

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

**CONTEMPT PETITION NO. 18 of 2017**

1 **MRS. CHANDRAWATI M. GAWADE,**  
Widow of late Mr. Mahadev Gawade,  
Aged 63 years, widow, Agriculturist

2 **MR. SHASHILANT M. GAWADE,**  
S/o Late Mr. Mahadev Gawade,  
39 years of age, agriculturist,  
Both resident of H. No. 161/3  
Shigmommand, Goaune,  
Bandora, Ponda, Goa.

...Petitioners

*V E R S U S*

1 **DIGAMBAR VASUDEV NAIK**  
S/o Vassudev Naik,  
42 years of age, married,  
R/o. H. No, (Not known)  
Service, r/o. H. No. 616,  
Gaunem, Bandora, Ponda, Goa.

2 **SHRI VINOD KUMAR CHANDRA,**  
Town Planner,  
Town & Country Planning Department,  
2nd Floor, Govt. Office Building,  
Opp. Axis Bank, Ponda, Goa.

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3 **MR SUSHANT NAIK**  
Secretary,  
Village Panchayat Bandora,  
Bandora, Ponda, Goa.

...Respondents

Mr Gaurish Agni and Mr. E. Usapkar, Advocates, *for the Petitioner.*

Mr J. Godinho, Advocate, *for the Respondent no. 1.*

Ms. Priyanka Kamat, Advocate *for the Respondent no. 2.*

Mr. Vivek Rodrigues, Advocate *for the Respondent no. 3.*

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**CORAM: NUTAN D. SARDESSAI, J**

**Reserved for Judgment on : 18th August 2017**

**Judgment Pronounced on : 15th September, 2017**

1. The Petitioners were seeking initiation of the contempt of proceedings against the Respondents for having wilfully disobeyed the Order dated 19th October 2016 passed by this Court in Writ Petition no.747 of 2014 and pressing for their punishment thereunder.

2. Ms. P. Kamat, learned Advocate for the Respondent no.2 raised preliminary objections and submitted that the Contempt Petition was not maintainable against the Respondent no.2 as he was not a party to the original Petition. The statement/undertaking was given by the Respondent no.1 who was since deceased. There were no allegations against the Respondent nos.2 and 3 in the Petition. The Suit was pending and the Petitioner could agitate his remedy in the said proceedings. The application was therefore liable for dismissal.

3. Shri J. Godinho, learned Advocate for the Respondent no.1 since deceased, submitted that as per the inspection carried out, the plot under reference was accessible by an existing six metre road and the work of the structure approved by the office was under progress. Besides, a three metre road access was available at the site towards the eastern side of the plot as shown by the Applicant and the

complainant and at the site the rear setback maintained was less than permissible. It was further his contention that the Trial Court was seized of the matter and therefore the present proceedings were not maintainable.

4. Shri Vivek Rodrigues, learned Advocate for the Respondent no.3, submitted that he had acted as per the technical clearance granted by the respondent no.2 and issued the license accordingly. He could not in any event override the decision of the Respondent no.2 and he had only renewed the existing license. The Petitioner had not challenged the permission of the Town and Country Planning Development nor was there any averment to that effect in the Petition and therefore the present Petition was not maintainable.

5. Shri G. Agni, learned Advocate for the Petitioner invited my attention to the Order dated 19.10.2016 passed by this Court where it was observed that in the event any construction was carried out in the breach of the approved plan, it would be open to the competent authority to take action in accordance with law. The duty of the Planning Authority i.e. Respondent no. 2 was to settle the boundary dispute. However, no action was taken despite such dispute. It was also his contention that in case there was any violation, it was the duty of the Respondent nos.2 and 3 to stop the violation and revoke the license.

6. Ms. P. Kamat, learned Addl. Government Advocate in reply submitted that the Respondent no.2 had addressed a letter under copy to the Applicant dated 13.12.2016 referring to the complaint dated 26.10.2016 conveying that the site had been inspected and that it was noticed that the rear setback was not available as per the visible boundary. Nonetheless, the directions issued by the High Court viz the order dated 19.10.2016 would be strictly followed and directing the Respondent no.1 to carry out the construction of the Respondent no.1 as per the plan approved by the office. The contempt as such was not maintainable.

