

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL No. 62 OF 2007**

Shri Shivaji B. Dessai,
Chief Officer,
Curchorem-Cacora Municipal Council,
Curchorem, Goa.

... Appellant.

Versus

1. Shri Vithoba Babuso Adel,
aged about 63, married,
businessman, r/o H. No. 126,
Bhansai, Cacora, Goa.
2. The Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Goa.
3. The Director of Municipal Administration,
Government of Goa,
Panaji – Goa.
4. Shri Gajraj Singh, Asst.
Engineer, Electricity Department,
W.D. VII, S. D. I,
Curchorem, Goa.

.... Respondents

Mr. A. D. Bhohe, Advocate for the Appellant.

Mr. D. Pangam, Advocate for the Respondent no. 1.

Ms. S. Linhares, Additional Government Advocate for the Respondents no. 2 to 4.

AND

FIRST APPEAL No. 70 OF 2007

- 1) Shri Gajraj Singh,
Assistant Engineer,
Electricity Department,
Works Division II, Sub Div. I,
Curchorem-Goa.
- 2) Chief Secretary,
Government of Goa,
Secretariat, Porvorim-Goa.

3) Director of Municipal Administration
Government of Goa,
Panaji – Goa.

... Appellants.

Versus

1. Shri Vithoba Babuso Adel,
aged about 65,
married, businessman,
r/o H. No. 126,
Bansai, Cacora, Goa.

2. Shri Shivaji B. Desai,
Chief Officer,
Curchorem-Cacora Municipal Council,
Curchorem-Goa

.... Respondents

Ms. S. Linhares, Additional Government Advocate for the Appellants.

Mr. D. Pangam, Advocate for the Respondent no. 1

Mr. A. Bhobe, Advocate for the Respondent no. 2.

CORAM:- F.M. REIS, J

RESERVED FOR JUDGMENT ON: 12.08.2016
JUDGMENT PRONOUNCED ON: 02.12.2016

JUDGMENT:

Heard.

2. Both the appeals are taken up together in view of the order dated 04.02.2009 passed by this Court as they arise out of the same judgment passed by the learned Additional District Judge, North Goa at Panaji.

3. Briefly, the case of the appellant is that a suit was filed by the Respondent no. 1 against the appellant in both the appeals before the learned District Judge for damages. The parties shall be referred as shown in the manner they so appear in the cause title of the impugned judgment.

4. It is the case of the plaintiff, who are respondents in both the appeals that by Sale Deed dated 27.05.1996 he had purchased an area of 1300 sq.mts including an area of the house which is located in Bansai ward of Village Panchayat of Cacora. It is further his case that the said Bansai ward was located in the Village Panchayat of Cacora and that the house was duly recorded for the purpose of house tax in the name of the plaintiff. It is further contended that sometime in the year 1988 the Cacora Panchayat merged with the Cacora-Curchorem Municipality and as such the said house has been registered for the purpose of house tax under H. No. 126 in the name of plaintiff who has been paying house tax. It is further contended that his father cultivated part of the paddy field surveyed under no. 129/4 alongwith one Niclau Fernandes and that the house came to be recorded in the name of the father of the plaintiff alongwith the paddy field cultivated by him. It is further alleged that sometime in the year 1978 there was a murder of one Balkrishna Bachur Adel in the ward of Maad where the family of the plaintiff was staying and the residents of the locality suspected that the plaintiff's father was the author of such crime. It is further his case that the family of the plaintiff was under a cloud of suspicion for the said murder and the whole locality being hostile, the parents of the plaintiff alongwith his other siblings, came to reside with the plaintiff in the said house in the year 1978. It is further pointed out that one Gokuldas B. Adel was accommodated on the northern portion of the said house and such occupation was of a mere tolerance. It is further pointed out that the said Adel and his wife, who was the brother of the plaintiff, started creating problems for the plaintiff and as such he was called upon to vacate the portion of the said house. It is further contended that the said brother made different attempts to get a separate electrical connection as the plaintiff had shifted electrical meter from the room occupied by the said Gokuldas to the other portion of the house. As such, said Gokuldas was without electricity to the portion of the house

