

IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO.56 of 2016.

Goa State Infrastructure Development Corporation Limited, Represented by its Managing Director, Mr. Sanjit Rodrigues, Major of age, Having its Office at 7th floor, EDC House, Dr. Atmaram Borkar Road, Panaji – Goa. ... Appellants

V/s.

- 1 Miss Meena Anant Lad,
Daughter of late Anant L. Lad,
Major of age,
r/o H. No.157,
Khorlim, Xim,
Mapusa – Goa.
- 2 The Chief Secretary,
Government of Goa,
Secretariat,
Porvorim – Goa. Respondents.

Shri A. D. Bhobe, Advocate for the appellants .

Shri Nitin Sardesai, Senior Advocate with Shri L. Raghunandan,
Advocate for the respondent no.1.

CORAM : NUTAN D.SARDESSAI, J.

RESERVED ON : 11th April,2017

PRONOUNCED ON : 27th April,2017

JUDGMENT:

Heard Shri A. D. Bhobe, learned Counsel for the appellants and Shri Nitin Sardesai, learned Senior Counsel for the respondent no.1.

2. Admit.

3. Shri L. Raghunandan, learned Advocate waives service on behalf of the respondent no.1.

4. Shri A.D. Bhole, learned Counsel for the appellants contended that the appellants had taken oral consent from the respondent no.1 apart from the written consent of some of the other owners for the construction of the bridge i.e. for public purpose. The appellants had done the piling work and had even completed two piers as on 03/12/2014 when the respondent no.1/plaintiff claimed that she saw the construction activities for the first time. The suit for permanent and mandatory injunction was however filed in April, 2015 after much delay therefore on the count of delay and laches, the respondent no.1, was not entitled to equitable reliefs of injunction. He adverted to the impugned order and submitted that there was no reason for the learned District Judge to make observations about the highhanded behaviour of the appellants and particularly not to reply to the notice when they had no intention to take the property without adequately compensating the respondent. The construction undertaken was of a public project and the position at loco would show how far the appellants had progressed and the extent of their involvement. The photographs also showed the extent of the construction activity done by the appellants and therefore this Hon'ble Court can put the appellants

to terms to secure the interest of the respondent no.1/ plaintiff. In any event, the impugned order could not be allowed to stand and therefore the injunction had to be vacated.

5. Shri N. Sardessai, learned Senior Counsel on behalf of the respondent no.1 contended at the outset that the concept of oral consent in respect of the Government Corporation was absolutely unbelievable. The entire conduct of the appellants was obnoxious to say the least which had issued the work order as early as February,2014 without obtaining the prior consent of the owners. The appellants had not spelt out who were their officials who had obtained such consent of the respondent no.1/plaintiff nor had they spelt out the authorities who had authorized them to act as they did. The whole concept of oral consent was further unbelievable in the absence of any terms qua the consideration with which the respondent no.1 was to be compensated and the order in respect of which the consent was concerned. He relied in **Mannalal s/o. Bagwandas Agrawal v/s. Upendrakumar s/o. Sawarmal Saharia and other** [2010 (2) All MR 360] and submitted that contrary to the contention of Shri A.D. Bhole, learned Advocate for the appellants , the piers 2 and 3 were erected on 09/05/2015. Assuming without admitting that they were erected in December,2014, there were no bills or documents to substantiate

the completion of the work which was besides the fact that the land in question was not acquired by the concerned Department.

6. Shri N. Sardesai, learned Senior Advocate for the respondent no.1/plaintiff further pointed out to the photographs relied upon by the respondent no.1/plaintiff to substantiate his contention that no construction was done in December 2014 but there was only piling of material at loco. The appellants had also not given any reply to the Section 80 C.P.C. notice nor spelt out in their case that the oral consent was given by the respondent no.1. The appellants as an instrumentality of the State had to behave as a model litigant and not to ride roughshod over the rights of the private individuals. In his submission, this was a fit case to make due observations regarding the conduct of the officials of the appellants and the manner in which they had acted in respect of the private property on the specious plea that they were undertaking a public project at the cost of the public exchequer. It was his contention that there was greater responsibility on the appellants particularly when they were dealing with the public money and their conduct to carry out the construction without acquiring the land in question only indicated their brazenness and for which they had to be taken to task. He relied in **Rameesh s/o. Shriram Wani v/s. The State of Maharashtra and others** [2012(2) All MR 779] and

Salem Advocate Bar Association T.N. V/s. Union of India

[(2005)6 SCC 344]. The appellants dealing with the public money could not act in a highhanded manner nor squander public money much less making the respondent no.1/plaintiff suffered for their highhandedness. The appellants had shown scant respect for the law of the land and also the people and had to be visited with harsh consequences. Finally on the aspect of delay and laches he relied in **Astra- IDL Limited v/s. TTK Pharma Limited** [1992(2) Bom.C.R.] and pressed for the dismissal of the appeal.

