

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.288 OF 2010.

Shri Lourenco Fernandes (deceased)
Through his legal representatives:-

1. Smt. Maria Diana Fernandes,
2. Shri Jeronimo Fernandes,
3. Smt. Rita Fernandes,
4. Smt. Rosy Fernandes,
All major of age, All Residents of
Ugem, Sanguem-Goa. Petitioners.

Versus

1. Sociedade Patriotica dos Baldios
das Conquistas, having its
registered office at Panaji, and
represented by its constituted
Attorney, Shri Joaquim
Mascarenhas, resident of
Khairicatem, Sanguem-Goa.
2. Administrative Tribunal, Goa,
Panaji-Goa.
3. Deputy Collector, Quepem-Goa.
4. Mamlatdar of Sanguem Taluka,
Sanguem-Goa. Respondents.

Mr. P. S. Lotlikar, Advocate for the petitioners.

Mr. Sudin Usgaonkar, Senior Advocate with Ms T. Ghanekar,
Advocate for the respondents.

CORAM : F.M. REIS, J.

DATE : 18th November, 2016.

ORAL JUDGMENT

Heard Mr. P. S. Lotlikar, learned Advocate for the petitioners and Mr. Sudin Usgaonkar, learned Senior Advocate for the respondents.

2. The challenge in the above petition is to a judgment/order dated 30.9.2009 passed in Tenancy Revision Application No. 147/2001 whereby the revision preferred by the petitioner came to be rejected.

3. Upon hearing extensively the learned Advocate appearing for the petitioners and the learned Senior Advocate appearing for the respondents what emerges is that the petitioners had filed proceedings for declaration of tenancy in respect of the subject property surveyed under No.52/0 way back in the year 1991. In such proceedings an ex-parte order of injunction was passed in favour of the petitioners. The challenge to such order before the superior authority did not yield any result. Thereafter, after hearing the parties the temporary injunction came to be confirmed.

4. It appears that prior to the filing of the said

proceedings by the petitioners, the respondents had filed a Civil Suit against the petitioners in respect of the same property being Regular Civil Suit No.15/1990. The said suit after recording of evidence came to be decreed by judgment and decree dated 23.8.1999. The challenge to such decree by the petitioners did not yield any result in favour of the petitioners and the injunction granted is in operation. Records also reveal that in the year 1991 as the petitioners were seeking a permanent injunction, the learned Mamlatdar by an order dated 15.12.1999 vacated the said order on the ground that the petitioners were unnecessarily delaying the matter by seeking an adjournment and sitting with a temporary injunction order in their favour. The petitioners challenged the order before the appropriate authority being a Deputy Collector, who by an order dated 26.11.2001 dismissed the appeal filed by the petitioners. While disposing of the said appeal the learned Deputy Collector also took note of the said judgment passed by the learned trial Judge which came to be confirmed by this Court inter alia restraining the petitioners from interfering with the subject property. The appeal filed by the petitioners was accordingly dismissed and the revision preferred before the learned Tribunal was also rejected by an order dated 30.9.2009. Being

aggrieved by the judgment/order passed by the Courts below the petitioners have filed the present petition.

5. Mr. Lolikar, learned Advocate appearing for the petitioners has pointed out that the learned Mamlatdar had erroneously vacated the order of temporary injunction on erroneous consideration that the petitioners were not diligently proceeding before the learned Mamlatdar. The learned Advocate further pointed out that the petitioners were diligently pursuing the proceedings before the learned Mamlatdar which can be found from the records of the learned Mamlatdar which would suggest that the ground on which the application for injunction order came to be vacated is unsustainable in law. The learned Advocate further pointed out that the petitioners are tenants of the subject property and as such, any order passed by the Civil Court in respect of such tenanted property is nullity and cannot be relied upon in collateral proceedings. The learned Advocate further submits that as the order of injunction passed by the learned Civil Court is a nullity the question of vacating the order of injunction would not arise at all. The learned Counsel further points out that the cognizance of such order by itself is illegal, as according to him, the application for

temporary injunction filed by the petitioners would have to be considered on the basis of the averments as found in the original application for temporary injunction. The learned Advocate further submits that the suit itself is an abuse of process of the Court, considering that the petitioners are tenants of the suit property and the decree relied upon by the respondents of the Civil Court has no basis and as such the impugned judgment/order be quashed and set aside.

6. On the other hand Shri Sudin Usgaonkar, learned Senior Advocate has pointed out that it clearly reveals from the record that the injunction order has been vacated in the year 1991 and examining the correctness of such order in the year 2016 would be not justifiable and not at all appropriate in the facts of the case. The learned Senior Advocate further pointed out that in the civil suit filed by the respondents, after evidence was recorded and the documents were produced, the learned Trial Judge granted the permanent injunction in favour of respondents which is still in operation. The learned Senior Advocate further pointed out that the judgment came to be confirmed by this Court despite of the contentions of the petitioners that tenancy proceedings were pending. The

learned Senior Advocate further points out that though the injunction order is operating against the respondents on a spacious ground that a temporary injunction was in force in favour of the petitioners, the proceedings before the learned Mamlatdar were unnecessarily delayed. The learned Senior Advocate further pointed out that the Appellate Authority had taken note of the judgment passed by the Civil Court and found that the findings therein suggest that the petitioners are not in possession of the suit property. The learned Senior Advocate further points out that the learned Mamlatdar was justified to vacate the temporary injunction order. The learned Senior Advocate further submits that the petitioners are not the tenants of the subject property and consequently, the authorities below were justified to pass the impugned judgment/order. The learned Senior Advocate has also taken me through the judgment of the learned Tribunal to point out that the Tribunal has clearly appreciated the material on record and has taken cognizance of the findings in the judgment, to come to the conclusion that the injunction was rightly vacated by the learned Mamlatdar. The learned Senior Advocate, as such, submits that the petition be rejected.

7. I have considered the submissions of the rival parties and I have also gone through the record.

8. Admittedly, the judgment/order impugned is of the year 1991. There is no injunction in favour of the petitioners as of said date though in the meanwhile the respondents have succeeded to obtain a permanent injunction against the petitioners passed in said judgment passed by the learned Trial Judge in a suit filed by the respondents. The appeal preferred challenging the said judgment came to be dismissed by this Court. In such circumstances, the authorities below were justified to take support of the findings in the said civil suit after a full fledged evidence was recorded. Apart from that the records reveal that the Authorities below found that the petitioners have been unnecessarily delaying the proceedings as the temporary injunction was operating against the respondents herein.

9. In such circumstances, the question of interference in the impugned judgment/order passed in the year 1991 in exercise of jurisdiction under Article 227 of the Constitution of India would not at all be justified. The petitioners were seeking

unnecessary adjournments which lead to the impugned order.

10. Considering the peculiar facts and circumstances of the case, I find that no case is made out for grant of any relief to the petitioners in the above Writ Petition. In any event considering that the tenancy proceedings are of the year 1991, it would be appropriate to direct the learned Mamlatdar now Civil Judge, Senior Division to expeditiously disposed off pending the proceedings within one year from the date of the receipt of this order.

11. Rule stands discharged.

F.M. REIS, J.

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