. 1, 2 and 3 filed their reply disputing the said contentions and inter alia, pointing out that on 16.06.1965, the Secretary Ministry of Home Affairs, Government of India, wrote a letter to the Chief Secretary, Government of Goa, to the effect that due to lack of tourist accommodation in Goa and in view of the fact that there were only two Hotels of three star category proposed to set up a hotel at Panaji. It is further their case that M/s. Ritz Hotels had opted to put up such hotel but, however, thereafter, they withdrew their application for putting up such construction. It is also their contention that thereafter the Respondent no. 4 applied for constructing such hotel at the disputed site. It is further their case that the rent was fixed in terms of the provisions of the Land Revenue Code. It is further their case that the question of granting permission of

such hotel construction was not concerning them as such permission was granted by the Planning Authority.

4. The Respondent no. 4 also filed their reply disputing the contention raised in the above Petition. It is further their case that the Petition has been filed belatedly and, as such, no relief should be granted in the above Petition. It is also their contention that the Lease Deed has been acted upon and duly registered. It is further their case that the hotel project building is on the landwards side of the Goa Youth Hostel and their building in the vicinity. It is further their case that the land was earmarked for commercial use and this was not challenged by the Petitioners. It is further their case that the Goa Daman and Diu Port Rules, 1983, did not apply to the case and the Hotel Project does not infringe upon or controvert any of the provisions of the Port Acts and the Rules.

5. We have heard Mrs. Alvares, learned Counsel appearing for the Petitioners as well as Shri Rafiq Dada, learned Senior Counsel appearing for the Respondent no. 4 and Shri Lawande, learned Government Advocate appearing for the Respondent nos. 1, 2 and 3.

6. At the outset Shri Dada, learned Senior Counsel appearing for the Respondent no. 4, has pointed out that the Petition is barred by gross laches and delay and on this ground alone, the Petition deserves to be rejected.

7. On the other hand, Mrs. Alvares, learned Counsel appearing for the Petitioners, has pointed out that only in April of the year 1993, when the Petitioners

found that some construction activity had started the Petitioners learnt about the execution of the said Lease Deed. The records reveal that in fact the Lease Agreement was executed on 30.04.1979. The Lease was duly registered. The objections with regard to the user of the land were also raised by the Petitioners as pointed out by learned Senior Counsel appearing for the Respondent no. 4. The Petition was filed in the year 1993. In such circumstances, the question of examining the legality of the said Lease Deed in the year 1993 would not at all be justified as the above is barred by laches and delay.

8. Be that as it may, we shall now proceed to examine the contention of Mrs. Alvares, learned Counsel appearing for the Petitioners, that the hotel project put up by the Respondent no. 4 is in contravention of the provisions of the Ports Act as well as the relevant Rules. The Petitioners have failed to show ex-facie the extent of the Panaji Port in terms of the Notification dated 29.11.1967 issued under Section 4 of the Ports Act. Apart from that, the Goa Daman and Diu Port Rules, 1983, came into force after they were notified in the year 1983. Before the said Rules were notified, there was no provisions to obtain permission from the Captain of Ports in respect of Government Riverine Land. The Lease Agreement was of the year 1979 and the Government Riverine Lands were defined by the amendment to the Rules on 11.02.1994 and Rule 54A was inserted and notified on 03.03.1994. This amendment in fact requires prior written permission of the Captain of Ports for such activities. The records also reveal that the letter dated 09.02.1987 shows that the Captain of Ports granted permission and consent to the lease of the land in favour of the Respondent no. 4 subject to some conditions. The learned Counsel appearing for the Petitioners, was unable to point out any specific provision that

written permission was then required for the execution of the Lease Agreement. In any event, the letter dated 09.02.1987, discloses that Respondent no. 1 did not raise any objections for such Lease Agreement being executed by the Respondent no. 2. Though Mrs. Alvares, learned Counsel appearing for the Petitioners, has pointed out that such letter is not in terms of the Port Acts and the Rules, we find that as the Petition has been filed belatedly, the question of going to that extent would not at all be justified considering that the Goa Daman and Diu Port Rules were amended only in the year 1994.

9. In any event, while disposing off Writ Petition no. 333/1993, we have issued directions to the concerned authorities with regard to the subject project being put up by the Respondents. Based on the outcome to such directions, in case there is any contravention of the provisions of the Port Rules or illegal user of Riverine Land, the Respondent no. 1 is at liberty to take necessary action in accordance with law.

10. Subject to the above, we find no case made out by the Petitioners for any reliefs as prayed for. The Petition stands accordingly disposed of. Rule stands disposed of accordingly.

11. Misc. Civil Application stands disposed of accordingly.

K. L. WADANE, J.

F. M. REIS, J.

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