

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 931 OF 2016

Mrs. Carmelina Barreto,
Major in age, (age not known),
R/o H.No.679, Cattiebaga,
Poinguinim, Canacona Goa. ... Petitioner

Versus

1. Mrs. Margarita Barreto,
Major in age, (age not known),
R/o H.No.699, Katebag,
Poinguinim, Canacona Goa.
2. Village Panchayat Poinguinim,
Through its Sarpanch & Secretary,
Poinguinim, Canacona Goa. ... Respondents

Mr. Gaurish N. Agni, Advocate for the petitioner.

Mr. Pranay A. Kamat, Advocate for the respondent no.1.

Coram:- F. M. REIS, J.

Date:- 16th December, 2016

ORAL JUDGMENT

Heard Mr. G. Agni, learned counsel appearing for the
petitioner and Mr. P. A. Kamat, learned counsel appearing for

the respondent no.1.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. Mr. P. A. Kamat, learned counsel waives service on behalf of the respondent no.1.

4. Considering the matter in controversy, notice to the respondent no.2 stands dispensed with. The challenge in the above petition is to the exercise of jurisdiction by the learned District Judge while disposing of a revision preferred by the respondent no.1 being Civil Revision Application No.13/2015 by judgment dated 20.01.2016.

5. Briefly, the undisputed facts which are necessary to consider the rival contentions are that the petitioner filed a complaint alleging that the respondent no.1 had carried out an

illegal construction in the property surveyed under No.148/1 of Village Poinguinim without obtaining the permissions from the statutory authorities. The petitioner approached the learned Dy. Director of Panchayat to assume powers under the Panchayat Raj Act to take action as the respondent no.2 failed to examine the complaint lodged by the petitioner. The learned Dy. Director by an order dated 18.12.2012 directed demolition of the subject structure. Thereafter the respondent no.1 preferred an appeal before the Additional Director of Panchayat which came to be rejected by an order dated 23.03.2016. Being aggrieved by the said order, the respondent no.1 preferred a revision before the learned District Judge which came to be disposed of by the impugned order.

6. Mr. G. Agni, learned counsel appearing for the petitioner points out that in the revision petition filed by the respondent no.1, an application was filed by the respondent no.1 inter alia contending that the property where the subject structure

is located was gifted to her sons way back in the year 2002 and as such, the sons have to be made parties to such proceedings. The petitioner objected to the said application but however, by the impugned order the learned District Judge allowed the sons to be impleaded as parties and proceeded to set aside the orders passed by the two Authorities and remanded the matter to the Dy. Director to examine the complaint afresh. The learned counsel further pointed out that the learned District Judge has exceeded its jurisdiction as while disposing of the application for impleading the sons proceeded to set aside the orders which were in favour of the petitioner. The learned counsel further submits that at the most the learned Judge could have permitted the sons to be made parties to the revision petition and after hearing the sons disposed of the Revision in accordance with law.

7. On the other hand, Mr. P. A. Kamat, learned counsel appearing for the respondent no.1 submits that the property was gifted to the sons in the year 2002 and as such any view taken in

the revision proceedings would affect the rights of the sons who are in possession of the subject structure. It is further submitted that there is a dispute between the petitioner and the respondent no.1 with regard to the larger property wherein the subject structure is located and as such it is pointed out that the petitioner is not entitled for any relief in the above petition. The learned counsel further pointed out that the learned District Judge was as such justified to pass the impugned order.

8. I have considered the submissions of the learned counsel and I have also gone through the records. The application under consideration before the learned District Judge was an application filed by the respondent no.1 to implead the sons as parties in the Revision. Only after taking a view on such application for impleading such parties, the learned Judge could have proceeded to dispose of the revision petition after hearing such parties who are alleged to be the sons of the respondent no.1. In the present case, while allowing the application to implead the sons, the learned District Judge exceeded its

jurisdiction in disposing of the revision and setting aside the orders passed by the authorities below and remanding the matter for fresh consideration. In such circumstances, I find that the exercise of learned Judge in passing the impugned order to the extent it set aside the orders passed by the authorities below and direct the Dy. Director for fresh consideration of the matter cannot be sustained and deserves to be quashed and set aside. The learned District Judge after impleading the sons based on the impugned order has to issue a notice to such parties and proceed to decide the Revision after hearing all the parties to the revision petition in accordance with law.

9. In view of the above, I pass the following :

ORDER

- (i) The impugned order dated 20.01.2016 to the extent it remands the matter to the authorities below after setting aside the orders dated 23.03.2015 passed by the learned Additional

Director of Panchayat and 18.12.2012 passed by the Deputy Director of Panchayat are quashed and set aside.

(ii) The Civil Revision Application No.13/2015 is restored to the file of the learned District Judge.

(iii) The learned District Judge is accordingly directed to decide the revision in the light of the observations made herein above in accordance with law.

(iv) Rule is made absolute in the above terms.

(v) The petition stands disposed of accordingly.

F. M. REIS, J.

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