

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 187 OF 2016

Comunidade of Bordem,
represented herein by its Attorney
Shri Tukaram Naru Pal,
59 years of age,
son of Naru Hari Pal,
Special Attorney & Authorised
Signatory of Petitioner,
Resident of House No.100,
Bordem, Bicholim Goa. ... Petitioner

Versus

1. The President
Shree Devi Shantadurga Sangodkarin,
Bordem, Bicholim Goa.
2. Administrator of Comunidade,
North Zone,
Comunidade Ghor,
Mapusa Goa. ... Respondents

Mr. Ashwin D. Bhobe, Advocate for the petitioner.

Mr. Shivan Desai with Mr. J. Ramaiya, Advocates for the respondent no.1.

Mr. Sagar Gurudas Dhargalkar, Addl. Government Advocate for the respondent no.2.

Coram:- F. M. REIS, J.

Date:- 16th November, 2016

ORAL JUDGMENT

Heard Mr. A. D. Bhobe, learned counsel appearing for the petitioner, Mr. Shivan Desai, learned counsel appearing for the respondent no.1 and Mr. S. Dhargalkar, learned Addl. Government Advocate appearing for the respondent no.2.

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

3. The learned counsel appearing for the respective respondents waive service.

4. Upon hearing the learned counsel appearing for the respective parties, a short point for consideration is whether the learned Tribunal was justified to pass the impugned order dated 01.9.2015 whereby the respondent no.2 who had already exercised its jurisdiction under Article 9 of the Code of Communitade granting

permission to file a suit to the Communitade can be recalled. Mr. Bhobe, learned counsel appearing for the petitioner has pointed out that the order passed under Article 9 of the Code of Communitade is in the nature of an administrative order wherein there is no power under the Code of Communitade to recall such order. The learned counsel further submits that while exercising such jurisdiction the respondent no.2 cannot examine the merits of the disputes sought to be raised by the petitioner. The learned counsel further submits that by the impugned order the respondent no.2 has proceeded to hold that there was suppression of material facts by the petitioner which is not at all the matter to be considered while granting a permission under Article 9 of the Code. The learned counsel as such points out that the impugned order be quashed and set aside.

5. The learned Addl. Government Advocate was unable to point out any provisions under the Code which would entitle the respondent no.2 to pass the impugned order recalling the permission granted under Article 9 of the Code.

6. Mr. S. Desai, learned counsel appearing for the respondent no.1 has supported the impugned order and submits that the petitioner has an alternate remedy to challenge the impugned order before the learned Tribunal.

7. I have considered the submissions of the learned counsel and I have also gone through the records. Merely because there is an alternate remedy would not by itself disentitle this Court to exercise its jurisdiction under Article 227 of the Constitution of India when the order impugned is patently illegal and without jurisdiction or sanctioned in law. The learned counsel appearing for the respondents were unable to point out any provisions under the Code of Communitade which entitle the respondent no.2 to recall the permission granted to the petitioner to file a suit. Merely because the petitioner was a party to the Civil Suit in connection with the property which is claimed to be belonging to the petitioner would not by itself mean that the respondent no.2 cannot exercise its powers to give consent to file a suit in terms of Article 9 of the Code of Communinade. Article 9 of the Code reads thus :

“Article 9 – The *comunidades* are not entitled to file any civil suits without permission of the Administrative Tribunal, save in cases where civil suit is merely of preventive relief or of executive nature or the delay in its filing may result in extinction of the right or any guarantee, in which case the sanction of the administrator be enough.”

8. To what extent such proceeding has a bearing to the proceeding in the Civil Suit is a matter which would have to be considered in the suit pending before the learned District Judge at Mapusa as there is no specific power to the respondent no.2 to recall/review its own order. As such, the impugned order passed by the respondent no.2 cannot be sustained. It is not the case that there is a mistake or obviously typographical error in the impugned order which require rectification and in fact the respondent no.2 has proceeded to examine the matter on merits which jurisdiction is not available to the respondent no.2 while considering an application under Article 9 of the Code of Communitade. On this short ground alone, the impugned order passed by the respondent no.2 cannot be

sustained and deserves to be quashed and set aside. Hence, the impugned order dated 01.09.2015 is quashed and set aside. Rule is made absolute in the above terms. The petition stands disposed of accordingly with no order as to costs.

F. M. REIS, J.

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