

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.62 of 2016**

Santosh Murari Gaonkar,
Major of age,
Resident of H.No.51,
Wadachawada, Sirigao, Goa .. Petitioner

V/s

1. Village Panchayat of Sirigao
Taluka Bicholim Post Assonora,
Through its Sarpanch.
2. Shri Bhagwant Gaonkar,
Major of age,
Resident of H. no.50,
Wadachawad, Sirigao
Assonora, Goa. .. Respondents

Mr. J. Godinho, Advocate for the petitioner.

Mr. V. Menezes, Advocate for the respondent no.2.

Coram:- C. V. BHADANG, J.

Date:- 21st April, 2016

ORAL ORDER :

By this petition, the petitioner, who is appellant in Panchayat Appeal No.30/2012 before the learned Additional Director of Panchayat at Panaji is challenging the order dated 16/12/2014 passed by the learned Additional Director of Panchayats, whereby the second respondent is allowed to intervene in the appeal.

2. The brief facts are that on the basis of a complaint lodged by the second respondent, the first respondent Village Panchayat had issued a final notice for demolition of a certain structure belonging to the petitioner. This is challenged by the petitioner before the learned Additional Director in the Panchayat Appeal No.30/12. In that appeal, the second respondent filed an application for intervention on the ground that the petitioner is the co-owner of the property bearing Survey No.59/3 (in which the alleged illegal construction exists) by virtue of a deed of Gift dated 15/04/2010. It is also contended that apart from the Gift Deed, the second respondent is also holding a Power of Attorney from Shri Babli Gaonkar, who is another co-owner. It was also contended that in the interregnum on account of panchayat elections, the new panchayat body has taken charge, which are favouring the petitioner. It is contended that the intervenor is a necessary party to enable the Court to effectually and completely adjudicate upon the question involved in the appeal.

3. The application was opposed on behalf of the petitioner on the ground that there is no provision under Panchayat Raj Act under which the Additional Director can entertain an application for intervention. It was contended that

the second respondent/ intervenor was not a necessary party.

4. The learned Additional Director has found that by virtue of the Deed of Gift dated 15/04/2010 and Power of Attorney from Babli Gaonkar, one of the co-owners, the second respondent had direct interest in the matter and no prejudice would be caused to the petitioner in the event the second respondent is added as a party. In such circumstances, the application came to be allowed.

5. It appears that the petitioner filed an application for review contending that there is a prior sale deed dated 25/01/1972 whereby the subject property namely, 'Murdi Bhat' surveyed under No.59/3 of village Sirigao (where the mundkarial house is situated) came to be sold and transferred to Mr. Narayan Bandekar and Mrs Suvarna Bandekar. It was contended that once the property was transferred by way of said Sale Deed, nothing could be transferred by way of subsequent deed of Gift dated 15/04/2010. It was contended that this aspect was suppressed by the second respondent and the impugned order which is based on the Gift Deed needs to be reviewed.

6. The application for review was rejected by the learned Additional Director on the ground that there is no provision for

review under the Panchayat Raj Act. Feeling aggrieved, the petitioner is before this Court.

7. I have heard the learned Counsel for the petitioner and the learned Counsel appearing for the second respondent. The first respondent has not put in appearance, though served.

8. The only contention raised on behalf of the petitioner is that the second respondent has not demonstrated any subsisting right, title or interest in the matter and in the absence thereof, the intervention could not have been allowed. The learned Counsel was at pains to point out that as far back as in the year 1972, the ancestors of the second respondent had executed a Sale Deed of the said property and as such there was no interest which could be transferred by the Gift Deed of the year 2010. The learned Counsel has also referred to an order dated 08/12/2014 passed by the learned Civil Judge, Senior Division at Bicholim in Special Civil Suit No.10/2010/A, which is a suit filed by Rajaram Bandekar against the second respondent and others. It is pointed out that the Civil Court has partly allowed the application for Temporary Injunction restraining the second respondent and other defendants from carrying out any construction in the suit property and from cutting fruit bearing trees in the suit property. It is, thus,

submitted that the so called title of the second respondent is also under challenge in the suit and for these reasons, the intervention could not have been allowed.

