

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO. 13 OF 2009

IN

MISC.CIVIL APPLICATION NO. 840 OF 2007

IN

PUBLIC INTEREST LITIGATION WRIT PETITION NO. 10 OF 2007

1. Shri Berrick Fernandes,
Son of Mariano Fernandes,
28 years of age, unemployed
Bachelor, residing at House No.124
Curpem Paroda Quepem Goa.
2. Smt. Fatima Cardozo,
31 years of age, married,
wife of Shri John Fernandes,
Service, residing at
House No. 128, Curpem,
Paroda Quepem Goa. ... Petitioners

Versus

1. M/s. Babu Sitaram Naik,
a partnership registered
under the Indian Partnership
Act, 1932 through its partner
Smt. Janabai Naik,
with the office at Mathura Niwas,
House No.271, Calcondem,
Navelim Salcete Goa.

2. Smt. Janabai Naik, Major,
Partner of M/s. Babu Sitaram Naik
Residing at Mathura Niwas
House No. 271, Calcondem,
Navelim Salcete Goa.
3. Shri Aditya Rama Kerkar,
Son of Rama Kerkar, major,
Partner of M/s. Babu Sitaram Kerkar,
Residing at Mathura Niwas,
House No.271, Calcondem,
Navelim Salcete Goa.
4. Smt. Dipika Aditya Kerkar,
Partner of M/s. Babu Sitaram Kerkar,
Wife of Aditya Rama Kerkar,
Residing at Mathura Niwas
House No. 271, Calcondem,
Navelim Salcete Goa. ... Respondents

Mr. V. P. Thali, Advocate for the petitioners.

Mr. A. Gaonkar, Advocate for the respondents.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.
Date:- 20th June, 2016

ORAL JUDGMENT: (PER F.M.REIS,J)

1. Heard Mr. Thali, learned Counsel for the petitioners and Mr. Gaonkar, learned Counsel for the respondents.

2. This is an application for contempt of the order passed by this court dated 17/07/2008 whereby the respondent no.3 has furnished an undertaking to this court while disposing of the Misc. Civil Application No. 840 of 2007 in PIL Writ Petition No. 10/2007 to the effect that the respondents would shift the crushing unit at a distance of 75mtrs. away from the residential houses occupied by the petitioners. Mr. Thali, learned Counsel submits that the above PIL Writ Petition No.10/07 came to be disposed off by an order dated 23/10/2007 and thereafter the respondents filed an application to substitute the undertaking which was permitted by an order dated 07/11/2007. The learned Counsel further submits that the petitioners thereafter filed an application to recall the said order as it was passed without giving the petitioners an opportunity of being heard. The learned Counsel further submitted that the said order was recalled and the matter was re-argued, whereupon directions were issued to the respondents to shift the crushing unit in terms of the undertaking at any place other than the one shown in the plan, subject to obtaining all the permissions from the statutory authorities including the said Pollution Control Board. As the respondents had violated the said undertaking and had started the unit without obtaining all the permissions, the petitioners filed above contempt petition. The respondents filed their reply initially contending that the respondents had obtained all

the permissions from the Statutory Authorities and were relying on the same permissions which were obtained much before the disposal of the said PIL Writ Petition. Thereafter, another affidavit came to be filed disputing the contentions of the petitioners. Ultimately, an additional affidavit was filed on 19/06/2014 whereby it was contended that the respondents had already obtained all the permissions and that even the Pollution Control Board had granted the consent to operate on 09/01/2014. The petitioners however filed a rejoinder to the said affidavit inter alia contained that the permissions allegedly obtained by the respondents were not the requisite permissions required to carryout the said operation.

3. Mr. Thali, learned Counsel has pointed out that as no requisite permissions have been obtained the respondents are guilty of contempt and as such necessary order be passed to that effect. On the other hand, the learned Counsel appearing for the respondents has submitted that the respondents had obtained all the requisite permissions to carryout the crushing activities even before the PIL Writ Petition was disposed off. Though the respondents had obtained the consent to operate from the Pollution Control Board much before the filing of the above Contempt Petition. The learned Counsel also brought to our notice that there was a provisional permission granted by the Village Panchayat to

shift the crusher. The learned Counsel further submitted that the respondents obtained the permissions from the authorities and as such the respondents have not committed any contempt.

4. We have considered the submissions made by the learned counsels for the parties and also gone through the material on record.

5. The main contention of the petitioners is that the order passed by this court stands violated as the requisite permissions were not obtained from the Statutory authorities. On perusal of the order dated 17/07/2008 passed by this court it clearly shows that the respondents were called upon to shift the Crushing Unit in terms of the undertaking provided all the permissions from the authorities were obtained prior to the commencement of such activities. In the present case, though the respondents had obtained the consent to operate from the Pollution Control Board in the year 2009 which was initially valid for a period of three months and the same was thereafter renewed from time to time, the last such renewal produced alongwith the additional affidavit dated 19/06/2014. In these circumstances, it cannot be disputed that the respondents had obtained the permission from the Pollution Control Board as directed by this Court.

6. Mr. Thali, learned Counsel submitted that there was no permissions either from the Health Department or the Village Panchayat. On perusal of the permission issued by the Village Panchayat, it appears that the respondents have obtained only a provisional permission. The records also reveal that the Village Panchayat had informed the petitioner that in terms thereof, the plans were not submitted by the respondents.

7. The learned counsel for the respondents has brought to our notice the final permission obtained by the respondents on 27/05/2014. The permissions, both from the Health Department and the Pollution Control Board attached to the additional affidavit shows that some of such permissions were obtained only in the year 2015 though it cannot be said that the respondents have substantially obtained the permissions as directed by this Court. Nevertheless, there was a lapse on the part of the respondents in carrying out the crusher activities without obtaining the required permissions as mentioned in the undertaking accepted by this Court in the order dated 17/07/2008. Considering the default committed by the respondents in carrying out the operations of the crushing unit without all the permissions for a substantial period in terms of the undertaking and as the permissions from the Health Department were obtained only in the year 2014, we find that the

respondent no.3 is liable to be penalized for such lapse. In the peculiar facts and circumstances of the case, it is our considered opinion that the respondents would be liable to pay a fine of ₹5000/- (Rupees Five Thousand only) to the petitioners in that regard.

8. In view of the above, I pass the following Order:

ORDER

1. The above petition stands disposed off by directing the respondent no.3 to pay the fine of ₹5,000/- (Rupees Five Thousand only) within a period of two months from today.
2. The contempt notice stands discharged, accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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