

IN THE HIGH COURT OF BOMBAY AT GOA**CIVIL REVISION APPLICATION NOS.21 and 23 of 2015****CIVIL REVISION APPLICATION NO.21 of 2015**

1. M/s Boshan Developers Pvt. Ltd.,
a Private Limited Company,
registered under the Indian
Companies Act, 1956, bearing
Registration no.24-02037 dated
16/02/1996, Having its Registered
Office at C-501/502, Boshan Homes,
Opposite Shree Bodgeshwar Temple,
Mapusa, Bardez Goa, Represented
herein by its Director, Mr. Amir S. Gaitonde,
son of late Shri Sadashiv R. Gaitonde,
aged about 66 years, married, businessman,
Indian National, resident of House No.38,
Ucassaim, Bardez, Goa. .. Petitioner

V/s

1. Comunidade of Bordem,
Through its Special Attorney,
Having Office at Gaonkar
Wada, Bicholim-Goa.
2. Shree Shantadurga
Sangodkarin Devasthan,
Having office at Sangolda
Livramento Wado,
Sangolda, Bardez Goa.
3. Bicholim Municipal Council,
Through its Chief Officer,
Bicholim Goa.
4. Town & Country Planning Department,
Through Deputy Town Planner,
Bicholim Goa.
5. State of Goa,
Through The Chief Secretary,
Secretariat Building,

Porvorim Goa.

..... Respondents.

Shri Shivan Dessai, Advocate for the petitioner.

Shri A. D. Bhobe and Shri S. Kamat, Advocates for the respondent no.1.

Shri V. P. Thali, Advocate for the respondent no.2.

Shri A. V. Halarnkar holding for Shri S. D. Padiyar, Advocate for the respondent no.3.

AND
CIVIL REVISION APPLICATION NO.23 of 2015

1. Shree Shantadurga
Sangodkarin Devasthan,
Having office at Sangolda
Livramento Wado,
Sangolda, Bardez Goa. .. Petitioner

V/s

1. Comunidade of Bordem,
Through its Special Attorney,
Having Office at Gaonkar
Wada, Bicholim-Goa.
2. M/s Boshan Developers Pvt. Ltd.,
a Private Limited Company,
registered under the Indian
Companies Act, 1956, bearing
Registration no.24-02037 dated
16/02/1996, having its Registered
Office at C-501/502, Boshan Homes,
Opposite Shree Bodgeshwar Temple,
Mapusa, Bardez Goa, represented
herein by its Director, Mr. Amir S. Gaitonde,
son of late Shri Sadashiv R. Gaitonde,
aged about 66 years, married, businessman,
Indian National, resident of Goa.
3. Bicholim Municipal Council,
Through its Chief Officer,
Bicholim Goa.

4. Town & Country Planning Department,
Through Deputy Town Planner,
Bicholim Goa.
5. State of Goa,
Through The Chief Secretary,
Secretariat Building,
Porvorim, Bardez, Goa. .. Respondents.

Shri V. P. Thali, Advocate for the petitioner.

Shri A. D. Bhobe and Shri S. Kamat, Advocates for the respondent no.1.

Shri Shivan Dessai, Advocate for the respondent no.2.

Shri A. V. Halarnkar holding for Shri S. D. Padiyar, Advocate for the respondent no.3.

CORAM :- C. V. BHADANG, J.

Reserved on :- 19th August, 2015.

Pronounced on :- 16th September, 2015

ORAL JUDGMENT :

Heard. Admit. The learned Counsel for the respondent waives service. Heard finally, by consent.

2. Both these Civil Revision Applications challenge the order dated 18/06/2015 passed by the learned Adhoc District Judge at Mapusa in Civil Suit No.6/2015. By the impugned order, the applications filed by the defendant nos.1 and 2 under Order VII, Rule 11(d) of C.P.C., have been dismissed. As the Civil

Revision Applications arise out of the same order and involve common and connected questions of law and fact, they are being disposed of by this common judgment.

3. The first respondent Comunidade of Bordem is the original plaintiff while Shri Shantadurga Sangordekarin Devasthan (Devasthan, for short) and M/s. Boshan Developers Pvt. Ltd, the petitioners in these Revision Applications are respectively the defendant nos.1 and 2 before the Trial Court. Bicholim Municipal Council and the Town and Country Planning Department are respectively the defendant nos.3 and 4 while State of Goa is the original defendant no.5.

