

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 431 OF 2016
WITH
WRIT PETITION NO. 509 OF 2016****WRIT PETITION NO. 431 OF 2016**

1. Mrs. Jayashri Nanasaheb Rajebhosale
Alias Bimabai Rauji Rane,
wife of Shri Nanasaheb R. Rajebhosale,
74 years of age, married, housewife,
Indian National, r/o "Krashikesh",
Plot No.114, PDA Colony,
Alto-Porvorim, Bardez, Goa.
Through her POA Shri Bhupendrasinh N.
Rahebhosale.
 2. Smt. Priyvranda Prataprao Jadhav
alias Crishnabai Rauji Rane,
W/o late Prataprao Y. Jadhav, Major Age,
married, house wife, Indian National,
r/o Plot no.1, Mahadev Nager,
Near R. K. Nager Society no.1,
Kolhapur, Maharashtra
- Petitioners

V e r s u s

1. Mahesh Ganesh Mandrekar,
House No.312, Kumbarwada,
Bordem, Bicholim, Goa.
 2. Village Panchayat Ona-Mauliguem-Kurchirem
through Secretary,
Maulinguem (N), Bicholim, Goa.
- Respondents

Shri J. J. Mulgaonkar, Advocate for the Petitioners.

Shri Pundalik N. Raiker, Advocate for Respondent no.1.

Shri Deepak Gaonkar, Advocate for the Respondent no.2.

WRIT PETITION NO. 509 OF 2016

Village Panchayat of Maulingem,
Maulingem North, Bicholim-Goa,
Through its Secretary,
Mr. Pundalik Soma Gawas,
Son of Shri Soma Gawas,
27 years of age,
Bachelor, Indian National and
residing at H. No.60, Gawaswada,
Ibrampur, Pernem, Goa.

..... Petitioner

V e r s u s

Mr. Mahesh Ganesh Mandrekar,
Son of Shri Ganesh Mandrekar,
Major in age, Indian National and
Resident of H. No.312, Kumbharwada,
Bordem-Bicholim-Goa.

..... Respondent

Shri Deepak Gaonkar, Advocate for the Petitioner.

Shri Pundalik N. Raiker, Advocate for the Respondents

CORAM: C. V. BHADANG, J.
DATE: 27TH JULY, 2016.

ORAL JUDGMENT:

Rule in both the petitions. The learned counsel for the respondents waive service. Heard finally by consent of parties.

2. In both these petitions the challenge is to the order dated 4/3/2016 passed by the learned Civil Judge Junior Division, Bicholim in Regular Civil Suit No.200/2015. As such, the petitions are being disposed of by this common judgment.

2 a. The brief facts necessary for the disposal of the petitions may be stated thus.

That on the basis of the complaint lodged by one Bhupendrasinh N. Rajebhonsale, who is the Attorney of the petitioner in W.P. No.431/2016 the Village Panchayat of Maulingem had issued a stop work notice to one Mr. Audumber @ Audhut G. Mandrekar. Subsequently, the Deputy Director of Panchayats, assumed powers under section 66 (5) of the Goa Panchayat Raj Act, 1994 (Act for short) and issued a notice of demolition to Audhut Mandrekar on 14/2/2013 in respect of the house standing in survey

no.99 of village Maulingem. It appears that the said notice was not challenged any further by Shri Audhut Mandrekar and had attained finality.

3. The original complainant filed Writ Petition No.35/2015 before this Court seeking implementation of the said demolition notice. This Court had decided the said petition on 19/11/2015 where under the Village Panchayat of Maulingem was directed to comply with the order dated 14/2/2013, with the assistance of the Block Development Officer (BDO), Bicholim. It was further directed that the BDO shall depute a competent person to assist the village panchayat to locate the disputed structure.

4. It appears that the demolition squad had visited the house on 4/3/2016. The demolition squad inter alia comprised of the Joint Mamlatdar and the Executive Magistrate as also the BDO of Bicholim. A perusal of the panchanama dated 4/3/2016 shows that the structure was identified. It further appears that at around 5p.m, the Bailiff of the Civil Judge Junior Division at Bicholim came at the site

and pasted an order dated 3/3/2016 passed by the said Court in R.C.S No.200/2015 on the outer door of the said house because of which the demolition of the said structure could not be carried out.

5. It may be mentioned that RCS NO.200/2015 is filed by the first respondent Mahesh Mandrekar, who happens to be the brother of Audhut Mandrekar. In that suit the Village Panchayat of Maulinguem is the sole defendant and the respondent no.1 is seeking the relief of injunction against the Village Panchayat from demolition of a house situated in land survey no.80. It appears that on 2/3/2016 the Trial Court had directed the Village Panchayat not to demolish the suit house existing in survey no.80. It further appears that on 3/3/2016, the first respondent/plaintiff filed an application Exhibit D-23 for appointment of a commissioner in which the respondent no.1 sought urgent reliefs for carrying out immediate spot inspection of the suit house in survey no.80. By virtue of prayer clause (b) the respondent no.1 prayed for directing the Bailiff of the Court or any other officer to act as commissioner and/or in aid of the court to affix the copy of

the courts order dated 2/3/2016 on the suit house. The learned Trial Court behind the back of the Village Panchayat took up that application and found that entire prayer clause (b) cannot be considered at that stage. However, in view of the urgency the following operative order came to be passed:

ORDER

Application stands allowed ex-parte to the extent of prayer (b) partly. Bailiff of the court is directed to affix the order dated 3/3/2016 on the door of the suit house existing in survey no.80 upon its identification by the plaintiff as stated in affidavit dated 4/3/2016 annexed to the application and submit his report accordingly as no any survey plan is produced on record from DSLR showing existence of the suit house.

