

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 641 OF 2016

MRS. FATIMA BI SHAIKH.	... Petitioner
Versus	
STATE OF GOA, THR. ITS CHIEF SECRETARY AND 6 ORS.	... Respondents

Shri S.M. Walavoikar, Advocate for the petitioner.

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

Date:- 18th July, 2016

P.C.

Heard Shri Walavoikar, learned counsel appearing for the petitioner.

2. The above petition, inter alia, takes exception to the construction being put up by the respondent no.5 in a property bearing Chalta nos.178 and 179 of P.T.Sheet no.45 of Panjim City. It is the contention of the learned counsel appearing for the petitioner that the property belonging to the petitioner is bearing Chalta no.176 of P.T.Sheet no.45 adjoining the property where the subject construction is in progress. The learned counsel further submits that the area reflected in the City Survey Records is not in accordance with the area disclosed in the approved building plan by NGPDA and as such, according to him, there is an encroachment on the property of the petitioner. The learned counsel points out that the respondent no.5 is also putting up the construction on the second

floor, which according to him, would cause grave prejudice to the enjoyment of the property belonging to the petitioner adjoining to the subject property. The learned counsel further points out that as the permission for construction granted by the NGPDA is contrary to the provisions of law, as the building put up by the respondent no.5 comes under the conservation area. It is also pointed out that as there is no permission to carry out construction in the conservation area, the permission granted by the NGPDA is null and void. The learned counsel has thereafter taken us through the plans approved by NGPDA to point out that the area disclosed therein is not in conformity with the City survey record. The learned counsel as such submits that there are grounds to challenge the permission granted by NGPDA.

3. We have considered the submissions of the learned counsel appearing for the petitioner and with the assistance of the learned counsel perused the record. It is not disputed that the property belonging to the respondent no.5 is bearing Chala nos. 178 and 179. It is not in dispute that the property belonging to the petitioner is bearing Chalta no.176 of P.T. Sheet no.45 and are adjoining.

4. On minutely going through the the complaint lodged by the petitioner dated 10th December, 2015 it essentially discloses that the grievance of the petitioner is that by putting up the subject construction by the respondent no.5, it would affect the enjoyment of

the property of the petitioner whereby rain water of the second floor could percolate into the property of the petitioner. It is further the case of the petitioner that as the construction put up by the respondent no.5 is adjoining to the wall belonging to the petitioner, it would affect such wall.

5. Taking note of the grievances as raised by the petitioner in the said complaint, we find that the dispute raised by the petitioner is a civil dispute which can be agitated only before the Civil Court. In petition under Articles 226 of the Constitution of India, the dispute of title between the parties cannot be examined. Reserving the right of the petitioner to pursue an appropriate remedy with regard to such grievances raised in the petition we find that there is no case made out by the petitioner to interfere in the subject licence at the instance of the petitioner in the facts of the present case. All the contentions of the petitioner are left open. Hence, reserving such right to the petitioner, the petition is rejected,

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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