4. The Comunidade is seeking a declaration that the Agreement for Sale dated 06/10/2009 executed by the Devasthan in favour of M/s. Boshan Developers is null and void and for consequent permanent injunction, restraining them or anybody on their behalf from carrying on any construction activity in the suit property and/or changing its user. Permanent injunction restraining them from creating any third party interest as also mandatory injunction directing the petitioners herein to restore the suit property to its original pristine condition is also sought for. The subject matter of dispute is a landed property situated at

village Bordem, Bicholim Taluka, more specifically described in para 5 of the plaint. The case made out in the plaint is that the suit property is leased out to the Devasthan on a permanent basis. The Devasthan is not permitted to change the user of the said property. It is contended that the Devasthan can enjoy the suit property in a restricted and controlled manner, in view of the terms and conditions of the lease and the provisions contained in the Code of Comunidades. It is contended that the Comunidade continues to be the owner of the property. The Devasthan is governed by the 'Regulamento das Mazania', better known as Devasthan Regulations and the property cannot be put to any use, which may be inconsistent with the object of the Devasthan or which may be in breach of the Devasthan Regulations. The defendant nos.1 and 2 sought rejection of the plaint under Order VII, Rule 11(d) of the Code, by filing separate applications. It is contended that the suit is barred by limitation. Reliance in this regard is placed on para 13 of the plaint, in order to contend that on its own saying since the order 2010, villagers/ residents of Gaonkarwada had noticed construction activities in the suit property and complaints/ representations were lodged in respect thereof to various authorities. It is contended that thus, the villagers/ residents of Gaonkarwada were having knowledge of construction activities since the year 2010. It is contended that

the villagers/ residents of Gaonkarwada, being the members / constituents of the Comunidade, a corresponding knowledge has to be attributed to the Comunidade also. Thus, the suit having been filed in the year 2015, is barred by limitation. It is contended that the suit is barred under Section 289 of the Goa Municipalities Act (the Municipalities Act, for short) since no notice as contemplated under Section 289(1)(b) of the said Act is issued.

5. The Devasthan has contended that under Article 9 of the Code of Comunidades, the Comunidade is not entitled to file a suit without permission of the Administrative Tribunal. The Comunidade has neither obtained nor produced any such permission nor there is any statement to that effect in the plaint. Thus, the suit is barred by the provisions of the Code of Comunidades.

6. The Devasthan has also raised similar plea based on the suit being barred by limitation on account of the knowledge of the gaonkars at least from the year 2010.

7. The learned Adhoc District Judge has dismissed the application by the common order dated 18/06/2015.

8. It is submitted by Shri Shivan Dessai, the learned Counsel appearing for the petitioners (Civil Revision Application No.21/2015) that from the plaint allegations themselves, it is clear that the villagers/ gaonkars were aware about the construction being carried out from the year 2010. He submitted that the villages/ gaonkars are the members/ constituents of the Comunidade. Hence, the knowledge of the said activities has necessarily to be attributed to the Comunidade also. He, therefore, submitted that the suit having been filed in the year 2015 is barred by limitation. The learned Counsel would submit that Tukaram Pal who is representing the plaintiff had signed the complaint dated 25/01/2010. He submitted that the permission for construction is granted by the Municipal Council way back in the year 2010 and the Occupancy Certificate is granted in 2003. It is, therefore, submitted that the suit is clearly barred by limitation. He submitted that the view taken by the learned District Judge that the issue of limitation being a mixed question of law and fact, the plaint cannot be dismissed, is apparently incorrect.

9. It is next submitted that the suit is also bad for non-issuance of notice under Section 289 of the Municipalities Act. He submitted that the grant of leave under Section 80 of C.P.C., cannot be a substitute for the issuance of the notice under Section

289 of the Municipalities Act. The learned Counsel has placed reliance on the following decisions, in support of his various submissions :

- (i) ***Syed Abdul Razzak Aminuddin and Hazrat Gaiban Shah Baba Syed Vs. Maharashtra State Board of Wakfs***, reported in 2009(111) BOMLR 3609.
- (ii) ***Sadu Vithal Joshi Vs. The Municipal Corporation and another***, reported in 1986(3) Bom.C.R. 628.
- (iii) ***Hardesh Ores Pvt. Ltd. Vs. Hede and Company***, reported in (2007)5 SCC 614.

10. Shri Thali, the learned Counsel for the petitioner (Civil Revision Application No.23/2015) has adopted the submissions made on behalf of the petitioner, in Civil Revision Application No.21/2015.

