

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 869 OF 2016

MR. DEVIDAS MARDOLKAR., ... Petitioner
Versus
STATE OF GOA, THR. ITS CHIEF
SECRETARY AND 5 ORS., ... Respondents

Shri Rohit Bras De Sa, Advocate for the petitioner.
Shri S. D. Lotlikar, learned Advocate General with Shri P. Dangui,
Addl. Govt. Advocate for the respondent nos.1 and 6.

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

Date:- 15th September, 2016

P.C.

Heard Shri R. Bras De Sa, learned Advocate for the petitioner and
Shri S. D. Lotlikar, learned Advocate General for the respondent
nos.1 and 6.

2. We have heard Shri R. Bras De Sa, learned Advocate for the
petitioner at length. It is his contention that on the basis of the
agreement executed on 13.9.2013, the possession of the subject flat
was delivered by the respondent nos.2 and 3 to the petitioner. It is
further pointed out that the respondent nos.4 and 5 filed proceedings
before the District Consumer Disputes Redressal Forum (hereafter
referred to as "the District Forum" for short) seeking a relief to
convey the subject flat in favour of the such respondents. It is further
pointed out that the proceedings before the District Forum
culminated into allowing the complaint filed by such respondents

inter alia directing the delivery of possession and executing a conveyance in favour of the respondent nos.4 and 5.

3. It is further pointed out that an appeal preferred by the respondent nos.2 and 3 before the State Commissioner came to be rejected. It is further pointed out that the petitioner has also filed a suit for a Specific Performance in the Court of the learned Senior Civil Judge, Vaso-da-Gama being Regular Civil Suit No.98/2015/A inter alia seeking reliefs to convey the subject flat in favour of the petitioner based on the said agreement dated 13.9.2013. It is further contended that the suit filed by the petitioner came to be dismissed by judgment and decree dated 11.7.2016. The petitioner apparently has challenged the said judgment before the Appellate Court which is pending for consideration. It is contended by Shri R. Bras De Sa, learned Advocate for the petitioner that in the meanwhile the respondent nos.4 and 5 have sought for execution of the order passed in the complaint filed by such respondents before the District Forum and in such proceedings a warrant of possession is also directed to be executed.

4. Shri R. Bras De Sa, learned Advocate has argued that as the petitioner is in possession of the said flat based on the said agreement, the petitioner has no other remedy and as such filed the present petition under Article 226 of the Constitution of India to protect his possession of the said flat. It is further reiterated that the petitioner has no other alternate remedy to challenge the order passed by the District Forum to issue the warrant of possession and as such

according to the learned Counsel direction has to be granted to the District Forum not to execute the order passed in the complaint filed against the respondent nos.2 and 3.

5. The learned Counsel has submitted that it is now well settled that when the rights of the petitioner are infringed the exercise of the jurisdiction under Article 226 of the Constitution of India would be justified. In support of his submissions he relied upon the judgments reported in (2012)1 Mh. L. J. 278 in the case of Bajirao Sirsat, VS. Sanjay PrakashChand Kothari and others, (2012) 13 SCC 460 in the case of A. K. Samantray Vs State of Orissa and another and (2011)14 SCC 337 in the case of Nivedita Sharma Vs Cellular Operators Association of India and others.

6. Shri S. D. Lotlikar, learned Advocate General has pointed out that the petitioner has failed to obtain a relief of specific performance based on the alleged agreement dated 13.9.2013 and as such, the question of invoking extra ordinary jurisdiction under Article 226 of the Constitution of India would not at all be justified. The learned Advocate General further pointed out that the suit filed by the petitioner has been dismissed also on the ground that the respondent nos.3 and 4 have prior registered agreement in their favour in respect of the subject flat. Learned Advocate General further pointed out that the petitioner if so aggrieved can raise his contention before an appropriate forum to get his right of possession protected.

67also gone through the records.

7. The records reveal that the petitioner has already filed a civil suit

for specific performance of the subject agreement dated 13.9.2013 which suit came to be dismissed by judgment and decree dated 11.7.2016. It is not disputed that an appeal has been preferred before the District Court Mapusa and no interim relief has been granted therein.

8. In such circumstances, the question of exercising our extra ordinary jurisdiction under Article 226 of the Constitution of India on a spacious ground that the petitioner is entitled to get his possession protected as he has already paid the total consideration to the respondent nos.2 and 3 would not at all be justified. This dispute sought to be raised is purely a civil dispute which cannot be adjudicated in a petition under Article 226 of the Constitution of India. The validity of the agreement relied upon by the petitioner is in dispute before the Civil Court.

9. Considering that the petitioner has already filed a civil suit, we find that the question of exercising extra ordinary jurisdiction would not at all be justified.

10. In any event, the petitioner if so advised is at liberty to challenge the order passed by the District Forum before an appropriate forum in accordance with law.

11. Subject to the above, the petition stands disposed off.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.