

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 515 OF 2016

Smt. Maria J. C. Pereira,
Major, R/o H. No.221,
St. Lawrence, Agassaim,
Baixe-de-Igreja,
Ilhas-Goa.

..... Petitioner

V e r s u s

1. State,
Represented by the Mamlatdar
of Tiswadi – Goa.

2. Mr. Mario Dias Do Rosario,
Son of Mr. Alvano Venceslau
Dias do Rosario,
Aged 50 years, Service,
R/o Baixe-de-Igreje,
Agassaim, Tiswadi-Goa.

..... Respondents

Shri Galileo Francisco Teles, Advocate for the Petitioner.

None for Respondent no.1.

Shri Rohit Bras De Sa, Advocate for the Respondent no.2.

CORAM: C. V. BHADANG, J.
DATE: 30th August, 2016.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. None
appears for Respondent no.1. The learned counsel for

respondent no.2, who is the only contesting party waives service. Heard finally by consent of the parties.

2. On the basis of a complaint lodged by the petitioner in November 2008, proceedings were initiated on the file of the learned Deputy Collector under section 33 of the Goa, Daman and Diu Land Revenue Code 1968 (Code, for short) in which by an order dated 4/8/2015 the respondent no.2 is directed to restore the land bearing survey no.3/5 of village Agacaim of Tiswadi Taluka to its original use by removing the mud filling. That order has been challenged by the respondent no.2 before the Administrative Tribunal in Land Revenue Appeal No.30/2015. The petitioner filed an application being Miscellaneous Application no.103/2015 for intervention in the said appeal. That application has been rejected by the Administrative Tribunal on 22/3/2016 which is subject matter of challenge in this petition.

3. I have heard Shri Teles the learned counsel for the petitioner and Shri De Sa, the learned counsel appearing for respondent no.2. With the assistance of the learned counsel

for parties, I have gone through the orders passed.

4. It is contended by the learned counsel for the petitioner that the intervention has been disallowed only on the ground that the petitioner has no interest in the subject field bearing survey no.3/5 of village Agacaim Tiswadi Taluka. It is submitted that the petitioner sought intervention specifically on the ground that the illegal conversion of the land and the user of the road by the petitioner which is abutting the septic tank and the compound wall constructed by the petitioner is causing prejudice to the petitioner as it is damaging the compound wall and the septic tank. It is submitted that once the petitioner has demonstrated that his rights as regards the compound wall and the septic tank are likely to be adversely affected by the user of the road, the intervention ought to have been allowed. The learned counsel has taken me through the original complaint dated 13/11/2008 and the sketch at page 28 of the compilation, drawn by the Talathi. The learned counsel points out that the said sketch clearly shows that the septic tank is just abutting the road. The learned counsel points out that the sketch is by

an independent Government Officer and has therefore, to be accepted. He submits that the impugned order which primarily proceeds on the ground that the petitioner has no interest in the field, thus cannot be sustained.

5. On the contrary, the learned counsel for the respondent no.2 has supported the impugned order. The learned counsel points out that the petitioner had made a similar request for intervention before the Principal Secretary (Revenue) which was rejected. It is submitted that this Court vide judgment and order dated 5/2/2015 in Writ Petition No.499/2014 has confirmed the said order and thus, the petitioner cannot come with a similar request again. The learned counsel points out that the petitioner has been examined as a witness before the Deputy Collector and thus had sufficient opportunity to put forth his case and cannot further persist in claiming intervention before the Administrative Tribunal. The learned counsel points out that the proceedings under section 33 of the Land Revenue Code are of a quasi criminal nature. The proceedings are prosecuted by the Mamlatdar before the Dy. Collector in

which the petitioner has been examined as a witness. He submits that the petitioner cannot assume the role of a prosecutor in addition to the Mamlatdar. He therefore, submits that the impugned order does not suffer from any infirmity.

6. I have carefully considered the rival circumstances and the submissions made. The Administrative Tribunal placing reliance on the decision of the Hon'ble Supreme Court in the case of **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and others** (1992) 2 SCC 524 and the decision of this Court in **Miss Samira R. Gauns Vs. Shri Chandrakant S. Paryekar** (2009) (2) Goa L.R. 494 has held that the addition of parties to a proceedings is not a mere formality and the issue boils down to a question whether the party is a necessary and proper party, whose presence is necessary. The Administrative Tribunal has found that in the facts of the case the presence of the petitioner or his assistance is not necessary and has proceeded to dismiss the application.

7. It is undisputed that it was on the the basis of the complaint lodged by the petitioner that the proceedings were initiated by the Mamlatdar before the Dy. Collector. The case made out by the petitioner is that on account of the alleged illegal conversion of the land and the user of the road, the compound wall of the petitioner and the septic tank are adversely affected. The petitioner is not claiming any right to the field survey no.3/5 of village Agacaim. The question is whether in such circumstances, the intervention could have been allowed. Prima facie it appears that in a proceeding under section 33 of the Code, in addition to a direction to restore the land to its original use, the Collector can also impose a penalty as prescribed under sub section 2 of section 33 of the Code. The proceedings are initiated before the Dy. Collector by the Mamlatdar in which the petitioner has been examined as a witness and thus had an opportunity to put forth his claim. After considering this evidence and other material, the Collector has directed the respondent no.2 to restore the land to its original condition. The question before the Administrative Tribunal is only about the legality and the validity of the order passed by the Dy. Collector. In other

words, the question is whether the land survey no.3/5 of village Agacaim has been put to non agricultural use in contravention of the provisions of the Code.

8. It is a matter of record that the petitioner had sought intervention before the Dy. Collector which was allowed vide order dated 2/12/2011. The respondent no.2 herein had challenged the said order passed by the Dy. Collector before the Principal Secretary (Revenue) in a revision application. The Principal Secretary (Revenue) had disposed of the revision by permitting the petitioner to be examined as a witness before the Dy. Collector. This order was in turn challenged by the petitioner before this Court in Writ Petition no.499/2014, in which this Court after noting the statement on behalf of the State that all possible steps for expediting the complaint would be taken up, has disposed of the petition. It is true that in para 6 of the order, this Court had said that it would be open to the petitioner to revive the request if the complaint is not disposed of within reasonable time period, that is, on or about six months. It can thus be seen that the order passed by the Principal

Secretary (Revenue) only permitting the petitioner to be examined as a witness before the Dy. Collector was not interfered with, by this Court. Considering the overall circumstances and the fact that the petitioner has already been examined before the Dy. Collector and had sufficient opportunity to place his grievance on record, I do not find that any case for interference with the order passed by the Administrative Tribunal is made out. It is evident that the scope of the proceedings are confined to the one under section 33 of the Land Revenue Code and the only question is whether the survey no.3/5 of village Agacaim is put to unauthorized change of user. If the petitioner has any civil right he can always take recourse to an independent remedy, in accordance with law and if so advised. The petition is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

Ap/