

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 566 OF 2016

SHRI. LAXMAN CANDOLKAR (DEC) THR.
HIS LRS., ... Petitioner

Versus

VILLAGE PANCHAYAT OF CANDOLIM,
THR. ITS SECRETARY AND ANR. ... Respondent

Mr. Vallabh D. Pangam, Advocate for the
Petitioner.

CORAM:- C.V. BHADANG, J.

DATE:- 17th JUNE, 2016.

ORAL ORDER:

Heard the learned Counsel for the
petitioner.

2. By this petition, the petitioner before
the learned Principal District Judge, North Goa,
Panaji in Civil Revision Application No. 39/2012
is taking exception to the order dated 13.04.2016
(below Exhibit-10) passed by the learned Principal
District Judge, Panaji, allowing intervention of
respondent no. 2-M/s Casa Blanca Resort.

3. The brief facts are that, on the basis of the complaint lodged by M/s Casa Blanca Resort, the Village Panchayat of Candolim had initiated action against the petitioner, directing demolition of the alleged illegal construction of the soak pit and the toilet in the property bearing survey no. 128/2, situated at Vaddy, Candolim. This was challenged by the petitioner before the learned Additional Director of Panchayats, Panaji in Panchayat Appeal No. 18/2006, which was dismissed on 09.07.2007. The petitioner has challenged the same before the learned District Judge, Panaji in Civil Revision Application No. 39/2012. It is in this civil revision application that the original complainant-M/s Casa Blanca Resort filed an application (Exhibit-10) for intervention, placing reliance on the decision of this Court in the case of **Mr. Alwyn D'Cunha Vs. Village Panchayat of St. Lawrence and Another**, [2006(2) Goa L.R. 368], on the ground that the right of the intervenor (respondent no. 2 herein) would be affected by the

decision in the said civil revision application, in as much as the construction of the soak pit and the toilet, was within three metres of the existence of the drinking water well belonging to the respondent no. 2.

4. The application was opposed on behalf of the petitioner on various grounds.

5. The learned District Judge by the impugned order has found that as per the allegations of the respondent no. 2, the soak pit and the toilet in the property was close to the said drinking well. The learned District Judge has further noticed that under the Goa Panchayat Raj Act, 1994 (the Act, for short) and the Rules framed thereunder, the minimum distance between the soak pit and the drinking well is required to be around 15 metres. It has been thus found that the dispute between the parties will have to be decided by giving fair and appropriate opportunity to the parties.

6. It was contended by the learned Counsel for the petitioner that in the year 1998 on the basis of the complaint of the petitioner, a notice was issued to the respondent no. 2 on 05.10.1998, alleging that there is an illegal construction of a septic tank, well and compound wall by the respondent no. 2. It is submitted that if, the digging of the well itself is illegal, the respondent no. 2 cannot be heard to say that the construction of the soak pit and the toilet by the petitioner is illegal. The learned Counsel submits that a similar intervention application was filed by the petitioner before the Additional Director of Panchayats, which was rejected and the same was challenged by the petitioner before the learned District Judge. However, during the pendency of the appeal, the appeal before the Additional Director of Panchayats was decided and the challenge before the learned District Judge had become infructuous. It is submitted that once the Additional Director of Panchayats had refused intervention of the respondent no. 2, the learned

District Judge had no reason to allow the same.

7. The learned Counsel for the petitioner has relied upon the decision in the case of **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others** reported in (1992) 2 SCC 524 and the decision of this Court in the case of **Miss Samira R. Gauns Vs. Shri Chandrakant S. Paryekar, [2009 (2) Goa L.R. 494]**, in order to submit that the intervention is not necessary as the dispute is essentially between the petitioner and the Village Panchayat and the intervention will have the effect of enlarging the scope of the civil revision application.

8. I have considered the circumstances and the submissions made and I find that no case for interference is made out.

9. This Court in the case of **Mr. Alwyn D'Cunha** has held that merely because a person on whose complaint, an action is taken by the local

authority, does not entitle the party to seek intervention. However, in order to justify such intervention, the party has to show that his right would be affected in some manner on account of the decision passed in the proceedings and if, the petitioner is able to disclose the same, nothing would preclude the authority to allow the same. Under Section 239-A of the said Act, there is no prohibition from allowing the aggrieved person to put forth his say in the matter. Thus, the material question is whether, *prima facie*, the intervenor is able to show in this case that his personal right is likely to be affected by the decision of the civil revision application.

10. As noticed earlier, it is the case of the petitioner that the drinking water well is situated within three metres of the alleged construction of the soak pit and the toilet constructed by the petitioner. If that be so, no exception can be taken to the finding that the personal interest and right of the intervenor

would be affected by the decision in the civil revision application. In the case of **Ramesh Hirachand Kundanmal** (supra), it has been held that in order to allow such intervention, the party must have a direct or legal interest in the litigation.

11. The learned Counsel for the petitioner has also submitted that the alleged illegal construction may be of compoundable nature. In the case of **Miss Samira R. Gauns** (supra), it has been held that illegalities could be of different nature i.e. one which is compoundable and non-compoundable. I find that this cannot be gone into at this stage, for the reason that the personal interest and right of the intervenor would be affected by the decision in the said civil revision application. All that has been done is that the intervention has been allowed. Unless and until the order exhibits any jurisdictional error, resulting into any manifest injustice, no interference is called for.

The petition is without any merits and is accordingly dismissed, with no order as to costs.

12. It is needless to mention that the learned Principal District Judge shall not be influenced by any of the observations made herein at the hearing of the civil revision application.

C.V. BHADANG, J.

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