occupied by him. It is contended that the plaintiff came to know that the said Gokuldas started making fresh attempts to obtain a separate connection to the said house. The plaintiff however raised objections for the release of a separate electricity connection. It is further contended that the Chief Officer of the Defendant no. 1 issued a letter dated 25.06.2004 calling upon the plaintiff to attend the office of the Municipality on 30.06.2004 to discuss the issue of NOC for a separate electrical connection to the said Gokuldas. It is further contended that thereafter the plaintiff was informed that the meeting was postponed for 08.07.2004. It is further pointed out that during this period the Chief Officer did not inform to the plaintiff that the NOC was already issued to the said Gokuldas on 24.06.2004 for the release of electricity. It is further pointed out in the written statement filed on 06.07.2004 at Exhibit no. 33 filed by the plaintiff before the Civil Court the plaintiff learnt about the NOC granted by the Chief Officer to the said Gokuldas. It is further pointed out that vide letter dated 14.07.2004 addressed to the Defendant no. 1 the plaintiff desired to know whether he had issued the NOC in respect of H. No. 126 as the Defendant no. 4 had released electricity connection to the portion of the said house occupied by said Gokuldas with police protection and after arresting the plaintiff and his brother Shashikant B. Adel. The Defendant no. 1 informed the plaintiff that the NOC was issued in respect of H. No. 126 and not H. No. 126/2. It is further pointed out that from the correspondence exchanged by the plaintiff between the Defendant no 1 and Defendant no. 4 it is apparent that each of the said Defendants were trying to cover up their own illegalities by trying to suppress relevant documents to escape the liability for damages caused to the plaintiff by wrongfully arresting the plaintiff and illegal release of the electrical connection to the said Gokuldas. It is further contended that as no NOC was granted to H. No. 126/2 it was incumbent upon the Defendant no. 4 to disconnect the electrical connection released to the said Gokuldas Adel. It

is further pointed out that the Defendants are as such liable to pay damages to the tune of Rs. 5,00,000/- towards his wrongful arrest and illegal release of electrical connection to his house bearing No. 126 at the request of said Gokuldas Adel. As such, after notice was issued the plaintiff filed the above suit as the Defendant no. 4 did not show any willingness to remedy the breach by disconnecting the electricity connection. It is further pointed out that the question of releasing electricity connection to H. No. 126/2 would not arise as the NOC was in respect of H. No. 126. It is further pointed out that as such Defendant no. 1 and 4 are jointly and severally liable to pay damages to the plaintiff for the loss caused to him by humiliation on account of his arrest at the instance of the said Defendants.

5. The Defendants filed written statements and raised preliminary objections that the suit is bad in law and not maintainable on the ground that the plaintiff is seeking relief of a sum of Rs. 5,00,000/- with interest towards damages against the Defendants no. 1 and 4 in their personal capacity although they are officers acting in official capacity while issuing the NOC and releasing the electrical connection to the premises of Gokuldas Babuso Adel. It is further pointed out that NOC was issued to release electricity to said Gokuldas in terms of his application dated 24.06.2004. It is further pointed out that the electricity connection was released in terms of the provisions contained and the powers vested on them by notification published in the official gazette dated 07.04.2004 as the house where the said Gokuldas was residing bears house No. 126 and the other part of the said house is being occupied by the plaintiff. It is further pointed out that documents produced by said Gokuldas Adel included the ration card issued by the Mamlatdar of Quepem and that by oversight H. No. 126 was mentioned in the NOC issued by the Defendant no. 1. It is further pointed out there is bar of jurisdiction in terms of the provisions of section 94(B) of the Goa Public Health Act. The

Defendants have also disputed all the contentions raised by the Petitioner, inter alia, contending that there is no ground to proceed against the Defendant no 1 and 4 and as such prayed that the suit be dismissed.

6. The learned Trial Judge framed nine issues. In support of their respective case the plaintiff examined himself and two other witnesses and closed the evidence. The Defendants also examined Defendant no 1 and Defendant no. 4 and closed their case. After examining the material on record and hearing the parties, by the impugned Judgment and Decree dated 22.12.2006 the learned Judge decreed the suit filed by the plaintiff and directed the defendant no 1 and 4 to jointly and severally to pay a sum of Rs. 5,00,000/- to the plaintiff alongwith interest @7.5% per annum till realisation and also costs of the suit.

Being aggrieved by the said Judgment the appellants have filed the above appeal.

