

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 164 OF 2017

SHRI. ANTHONY ANDREW CARVALHO., ... Petitioner
Versus
STATE OF GOA, THR. CHIEF SECRETARY
AND 4 ORS., ... Respondents

Mr. Balkrishna Prakash Sardessai, Advocate for the Petitioner.
Mr. S. D. Lotlikar, Advocate General with Ms. Neha Kholkar,
Additional Government Advocate for the Respondents No.1 to 3.

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

Date:- 7th February, 2017

P.C.:

Heard Mr. Balkrishna P. Sardessai, learned Counsel appearing for the Petitioner and Shri S. D. Lotlikar, learned Advocate General appearing for the Respondents no. 1 to 3.

2. The grievance of the Petitioner is that the Respondent no. 5 is putting up a construction which, according to the Petitioner, is without obtaining the requisite permission from the statutory authority. It is pointed out that despite of a complaint lodged before the local Panchayat, no action was being taken and, as such, the Petitioner moved the Dy. Director to exercise powers under section 66(5) of the Panchayat Raj Act. It is further pointed out that the Dy. Director-Respondent no. 3, accordingly, sought a report from the local Block Development Officer with regard to the subject construction and issued directions to take

action with regard to any illegality being carried out by the Respondents. It is further submitted that no site inspection was conducted and directions were issued to the Panchayat Secretary to take further action. Learned Counsel submits that though stop work order was issued somewhere on 05.01.2017, no action was being initiated to implement the said order. It is also pointed out that thereafter the Petitioner moved the Assistant Director of Panchayat on 02.02.2017 raising a grievance about the inaction of the authority to comply with the statutory duties in terms of the subject provisions.

3. We have considered the submissions of the learned Counsel and with their assistance we have also gone through the records. It is pointed out by Shri S. D. Lotlikar, learned Advocate General appearing for the Respondents No. 1 to 3 that the Dy. Director-Respondent no. 3 has already assumed powers under section 66(5) of the Panchayat Raj Act and action in accordance with law will be initiated after complying with the procedure laid down therein. It is also pointed out that the Petitioner, if he so desires, has an efficacious alternate remedy to bring to the notice of the Respondent no. 3 that despite of directions issued, no compliance was being effected by the concerned authority.

4. Upon hearing the learned Counsel and perusing the records, it clearly reveals that the Petitioner is a co-owner of the property

and is before this Court alleging that in view of the construction being carried out by his brother who is also a co-owner, the Respondent no. 5 herein, the access to his factory portion of the subject property is being blocked. It is also not in dispute that such construction activity commenced in September, 2016. In such circumstances, such grievances of the Petitioner in respect of the alleged claim of access is not a matter which can be adjudicated in the present Petition under Article 226 of the Constitution of India. In such circumstances, issuing any directions at the instance of the co-owner although he has an efficacious alternate remedy, if at all, in connection with the subject construction, would not at all be justifiable in exercise of our jurisdiction under Article 226 of the Constitution of India. But, however, as the Respondent no. 3 has already assumed powers under Section 66(5) of the Panchayat Raj Act, the Respondent no. 3 shall proceed to decide such petition by following the procedure as expeditiously as possible in accordance with law.

5. With the aforesaid directions, the Petition is disposed of.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

msr