

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 839 OF 2015

MRS.JAYASHRI N. RAJEBHOSALE @
BIMABAI RAUJI RANE, THR. SHRI
BHUPENDRASINH N. RAJEBHOSALE AND
ANR.,

... Petitioners

Versus

STATE OF GOA, THROUGH CHIEF
SECRETARY AND 5 ORS.,

... Respondents

Shri J. J. Mulgaonkar, Advocate for the petitioner.
Shri V. Sardessai, Addl. Govt. Advocate for the respondent nos.1 to
4.
Shri D. Gaonkar, Advocate for the respondent no.5.

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

Date:- 1st August, 2016

P.C.

This petition takes exception to the activities being carried out by the respondent no.5 in the property surveyed under No.53/1 of village Mauliguem, Bicholim.

2. Mr. Mulgaonkar, vehemently argued that the Work Order issued to the concerned panchayat was in the property surveyed under No.83/1 and not in the property surveyed under no.53/1 wherein a reconstruction of an existing building was in progress. The learned Counsel further points out that when such activities were started the petitioners had raised an objection inter alia contending that the construction has been put up in survey no.53/1 which is a private property belonging to the petitioners. Shri Mulgaonkar,

learned Counsel further submits that after starting the construction activities the petitioners raised an objection that it is in fact located in the survey no.53/1 and the respondent no.2 issued a corrigendum to that effect thereby substituting survey no.53/1 in the place of survey no.83/1. The learned Counsel further submits that this exercise itself is illegal and as the subject property is a private property belonging to the petitioners, the question of the respondent no.5 carrying reconstruction would not arise at all.

3. Shri D. Gaonkar, learned Counsel for the respondent no.5 however submits that admittedly there was a panchayat hall in the property surveyed under no.53/1 which was put up by the panchayat by obtaining financial assistance from the Government prior to 1986 and no objection was raised by the petitioners or any of their family members with that regard. Shri D. Gaonkar, learned Counsel further submits that the respondent no.5 is reconstructing the said existing panchayat hall and consequently the alleged dispute raised by the petitioners at such later stage is totally misconceived. It is further submitted that one Babaji Rane who was ex-sarpanch of the village Panchayat Mauliguem gifted the property under survey nos.53/1 and 53/2 to the local panchayat and the respondent no.5 put up a construction therein. It is further submitted that as such, the alleged dispute raised by the petitioners cannot be examined by this Court in the present petition.

4. In reply to the said contention Mr. Mulgaonkar submits that the construction put up by the respondent no.5 was not for a panchayat hall but for Angadwadi somewhere in the year 1986.

5. we have considered the submission of the learned Counsels and we have also gone through the record.

6. On the basis of the admitted position that emerges from the rival contentions it is not disputed that infact the construction is located in the property surveyed under no.53/1 prior to the year 1986.

7. In such circumstances, whether the respondent no.5 is otherwise entitled to reconstruct in such property based on the contention of the petitioners that the title of the said property belongs to the petitioners is a matter which has to be adjudicated before the Civil Court. It is well settled that such title dispute cannot be decided in the Writ jurisdiction under Article 226 and 227 of the Constitution of India. The petitioners, if so advised, may take an appropriate remedy to get such dispute adjudicated before an appropriate forum. Consequently, the question of inference in this Writ Petition based on the petition as filed would not be justified. Keeping open the right of the petitioners to assert their alleged right in a appropriate forum we find that no case is made out at this stage for any interference in the subject activity. However, the petitioners submit that the statutory

authority has raised some objection with regard to such construction activities. In case there is any contravention to any approved plans the statutory authority has to examine such objection and act in accordance with law.

8. Subject to above, the petition stands rejected.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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