9. On the contrary, the learned Counsel for the second respondent submits that there is no decree passed in the suit filed by Rajaram Bandekar and prima facie observations of the Civil Court while deciding the application for Temporary Injunction cannot be called into aid to contend that the second respondent has no subsisting interest or right in the property. The learned Counsel, on the contrary has pointed out certain observations of the Civil Court in which the Court has found that the name of the plaintiff in the civil suit does not figure in Form I and XIV of the property. It is submitted that in such circumstances, the application for Temporary Injunction was only partly allowed so as to ensure that status-quo as to property is maintained.

10. The learned Counsel has placed reliance on the decision of this Court in ***Alwyn D'Cunha Vs Village Panchayat Saint Lawrence***; reported in 2006(2) GLT 368 and unreported decision in ***Bholu Naik Vs. Village Panchayat of Marcaim*** (W.P.No.12/2010, dated 23/04/2010), in order to submit that once the intervenor was found to be a complainant having interest in

the property, the intervention can be allowed. The learned Counsel also pointed out that, the first respondent has not appeared, which would go to show that there is collusion.

11. I have considered the rival circumstances and the submissions made.

12. At the outset the only dispute before the learned Additional Director is as to whether the construction carried out by the petitioner is legal and on obtaining appropriate licence from the first respondent- Village Panchayat and whether the notice of demolition is legal and proper. In so far as the issue of intervention is concerned, it has been held by this Court in the case of **Alwyn D'Cunha and Bholu Naik** (supra) that in order to justify the intervention, the party has to show that his rights will be affected in some manner on account of decision that may be passed in proceedings and if the party is able to disclose the same, nothing would prevent the Appellate Authority from allowing the intervention.

In the case of **Bholu Naik** (supra), it was found that the petitioner had some interest in the property and if the Appellate Authority under the Panchayat Raj Act allows persons, on whose instance the action is taken by the Village Panchayat, to intervene,

there is no reason why the intervention should not be allowed. This Court has noticed that most of the Village Panchayats do not take action against illegal constructions, unless a complaint is filed and doggedly pursued and thus, it would be in public interest to allow such complainants to assist the Appellate Authorities to come to the right conclusion. It was held that in such circumstances, the presence of the intervenor will certainly assist the Appellate Authority to satisfactorily, effectively and completely decide the controversy involved in the appeals.

13. Coming back to the present case, admittedly, it was on the complaint of the second respondent that the Village Panchayat had acted and had issued notice of demolition. That apart, according to the respondent, he has right and interest in the property by virtue of a Gift Deed executed by the wife of late Nagendra Gaonkar, whereby undivided share in the suit property is gifted to the second respondent. It is true that Rajaram Bandekar has filed a Civil Suit on the strength of Sale Deed of the year 1972. However, that suit is still pending and there is no decree as such passed in the suit holding the Sale Deed as invalid. Merely on account of the prima facie observations while deciding application for Temporary Injunction, it would not be permissible for the petitioner to challenge the order of intervention. It is not

necessary to go into the controversy involved in the civil suit as it is neither necessary nor an issue which directly arises in the Panchayat Appeal before the learned Additional Director. Once the second respondent is coming with some semblance of right on the strength of Gift Deed, which is yet not held to be invalid by the Competent Court, I see no reason to take exception to the order of the learned Additional Director allowing the intervention. I also do not see that any prejudice would be caused to the petitioner if the second respondent is heard in the appeal and as held by this Court in the case of **Bholu Naik** (supra), the same will assist the Additional Director of Panchayats to effectually and completely decide the controversy involved in the appeal.

14. Thus, no case for interference is made out and the Writ Petition is hereby dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA