

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO. 14 OF 2016

IN

WRIT PETITION NO. 906 OF 2015

MR.OSWALD FERNANDES AND 20 ORS., ... Applicants
Versus
THE COMMISSIONER, CORPORATION OF
THE CITY OF PANAJI AND ANR., ... Respondents

Mr. Vishnuprasad A. Lawande and Ms. F. Cardozo, Advocates for the applicants.

Mr. Ashwin D. Bhobe and Ms. V. Shetye, Advocates for the respondent no.1.

Ms. P. Bhandari, Addl. Government Advocate for respondent no.2.

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

Date:- 4th February, 2016

P.C.

Heard Mr. V. A. Lawande, learned counsel appearing for the applicants, Mr. A. D. Bhobe, learned counsel appearing for the respondent no.1 and Ms. P. Bhandari, learned counsel appearing for the respondent no.2.

2. Mr. V. A. Lawande, learned counsel appearing for the applicants prays for an ad-interim relief as according to him the Carnival festival is to take place from 06.02.2016 to 09.02.2016, and that at the time of such festival, the municipal garden which is located across the road adjoining the business establishments

belonging to the applicants is being used for such festive occasion. It is further submitted that during such festival celebration, a stage is erected along the Velho building which according to him obstructs the movement of the traffic on the road as well as the footpaths abutting to the commercial establishments of the applicants. The learned counsel further points out that during such festive occasion for the last three years, the footpaths abutting the business establishments of the applicants become inaccessible and even hampers window shopping in the shops. It is further pointed out that it is well settled that the public streets cannot be used for such activities and as such according to him the activity proposed to be conducted during such festival has to be stopped. The learned counsel further points out that during such occasion there is also sound pollution as according to him the activities prolonged beyond late hours in the night which causes grave inconvenience and health hazard to the applicants as well as the other inhabitants of the locality. The learned counsel further submits that though such activities are carried out for the last over three years, nevertheless, there is sufficient open ground at different other places in the city of Panaji, where such festivals can be celebrated. The learned counsel further points out that conducting such festival on a public street is an invasion of fundamental right under Article 21 of the Constitution of India and as such, according to him the respondents be restrained from creating any obstruction to the free movement of the traffic abutting the establishments of the applicants as well as the footpaths

appurtenant thereto. The learned counsel in support of his submissions has relied upon the judgment of the learned Division Bench of this Court dated 12.10.2015 passed in Public Interest Litigation No.173 of 2010 pending before the Principal Seat at Mumbai. The learned counsel has also relied upon the judgment passed by the Division Bench of this Court at Goa in WP No. 801 of 2010 dated 13.10.2015 in the case of Green Goa Foundation V/s The Municipal Council & Ors and pointed out that this Court has come to the conclusion that the footpaths cannot be blocked as they are meant for the movement of the pedestrian.

3. On the other hand, Mr. A. D. Bhobe, learned counsel appearing for the respondent no.1 has pointed out that the Carnival festival is being celebrated in the city of Panaji and other cities of Goa since 18th century. The learned counsel further pointed out that these activities are celebrated at the municipal garden which is located across the streets which are known as Diogo De Couto Road and Dr. Roque D'Souza road. The learned counsel points out that considering the paucity of space at such garden, the members of the public who attend such occasion have to spill over the adjoining roads and as such, the respondent no.1 has sought necessary permission in public interest to close the portion of the road to facilitate such celebration. The learned counsel further points out that the application with that regard has been filed before the concerned Collector under Section 115 of the M.V. Act and only upon obtaining

such permission the activity on such street would be conducted. The learned counsel further submits that in case the user of the road is not permitted during such occasion, it would cause grave inconvenience to the public and even result in untoward incident as the movement of the traffic would continue as the celebration would be in progress. The learned counsel further points out that such celebration starts from 6.00 p.m. to 10.00 p.m. and as such according to him there is no obstruction to the footpaths during the day time and other periods and as such the movement of the pedestrian is not at all hampered. The learned counsel further points out that even the permission issued by the respondent no.1 is subject to condition which clearly shows that all the requisite permissions from all the concerned authorities have to be obtained before such activities are conducted by the State Level Committee appointed by the respondent no.2. The learned counsel further points out that there is no inconvenience caused to the applicants whilst carrying out such activity and as such granting any relief in favour of the applicants would severally jeopardize the festive occasion fixed on 06.02.2016. The learned counsel further points out that the respondent no.1 shall ensure that there is no obstruction to the pedestrian on the footpaths during the celebration at such garden. The learned counsel further submits that the question of granting an interim relief with regard to stop such function at garden does not arise at all.

