

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 457 OF 2016

PRASHANT NARAYAN PRABHU. ... Petitioner
Versus
SADANAND DAMODAR PRABHU AND ANR., ... Respondents

Mr. M.B. Costa, Senior Advocate with Ms. Karishma Betquecar,
Advocate for the Petitioner.

Mr. Vilas P. Thali, Advocate for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 22nd August, 2016

ORAL ORDER:

Heard Mr. Costa, the learned Senior Counsel for the petitioner and
Mr. Thali, the learned Counsel for the respondents.

2. The challenge in this petition, at the instance of the original defendant, is to the judgment and order dated 29.02.2016 passed by the learned District Judge at Margao in Miscellaneous Civil Appeal No. 59/2015. By the impugned judgment, the learned District Judge has set aside the order passed by the Trial Court and granted injunction in favour of the respondents/plaintiffs. Consequently, the petitioner or anybody on his behalf, has been restrained from carrying out any type of construction, re-construction or renovation in the suit property bearing Survey No.60/5 of village Chaudi during the pendency of the suit.

3. The respondents had sought temporary injunction, which was rejected by the learned Trial Court. The learned District Judge after taking a note of the permission for repairs granted to the respondents by Canacona Municipal Council on 08.06.2015, has found that under the garb of carrying out repairs or taking protection measures, the petitioner, could not have carried out extension to the existing structure. The learned District Judge found that the permission was granted only for carrying out repairs within the existing plinth area and also that the permission was issued only for replacement of rafters and A/C sheets roofing. In that view of the matter, the appeal came to be allowed.

4. The learned Senior Counsel for the petitioner has referred to the photographs A-1 and A-2 (at pages 206 and 207 of the compilation), in order to point out that the structure abutting the disputed shed has developed moss with growth of vegetation. It is contended that the rain water, which splashes against the wall has further deteriorated the condition of the structure. It is contended that the erection of the shed was necessary. The learned Senior Counsel pointed out that as at present, the petitioner only intends to cover the sides of the shed by putting sheets, so that the structure abutting the shed, would be adequately protected, from rain water.

5. The learned Counsel for the respondents pointed out that the permission granted to the petitioner was only for replacing the rafters

and the roof and the said permission did not permit the petitioner to erect the shed. The learned Counsel pointed out that the said permission has also been set aside by the Director of Urban Development, Panaji by order dated 10.08.2016.

6. In reply, the learned Senior Counsel for the petitioner pointed out that the petitioner would take steps to challenge the said order. The learned Senior Counsel was at pains to point out that the issue would be whether, the portion on which the shed is erected, was earlier an open space or whether there was a structure standing therein.

7. I have considered the rival circumstances and the submissions made. The dispute pertains to a shed comprising of 9 G.I. poles and M.S. angles erected by the petitioner. Prima facie at this stage, it appears that the permission granted to the petitioner on 08.06.2015 was inter alia on the condition that it would be for replacement of rafters and A/C sheets roofing only. As of today, even that permission has been set aside by the Director of Urban Development.

Be that as it may, the only contention raised in support of erection of the shed is that, it is necessary to protect the abutting structure from rains. In this case admittedly, there is an order passed by the competent authority under the Disaster Management Act, 2005 on 26.06.2009, whereby the petitioner was directed to cause immediate repair of the building by complying all the required formalities, so as to avoid occurrence of any untoward incidents/danger "for

themselves and people/public in and around". There are also proceedings initiated before the Executive Magistrate under Section 133 of Cr.P.C., in which by conditional order dated 05.12.2014, the petitioner has been directed to demolish the old house/building. It is submitted on behalf of the petitioner that the said proceedings are pending.

8. The learned Senior Counsel for the petitioner pointed out the observations in para 24 of the judgment of the Appellate Court, in which, reliance is placed on the inspection report of Engineer Kakule, supported by the transgression report and the sketch prepared by the Engineer. The learned Senior Counsel for the petitioner pointed out that the report of the Engineer was not produced before the Trial Court and that the report was produced before the Appellate Court, which was objected to.

9. The learned Counsel for the respondents does not dispute that there was an old structure standing, at the portion where the disputed shed is erected. This would adequately take care of the apprehension on behalf of the petitioner that there was no structure standing on the portion where the shed was erected.

10. Having perused the record and the impugned order passed and having seen the photographs produced by the petitioner, it is difficult to accept that the adjoining portion is in such a condition that it can

be eventually repaired and reused. It is not a structure which can be salvaged. Thus, it is not possible to accept that to protect the said structure, the petitioner could be permitted to enclose the sides of the shed. I do not find that the impugned order suffers from any infirmity, so as to warrant interference. The petition is without any merits and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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