

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 532 OF 2017**

Mr. Prakash Mukund Murari, s/o late
Mukund Murari, aged 67 years, married,
r/o H. No. 33, Sonye, Tuem, Pernem, Goa. Petitioner

Versus

1. Additional Director of Panchayat-II,
Director of Panchayat, 3rd floor, Junta
House, 18th June Road, Panaji-Goa.
2. The Village Panchayat of Tuem,
Through its Secretary, Village
Panchayat of Tuem, Pernem, Goa.
3. Mr. Mahadev R. Murari, s/o late
Rajaram Murari, major of age,
married, r/o H. No. 35, Sonye, Tuem,
Pernem, Goa.
4. Mr. Mahesh R. Murari, s/o late
Rajaram Murari, major of age,
married, r/o H. No. 35, Sonye, Tuem,
Pernem, Goa. Respondents

Shri Vivek Rodrigues, Advocate for the Petitioner.

Shri Ashwin D. Bhobe, Advocate for the Respondent No.2.

Shri A.V. Pavithran, Advocate for the Respondent Nos. 3 and 4.

CORAM:- C.V. BHADANG, J.

DATE:- 24th JULY, 2017.

ORAL JUDGMENT:

Rule made returnable forthwith. The learned
Counsel for the respondent no. 2 and the learned Counsel for
the respondent nos. 3 and 4, waive service. Heard finally by
consent of parties.

2. By this petition, the petitioner is challenging the order dated 07.10.2016, passed by the learned District Judge, Panaji in Civil Revision Application No. 96/2015. By the impugned order, the learned District Judge has affirmed the order of remand dated 07.10.2015, passed by the learned Additional Director of Panchayat, Panaji.

3. The petitioner had lodged a complaint with the respondent no. 2-Village Panchayat of Tuem about certain alleged illegal construction under taken by the respondent no. 3, obstructing the access of the petitioner. It was also contended that the construction was without any licence. The Village Panchayat failed to take any action. Hence, the petitioner approached the learned Deputy Director of Panchayat, who assumed powers under Section 66(5) of the Goa Panchayat Raj Act, 1994. It appears that the Deputy Director of Panchayat caused the spot inspection of the site conducted through the Block Development Officer, Pernem (BDO), who submitted his report on 04.08.2009, confirming that the respondent no. 3 had carried out illegal construction in the property situated at village Tuem.

4. The learned Deputy Director of Panchayat by an order dated 06.06.2011, directed the respondent no. 3 (respondent no. 2 before the Deputy Director of Panchayat) to remove/demolish the illegal construction/extension of the house. This was challenged by the respondent no. 3 before the learned Additional Director of Panchayat. The learned Additional Director of Panchayat found that no opportunity was granted to the respondent no. 3 to put forth his case and secondly, the learned Additional Director of Panchayat also noticed that this Court by judgment and decree dated 17.09.2014 in Second Appeal No. 50/2014 directed the following issues to be examined by the Trial Court:

“(a) Whether the findings of the Lower Appellate Court on the aspect of encroachment of the defendants over the plaintiffs property and on the access claimed by the plaintiff are vitiated by misreading and/or misconstruction of pleadings in the suit and in ignorance of material evidence on record and are otherwise perverse being contrary to such pleadings and evidence more particularly when such findings were in reversal of the findings of the Trial Court ?

(b) When the plaintiffs have claimed for mandatory injunction for removal of the encroachment over

the access claimed as right of way, which access is admitted by the defendants, whether the plaintiff is required to separately seek a declaration regarding plaintiffs easementary right over the access and more particularly in the light of specific case of plaintiff in the pleading that said access was also passing through the part of the suit property of which the plaintiffs were owners in possession ?”

5. In that view of the matter, the appeal was allowed, remanding the matter to the learned Deputy Director of Panchayat. Feeling aggrieved, the petitioner challenged the same before the learned District Judge, who has concurred with the finding of the learned Additional Director of Panchayat. Hence, this petition.

6. It is submitted by Shri Rodrigues, the learned Counsel for the petitioner that the respondent no. 3, till date has not produced any license/permission for carrying out the said construction. The learned Counsel has taken me through the order sheets in the appeal before the learned Deputy Director of Panchayat to point out that sufficient opportunity was granted to the respondent no. 3. It is submitted that the findings recorded by the learned Additional Director of

Panchayat are not borne out of record. Secondly, it is contended that the decision of this Court in the Second Appeal has no bearing on the question whether, the respondent no. 3 has carried out illegal construction, without proper licence. It is submitted that the question of easementary right of access, cannot be decided by the Deputy Director of Panchayat and the only question is about the alleged illegal construction. Lastly, it is submitted that a fresh inspection could not have been directed in view of the fact that the BDO had already carried out inspection, showing that the respondent no. 3 has carried out illegal construction.

7. Shri Bhobe, the learned Counsel for the respondent no. 2 submits that once, the Deputy Director has assumed powers and the matter is re-stored to the file of the learned Deputy Director, it would be appropriate that the learned Deputy Director decides the matter afresh and no prejudice would be caused, to the petitioner.

8. Shri Pavithran, the learned Counsel for the respondent nos. 3 and 4 submits that the respondent nos. 3 and 4 have only carried out some repairs to the house. It is submitted that the respondent no. 4 was not made a party to

the proceedings before the learned Deputy Director or before the learned Additional Director in appeal. It is submitted that the learned District Judge is justified in holding that in the absence of the respondent no. 4 being made a party, the matter was required to be sent back. The learned Counsel pointed out from the inspection report carried out by the BDO that the respondent no. 3 and others are shown to be the persons, who have undertaken the illegal construction.

9. I have carefully considered the rival circumstances and the submissions made. It is true that the order sheet before the learned Deputy Director shows that opportunity was granted to the respondent no. 3 (respondent no. 2 before the learned Deputy Director). However, he had failed to remain present. Nonetheless, fact remains that the petitioner on his own accord has made respondent no. 4 as party-respondent for the first time in civil revision application before the learned District Judge. Thus, even on the saying of the petitioner, the respondent no. 4 was required to be heard. The inspection report dated 04.08.2009 also shows that Mahadev Rajaram Murari, who is the respondent no. 3, alone had not undertaken the illegal construction. The respondent no. 4, happens to be the real brother of the respondent no. 3. The learned District

Judge in paragraph 9 of the impugned order has held and to my mind rightly so, that the respondent no. 4 (respondent no. 2 before the learned District Judge) was not made a party before the learned Deputy Director of Panchayat. For this reason alone, the impugned order of remand, in my considered view, can be justifiably sustained.

10. It needs to be mentioned that by the impugned order, all that the learned District Judge has done is remanding the matter to the learned Deputy Director, where all the parties will get an opportunity of being heard. Thus, it cannot be said that the impugned order causes any manifest injustice. In that view of the matter, no case for interference is made out. It is however clarified that the learned Deputy Director shall restrict the consideration to the question whether, the construction is without any licence/permission and the question of existence or otherwise of easementary right, is not relevant insofar as this issue is concerned. In the event, if, the learned Deputy Director finds it appropriate that fresh inspection is necessary, the learned Deputy Director can pass appropriate orders, after hearing the parties.

With this, the petition is dismissed, with no order as to costs. Rival contentions of the parties are left open. The

learned Deputy Director shall decide the matter as expeditiously as possible and preferably, within a period of three months from the date of receipt of this order.

C. V. BHADANG, J.

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