11. On the contrary, it is submitted by Shri Bhobe, the learned Counsel for the respondent no.1 that the knowledge of the gaonkars cannot tantamount to the knowledge of the Comunidade, which is a distinct body. It is submitted that the plaint alleges that the cause of action has accrued on 21/07/2014, when the defendant no.2 started construction activity in the suit property.

He submits that the agreement of sale is a result of fraud, which would vitiate the entire transaction. He, therefore, submitted that the plaint cannot be said to be barred by limitation. Even so far as the necessity to issue a notice under Section 289 of the Municipalities Act is concerned, it is submitted that the Court has granted leave under Section 80 of C.P.C. on an application dated 04/02/2015. It is contended that the application dated 13/02/2015 filed by the defendant no.1 under Order I Rule 10 of C.P.C., seeking deletion of defendant nos.3 to 5 has been rejected, which is not challenged any further and has thus attained finality. The learned Counsel has placed reliance on the following decision, in support of his submissions :

- (i) ***Western Coalfields Ltd. and others Vs. Chandraprakash w/o Krishnalal Khare***, reported in 2010(4)Mh.L.J.
- (ii) ***Goa Industrial Development Corporation Vs. M/s. Sadhana Builders Pvt.***, (unreported judgment in CRA No.22/2012, dated 29/04/2014).
- (iii) ***Maya Shrikant Sawant Dessai Vs. the Chief Secretary and another***, (unreported judgment in F.A.No.67/2014, dated 25/02/2015).

12. In view of the rival circumstances and the submissions

made, the following points arise for my determination. I have recorded my findings against the same for reasons, which follow.

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|--|---|
| (i) <i>Whether the plaint is liable to be rejected under Order VII, Rule 11(d) of C.P.C. as being barred by limitation ?</i> | <i>In the negative.</i> |
| (ii) <i>Whether the plaint is liable to be rejected under Order VII, Rule 11(d) of C.P.C. as against respondent no.3/defendant no.3 for want of notice under Section 289 of the Goa Municipalities Act ? If yes, what effect ?</i> | <i>In the affirmative.</i> |
| (iii) <i>Whether the plaint is liable to be rejected under Order VII Rule 11(d) of Civil Procedure Code, as against respondent no.4/defendant no.4 by virtue of Sections 121 & 129 of the Goa Town and Country Planning Act, 1974?</i> | <i>In the negative</i> |
| (iv) <i>Whether the impugned order needs interference in exercise of Revisional jurisdiction of this Court ?</i> | <i>Partly in the affirmative.
As per final order.</i> |

13. **As to point no.(i):-** It is now well settled that while examining the question whether the plaint can be rejected under Order VII, Rule 11(d) of C.P.C., the Court has to confine itself to the allegations in the plaint. Thus, any defence, actual or probable, cannot be looked into at this stage. On behalf of the petitioner, reliance is placed on para 13 of the plaint which reads thus :

“The plaintiff states that in the year 2010, the

villagers/residents of Goankar wada noticed construction activities in the suit property and that the suit property is being misused. The plaintiff states that the Gaokars therefore started inquiries/applying for copies of the documents pertaining to the suit property from various authorities and making complaints/representations in respect of the illegality. The residents of Gaonkar wada filed complaints with the authorities with regards to the activities which were just being commenced in the suit property. The residents of Gaonkar wada though were aware that the suit property belongs to the plaintiff and demised to Defendant no.1. There were also rumors that the land was sold to the Defendant no.2, however the residents of Goankar wada were not aware of any such document. The residents of Gaonkar wada since then took up the issue with various Statutory Authorities. During the said process the said Gaonkars on or about 12th August, 2014 learnt about the Managing Committee of the Defendant no.1 having clandestinely executed an Agreement for sale dated 06/10/2009 with the Defendant no. 2, which is apparently registered in the Office of the Sub-Registrar of Bicholim, under registration No. 1179/09 at pages 167 to 193 of Book No.1 Volume No. 741 dated 16./11/2009 (hereinafter referred to as the "said Agreement" for the sake of brevity."