4. The learned Addl. Government Advocate submits that the

permission sought under Section 115 of the M.V. Act is pending consideration before the concerned Collector and only after receiving all the concerned data, the Collector shall take a decision on such count. The learned Addl. Government Advocate further points out that the State Level Committee will carry out such celebration shall ensure that all precautions are taken to see that the provisions of law including the restrictions of noise pollution are strictly complied with.

5. We have considered the submissions of the learned counsel and we have also gone through the records. As pointed out herein above, the fact that such Carnival celebrations are held at the concerned garden/streets for the last number of years has not been disputed. It is also not disputed that the festival takes place for a period of three to four days. Mr. Bhole, learned counsel appearing for the respondent no.1 points out that the celebration would start from 6.00 p.m. to 10.00 p.m. only. In such circumstances, restraining the respondents at this stage to celebrate such festival at the said garden cannot be granted at this interim stage. This Court would have to examine such aspect only after the affidavits are filed by the respondents to ascertain the extent of the alleged nuisance caused on account of such celebration.

6. Be that as it may, we will examine the contention of Mr. Lawande, learned counsel appearing for the applicants on the other

two aspects namely that such festival block the footpaths and the roads as well as causing noise pollution. As far as the blocking of the footpaths is concerned, it cannot be disputed that the public footpaths are for the benefit of the pedestrian. This aspect has also been dealt with by us in Writ Petition No. 801 of 2010 in the case of Green Goa Foundation (*supra*).

7. Considering the said aspect, it is not permissible for the respondents to cause any obstruction to the pedestrian movement and the customers to the business establishment of the applicants during such occasion. As such, we direct the respondent nos.1 and 2 to ensure that no footpaths abutting the business establishments of the applicants are in any way obstructed nor free movement of the pedestrian hampered in any way during such celebration.

8. With regard to the obstruction of the public streets abutting the said garden, it is pointed out that only the main road towards the northern side and the eastern side as well as the internal road separating the two parts of the garden on the southern side are blocked essentially from 06.00 p.m. to 10.00 p.m. during the said festival to ensure that no untoward incident occurs during the ingress and egress of the public to the said garden. This aspect would have to be examined by the Collector while examining the grant of permission under Section 115 of the M.V. Act which the authorities are in the process of examining. Hence, we find that the question of

passing any direction with that regard at this stage would not be appropriate. It is also to be noted that the celebration only starts from 6.00 p.m. to 10.00 p.m. and as such there is no blanket disturbance to the customers visiting the shops of the applicants during the other hours of the day.

9. With regard to the contention of Mr. Lawande, learned counsel appearing for the applicants in connection with noise pollution, we find that it cannot be disputed that quietness and freedom from noise are indispensable to the full and free enjoyment of an establishment/house. No proprietor has an absolute right to create noise upon his own land, because any right which the law gives is qualified by the condition that it must not be exercised to the nuisance of his neighbours or of the public and materially interfering with the ordinary comforts of life. Thus, with this in mind, there have been restrictions imposed even for bursting of fire crackers and other irritants between 10.00 p.m. to 6.00 a.m. In the present case, Mr. Bhobe, learned counsel appearing for the respondent no.1 has pointed out that the celebration has been allowed from 6.00 p.m. to 10.00 p.m. only and that there are conditions imposed to the effect that all permissions from the concerned authorities have to be obtained by the organizer. In such circumstances, we direct that the respondents shall ensure that there is no noise pollution beyond permissible limit as in force during such celebration and comply with all norms provided in law with regard to the noise pollution during

such period. The respondent no.1 shall also ensure that all the conditions imposed in the permission including the time period specified therein as pointed out by the learned counsel appearing for the respondents are strictly complied with and in default, the authorities shall take necessary action in accordance with law. The above application stands disposed of by the aforesaid interim directions. Such directions would be subject to further orders which may be passed during the pendency of the above petition.

K. L. WADANE, J.

F. M. REIS, J.

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