

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.151 OF 2017**

Mr. Avinash V. Nasnodkar
Aged 65 years,
r/o B-3, 1st Floor,
Green View Apts.,
Alto-Betim-Bardez
Goa

.. Petitioner

Vs

1. Additional Director of Panchayat-II
Director of Panchayat
3rd floor, Junta House,
18th June Road,
Panaji-Goa
 2. The Village Panchayat of Reis
Magos, Reis Magos, Verem,
Bardez, Goa
 3. The Secretary
Village Panchayat of Reis Magos,
Reis Magos, Verem,
Bardez, Goa
 4. Mr. Bassana Huncha
R/o next to Green View Apts.,
Alto-Betim, Bardez
Goa
- .. Respondents

Mr. V. Rodrigues, Advocate for the petitioner.

Ms. Neha Kholkar, Additional Government Advocate for respondent no.1.

Mr. P. A. Kamat, Advocate for respondent nos.2 and 3.

Mr. Charston D'Souza, Advocate for respondent no.4.

Coram :- M. S. SONAK, J.

DATE :- 11th April, 2017

ORAL JUDGMENT :-

Heard Mr. V. Rodrigues for the petitioner, Ms. Kholkar for respondent no.1, Mr. Kamat for respondent nos.2 and 3 and Mr. Charston D'Souza for respondent no.4.

2. Rule. Rule is made returnable forthwith. With the consent of the learned Counsel for the parties, heard forthwith.

3. The challenge in this petition is to the orders dated 06/04/2016 and 26/10/2016, made by the Additional Director of Panchayat and Ad hoc District Judge I (Appellate Authority), declining the petitioner intervention in the proceedings bearing no.ADP-II-PA No.121/2015, pending before the Director of Panchayat at Panaji.

4. Mr. Rodrigues submits that the petitioner is the complainant on the basis of whose complaint, the Panchayat has initiated action against the respondent no.4. He further points out that in terms of Sale Deed dated 15/12/1988, the petitioner is the

purchaser of undivided rights in respect of part, which is a property, in which he resides, and also some of the portion of the property, in which the construction, of which complaint was lodged, is coming up. He submits that the construction in question directly affects the rights of the petitioner. He, therefore, submits that the petitioner's intervention ought to have been allowed. Mr. Rodrigues relies upon the decisions of this Court in the case of **Bholu Naik Vs. V. P. of Marcaim** (W.P.12/2010) decided on 23/04/2010 and **Santosh Gaonkar Vs. V. P. Sirigao** (W.P. No.62/2016) decided on 21/04/2016.

5. Mr. Charston D'Souza, appears for respondent no.4, who is the petitioner before the Director of Panchayat in the proceedings wherein the intervention was applied for. He submits that the petitioner has only delayed the matter without demonstrating in any manner his precise interest. He submits that the petitioner falsely alleged that the construction in question has encroached upon some compound wall of the petitioner's property. Further, the petitioner was unable to demonstrate any encroachment. He submits that the petitioner made wild allegation that this construction has come up in a private area. Again, despite lapse of over two years, the allegations were never specified. Mr. D'Souza relies upon the decision in the case of

Alwin D'Cunha Vs. V. P. of Santa Cruz; 2006 (2) GLR 368, to submit that the complainant cannot, as a matter of right, insist upon intervention. He submits that if the petitioner is permitted to intervene in the matter of this nature, it is possible that the proceedings before the Director of Panchayat will be unduly prolonged and this will not be in the interest of justice.

6. Mr. Kamat, the learned Counsel for the Panchayat stated that the Panchayat will have no objection if the intervention is permitted. He points out that the motion for intervention was never opposed by the Panchayat either before the Tribunal or before the Appellate Authority.

7. Ms. Kholkar submits that she has no submissions to make in a matter of this nature.

8. There is no dispute that the petitioner is the complainant, on the basis of whose complaint, the Panchayat initiated action against respondent no.4, thereby, requiring respondent no.4 to take out proceedings before the Additional Director of Panchayat. On considering the application for intervention, there is really no necessity to go into the issue of allegations and counter allegations. There is also no necessity to

go into the issue as to whether the construction undertaken by respondent no.4, is indeed legal or not. These are all matters, which will have to be ultimately decided by the Director of Panchayat in the pending proceedings. In this case, as noted earlier, it cannot be said that the petitioner is some stranger or a busybody, seeking intervention. Apart from the petitioner being a complainant, there is really no dispute that the construction has come up in the property, which is virtually adjacent to the petitioner's property or at least the property, in which the petitioner claims interest. The petitioner has placed on record a Deed of Sale, which, according to him, renders him the purchaser of certain undivided rights. As noted earlier, this is hardly the stage to go into the effect of such document in great details. Suffice to note that in a case of this nature, intervention ought not to have been declined to the petitioner.

9. The decision in the case of **Alwin D'Cunha** (supra), has been considered by this Court in the case of **Bholu Naik** (supra). Therein, it was held that the intervenor was found to be complete stranger to the property in question. Besides, certain observations in the case of **Bholu Naik** (supra), which assist the case of the petitioner in his plea for intervention, are required to

be noted and the same read thus :

“In my view, whether the order of the V.P. is right or wrong will be determined by the Appellate Authority. Jaganath N. Kamat may be the owner of the property but as can be seen from para 4 of the complaint dated 8-10-2007, the Petitioner has some interest in the property. If the Appellate Authorities under the Panchayat Act allow persons at whose instance action is taken by the V.P. to intervene in the appeals, I see no reason why the Petitioner in this case, ought not to have been allowed to intervene in the appeal. They ought to follow an uniform practice. Considering that most of the V.P. do not take action against illegal constructions, unless a complaint is filed and doggedly pursued, it would be in public interest to allow such complainants to assist the Appellate Authorities to come to the right conclusion. Cases where V.P. do not contest the appeals are also not unheard of. Presence of such intervenors will certainly assist the Appellate Authorities to satisfactorily, effectually and completely decide the controversy involved in the appeals.”

10. **Bholu Naik** (supra), was also followed by this Court in the case of **Santosh Gaonkar** (supra). At para 13, this is what was observed :

“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. ”

11. Upon cumulative consideration of the aforesaid, the impugned orders are set aside and the petitioner is permitted to intervene in the proceedings before the Director of Panchayat.

12. It is made explicitly clear that this Court has not gone into the merits of the matter and, therefore, the observations in this order or for that matter in the impugned orders, which have now been set aside, need not influence the Additional Director of Panchayat in disposing of the proceedings initiated by respondent no.4 on their own merits and in accordance with law.

13. Rule is made absolute in the aforesaid extent.

14. There shall be no order as to costs.

SMA

M. S. SONAK, J.