7. Shri A. D. Bhobe, learned counsel appearing for the appellants pointed out that the learned Trial Judge has erroneously come to the conclusion that the plaintiffs are entitled for damages as claimed. It is further pointed out that the suit itself is barred by law of limitation as the suit has been filed much beyond the time prescribed. It is further submitted that the learned Judge has failed to consider that the action carried out by Defendants No. 1 and 4 are in their official capacity and as such the question of directing payment of any damages personally by such Defendants would not arise. It is further submitted that the defendant no. 1 and 4 have in fact proceeded to release the electricity connection in terms of the provisions of the Public Health Act and as such the question of contending that the acts committed by the said defendants are contrary to law are totally misconceived. Learned Counsel has taken me through the provisions of the Public Health Act as well

as the other relevant provisions to point out that the allegations made by the plaintiffs are totally misplaced. It is further submitted that the plaintiff has failed to establish the actual alleged damages or that anything done by the defendant was contrary to law. The learned counsel further pointed out that the electricity connection was being issued by legal order and as such the plaintiff could not take law in his own hands and obstruct the personnel of the Electricity Department to prevent them from implementing such orders. Learned Counsel has also taken me through the findings of the learned Judge to point out that there is no basis in the suit filed by the plaintiff and as such the impugned Judgment passed by the learned Judge deserves to be quashed and set aside.

Ms. S. Linhares, learned Additional Government Advocate has adopted the contentions of Mr. Bhobe, learned Counsel for the other appellants.

8. On the other hand Shri D. Pangam, learned Counsel appearing for the respondent/plaintiff has pointed out that the plaintiff has been humiliated by being arrested at the instance of the Defendant no.1 and 4. It is further submitted that the Defendant no. 1 and 4, who are bound to follow the provisions of law, have acted in highhanded manner contrary to law and, as such, are liable to pay the damages to the plaintiff. It is further submitted that the plaintiff being the owner of the house was entitled to obstruct the release of electricity connection to the said Gokuldas and further pointed out that the conduct of the defendant no. 1 and 4 itself suggest the sinister motive of the defendants no. 1 and 4 in covering up the illegal exercise of releasing electricity connection to the said Gokuldas. The learned counsel appearing for the respondent has thereafter taken me through the Judgment of the learned Trial Judge to point out that the learned Judge has rightly appreciated the material on record and has decreed the suit filed by the plaintiff.

9. Upon hearing the learned Counsel and on going through the records, following point arises for determination:

Whether the learned Judge was justified to pass the impugned judgment and direct the payment of damages by the defendant no. 1 and 4 on account of illegal action taken by the defendants in releasing the electricity connection to the portion of the house occupied by said Gokuldas Adel.

10. On going through the material on record as well as the findings of the learned Trial Judge, I find that as far as the issues framed by the learned Trial Judge being issues no. 1 to 3 are irrelevant and findings therein may not be required to be examined. But in the present case the release of electricity connection does not depend on whether the person applying for electricity connection is the owner or not, of the subject house. The basis of the claim put forward by the plaintiff would rest on whether the findings of the learned Trial Judge on issues no. 4, 5 and 6 are justifiable in law. On perusal of the findings of the learned Trial Judge on this count the findings therein have been rendered in favour of the plaintiff essentially on the ground that though the said Gokuldas had no electricity connection from 1993 to 2004, and though the plaintiff as owner had raised an objection to release of electricity connection, the Defendant no. 1 and 4 were justified in law to proceed to release the connection. Learned Judge perused the correspondence on record to come to the conclusion that despite of such objection by the plaintiff, the Defendants no. 1 and 4 illegally proceeded to release the electrical connection to the said Gokuldas. Learned Judge also noted that the plaintiff was kept in the dark about the NOC granted by the Defendant no. 1 for release of electricity connection dated 24.06.2004. On perusal of the NOC at exhibit 33, I find that it was issued for the release of electricity to the subject house occupied by said Gokuldas. Learned Judge further found that the exercise of defendant no. 1 and 4 was colourable exercise of power as no

consent of the plaintiff was obtained for release of electricity to the subject house occupied by said Gokuldas. Learned Judge further found that despite of objections of the plaintiff who was the owner of the house the electricity connection came to be released. The records however point out that the ration card produced by the said Gokuldas discloses the house number. The fact that the house no. 126 belongs to the plaintiff is not in dispute but the learned Judge failed to note that the electricity connection was released in terms of the provisions of Public Health Act.