14. It is contended that the residents of Gaonkarwada

were aware about the construction from the year 2010. The submission that the knowledge of the villagers has necessarily to be attributed to the Comunidade does not commend to me. Though the villagers and residents may be the members / constituents of the Comunidade, the Comunidade is a distinct body, governed by the Code of Comunidades and subject to the rights and liabilities as contained therein. Thus, merely because the villagers were aware from the year 2010, it cannot be said that the Comunidade was also aware of the same. That apart, it is trite that the plaint allegations have to be read as a whole in determining whether the plaint is barred by any law. A particular para cannot be picked up, in order to contend that the plaint is barred by any law. A bare perusal of para 13 would show that the plaint alleges that on or about 12/08/2014, it was learnt that the Managing Committee of the Devasthan have clandestinely executed the agreement for sale on 06/10/2009 in favour of the defendant no.1. In para 34, 35 and 36 of the plaint, it is stated thus :

“34. The plaintiff states that the cause of action arose on 21/07/2014 when the defendant no.2 started construction activity in the suit property. The subject matter of the present suit is an act of fraud committed by the Defendants as stated herein above which act has vitiated the entire transaction referred to herein above. The cause of action is continuing.

35. Although the components of the plaintiff

wanted to prevent continuance of illegal construction activity in the suit property after noticing the same by approaching this court immediately, however, filing of the suit required compliance of law in form of approvals for filing the present suit. The general body meeting for discussing issues pertaining to the suit property was held on 04/01/2015 and in the said meeting the members of the plaintiff resolved to file the present suit in order to protect the suit property. The Administrator of Comunidade also has accorded approval on 03/02/2015 for filing the present suit in compliance with law.

36. *The suit is within limitation."*

These material allegations are disputed on behalf of the petitioner. If that be so, it has to be said that the question of limitation would require examination of facts and would be a disputed question which can be gone into at the trial. That is also the reason given by the learned District Judge while dismissing the application. In the case of **Hardesh Ores Ltd.** (supra), the Trial Court had dismissed the suit under Order VII, Rule 11 of C.P.C. as being barred by limitation. The High Court affirmed the same holding that in effect, the suit was for specific performance of renewal of agreement and the suit, which was styled as injunction simpliciter was nothing but a camouflage to get over the bar of limitation. While confirming the same, the Hon'ble Apex Court has

inter alia, held that the question is whether the real cause of action has been set out in the plaint or something purely illusory has been stated, with a view to get out of Order VII, Rule 11 of C.P.C. It has been held that a clever drafting creating illusion of cause of action, are not permitted in law and a clear right to sue should be shown in the plaint. In the case of **Hardesh Ores Ltd.** (supra), the appellants had sought renewal of lease, which was denied by the respondents. It was, thus, held on facts that the appellant could not have camouflaged the real issue claiming an order of injunction, without establishing the subsistence of valid agreement.

15. In the present case, the question is about the knowledge and starting point of limitation, which as rightly held by the learned Trial Court, would be a disputed question of fact, which can be gone into only at the trial. Thus, in my considered view, no exception can be taken to the finding that the suit cannot be dismissed at the threshold as being barred by limitation. The point is accordingly answered in the negative.

16. **As to point no.(ii):-** This takes me to the question of necessity of issuance of notice under Section 289 of the Municipalities Act and the consequence thereof. At the outset, it

needs to be mentioned that in so far as the defendant no.5 State of Goa is concerned, already the Trial Court has granted leave under Section 80 of C.P.C. The defendant no.3 is the Bicholim Municipal Council while defendant no.4 is Town and Country Planning Department. The objection based on Section 289 of the Municipalities Act pertains to the defendant no.3 alone. At the outset, it may be mentioned that the defendant no.3 has not raised the objection and the objection is raised by the private defendant nos.1 and 2. On behalf of the petitioner, reliance is placed on the decision of this Court in **Syed Abdul Razzak** (supra), in order to submit that such an objection, based on want of statutory notice, can be raised by any of the defendants and not necessarily by the Statutory body, which in the present case, is the Municipal Council. In the case of **Syed Abdul Razzak** (supra), the suit was filed against the Wakf Board, which was the defendant no.1. The objection was raised by the private respondent. A learned Single Judge of this Court held thus in para 21 of the judgment :

“21. Coming to the next contention raised by the learned counsel for the petitioners regarding raising objection of non-issuance of notice by defendant no.17, I am of the view that the objection regarding non-issuance of notice under Section 89 of the Wakf Act, 1995 pertains to law point and, therefore, objection can be raised by any of the

defendants and it is not necessary that defendant no.1 only can raise the said objection and silence of defendant no.1 in not raising objection regarding non-issuance of notice under Section 89 of the Wakf Act will not amount to deemed waiver, since as mentioned above, the concept of deemed waiver of Section 89 of the Wakf Act, 1995 cannot be imported thereunder, as the very language of the said provision is express, explicit and mandatory, since the Wakf Act, 1995 is a special Act."

