

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 664 OF 2015

MR. JOE MATHIAS.

... Petitioner

Versus

SHRI SHAMSUNDER SHRIDHAR DALVI AND
19 ORS.,

... Respondents

Mr. N. Sardesai, Senior Advocate with
Mr. Deep Shirodkar, Advocate for the Petitioner.
Mr. Joseph Vaz, Advocate for the Respondent nos. 1, 4, 5, 6, 8 & 11.
Mr. Vivek Rodrigues, Government Advocate for the Respondent nos.
14, 17 to 19.

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

Date:- 9th October, 2015

P.C.

Heard Shri Nitin Sardesai, learned Senior Advocate appearing for the Petitioner, Shri J. Vaz, learned Counsel appearing for the Respondent nos. 1, 4, 5, 6, 8 and 11 and Shri Vivek Rodrigues, learned Government Advocate appearing for the Respondent nos. 14, 17 to 19.

2. On the last date of hearing, Shri Sardesai, learned Senior Advocate appearing for the Petitioner, had shown willingness to voluntarily demolish the subject construction without prejudice to his rights and contentions. The only aspect which remained to be examined was that it was contended by the learned Senior Advocate appearing for the Petitioner that in order to carry out such exercise of

demolishing of the subject construction, a portion of the property belonging to M/s. Sagar Co-operative Housing Society would be required to be used to proceed to such subject construction.

3. Shri J. Vaz, learned Counsel appearing for the Respondent nos. 1, 4, 5, 6, 8 and 11, has in fact sought permission from the said Society to permit the Petitioner to proceed to the subject construction so as to carry out such demolition. The consent obtained from the said Society vide letter dated 23.09.2015 is placed on record at exhibit "B".

4. On perusal of the said letter, we find that the said Society has permitted the Petitioner to use a part of their property to proceed to carry out the demolition of the said construction subject to the conditions stipulated therein. Such condition, inter alia, include that the Petitioner is permitted to demolish a part of the barbed wire fencing and after the demolition exercise is completed, restore the barbed wire to its original condition. Apart from that, in case any damage or loss is occasioned to the Society, the Petitioner will make good such loss or damages. It is however clarified that merely allowing the Petitioner to use the said portion of the property belonging to the said Society would not in any way create any right or obligation in favour of the Petitioner in respect of such portion of the property. This exercise is purely a temporary for the purpose of carrying out the demolition of the subject construction and remove

the debris of such demolition. The portion of the property of the said Society permitted to be used by the Petitioner for such exercise, is shown in the plan in red colour produced by both the Counsel. The said plan is taken on record and marked 'X' for identification. Such permission to carry out the exercise of demolition of the subject structure will be for a period of two months starting from 19.10.2015 and shall be automatically withdrawn upon completion of two months from the said date. The programme for such exercise of demolition shall be intimated by the Petitioner to the Chairperson/Secretary of the said Society before starting the said work.

5. Needless to say, the exercise carried out by the Petitioner is without prejudice to the rights and contentions of the Petitioner as well as the Respondents.

6. The Petition stands accordingly disposed of.

7. Place the matter for compliance report on 14.12.2015.

K. L. WADANE, J.

F. M. REIS, J.

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