7. The Petitioners had maintained the Petition against the Respondent no.1 alone challenging the Judgment and Order dated 07.10.2014 passed by the District Judge-2, Panaji as being illegal, perverse and bad in law. It was their case that the names of the father/grandfather of the Petitioner nos.1 and 2 were recorded as tenants in respect of the survey holding nos.176/13 and 176/28 and they were in exclusive and peaceful enjoyment and possession thereof since the last more than 60 years. They had to pass through the survey no.180/1 via the traditional access to their paddy field. The Respondent had come into the survey no.180/1 claiming that he had purchased the plot from one Umesh Phadte and tried to obstruct the traditional access by dumping mud which was resisted by them by complaining to the Panchayat of Bandora. The Respondent no.1 had also brought laterite stones to carry out the construction and therefore in those circumstances, they were constrained to file the suit before the learned Civil

Judge Senior Division at Ponda and seek the interim relief which was allowed in their favour by the Senior Civil Judge and in Appeal it was set aside giving rise to the Petition at their instance. It is in the said context that an undertaking was given by the Respondent no.1 that the three metre wide unobstructed access would be maintained, and the Order was made on 19.10.2016 and accordingly the Petition was disposed off as withdrawn with no order as to costs. However, an option was left open to the Petitioner that in the event any construction was carried out in breach of the approved plan, it would be open to the appropriate authority to take action in accordance with law. Taking cue from the said order, the Petitioners have invoked the contempt jurisdiction of this Court not only against the sole Respondent but also against the Respondent nos.2 and 3 being the Town Planner and the Secretary on the premise they had not complied with their statutory duties.

8. Admittedly, as contended by Ms. P. Kamat, the Respondent no.2 was not a party to the Petition and it was only the Respondent no.1 who had made a statement before this Court assuring to keep a three metre wide access and in that view of the matter, the Applicants had withdrawn their Petition and the observations were made by this Court at para 5 in broad terms leaving it to the appropriate authority to take action in accordance with law in the event any construction was done in breach of the approved plan. Admittedly, the suit is at large before the Civil Court and in the event any such activities are done by the Respondent no.1, the Petitioners

could pursue the remedies before the Civil Court. Instead they have sought to haul up the authorities namely the Respondent nos.2 and 3 and that too for the alleged breach of undertaking given by the Respondent no.1, since deceased.

9. There was no allegation against the Respondent nos.2 and 3 as rightly contended by Ms. P. Kamat for the Respondent no.2. In any event, it is always open to the Petitioners to pursue their remedies before the Civil Court which is seized of the proceedings. Moreover, the Respondent no.3 as rightly contended by Mr. V. Rodrigues, had acted as per the Technical Clearance issued by the office of the Town Planner and renewed and revalidated the license of the Respondent no.1, since deceased. In any event, as rightly canvassed by him, the Respondent no.3 could not override the decision of the Respondent no.2 by granting a renewal of the existing licence. Furthermore, the Petitioners had also not challenged the technical clearance issued by the office of the Respondent no.2. The contention of Shri Agni therefore that it was the duty of the Planning Authority i.e. the Respondent no.2 to settle the boundary disputes cannot be entertained particularly in an application of the nature moved by him. There is otherwise no material on record to show what was the nature of the breach carried out by the Respondent no.1 as to fasten any liability on the Respondent nos.2 and 3. Last but not the least, the undertaking was given by the sole Respondent i.e. the Respondent no.1 and in any event, the Respondent nos.2 and 3 cannot be said to be in breach of the said undertaking even on a proper construction of para 5 of the Order dated

19.10.2016 as to enable the Petitioners-Applicants to take recourse to the contempt jurisdiction of this Court.

**10.** The application is found wanting in merits and is therefore dismissed.

**(NUTAN D. SARDESSAI, J)**