

IN THE HIGH COURT OF BOMBAY AT GOA PANAJI

WRIT PETITION NO. 880 OF 2015

Mr. Jeremias Serafino Basilio Rodrigues,
Major of age,
S/o Pedru Rodrigues,
R/O. House No.235,
Arrais Wado, Nagoa,
Bardez, Goa.

.... Petitioner

V e r s u s

1. M/s. P. V. Builders,
Through its proprietor,
Mr. Philip Vaz,
r/o Santa Cruz Apartments,
Shop No.10,
Naika Waddo,
Calangute, Bardez, Goa.

2. Dy. Town Planner,
Collectorate Building,
Town & Country Planning Department,
Morod, Mapusa, Bardez, Goa.

3. Village Panchayat of Nagoa,
Arpora, Nagoa,
Bardez Goa.

..... Respondents

Shri J. Godinho, Advocate for the Petitioner.

Smt. S. Linhares, Advocate for the Respondent no.1.

CORAM: C. V. BHADANG, J.
DATE: 23rd MARCH, 2016.

ORAL JUDGMENT:

Rule. The learned counsel for the respondent waives service. There is no appearance on behalf of the respondent nos.2 and 3. A notice for final disposal was issued on 18/2/2016. As such, the petition is taken up for final disposal, by consent.

2. The petitioner is the original plaintiff and is challenging the order dated 28/8/2015 passed by the learned Ad-hoc District Judge, (FTC) at Panaji in Civil Suit No.65/2012. By the impugned order, the application (Annexure “A”) filed by the petitioner for amendment of the plaint has been dismissed on the ground that the amendment is not necessary for deciding the real controversy in dispute.

3. I have heard the learned counsel for the petitioner and the learned counsel appearing for the contesting respondent no.1. With the assistance of the learned counsel for the parties, I have perused the record.

4. The suit filed by the petitioner is in respect of an alleged illegal construction undertaken by the first respondent in the set back area. Admittedly, the petitioner is the owner/occupant of an adjacent plot. The suit is admittedly at a pre-trial stage in which the trial has not commenced. A

perusal of the proposed amendment would show that the petitioner wants to add the Health Officer, Primary Health Centre, Candolim, Bardez, Goa, as also the Executive Engineer, PWD, Mapusa and the Dy. Collector of Bardez at Mapusa, as defendant nos. 4 to 6. The petitioner further intends to add para 12 and the amendment to prayer clause “aa” and “aaa” , which reads as under:

“12. That the Deputy Collector of Bardez has issued a Memorandum dated 02/02/2011 to the Mamlatdar of Bardez at Mapusa to conduct site inspection and to take appropriate action in the matter however no action was taken till date. That thereafter the Deputy Collector of Bardez at Mapusa issued a letter dated 17/12/2012 to the Plaintiff however till date no effective action is taken against the Defendant no.1 by the Defendant no.6.

Prayer (aa) may be corrected as under:

(aa) For a judgment and order of directing the Defendant No.2 and 3 to immediately cancel the said approved plans, as it is in violation of the said Town and Country Planning Act and direct the Defendant no.3 to suspend/cancel the construction license issued to the Defendant no.1 in violation of the Goa Daman and Diu Panchayats (Regulations of Buildings) Rules, 1971.

(aaa) For a judgment and order directing the Defendant No.4, 5 and 6 to take necessary action against the defendant no.1 as per appropriate provisions of Law.”

5. The learned counsel for the petitioner has pointed out that the

petitioner had obtained certain information under the Right to Information Act on 17/7/2012 about the alleged illegal construction of a septic tank/soak pit touching the P.W.D road in the plot bearing no.59/11, which is the subject matter of dispute. The learned counsel has further pointed out a report about the alleged illegal construction of the septic tank/soak pit, which is dated 13/4/2012. It is pointed out that the learned trial Court by an order dated 5/8/2014 has allowed the production of the said documents. It is, therefore, contended that if the documents relating to the controversy regarding septic tank are already allowed to be placed on record, the necessary pleadings could not have been disallowed, on the ground that they are not necessary for deciding the real controversy in dispute.

6. The learned counsel appearing for the first respondent submits that the septic tank has already been relocated at a distance which is beyond 7.5 metres from the central line of the road. The learned counsel has invited my attention to a copy of letter dated 23/10/2012 issued by the Assistant Engineer, P.W.D to the first respondent. It is submitted that the issue about the septic tank has already been sorted out.

7. I have considered the rival circumstances and the submissions made. As noticed earlier, the suit is regarding the alleged illegal construction undertaken by the first respondent in the set back area. By virtue of the

amendment, a claim about alleged illegal construction of a septic tank in the said plot is tried to be raised. It appears that the documents to that effect which the petitioner had obtained, have been already been allowed to be placed on record. The learned counsel has also pointed out, a letter dated 16/4/2012 written by the Executive Engineer to the Dy. Collector requesting the later to take necessary action to demolish the illegal structure constructed on the road set back area. In that view of the matter, I find that it cannot be said that the amendment would be beyond the dispute involved. Thus it cannot be said that the proposed amendment is not necessary for deciding the real controversy in dispute. Admittedly, the suit is at a pre-trial stage and as such, the proviso to Rule 17 Order 6 of C.P.C would not apply. In so far as the claim of the first respondent that the septic tank has already been shifted, it would be always open to the first respondent to raise appropriate defence in this regard by amending the written statement by way of consequential amendment. The learned counsel for the petitioner, on instructions, states that he will not press for addition of the Health Officer, as one of the defendants and he proposes to add the Executive Engineer, P.W.D, Mapusa, Goa and the Dy. Collector of Bardez and Mapusa, as defendant nos. 4 and 5.

8. In such circumstances, the petition is allowed. The impugned order is hereby set aside. The application for amendment is allowed, subject to the condition that the Executive Engineer, P.W.D and the Deputy Collector,

Bardez, Mapusa shall be added as defendant nos. 4 and 5 along with the amendments, as prayed.

9. Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

Ap/-