

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 44 OF 2014

Mr. Madhukar Parab,
S/o Vithu Parab, aged 67 years,
retired, married, r/o
Housing Board Colony,
Mapus, Bardez, Goa.

..... Appellant
(Original Plaintiff)

V e r s u s

1. Comunidade of Sirsaim,
through its Attorney,
Frqancisco D'Souza,
Sirsaim, Bardez, Goa.

2. Administrator of Comunidade,
North Zone, having office at
Comunidade building,
Near Court junction,
Mapusa, Bardez-Goa.

3. The Government of Goa,
Through the Chief Secretary,
The Goa Legislative Assembly Complex,
Porvorim-Goa.

.... Respondents
(Original Defendants)

Mr. L. J. Deva, Advocate for he Appellant.

Mr. Gaurish Agni, Advocate for the Respondents.

CORAM: M. S. SANKLECHA, J.
DATE: 23RD MARCH, 2015.

ORAL ORDER:

This appeal is from the order dated 1/9/2014 passed by the District Judge-III, Panaji. By the impugned order, the appellant's application for interim injunction to dispossess the appellant of plot of land and interference with construction on the plot was rejected.

2. At the joint request of the counsel the petition is being disposed of finally at the stage of admission.

3. Briefly, the facts leading to this appeal are that:

On 9/12/2005 the appellant had applied to the Comunidade of Sirsaim- respondent no.1 for plot no.8 admeasuring 298 sq.metres (suit property) for the purposes of constructing a house. On 25/2/2006, in terms of Article 341 of the Code of Comunidade (Code), the provisional possession of the plot applied for by the appellant was granted by the respondent no.1. The grant in terms provided that the possession of the suit property would be temporary and for a period of 4 years and if the residential house is not constructed, during the specified period from the date of temporary possession, the suit property would revert to the respondent no.1-

Comunidade. The grant also provided that the Managing Committee of respondent no.1-Comunidade will be entitled to give extension to the construction work for valid reason. The appellant did not carry out any construction activity during the specified period or even till date. However, from time to time, the petitioner did apply for extension of time to fulfill the grant of construction of a residential house on the suit property. First such application was made on 22/4/2009. The Managing Committee of the Comunidade extended the period, in terms of the grant by which the suit property was allotted to the appellant. Thereafter on 9/2/2012, the appellant sought a further extension of time of one year from the Comunidade to complete the construction of the residential house. The aforesaid extension sought for was neither granted nor refused. However by a resolution dated 16/6/2013 the General Body of the Comunidade decided to revoke the allotment of the suit property to the appellant and declare the suit property as vacant. However, the above resolution was subject to an order being passed by the Administrator of Comunidade.

4. The appellant filed a suit seeking a declaration that the resolution dated 16/6/2013 passed by the respondent no.1-Comunidade as null and void. In the meantime, the appellant also

sought interim protection of possession and undisturbed liberty of constructing the house till the disposal of the suit.

5. The Trial Judge by the impugned order rejected the application of the appellant inter alia holding that appellant had not taken advantage of the suit plot allotted to him, within the stipulated time. Thus the suit property automatically reverts back to the Comunidade. The impugned order also adverts to the fact that the rent (foro) for the suit property was not paid for the years 2011 and 2012. On the above basis, the impugned order holds that the appellant has not been able to make out a prima facie case for grant of injunction.

6. The grievance of the appellant is that in terms of Article 342 of the Code, the appellant's application for extension has to be decided by the Administrator. The appellant's application dated 9/2/2012 to the Comunidade has not been forwarded to the Administrator for the purpose of taking a decision thereon. Consequently, it is submitted that in the absence of an order being passed on the appellant's application dated 9/2/2012 rejecting the prayer for extension, the resolution dated 16/6/2013 passed by the

Comunidade is premature.

7. As against the above, Mr. Agni, learned counsel appearing for the respondent no.1-Comunidade submits that Article 342 of the Code would only come into force when the appellant concerned has commenced construction activity and has not been able to complete the house within the stipulated period. In this case for the period of 2006 till date, the appellant has not carried out any construction activity and therefore Article 342 of the Code would have no application. Moreover, the extension can be granted under Article 342 only for one year and the appellant has not done any construction activity for more than four years of its allotment of the suit plot in 2006. In that view of the matter, it is submitted that no interference is called for.

8. For the purpose of better appreciation of the rival contentions, it would be appropriate to reproduce Article 342 of the Code , which reads as under:

“**Art.342-** The emphyteuta who, for any reason, cannot avail of plots granted as emphyteusis, within the period of four years, can, before expiry of the

same, apply for its extension, mentioning the causes for delay in the fulfillment within the stipulated period, and the Governor General, after hearing the managing committee of the comunidade and the respective administrator, decide the request as he thinks fit, granting the extension for one year.”

9. The impugned order holds that if the allottee of the suit plot does not take advantage of the same and constructs the house within the prescribed time, i.e. four years, the suit plot reverts back to the Comunidade. No specific provision in the Code in support of the aforesaid finding has been brought to my notice. The contention of the respondent no.1- Comunidade that in the absence of any construction activity being commenced, Article 342 of the Code does not get triggered, is not found therein or in any other Article of the Code. The causes for the delay in not constructing an house could be numerous and it is for the Administrator to consider the same and either grant or reject the application under Article 342 of the Code. In case the application is rejected, the Comunidade will be entitled to revoke the allotment of the suit property to the appellant.

10. However, in the facts of the present case, the application of the appellant has not been forwarded to the administrator. For the purpose of rejecting the request for extension under Article 342 of the Code, the Managing Committee of the Comunidade will forward to the Administrator the application of the allottee for his decision thereon. Thereafter the decision of the Administrator is to be considered by the Administrative Tribunal and if the same is found in order extension is granted or it is otherwise rejected. The aforesaid procedure as mandated by the Code has not been followed in this case. In view of the above, the impugned order is not sustainable, as the action of the Comunidade is in the face of Article 342 of the Code.

11. The other contentions urged on behalf of the respondent no.1-Comunidade that the Article 342 of the Code will not apply for more than one year after the end of the four years for which it was allotted has expired. This is on the basis of its interpretation of Article 342 of the Code. To my mind any decision taken by the Managing Committee of the Comunidade is subject to the decision for the Administrator. Thus, it is for the Administrator to interpret Article 342 of the Code and the respondent no.1- Comunidade cannot take over

the function of the Administrator.

12. However, at the same time, it may pointed out that the conduct of the appellant leaves much to be desired. The suit plot was allotted to the appellant as far back as in 2006. Admittedly, no construction has taken place for all these years. An application for extension was made in 2009 and again n 2012. Besides, the rent(foro) payable for the suit plot has not been paid for the years 2011, 2012, 2013 and 2014. Therefore though the impugned order dated 1/9/2014 is set aside, the appellant's application dated 9/2/2012 shall along with the resolution dated 16/6/2013 of the respondent no.1- Comundiade will be forwarded to the Administrator for taking appropriate action on the same, which would then be forwarded to the Administrative Tribunal for its appropriate decision. Needless to say that the authorities concerned will follow the principles of natural justice. However, in the meantime, till such time a decision is taken by the Administrative Tribunal both the Comunidade as well as the appellant will maintain status quo with regard to the suit plot (admittedly vacant today), as it exists today.

13. The appellants are at liberty to make a fresh interim

application to the Trial Court after the decision of the Administrative Tribunal. The Trial Court shall consider the same on its merits. However, in the meantime, the parties are directed to maintain status quo as of today.

14. Appeal allowed in above terms. No order as to costs .

M. S. SANKLECHA, J.

Ap/-