It is this order which is subject of challenge in both these petitions.

6. I have heard the learned counsel for the parties at length.

7. It is contended on behalf of the petitioners that the Trial Court could not have allowed the respondent no.1/plaintiff to identify the property, particularly in view of the fact that there is a serious dispute about the identification of the said house,namely, as to whether it is situated in survey no.99 or survey no.80. The contention on behalf of the petitioner is that respondent no.1 at the instance of his brother Audumber is trying to protect the house situated in land survey no.99 under the garb of an order obtained in respect of a house situated in land survey no.80.

8. For the limited purpose of deciding these petitions, it is not necessary to refer to the other contentions in detail. This is because admittedly the ad interim order of injunction granted by the Trial Court on 2/3/2016 has been confirmed by the learned trial Court on 8/3/2016 and the same is subject matter of challenge at the instance of the petitioner Village Panchayat as also the original complainant before the District Court. In that view of the matter it is not necessary nor appropriate to examine legality of the said order. The

dispute according to the petitioners is that the respondent no.1 has filed the suit acting at the instance of his brother and is trying to protect the house standing in survey no.99 under the garb of an order obtained in respect of the house situated in survey no.80.

8. The learned counsel for the respondent no.1 has strenuously urged that looking to the urgency the learned Trial Court was justified in permitting the respondent no.1 to identify the suit house. The contention is that otherwise, the suit house would have been demolished rendering the suit filed by respondent no.1 infructuous. The learned counsel has placed reliance on a decision of the Supreme Court in the case of **Ouseph Mathai & Ors. Vs. Abdul Khadir in Appeal (Civil) 7519 of 2001** dated 5/11/2001 in order to submit that the powers of superintendence under Article 227 of the Constitution of India and revisional powers under section 115 of C.P.C. are essentially limited and this Court may not interfere with the impugned order.

9. I have carefully considered the rival circumstances

an the submissions made.

10. Before considering the rival contentions it is necessary to mention that the petitioner in Writ Petition No.431/2016 had filed Contempt Petition No.11/2016 alleging the contempt of the order passed on 19/11/2015. The Division Bench has disposed of the said contempt petition by its judgment and order dated 15/6/2016. A perusal of para 5 of the said order would show that a reference is made to the averments in para 10 of the Writ Petition No.431/2016 and the Division Bench has observed that "the adjudication with regard to such averments will have to be carried out by the concerned court in accordance with law". The Division Bench has further observed that immediately after the injunction order ceases to be in operation, the Village Panchayat shall proceed to comply with the direction of this Court and file compliance report. It would be worthwhile to reproduce para no.6, which reads as under:

6. On perusal of the above Contempt Petition, we find that there is no averment

with that regard in the said petition. This itself discloses that the petitioners have approached this Court without disclosing the fact that an interim order is in operation. In any event, contempt is a matter between the Court and the Contemptner. In the present case, as there is an interim order passed by the learned Civil Judge, Senior Division at Bicholim, judicial propriety would demand that until the order is in operation or clarified, the respondent no.2 would have to wait the outcome of such proceedings before the Court. Needless to state that immediately after the injunction order ceases to be in operation, the respondent no.2. shall proceed to comply with the direction of this Court and file a compliance report thereof.

11. It can thus be seen that the Division Bench of this Court after noticing the averments in para 10 in W.P. No.431/2016 has held that until the order of injunction is in "operation or is clarified", the respondent no.2 i.e. the Village Panchayat of Maulinguem would have to await the outcome of such proceedings before the Court.

12. Coming back to the present case, it appears that the dispute essentially is about the identity of the house, namely, whether the same is situated in survey no.80 as claimed by respondent no.1. or it is the house situated in survey no.99, as claimed on behalf of the petitioners. In such circumstances, in my considered view the trial Court could not have left the matter about the identification of the house to the respondent no.1, who was the plaintiff in the said case. A perusal of the prayer clause (b) of the application would clearly show that the respondent no.1 had claimed a direction to the Bailiff or any other officer of the Court to act as a commissioner, in aid of the Court to affix the copy of the order dated 2/3/2016 on the suit house. Even assuming that there was some element of urgency considering the fact that that the very dispute was about identification of the suit house, the matter could not have been left to be identified by the respondent no.1 and to that extent the impugned order will have to be set aside. However, as noticed earlier, the application Exhibit D-23 filed by respondent no.1 for appointment of a commissioner is still said to be pending

before the learned Trial Court. Further the Division Bench of this Court in Contempt Petition no.11/2016 has observed that judicial propriety would demand that until the order is in "operation or is clarified", the Village panchayat/respondent no.2 would have to await the outcome of these proceedings. In such circumstances, in my considered view interest of justice would be sub served if the Trial Court is directed to decide the application Exhibit D-23 expeditiously within a time bound period. It may be mentioned that an application filed by the petitioner in W. P. No.431/2016 for intervention is said to be pending before the trial Court. That application can also be directed to be taken up for consideration along with application Exhibit D-23. Thus, the petitions are disposed of in the following terms:

ORDER

- (i) The impugned order permitting the suit house to be identified by the respondent/plaintiff is hereby set aside.
- (ii) The learned Trial Court shall decide applications Exhibit D-23 along with the application for intervention filed by the petitioner in W.P. No.431/2016 within a period of four weeks from the receipt of this order, in

accordance with law.

(iii) Rival contentions of the parties are left open.

(iv) Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

ap/-