It can, thus, be seen that the objection raised was based on Section 89 of the Wakf Act, 1995. This Court held that as the objection pertained to a law point, which can be raised by any of the defendants, it is not necessary that the defendant no.1 (the Wakf Board) only can raise the said objection. It has also been held that the silence of the defendant no.1 in not raising objection regarding non-issuance of the notice under Section 89 of the Wakf act, will not amount to deemed waiver, since the concept of deemed waiver under Section 89 of the Wakf Act, 1995, cannot be imported in view of the language of the said provisions, which is express, explicit and mandatory.

17. Coming to the present case, Section 289 of the Municipalities Act reads thus :

“289. Limitation of suits against Council, its committees, officers and servants for acts done in pursuance or execution of this Act.—

(1) No suit shall lie against a Council or against any committee constituted under this Act, or against any officer or servant of a Council in respect of any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act,—

(a) unless it is commenced within six months next after the accrual of the cause of action; and

(b) until the expiration of one month after notice in writing has been, in the case of a Council or its committee, delivered or left at the municipal office and, in the case of an officer or servant of a Council, delivered to him or left at his office or place of abode; and all such notices shall state with reasonable particularity the causes of action and the name and place of abode of the intending plaintiff and of his advocate, pleader or agent, if any, for the purpose of the suit.

(2) At the trial of any such suit,—

(a) the plaintiff shall not be permitted to adduce evidence relating to any cause of action save such as is set forth in the notice delivered or left by him as aforesaid;

(b) if the suit be for damages and if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered and shall pay all costs incurred by

the defendant after such tender.

(3) If the defendant in any such suit is an officer or servant of a Council payment of any sum or part thereof payable by him in or in consequence of the suit may, with the sanction of the Council, be made from the municipal fund.

(4) Nothing in clause (a) and (b) of sub-section (1) shall apply to any suit under section 38 of the Specific Relief Act, 1963 or under subsection (1) or (2) of section 92 of this Act."

18. It would be, thus, clear that the language of Section 289 is also mandatory in nature as subsection (1) of Section 289 of the Municipalities Act clearly provides that no suit shall lie against the Council or against Committee constituted under the Act in respect of any act done in pursuance of, or in execution or intended execution of the act or in respect of any alleged neglect or default in the execution of the act. In my considered view, in the face of the language as used, it would be for the Court to look into whether the suit would be maintainable for want of notice under Section 289 of the Municipalities Act. Thus, once the fact about absence of a statutory notice under Section 289 of the Municipalities Act is brought to the notice of the Court, the same cannot be brushed aside on the ground that the concerned statutory body, namely Municipal Council has not raised the issue,

but is raised by some other defendant. If we were to draw an analogy, the same can be found in Section 3 of the Limitation Act, wherein notwithstanding the fact that any of the parties raise the issue, the Court is obliged and is entitled to look into and ascertain whether the suit is filed within limitation. In view of the language as used in Section 289 of the Act and the observations in the case of **Syed Abdul Razzak** (supra), with which I am in respectful agreement, the objection that the issue of absence of notice under Section 289 is not raised by the statutory body i.e. the Municipal Council, but by a private defendant, cannot be accepted. I also find that non-raising of the said objection by Municipal Council cannot tantamount to waiver as there is a statutory bar in entertaining the suit in the absence of the notice.

19. It would not be necessary to multiply authorities on the point. In the face of the language as used in Section 289 of the Municipalities Act, I am of the considered view that the suit against the defendant no.3 Municipal Council would be barred by the provisions of the said Act. The learned Trial Court has articulated two reasons in refuting the submission in this regard. Firstly, it has been held that leave was granted under Section 80 of C.P.C. and secondly, that application for deletion of the defendant nos.3 and 5 was rejected earlier. In the first instance,

the issuance of the notice under Section 80 of C.P.C. and for the matter of that, the grant of leave to institute the suit in absence thereof, cannot enure to the benefit of the plaintiffs in overcoming the absence of the notice and the legal effects thereof under Section 289 of the Municipalities Act, which is a distinct provision under a special Statute. The rejection of the application under Order I, Rule 10 of C.P.C. seeking deletion of defendant nos.3 and 5 also cannot come to the aid of the plaintiff/ respondent no.1 as the considerations under Order I, Rule 10 of C.P.C. and Order VII, Rule 11(d) of C.P.C. in the present context, would be distinct and differentiable. I, thus, find that the plaint will have to be rejected as against the defendant no.3. I would hasten to add that in the context and the nature of the suit claim and the reliefs claimed, the main relief is in respect of the declaration of the agreement of sale dated 06/10/2009 executed by the defendant no.1 with the defendant no.2 being null and void. The relief in so far as the defendant nos.3 and 4 are concerned may only be ancillary and consequential in nature as the only relief is to revoke the construction licence and the plan approved, being illegal and contrary to law. Be that as it may, the objection based on absence of notice under Section 289 of Municipalities Act, will have to be accepted in the present case.