11. The main ground on which the learned Judge found that the action by the Defendant no. 1 and 4 was illegal was because the NOC was not obtained from the owner who is the plaintiff, to get the electrical connection allotted to said Gokuldas. But, however, Section 94A (4)(c) clearly provides that granting such electrical connection or any other essential services shall not in any way be taken to have regularised, validated or legalised any such occupation by any such person or any question related or incidental thereto, such dispute, lis, proceedings, rights, privileges shall remain unaffected and shall not prejudice any person in any way whatsoever. This clearly shows that granting such essential electrical connection would not prejudice the Plaintiff nor create any prejudice to the Plaintiff as his rights, if any, are kept intact and allowing such connection does not rest or depend on obtaining a NOC from the owner of such premises. In the present case, the electrical connection was granted in exercise of powers in terms of Section 94A of The Goa, Daman and Diu Public Health Act, 1985 which came to be amended and published in Official Gazette on 07.04.2004 much before the grant of such electrical connection to said Gokuldas.

12. Section 94B of the said Public Health reads thus:

“94B. Bar of Courts' jurisdiction to entertain suits.--

Any order passed by or on behalf of the Government under section 94A shall not be called in question in any Court of law and no Court shall have jurisdiction to entertain, try or dispose of any proceedings, suit or application challenging, questioning or prohibiting, directly or indirectly, the order under section 94A:

Provided however that, the right of any person, body, authority, owner or occupier of any land or structure, to receive any compensation subsequent to such supply, under any law, shall not be affected”.

The said provision clearly provides that grant of such permission or legality thereof cannot be called in question in the Court of law subject to what has been stated therein. As such, it would not be open to the learned Judge to examine the correctness or otherwise of grant of such license. Apart from that, it is not disputed that the Defendant no. 1 and 4 acted in their official capacity under exercise of powers conferred under the said provisions of Public Health Act.

13. Section 110 of the Public Health Act reads thus:

“110. Bar of suits and prosecutions in certain cases.-- (1) No suit, prosecution or other proceeding shall lie against any local authority or against the Government or any officer or servant of a local authority, or of the Government, or against any person appointed under section 11 of this Act, for any act done or purporting to be done under this Act, without the previous sanction of the Government.

(2) No local authority, officer or servant of any local authority or of the Government and no person appointed under section 11

of this Act, shall be liable in respect of any such act in any civil or criminal proceeding if the act was done in good faith in the course of the execution of duties or the discharge of functions imposed by or under this Act.”

The records do not suggest that the said Defendants have performed their functions in bad faith. Merely issuing a notice to the Plaintiff in connection with such application filed by the said Gokuldas which was thereafter withdrawn would not, by itself, suggest that the action in performing the functions and duties by the Defendant no. 1 and 4 are in bad faith. The deposition of the said Defendants clearly show that they have acted in good faith and consequently, in terms of the said provisions of the said Act, the suit filed by the Plaintiff does not deserve any consideration.

14. On bare perusal of the Judgment of the learned Judge, I find that the learned Judge has lost sight of the said provisions to erroneously come to the conclusion that the Plaintiff was entitled for compensation for granting electrical connection to said Gokuldas in terms of the said Act. In any event, any acts done in good faith in official capacity in furtherance of the duties cannot be a ground to award damages to the plaintiff when admittedly no pecuniary loss has been established nor pleaded by the plaintiff. Learned Judge has failed to consider the well settled principles of law while awarding damages as, admittedly, no pecuniary loss has been established by the plaintiff. Apart from that, the directions issued by the defendant no. 1 and 4 are in exercise of power conferred under the Public Health Act. The issue of title or other rights to get said electricity connection are matters to be adjudicated in the proper forum. Merely because such electricity connection has been granted for domestic purpose would not by itself affect the rights, if any, of the plaintiff to get their claim adjudicated as against the said

Gokuldas in accordance with law. Considering that the learned Judge failed to consider the well settled principles of law whilst passing the impugned order, I find that the impugned order passed by the learned Judge cannot be sustained and deserves to be quashed and set aside. The points for determination are answered accordingly.

15. In view of the above, I pass the following order:

ORDER

- i) Both the appeals are partly allowed.
- ii) The impugned judgment dated 22.12.2006 passed by the learned Trial Judge is quashed and set aside.
- iii) The suit filed by the plaintiff stands dismissed with no order as to costs.
- iv) Both the Appeals stand disposed of accordingly.

F. M. REIS, J.

msr.