

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 311 OF 2017**

1. Shri Alex J. Fernandes,
r/o H. No.5/140, Umta Vaddo,
Calangute, Bardez Goa.

2. Augustinho Coutinho,
r/o H. No.5/207, Umtavaddo,
Calangute, Bardez Goa.

3. Kevin D'Souza,
r/o H. No.5/80A,
Maddo Vaddo, Calangute,
Bardez Goa.

... Petitioners

Versus

1. State of Goa,
through Chief Secretary,
with his office at Secretariat,
Porvorim, Bardez Goa.

2. Directorate of Tourism,
Through Director,
with his office at Paryatan Bhavan,
Panaji Goa.

3. Mrs. Lavita Fernandes,
r/o H. No.5/160, Umta Vaddo,
Calangute, Bardez Goa.

4. Mr. Alex Fernandes,
r/o H. No.5/160, Umta Vaddo,
Calangute, Bardez Goa.

... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. Prasheen Lotlikar, Advocate for the petitioners.

Ms. P. Bhandari, Addl. Government Advocate for the respondent nos. 1 and 2.

Mr. P. A. Kamat, Advocate for the respondent no. 3.

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

Date:- 29th March, 2017

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. S. D. Lotlikar, learned Senior Counsel appearing for the petitioners, Ms. P. Bhandari, learned Addl. Government Advocate appearing for the respondent nos. 1 and 2 and Mr. P. A. Kamat, learned counsel appearing for the respondent no. 3.

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

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

4. The above petition takes exception to the orders passed by the respondent no.2 dated 13.02.2017 and 16.03.2017 in Case No. 7/7(403)/16/17/DT/1069 pending before the respondent no.2 and for quashing and setting aside the impugned order dated 24.03.2017.

5. Mr. S. D. Lotlikar, learned Senior Counsel appearing for the petitioners has pointed out that the complaint lodged by the respondent nos. 3 and 4 against the petitioner no.3 has been rejected by the respondent no.2. It is further pointed out that though such proceedings have been disposed of, the respondent no.2 has proceeded to direct an inspection based on the original complaint lodged by the respondent nos. 3 and 4. The learned Senior Counsel further submits that this exercise by the respondent no.2 is in excess of his jurisdiction and deserves to be quashed and set aside. The learned Senior Counsel further pointed out that as far as the petitioner nos. 1 and 2 are concerned, the complaint lodged by the respondent nos. 3 and 4 was originally rejected but however the Writ Petitions filed before this Court being Writ Petition Nos. 240

of 2017 and 246 of 2017 by the said respondents came to be disposed of by judgment dated 07.03.2017 whereby the matters were remanded to the respondent no.2 to pass a fresh decision on the complaint filed by the respondent nos. 3 and 4. It is further pointed out that when the original complaint was disposed of based on the same allegations, an inspection was carried out wherein all the material facts were duly recorded in the inspection report. The learned Senior Counsel further submitted that once such inspection report is already part of the record, the question of directing a fresh inspection on the same aspect is an abuse of the process and untenable in law. The learned Senior Counsel further submits that in the judgment passed by this Court disposing of Writ Petitions, there are clear observations inter alia the manner in which the ownership of the motor vehicle can be conveyed. It is further submitted that the respondent no.2 has also proceeded to direct the petitioner nos. 1 and 2 to file additional documents which according to him is untenable in law and not at all justified. The learned Senior Counsel as such points out that the impugned order has no base in law and deserves to be quashed and set aside.

6. On the other hand, Mr. P. A. Kamat, learned counsel appearing for the respondent no. 3 has submitted that on perusal of the judgment passed by this Court, the matter has been directed to be heard afresh and as such according to him no prejudice would occasion to the petitioners if the inspection is carried out. The learned counsel further submits that there were allegations made by the respondent no.3 for the conduct of the earlier inspection and as such according to him there is no error committed by the respondent no.2 while passing the impugned order. The learned counsel however points out that though the complaint against the petitioner no.3 has been rejected, according to him a Writ Petition has been filed before this Court and an application has been moved by the respondent nos. 3 and 4 in such petition to direct a fresh inspection of the subject shack. The learned counsel as such points out that the petition be rejected.

7. Ms. P. Bhandari, learned Addl. Government Advocate appearing for the respondent nos. 1 and 2 points out that as far as the directions in the impugned order, the same have been issued in

compliance with the remand order passed by this Court in the said judgment. The learned counsel accepts the position that the petitioner no.3 was not a party to the impugned order and in fact was not heard before such order was passed.

8. We have given our thoughtful consideration to the rival contentions and we have also gone through the records. Mr. Lotlikar, learned Senior Counsel appearing for the petitioners is justified to contend that as far as the petitioner no.3 is concerned, as no proceedings are pending in connection with the subject shack before the respondent no.2, the question of holding a fresh inspection would not at all be justified. Apart from that, Mr. Kamat, learned counsel appearing for the respondent no. 3 points out that an application for similar relief is also pending for consideration before this Court. In such circumstances, the respondent no.2 was not justified to pass the impugned order and direct the inspection as far as the subject shack of the petitioner no.3 is concerned. To that extent, the impugned order passed by the respondent no.2 cannot be sustained and deserves to be quashed and set aside.

9. As far as the petitioner nos. 1 and 2 are concerned, by the impugned order only an inspection has been ordered to be carried out. The procedure being followed by the respondent no.2 in terms of the directions of this Court cannot be examined by this Court at this stage in exercise of our extra ordinary jurisdiction under Article 226 of the Constitution of India. The apprehension of Mr. Lotlikar, learned Senior Counsel appearing for the petitioners that the respondent no.2 may not follow the observations in the judgment passed by this Court in connection with the allegations made by the respondent nos. 3 and 4 is a matter which the respondent no.2 is expected to examine on its own merits while deciding the application filed by the respondent nos. 3 and 4. At this stage, it is not possible to prejudge the matter and proceed to examine such contention of the learned Senior Counsel.

10. In view of the above, we find that the question of any interference at this stage under Article 226 of the Constitution of India would not at all be justified. All contentions of both the parties on merits as well as the correctness of the observations in

the impugned order are left open.

11. In view of the above, we pass the following :

ORDER

(i) The impugned order dated 24.03.2017 directing the inspection of the subject shack of the petitioner no.3 stands quashed and set aside.

(ii) As far as the inspection of the subject shack of the petitioner nos. 1 and 2, the respondent no.2 shall proceed to hold such inspection in terms of the direction issued by this Court in accordance with law.

(iii) Rule stands disposed of in the above terms.

(iv) The petition stands disposed of accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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