20. **As to point no.(iii):-** This takes me to the objection as regards the defendant no.4 Town and Country Planning Department is concerned. Reliance in this regard is placed on Section 121 and/ or Section 129 of the Goa Town and Country Planning Act, 1974 (the said Act, for short). Sections 121 and 129 of the said Act read as under :

***“121 - Bar of legal proceedings-** No suit or other legal proceeding shall be maintained against the Government, Planning and Development Authority or any of its officers or persons duly appointed or authorised by it in respect of anything in good faith done or purporting to be done under the provisions of this Act or the rules or regulations made thereunder.*

***129- Finality of orders-** Save as otherwise expressly provided in this Act, every order passed or direction issued by the Government or the Board or order passed or notice issued by any Planning Development Authority under this Act shall be final and shall not be questioned in any suit or other legal proceeding.”*

21. Section 121 of the said Act may not present much difficulty as the immunity from legal proceedings granted is in respect of any act done in good faith, which would be a question of fact in the context of the plaint allegations. Thus, the plaint cannot be rejected at the threshold as against the defendant no.4,

placing reliance on Section 121 of the said Act. In so far as Section 129 of the said Act is concerned, undoubtedly it attaches finality to the order passed by the planning and development authority under the Act and it is not open to be questioned in any suit or other legal proceedings. In this regard, the learned Trial Court has referred to a decision of the learned Single Judge of this Court (A. S. Oka, J.) in the case of **Laxman Barkya Wadkar Vs. Mumbai Municipal Corporation** (F.A.No.1635/2010). The learned Trial Court has found that this Court after considering the provisions of Sections 53 and 55 of the Maharashtra Regional and Town Planning Act has held that although on a plain reading of Section 149 of the M.R.T.P. Act, which contains a finality clause, excludes the jurisdiction of the Civil Court, on further analysis, based on the decision of the Hon'ble Apex Court in the case of **Dhulabhai Vs. State of M.P. and another**, reported in AIR 1969, SC 78 and **Kamla Mills Ltd. Vs. State of Bombay**, reported in 1966(1) SCR 64 has held that if there are allegations made in the plaint that action under Section 53(1) or 55 of M.R.T.P. Act is nullity, then provisions excluding jurisdiction of the Civil Court, will not come in the way of entertaining the suit. It does appear that the learned Trial Court, after considering the decision and analogous provisions contained in Maharashtra Regional and Town and Country Planning Act, 1966, has held that

the plaint cannot be rejected at the threshold, placing reliance on Section 149 of the Town and Country Planning Act. At the cost of repetition, it may be stated that the case made out in the plaint is that the defendant no.1 had no title to transfer the suit property to the defendant no.2 and when the property is belonging to the plaintiff Comunidade, the entire action was fraudulent. Here again, it may be mentioned that the relief in so far as the revocation of the construction licence or approved plan against the defendant no.4 is concerned, would be consequential to the declaration as sought in the prayer clause (a) of the plaint. Even in the case of **Maya Dessai** (supra), this Court, after referring to the decision in the case of **Laxman Barkya Wadkar** (supra), has held that if the action is nullity, then bar to the jurisdiction of the Civil Court will not come in the way. In the case of **Maya Dessai** (supra), this Court, in view of the pleadings that the action is vitiated by fraud and that the officers have acted in bad faith, had held that the matter would be required to be considered on merits and order dismissing the suit, merely relying on the bar, was set aside.

22. In that view of the matter, the suit cannot be dismissed at the threshold as against the defendant no.4. The point is accordingly answered in the negative. In the result, the

following order is passed :

- (i) Civil Revision Applications are partly allowed.
- (ii) The impugned order to the extent refusing to reject the plaint against the defendant no.3, Bicholim Municipal Council is hereby set aside.
- (iii) Plaint stands rejected as against the defendant no.3.
- (iv) Rest of the order stands confirmed.
- (v) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

SMA