

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 541 OF 2016

SHRI. PAUL FERNANDES. ... Petitioner
Versus
SHRI. JOHN GILBERT FERNANDES (DEC)
THR. LRS. AND ANR. ... Respondent

Shri Joaquim Godinho, Advocate for the Petitioner.
Shri Athnain Naik, Advocate for Respondent Nos. 1 (a) (d) and (j).

Coram:- C. V. BHADANG, J.

Date:- 20th October, 2016

ORAL ORDER:

Heard Shri Godinho, the learned Counsel for the petitioner and Shri Naik, the learned Counsel appearing for respondent nos. 1 (a) (d) and (j). There is no appearance on behalf of respondent no. 1(b) and respondent no. 2. The rest of the respondents, who are the legal representatives of the original respondent no. 1-John Fernandes, have been deleted.

2. It appears that respondent no. 2-Village Panchayat had carried out an inspection on 24.03.2008 and drawn a panchanama after which, a show cause notice dated 17.07.2008 was issued to Shri Steven Fernandes, respondent no. 1(b) herein. It appears that the reply to the said notice was filed on 21.07.2008 by James Fernandes. Steven Fernandes and James Fernandes are sons of deceased respondent no. 1-John Fernandes. James Fernandes was a Power of Attorney holder of John Fernandes during his lifetime. The Village

Panchayat issued a demolition order dated 20.09.2008, which was challenged by John Fernandes before the Additional Director of Panchayats, who by judgment and order dated 14.07.2010 had set aside the impugned demolition notice dated 20.09.2008 and had remanded the matter to the Village Panchayat for deciding the same afresh after following due procedure as prescribed and in accordance with law. This was challenged by the petitioner before the District Court in Civil Revision Application No. 37/2011, which has been dismissed on 24.02.2016, which is subject matter of challenge in this petition.

3. It is submitted by the learned Counsel for the petitioner that during inspection, James Fernandes informed that the construction has been made by Steven Fernandes. It is submitted that therefore, notice was issued to Steven Fernandes, which was replied by James Fernandes. However, the demolition notice was challenged by the father-John Fernandes, through the Power of Attorney-James Fernandes.

4. The learned Counsel for the respondent nos. 1 (a) (d) and (j) supports the impugned order.

5. On hearing the learned Counsel for the parties, I find that although, the order of the Additional Director was passed in the year 2010, the Village Panchayat has not proceeded in the matter. The

parties inform that there was no stay operating against the order of the learned Additional Director. Be that as it may, in the circumstances, I am not inclined to interfere with the impugned order of remand. It would be appropriate that the Village Panchayat issues notice to both Steven Fernandes and James Fernandes, so also to respondent no. 1(a), who is the widow of John Fernandes and then decides the matter in accordance with law.

6. With this, the petition is disposed of with no order as to costs. Considering the fact that the initial notice was issued in 2008, the Village Panchayat shall take a decision within a period of six months from today.

C. V. BHADANG, J.

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