

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.660 OF 2014**

Mr. Vijay Kumar P. Verlekar,
S/o Mr. Prakash Verlekar,
R/o H. no.1028, Escrivao waddo,
Candolim, Bardez- Goa
Major of age, Business,

.. Petitioner

V/s

1. The Village Panchayat of Candolim
Through its Secretary/Sarpanch,
Candolim, Bardez-Goa.
2. Mr. Sanjiv Manohar Verlekar,
R/o H.no. 1028/A-1, Escrivao waddo
Candolim, Bardez-Goa.
Major of age.
3. Mr. Kalidas Raghuvir Verlekar,
R/o H.no. 1028/A-1, Escrivao waddo
Candolim, Bardez-Goa.
Major of age.
4. Mr. Ramakant Parshuram Verlekar,
R/o H.no. 1028/A-1, Escrivao waddo
Candolim, Bardez-Goa.
Major of age.
5. Mr. Yogesh Premanand Verlekar,
R/o H.no. 1028/A-1, Escrivao waddo
Candolim, Bardez-Goa.
Major of age.

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Respondents

Mr. Kapil D. Kerkar, Advocate for the petitioner.

Mr. D. Shirodkar, Advocate for the respondent no.1.

Mr. Ashwin D. Bhohe, Advocate for the respondent nos.2 and 5.

Coram:- C. V. BHADANG, J.

Date:- 9th October, 2015

ORAL ORDER :

By this petition, the petitioner is challenging the judgment and order dated 08/08/2014, passed by the learned District Judge, Panaji in C.R.A. No.5/2014. By the impugned judgment, the challenge raised by the petitioner to the order dated 31/08/2012 passed by the first respondent, Village Panchayat, Candolim and the impugned judgment and order dated 20/02/2014 passed by the learned Additional Director of Panchayat-I, has been negatived.

2. The brief facts are that the petitioner has erected a stall, which is admittedly standing on property bearing Survey No.161/3 situated at Escrivao waddo, Candolim. By a notice dated 20/06/2012, the first respondent Village Panchayat had issued a notice under Section 64(j) of Goa Panchayat Raj Act, 1994 (the Act, for short), directing the petitioner to produce necessary documents for the installation of the stall, including a licence obtained for the said purposes. It appears that the petitioner sent a reply to the notice on 25/06/2012, claiming that the petitioner

has not installed any stall in the aforesaid property. Curiously enough, in the second paragraph of the reply, the petitioner claimed that after enquiry, it was revealed that one Mr. Prakash Verlekar has installed the said stall, after obtaining valid N.O.C. / permission from the first respondent on 20/06/2012. The first respondent, after considering the reply, by an order-cum-notice under subsection (4) of Section 66 of the said Act, dated 31/08/2012, directed the petitioner to demolish the said stall, failing which, it was to be demolished by the first respondent at the cost of the petitioner.

3. It appears that the petitioner challenged the said order before the Additional Director of Panchayats in an appeal under Section 66(7) of the said Act, which was dismissed on 20/02/2014, *inter alia*, holding that the permission dated 30/09/2011 shows manipulation in respect of the survey number. The petitioner persisted further and challenged the order of the Additional Director in C.R.A. No.5/2014 before the learned District Judge at Panaji. The learned District Judge also concurred with the finding recorded by the learned Additional Director that there was manipulation in respect of the survey number, which was changed from 161/2 to survey number 161/3. The learned District Judge also considered whether the order passed by the learned

Additional Director of Panchayats-I was arbitrary and perverse. The learned District Judge framed two points, namely, as to whether the impugned order dated 31/08/2012 passed by the first respondent and the impugned judgment and order dated 20/02/2014 passed by the learned Additional Director of Panchayats-I were arbitrary and perverse ? The learned District Judge answered both the points in the negative. The learned District Judge has specifically found in paragraph 7 that the petitioner has approached the Court with uncleaned hands, suppressing certain material facts and claiming that the stall does not belong to the petitioner. The learned District Judge also found that the said stall falls within three metre wide access, leading to the main road and the said access is common property and the stall caused obstruction in the common access. The learned District Judge also negated the contention that there was any breach of principles of natural justice, after finding that the petitioner was duly notified and it was only after issuance of show cause notice, to which the petitioner had filed a reply, that the impugned order was passed by the first respondent. In the face of such findings, C.R.A. no.5/2014 came to be dismissed on 08/08/2014. Feeling aggrieved, the petitioner is before this Court.

4. I have heard Shri Kerkar, the learned Counsel for the

petitioner, Shri Shirodkar, the learned Counsel for the respondent no.1 and Shri Bhobe, the learned Counsel for the respondent nos.2 to 5.

5. The only contention raised on behalf of the petitioner is that there was no manipulation in the permission dated 30/09/2011. It is submitted that the finding recorded by the Additional Director of Panchayats and the learned District Judge that there is manipulation, is incorrect.

6. The learned Counsel appearing for the respondents have supported the impugned orders on the ground that on the face of it, the communication dated 30/09/2011 would clearly show that there is manipulation in respect of survey number. It is submitted that the concurrent finding recorded in this regard do not need any interference.

7. On hearing the learned Counsel for the parties and on perusal of the record and the impugned judgments, I do not find that any case for interference is made out. A bare perusal of the communication dated 30/09/2011 would show that the survey no.161/2 is changed to 161/3. It was not disputed by the learned Counsel for the petitioner during the course of arguments at bar

that the disputed stall is situated in Survey No.161/3. It would be further significant to note that the petitioner has not produced a copy of the application, seeking permission by which, it could have been shown that the permission was in fact sought for erection of the stall in Survey No.161/3. The learned Counsel for the petitioner submitted that the said application was filed by his late father under some misconception. In that view of the matter, it was not disputed that the said application was filed and the permission was sought in respect of Survey No.161/2. If that be so, it cannot be countenanced that the permission would be granted to erect the stall in Survey No.161/3, if the application was filed seeking permission to erect the stall in Survey No.161/2. In either case, it is manifest from the the record that there is some manipulation as to the survey number and in that view of the matter, the concurrent findings recorded by the Courts below, in my considered view, do not call for any interference in the exercise of extraordinary jurisdiction of this Court under Article 227 of Constitution of India. Thus, the Petition is without any merits and is hereby dismissed, with no order as to costs.

C. V. BHADANG, J.

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