

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 107 OF 2016

Mrs. Surekha Narayan Kokane,
widow of late Narayan Kokane,
major of age, Indian National,
R/o. House no. 10/3,
Firguem Bhat, Vaddy,
Merces, Goa.

..... Petitioner

V e r s u s

1. Smt. Reena Raulo Pilerkar,
Widow of late Raulo Datta Pilerkar,
major of age, Indian National,
R/o. House no. 10/4,
Firguem Bhat, Vaddy,
Merces, Goa.

2. The Village Panchayat of Merces,
through its Secretary,
Village of Merces,
Tiswadi, Goa.

..... Respondents

Mr. Nuno J. Noronha, Advocate for the Petitioner.

Mr. Sudesh Usgaonkar, Advocate for the Respondent no. 1.

Mr. A. D. Bhobe and Ms. S. Bhobe, Advocates for the Respondent no. 2.

Coram :- **C. V. BHADANG, J**

Date : **20th April, 2016**

ORAL JUDGMENT

Heard.

2. By this Petition, the Petitioner is challenging the Judgment and Order dated 03.11.2015 passed by the Adhoc District Judge, Panaji, in Civil Revision

Application No. 65 of 2015, whereby the Judgment and Order dated 18.06.2015 passed by the learned Addl. Director of Panchayat in Panchayat Appeal no. 74 of 2013 is confirmed. The learned Addl. Director of Panchayat had allowed Panchayat Appeal no. 74 of 2013 thereby setting aside the Order dated 16.05.2013 passed by the second Respondent, Village Panchayat. The Village Panchayat had directed the first Respondent to demolish the illegal construction comprising of two pillars and a gate which was allegedly causing obstruction to the access of the Petitioner to her residential house.

3. Learned Counsel appearing for the Petitioner on whose complaint the Village Panchayat had acted, relies on the decision of the Hon'ble Supreme Court in the case of ***Village Panchayat, Calangute vs. Addl. Director of Panchayat-II & ors.*** reported in ***(2012) 7 SCC 550*** and in particular the observations in Para 24 of the said Judgment.

4. Learned Counsel appearing for the Petitioner submits that the spot inspection was jointly carried out by the Sarpanch and the Secretary and by Resolution no.10(3) dated 16.03.2013. The Village Panchayat had resolved to issue the show cause notice. It is submitted that subsequently the Village Panchayat had passed Resolution no. 12(3) dated 13.04.2013 directing demolition which in fact was communicated by the Secretary. He submits that thus the Addl. Director and the learned District Judge ought not to have interfered with the final notice of demolition.

5. The only contention raised on behalf of the first Respondent is that under Section 66 of the Goa Panchayat Raj Act, the Sarpanch was not the competent person to issue a show cause notice. The learned Counsel has placed reliance on the decision of this Court in the case of **Gangadhar Ramchandra Kharbe vs. Sarpanch, Village Panchayat of Parra**, in **Writ Petition no. 735 of 2009** dated 19.11.2009. It is submitted that the issue about jurisdiction of the Sarpanch to issue a show cause notice was specifically raised in the reply filed by the Petitioner. It is submitted that the Courts below have rightly held the notice to be illegal.

6. The learned Counsel for the second Respondent submits that the final notice was issued by the Secretary. He thus supports the Petitioner.

7. On hearing the learned Counsel for the parties, I find that by the Resolution dated 16.03.2013 bearing no. 10(3) Panchayat had resolved to issue a show cause notice against the Petitioner as to why action under Section 66(3)(a) and Section 73 of the Goa Panchayat Raj Act should not be taken. The only contention is that the show cause notice dated 13.03.2013 was not issued by the Secretary but by the Sarpanch. Having regard to the provisions of Section 66 and the decision of this Court in the case of **Gangadhar Ramchandra Kharbe** (supra), I find that the first Respondent can be directed to issue a fresh show cause notice signed by the Secretary on the strength of the Resolution no. 10(3) dated 16.03.2013. The Village Panchayat shall pass appropriate Orders in accordance with law after considering the reply, if any, filed by the Respondent no. 1.

8. The decision in the case of ***Village Panchayat, Calangute*** (supra) involved a question whether the Village Panchayat is an aggrieved party and whether it has locus standi to challenge the Order of the Deputy Director or the District Court. The facts in the present case would be distinguishable.

9. In such circumstances, the following Order is passed :

ORDER

(I) The impugned Orders are hereby set aside.

(II) The second Respondent shall issue a fresh show cause notice in accordance with the relevant provisions, on the strength of the Resolution no. 10(3) dated 16.03.2013 and shall pass appropriate Orders in accordance with law.

(III) The rival contentions of the parties are left open.

(IV) Rule is made absolute in the aforesaid terms with no Orders as to costs.

C. V. BHADANG, J.

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