

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 50 OF 2017

IN

WRIT PETITION NO. 685 OF 2016

MR. THOMAS FERNANDES.,

... Applicant

Versus

STATE OF GOA, THR. ITS CHIEF
SECRETARY AND 4 ORS.,

... Respondents

Shri Joaquim Godinho, Advocate for the Applicant.
Shri S.D. Lotlikar, Advocate General with Shri Amogh
Prabhudessai, Additional Government Advocate for Respondent
Nos.1 to 4.
Shri A.D. Bhobe, Advocate for the Original Petitioners.

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

Date:- 19th January, 2017

P.C.:

Heard Shri J. Godinho, the learned Counsel appearing for the applicant, Shri S.D. Lotlikar, the learned Advocate General appearing for respondent nos.1 to 4 and Shri A.D. Bhobe, the learned Counsel appearing for the original petitioners.

2. The matter was mentioned yesterday as it was pointed out by Shri J. Godinho, the learned Counsel appearing for the applicant that on the garb of an order passed by this Court dated 10/01/2017 disposing off Writ Petition on the basis of the statement of the learned Advocate General that police protection

was granted to the original petitioners for one day a traditional access of the applicant, who was the original respondent no.5 to the petition, was being blocked. It was also pointed out that in view of such exercise the applicant does not have any other alternative access. The learned Advocate General had pointed out that he would request the learned Additional Government Advocate to visit the site to examine the situation at loco.

3. When the matter was taken up today, it was pointed out by Shri S.D. Lotlikar, the learned Advocate General that there was an opening on the wall now constructed having a width of one metre on the extreme North Eastern side of the property belonging to the original petitioners bearing Chalta No.166-A P.T. sheet no.59.

4. Shri A.D. Bhobe, the learned Counsel appearing for the original petitioners has seriously disputed the claim of the applicant that he has a traditional access and further pointed out that though the applicant had filed a suit claiming such access the suit has been dismissed by the learned Trial Judge though an appeal is pending before the Lower Appellate Court.

5. We do not propose to examine the rival contentions with regard to the claim of access for which proceedings are pending consideration before the Lower Appellate Court. The only

aspect we propose to examine is whether the status quo at the site could be altered based on an order passed by this Court with the support of the police protection granted by this Court while disposing off the above Writ Petition. It cannot be disputed that police protection cannot be misused to create a new situations specially when the matters are pending before the Court. In such circumstances, we find that though as pointed out herein above we do not propose to consider the rival contentions about the claim of such traditional access, nevertheless, the construction of the compound wall to the extent of blocking an opening of one metre towards the North Eastern side of the subject property has to be kept open. So also, the corresponding opening towards the South Eastern side to the extent of one metre has also to be kept open, as it is pointed out that such exercise was also carried out in the same process of closing the opening on the North Eastern side of the property belonging to the original petitioners.

6. At this stage, Shri A.D. Bhobe, the learned Counsel appearing for the original petitioners, upon instructions from the petitioner who is present in Court has pointed out that without prejudice to the rights and contentions in the litigation pending before the Court the petitioners would keep an opening open on the subject wall as well as at the site on the South Eastern side of the said property belonging to the petitioners by tomorrow. The said statement of Shri A.D. Bhobe, the learned Counsel

appearing for the original petitioners, upon instructions, is accepted as an undertaking to this Court.

7. In view of the said undertaking of the original petitioners, the grievance of the applicant no longer survives. It is however made clear that any act carried out by the original petitioners herein based on this order shall not in any way create any rights on the applicant nor influence the learned Judge while deciding the appeal preferred by the applicant on its own merits in accordance with law. All contentions with that regard on the disputed access of both the private parties are left open. The application stands disposed off accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

NH