

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 502 OF 2016

IN

PUBLIC INTEREST LITIGATION WP NO. 26 OF 2014

THE GOA FOUNDATION, THR. ITS
SECRETARY, DR. CLAUDE ALVARES.

... Applicant

Versus

THE CHIEF TOWN PLANNER TOWN AND
COUNTRY PLANNING DEPT. AND 13 ORS.

... Respondent

Ms. Norma Alvares, Advocate for the applicant-original petitioners.
Mr. S. D. Lotlikar, Advocate General with Mr. P. Dangui, Addl.
Govt. Advocate for the respondents No.1 to 3, 6 and 7.
Mr. D. Lawnade, Additional Advocate General for the respondent
No.4,
Mr. Shivan Desai, and Ms. P. Chopdekar, Advocates for the
respondent No.8.
Mr. D. Pangam, Advocate for the respondent No.12.
Mr. A. D. Bhobe, Advocate for the respondent No.13.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 8th August, 2016

P.C.:

Heard Ms. Norma Alvares, learned Counsel appearing for the
applicant-original petitioner, Mr. S. D. Lotlikar, learned Advocate
General appearing for the respondents No.1 to 3, 6 and 7, Mr. D.
Lawande, learned Additional Advocate General appearing for the
respondent No.4, Ms. P. Chopdekar, Advocates for the respondent
No.8, Mr. D. Pangam, learned Counsel appearing for the respondent
No.12 and Mr. A. D. Bhobe, learned Counsel appearing for the
respondent No.13.

2. This is an application filed by the applicant-original petitioner for leave to file an Additional Affidavit dated 10/06/2016, along with the fact finding report prepared by an One Man Inquiry Commission.

3. The learned Counsel appearing for the applicant points out that when the above PIL Writ Petition was posted for hearing, the learned Government Advocate had made a statement that an One Man Inquiry Commission has been constituted by the State Government in connection with the subject-matter of the above petition and that the findings therein would be material for deciding the controversy in the above PIL Petition. The learned Counsel further points that the petition was, accordingly, adjourned from time to time awaiting the report of such Commission. The learned Counsel further points out that thereafter, the State Government took a decision not to accept such report and, as such, as the report was not placed on record, the petitioner sought information under the Right to Information Act, whereby the petitioner obtained a copy of such report. The learned Counsel further submits that as the notification appointing the One Man Inquiry Commission was also notified as a Mamlatdar under the Goa Agricultural Tenancy Act, 1964, the findings rendered therein would assist the Court in taking a decision in the above petition. The learned Counsel further submits that as such, the petitioner be permitted to file an Affidavit, along

with the said report dated 10/6/2016, copies whereof have already been furnished to the learned Counsel appearing for the respondents. The learned Counsel further points out that the petitioner had filed an application being Misc. Civil Application No. 313/2016 to direct the State Government to produce such report and on such failure, the petitioner was compelled to move the Authority under the RTI.

4. On the other hand, Mr. Shivan Desai, learned Counsel appearing for the respondent No.8 and Mr. D. Pangam, learned Counsel appearing for the respondent No.12 in the petition, have strongly objected to the production of such report. The learned Counsel point out that such report is prepared in gross violations of the principles of natural justice and, in fact, according to them, no notice was issued to the said respondents and, consequently, the report has no sanctity in law. The learned Counsel further submit that in fact, the State Government has refused to accept the report and, therefore, the question of relying upon such a report in the present petition, would not be justified. The learned Counsel further point out that the One Man Inquiry Commission was constituted only for the purpose of assisting the State Government to take a decision in the matter and since the State Government has refused to accept such a report, it has no basis in law. The learned Counsel in support of their contentions have relied upon a Judgment of the Supreme Court reported in (2013) 16 SCC 538, in the case of State Bank of India through General Manager vs. National Housing Bank

and ors..

5. Mr. S.D. Lotlikar, learned Advocate General submits that once a report has not been accepted, it has no value in law, and as such, according to him, the question of granting leave to the applicant-petitioner to produce such a report would not arise. The learned Advocate General therefore submits that the application deserves to be rejected.

6. In reply, it was also pointed out by Mr. Pangam and Mr. Shivan Desai, learned Counsel appearing for the respective respondents that they have also filed writ petitions being Writ Petitions No. 735/2016 and 741/2016 respectively, disputing the validity of such report and, as such, seeking to set it aside.

7. We have considered the submissions of the learned Counsel and we have also gone through the records. No doubt, the records reveal that the petition was adjourned from time to time at the instance of the learned Government Advocate who had pointed out that a fact finding inquiry was constituted to assist the Government in taking a decision in the controversy. The report sought to be produced by the petitioner is the outcome of such fact finding inquiry commission constituted by the State Government. The Notification appointing the inquiry commission also suggests prima facie that the Inquiry Officer was notified as a Mamlatdar under the

Agricultural Tenancy Act, 1964. The learned Counsel appearing for the private respondents have strongly opposed the validity of the said report. It is submitted that the private respondents were not given a hearing by the Inquiry Officer and that the appointment of the Inquiry Officer as Mamlatdar is itself without jurisdiction and, as such, the question of relying upon such report is not at all justified.

But, however, it is not disputed that the writ petitions filed by the respondents challenging such report are also under consideration before this Court.

8. At this stage, we are only examining whether leave can be granted to the applicant-original petitioner to file an additional affidavit along with such report. Validity of the report or its evidentiary value, are matters which can be examined at the time of hearing of the writ petitions.

9. Considering that the respondents No.8 and 12 have also filed writ petitions challenging the validity of such report, we find it appropriate, in the interest of justice and to avoid multiplicity of proceedings, to place the said Writ Petitions filed by the said respondents along with the above PIL Writ Petition, for final disposal.

10. In such circumstances, we permit the applicant-original petitioner to file the affidavit, along with the said report, subject to

what has been stated herein above. All contentions of the respondents about the validity, authenticity or evidentiary value of such report, are left open.

11. Application stands disposed of accordingly. Needless to say, the respondents, if so advised, are at liberty to file an additional reply.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

ssm.