

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NOS. 683, 684 & 685 OF 2017

WRIT PETITION NO. 683/2017

MR. BHOLU VITHU NAIK ... Petitioner

Versus

MR. ASHOK GOVIND NAIK & ANR. ... Respondents

WRIT PETITION NO. 684/2017

MR. BHOLU VITHU NAIK ... Petitioner

Versus

MR. SAMEER SAVLO NAIK & ANR. ... Respondents

WRIT PETITION NO. 685/2017

MR. BHOLU VITHU NAIK ... Petitioner

Versus

SMT. SURANGA SAVLO NAIK & ANR. ... Respondents

Shri Sagar Dhargalkar, Advocate for the Petitioner.

Shri Ashwin D. Bhobe, Advocate for the Respondent No. 1.

Shri Alistan Lobo, Advocate for the Respondent No. 2.

CORAM:- C. V. BHADANG, J.

DATE:- 20th SEPTEMBER, 2017

ORAL ORDER:

All these petitions can be conveniently disposed by this common order.

2. The petitioner had lodged a complaint to the respondent no. 2-Village Panchayat, about the three alleged illegal structures erected by the respondent no. 1. The Village Panchayat failed to take any action and hence, the learned Deputy Director of Panchayat assumed powers under Section 66(5) of the Goa Panchayat Raj Act, 1994 (Act, for short). However, the learned Deputy Director of Panchayat dismissed the complaint. Ultimately, the learned Additional Director of Panchayat by an order dated 23.01.2014, directed the Village Panchayat to demolish the said construction. This was challenged by the respondent no. 1, before the learned District Judge in Civil Revision Application, under Section 201-B of the Act. The learned District Judge has allowed the Civil Revision Application, restoring the order passed by the learned Deputy Director of Panchayat, with a clarification that the application for regularisation, filed by the respondent no. 1, shall be considered in accordance with law, after giving an opportunity of hearing to the present petitioner. It is this order, which is subject matter of challenge in these petitions.

3. I have heard Shri Dhargalkar, the learned Counsel for the petitioner, Shri Bhobe the learned Counsel for the respondent no. 1 and Shri Lobo, the learned Counsel for the respondent no. 2. Perused record.

4. Shri Dhargalkar, the learned Counsel for the petitioner has placed reliance on the decision of this Court in the case of **Sadashiv D. Late (since deceased) Vs. the State of Maharashtra and Others** (Writ Petition No. 11293/2014 decided on 12.02.2016), in order to submit that in similar circumstances, this Court has maintained the order of demolition of the construction, which was undertaken without obtaining permission from the statutory Authorities. He submits that the petitioner is a resident of the same village and his fundamental and constitutional rights are affected by the illegal construction.

5. On the contrary, it is submitted by Shri Bhobe, the learned Counsel for the respondent no. 1 that there was an application for regularisation filed on January, 2012 before the Deputy Director Panchayat, Ponda. It is submitted that another application is filed before the Village Panchayat on 16.08.2017 and all that the learned District Judge has done is to direct the

concerned Authority to consider the application for regularisation. It is contended that the petitioner will also get an opportunity of being heard, before the application for regularisation is decided and as such, the rights and interest of the petitioner, are protected.

6. I have carefully considered the rival circumstances and the submissions made. In the case of **Sadashiv D. Late** (supra), the challenge was at the instance of the petitioner, who was directed to remove the unauthorised construction. It was contended that none of the State Authorities, namely, the Collector, Commissioner and the Ministry of Revenue, have jurisdiction to pass the impugned order, as the subject construction was made upon the petitioner's private property. It can thus be seen that the case turned on its own facts. This Court in para 14 of the judgment has taken note of the decision in the case of **Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation, (2013) 5 SCC 336**, in which the Supreme Court has held that illegal and unauthorised construction of buildings and other structures not only violates municipal laws and the concept of planned development of a particular area, but, it also affects the various fundamental and constitutional rights of a person.

7. In the present case, the petitioner shall get an opportunity of hearing before the application for regularisation is considered. The petitioner can raise all the contentions, as may be available on facts and in law before the competent Authority. On carefully going through the impugned order, I do not find that any interference is called for. The petitions are accordingly dismissed. Needless to mention that the competent Authority shall consider the application for regularisation, on its own merits, after hearing the petitioner, as expeditiously as possible and preferably, within a period of three months from the receipt of this order.

C. V. BHADANG, J.

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