

WRIT PETITION NO.539 of 2016

 $V/S.$

By this petition, the petitioner is challenging the order dated 18/11/2015 passed by the learned District Judge, Panaji in Civil Appeal No.3/2015. By

the said order the learned District Judge has confirmed the order dated 10/07/2015, passed by the respondent no.2, on a complaint filed by the petitioner. By the impugned order, the parties are directed to maintain status-quo in respect of the subject matter. This order has been passed on the ground that there is civil litigation pending between the parties before this Court in Second Appeal No.25/2012.

2. The brief facts are that the petitioner claims to be the owner and in possession of the Land Chalta No.18 while the respondent no.1 is holding Land Chalta No.17 of P.t. Sheet No.73 at Panaji which are abutting to each other. Indisputably, the respondent no.1 had filed Special Civil Suit against the petitioner herein being Special Civil Suit No.103/1983/A, in which an ex-parte decree was passed against the father of the petitioner. The petitioner filed Special Civil Suit No.91/1997/B against the respondent no.1, inter alia, seeking a declaration that the petitioner is the owner in possession of the suit property admeasuring 100 square metres i.e. 11 metres x 9 metres of Chalta

No.18 (Old Chalta No.13) of P.T. Sheet No.73 of City Survey, Panaji. The petitioner also sought a declaration that the judgment and decree dated 29/04/1988 passed in Special Civil Suit No.103/1983/A and the order dated 28/06/1996 passed in Execution Application No.99/1991/A was obtained by fraud and misrepresentation. The petitioner, accordingly, prayed for declaration that the said judgment and decree and order are null and void, with some other reliefs. It is a matter of record that the said suit filed by the petitioner was dismissed by the Trial Court. However, the same was decreed in appeal by the learned District Judge. The said judgment and decree is subject matter of challenge in aforesaid Second Appeal No.25/2012 at the instance of the respondent no.1.

3. On the basis of the complaint filed by the petitioner, the Municipal Corporation had found that the respondent No.1 had constructed a temporary G.I. Shed approximately admeasuring 4x3 metres in the open space between the houses of the petitioner and the respondent no.1. It appears that a show cause notice was issued, to which the respondent no.1 filed a

reply, claiming that the temporary shed is constructed in the property belonging to the respondent no.1. The learned Deputy Commissioner, after hearing the parties and on perusal of the documents, found that there was similar complaint lodged by the respondent no.1 against the petitioner, in which following order was passed :

"Both parties present. Both parties agreed that the subject matter is pending with Hon'ble High Court; hence this office cannot take any further decision in the matter. Hence proceedings stands closed. Options are opened for both the party to approach appropriate forum after the outcome of High Court order."

The learned Deputy Commissioner found that there was civil litigation between the parties, which was pending before this Court and, therefore, the Deputy Commissioner found that he was unable to take any decision on the complaint filed by the petitioner. In that view of the matter, the parties have been directed to maintain status-quo. Feeling aggrieved, the petitioner is before this Court.

4. The learned Counsel for the petitioner submitted that the complaint lodged by the petitioner has no relevance with the dispute, which is pending before this Court in the above Second Appeal. He submits that at any rate, the construction of the shed, which is carried out by the respondent no.1 in the year 2015 is unauthorised and thus, the Deputy Commissioner could not have refrained himself from taking action on the ground that civil dispute is pending between the parties before this Court. He, therefore, prays that the Deputy Commissioner be directed to take action on his complaint.

5. On the contrary, it is submitted by the learned Counsel for the respondent no.1 on the basis of the compilation of the documents produced, including the plaint filed in the suit filed by the petitioner that the dispute, which is pending before this Court in Second Appeal has a bearing on the matter complained of by the petitioner. The learned Counsel points out that there is stay operating to the judgment and decree passed by the District Judge. He, therefore,

submits that the Deputy Commissioner was justified in staying his hands and directing the parties to maintain status-quo.

6. The learned Counsel for the respondent no.2 has pointed out the copy of the earlier complaint lodged by the respondent no.1 and the order passed thereon, which has been referred to by the learned Deputy Commissioner in the impugned order. He submits that when substantive civil dispute between the parties is pending before this Court, the Corporation was justified in not taking any action. He, therefore, supports the impugned order.

7. I have carefully considered the rival circumstances and the submissions made. With the assistance of the learned Counsel for the parties, I have gone through the compilation of documents including the plaint, in Civil Suit No.91/1997 filed by the petitioner.

8. The petitioner wants the Municipal Corporation to take action under Section 269(2) of the City of

Panaji Corporation Act, 2002. In short, it is contended that the construction of the shed is without any sanction and as such, the Corporation should take action for demolition of the said construction. From the perusal of the record and the impugned order, it appears that there was a similar complaint lodged by the respondent no.1 against the petitioner. The order, as reproduced above, also records that in the presence of the parties, it was stated that as the matter is pending before this Court, the office of the Deputy Commissioner cannot take any further decision in the matter and the proceedings were closed. In that complaint, an option was given to the parties to approach appropriate Forum after the outcome of the Second Appeal No.25/2012 before this Court. If in such circumstances and having regard to the nature of the dispute, which is long standing between the parties, the Deputy Commissioner has taken a view that no action can be taken, I do not find any justification to interfere with the same.

9. The order passed by the Deputy Commissioner was challenged by the petitioner before the learned

District Judge in an appeal under Section 269(5) of the Act and the learned District Judge has confirmed the said order. The learned District Judge has found that the powers under Section 269 of the Act are discretionary in nature. The learned District Judge has found and to my mind rightly so, that the decree passed in Special Civil Suit No.103/1983 is still in operation. That apart, the judgment and decree passed in the Civil Suit filed by the petitioner is also stayed in Second Appeal. In that view of the matter, the learned District Judge has refused to interfere with the order passed by the Deputy Commissioner. In such circumstances, I am not inclined to interfere with the concurrent finding recorded by the Authority under the Corporation Act and the learned District Judge. In any event, as the parties are directed to maintain status-quo, the interest of the parties are sufficiently guarded. The petition is without any merit and is, accordingly, dismissed, with no order as to costs.

C. V. BHADANG, J.

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