

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 626 OF 2015

Sree Sai Champions Family Trust,
having office at 701, Avalon,
80 Feet Road, 4th Block,
Koramangala, Bangaluru,
Karnataka 560 034, represented
by its Trustee Mr. Subhakar
Rao Surapenin, aged 44,
Indian National, r/o H.No.206,
Aldeia De Goa, Bambolim Goa.

... Petitioner

V e r s u s

1. Cavelossim Villagers Forum,
a Society registered under the
Societies Act, 1860
bearing registration No.
196/Goa/2013, H.No.314/L,
IBR-Plaza, Patecantem,
Cavelossim, Salcete Goa 403 731
through its President
Mr. Iris Passanha,
r/o H.No.314/L, Patecantem,
Cavelossim, Salcete Goa 403 731.

2. Village Panchayat of Cavelossim,
through its Sarpanch/Secretary,
having office at Panchayat Building,
Cavelossim, Salcete Goa.

3. The Collector,
South Goa District,
Margao Goa

4. Goa Coastal Zone Management Authority,
c/o Department of Science,
Technology & Environment,
Government of Goa,
3rd Floor, Dempo Towers,
Patto, Panaji Goa.

... Respondents

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Mr. N. Sardessai, Senior Advocate with Mr. L. Raghunandan, Advocate for the petitioner.

Mr. Nigel Da Costa Frias, Advocate for respondent no.1.

Ms. Nalanda Chari, Advocate for respondent no.2.

Mr. P. Faldessai, Addl. Government Advocate for respondent nos. 3 and 4.

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

Date :- 10th September, 2015

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

Heard Mr. N. Sardessai, learned Senior Counsel appearing for the petitioner, Mr. Nigel Da Costa Frias, learned counsel appearing for the private respondent no.1, Mr. Faldessai, learned Addl. Government Advocate appearing for the respondent nos.3 and 4 and Ms. N. Chari, learned counsel appearing for the Panchayat.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. The learned counsel appearing for the respective respondents waive service.

4. We have extensively heard Mr. N. Sardessai, learned Senior Counsel appearing for the petitioner and Mr. Nigel Da Costa Frias,

learned counsel appearing for the private respondent no.1. The main grievance of Mr. N. Sardessai, learned Senior Counsel is that the learned Tribunal has passed the impugned order dated 09.07.2015 in gross breach of the principles of natural justice. The learned Senior Counsel has taken us through the minutes of order dated 23.04.2015 to point out that the learned Tribunal has directed the Member Secretary and the experts from the GCZMA to remain personally present and file affidavit in connection with the alleged discrepancy in the proceedings before the GCZMA and the matter was thereafter posted for filing such affidavit and appearance on 12.05.2015. The learned Senior Counsel has thereafter taken us through the minutes of order dated 12.05.2015 which clearly discloses that as the said Member Secretary and the experts from the GCZMA were not present, bailable warrants were issued against them to ensure their presence on the next date and the matter was thereafter posted on 09.07.2015. On 09.07.2015, the learned Advocate on record present on behalf of the petitioner had pointed out that the matter was to be argued by Advocate Nilesh Shirodkar and she has no instructions to argue the matter on behalf of the petitioner. The learned Senior Counsel further submits that without giving an adequate opportunity of hearing to the petitioner the learned Tribunal has proceeded to dispose of the application under Section 14 filed by the respondent no.1 inter-alia directing the demolition of the subject structures. The learned Senior Counsel further pointed out that the order passed on 09.07.2015

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stands vitiated as according to him as the petitioners were not given an adequate hearing nor any opportunity to advance their arguments, grave prejudice has occasioned to the petitioner. The learned Senior Counsel as such points out that the impugned order be quashed and set aside and the matter be directed to be heard by the learned Tribunal after hearing all the parties in accordance with law.

5. On the other hand, Mr. Nigel Da Costa Frias, learned counsel appearing for the private respondent no.1 has pointed out that the Advocate on record Ms. Alka Babaladi was always appearing whenever the matter was heard and as she had no instructions, the learned Tribunal was justified to proceed to dispose of the application under Section 14 filed by the respondent no.1. The learned counsel further pointed out that as such the contention of the petitioner that the impugned order stands vitiated for breach of the principles of natural justice is not at all justified. The learned counsel further pointed out that the principles of natural justice cannot be extended to allow the petitioner to re-argue the matter when the Advocate appearing for the petitioner was absent. The learned counsel as such submits that the petition be rejected.

6. Mr. Faldessai, learned Additional Government Advocate has pointed out that the concerned Member Secretary as well as the experts from the GCZMA had appeared before the learned Tribunal on

27.05.2015 and got the bailable warrant cancelled.

7. The learned Addl. Government Advocate further pointed out that the explanations sought from the Member Secretary and the experts were duly given to the learned Tribunal. The learned Addl. Government Advocate further pointed out that GCZMA- respondent no.4 has already acted upon the directions issued in the impugned order.

8. We have given our thoughtful consideration to the rival contentions and we have also gone through the records. It is not disputed that the petitioners have not sought for any adjournment when the matter was posted for hearing before the learned Tribunal. The records also reveal that when the matter was posted on 23.04.2015, the learned Advocate Mr. Asim Sarode had appeared on behalf of the petitioner. The matter was in fact posted for filing affidavit by the three officials of the respondent no.4 on 12.05.2015. On 12.05.2015 apparently, the said officials were not present and a coercive order was passed to ensure their presence on the next date. The matter was posted on 09.07.2015 which could be assumed to be fixed for filing affidavits by the said officials. It appears that on the said date no such affidavit was filed by the concerned officials but however, clarification sought by the learned Tribunal were given orally. In such circumstances, we find that the learned Tribunal could have

given an opportunity to the petitioner to advance oral arguments and proceed with the hearing of the application under Section 14 filed by the respondent no.1. The records as pointed out herein above do not disclose that there were attempts on the part of the petitioner to delay the disposal of the main application. In such circumstances, we find that as the petitioners were not given an adequate opportunity to advance their arguments in support of their contention on the application filed by the respondent no.1 the impugned order stands vitiated for breach of the principles of natural justice. On this short ground alone the impugned order passed by the learned Tribunal deserves to be quashed and set aside.

9. In view of the above, we pass the following order :

O R D E R

- (i) The impugned order dated 09.07.2015 is quashed and set aside.
- (ii) The original application dated 06.01.2015 filed by the respondent no.1 is restored to the file of the learned Tribunal.
- (iii) The learned Tribunal shall proceed to decide such application after hearing all the concerned parties including the petitioner in accordance with law.

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(iv) All contentions of both the parties on merits are left open.

(v) Rule is made absolute in above terms.

(vi) By consent of the learned counsel, the parties are directed to appear before the learned Tribunal on 15.10.2015 at 10.30 a.m.

(vii) The petition stands disposed of accordingly.

K. L. WADANE, J

F. M. REIS, J

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