7. Shri A. D. Bhole, learned Counsel for the appellants/defendants submitted that the appellants had not acted in a highhanded manner nor was it even remotely their case that they would not compensate the respondents. At the highest it was erroneous on their part to act on the basis of an oral consent and therefore while dealing with the public project involving public money they could not be penalized. The impugned order was therefore liable to be interfered with and the appeal be allowed in their favour putting them to terms if found necessary.

8. Apparently on the basis of the appellants own showing, they had not acquired the property in question belonging to the respondent no.1/ plaintiff and had acted purportedly on the basis of

the oral consent. It is rather unbelievable that the statutory authorities like the appellants manned with several officials would act in such an irresponsible and reprehensible manner while dealing with public funds and public property on the specious plea that they were undertaking public project for the benefit of the public. Shri N. Sardesai, learned Senior Advocate had rightly shown from the pleadings of the appellants that the work order was issued by the appellants in February, 2014 and that too without any consent of the lawful owners of the properties involved in the said project including the respondent no.1 herein. The appellants had also not spelt out who exactly was responsible to procure the consent of the respondent no.1 assuming that such a consent was at all given by the respondent no.1. It is besides the point that it is unbelievable that the respondent no.1 would have parted with the possession of her property to any authority without any terms being reduced to writing on the area to be given for the project or the consideration to which she would be entitled to as a matter of course. It could not at all be countenanced that the respondent would have given her land for the mere asking to the appellants without her interest therein being secured. Therefore the whole concept of oral consent being given by the respondent no.1 to the project undertaken by the appellants fails to inspire confidence.

9. Besides even assuming for a moment that the piers 2 and 3 were completed in December, 2014 as contended on behalf of the appellants, the appellants had also not produced any bills raised by the contractors or related documents to substantiate their case on the completion of the work. This is even besides point that the appellants had not taken any initiative to acquire the land in question before undertaking the public project with the public money.

10. In **Mannalal** (supra), the learned Judge of this Court at Aurangabad observed that in suit for specific performance of the contract based upon the oral agreement of the sale of the suit land can be specifically enforced. However an assessment of a prima facie case, in a suit for specific performance of contract, based upon the oral agreement, had to be different than such a suit, based upon the written agreement. In a suit based upon the written agreement, the agreement placed on record and its contents, become significant and the same can be read along with the averments made in the plaint. The written agreement placed on record, discloses the names of the parties, their place of residence, the place of agreement, the consideration, the description of the property and other terms and conditions of the contract, which the parties have entered into. Normally, in such a suit, what is required to be seen, is the

interpretation of the terms of the contract and compliance of it. It becomes easier for the Court to reduce the controversial position. This is not the advantage, in case of a suit based upon an oral agreement. The court is at loss to know the prima facie, undisputed factual position, which can only be ascertained, by reading the averments made in the plaint and the stand taken in the written statement. In a suit for specific performance of a contract based upon the oral agreement, the averments made in the plaint carry great weight and significance in ascertaining even a prima facie case. The averments are required to be strictly construed and heavy burden lies upon the plaintiff to establish the *consensus ad idem*. The Court has to proceed cautiously and read the averments minutely, to understand the exact nature of the case, to find out, whether prima facie case is made out or not. The averments in the plaint, must inspire the confidence of the court, as to credibility of the plaintiff and truthfulness of the averments. Besides it reiterated the well settled principles governing the grant of a temporary injunction namely the three tests (i) whether the plaintiff has made out a prima facie case, (ii) whether the balance of convenience lies in favour of the plaintiff and (iii) if the injunction is refused, whether the plaintiff is likely to suffer an irreparable loss. It relied in **Dalpatkumar and another V/s Prahlad Singh and others** [(1992) 1 SCC 719] which reiterated these principles governing the

grant of injunction.

11. The appellants for the first time had come with a plea in defence that there was an oral consent by the respondent no.1/ plaintiff to permit them to undertake the work of construction of the bridge. However, though a notice was issued to them in terms of Section 80 C.P.C., the appellants had not responded to the notice on the premise that it was misconceived in law and its cognizance was not required to be taken by them. However, the significance of the notice was clearly lost on the appellants to act at least for coming up with a specific case that the respondent no.1 had given an oral consent to go ahead with the construction activity in her property. It would at least have carved a foundation for their plea in defence assuming for a moment that such a plea of oral consent was adequate in respect of a statutory authority to act in the manner it did and at the cost of the public exchequer. Besides, the appellants as an instrumentality of the State had to behave like a model litigant and not ride a roughshod over the rights of the respondent no.1.

12. In **Ramesh Wani** (supra), the Division Bench of this Court at Aurangabad reiterated the well settled principle of law that though a right to property is no more a fundamental right, it is

recognized to be a constitutional right. It was found that the State had committed an illegality which was not empowered to take possession of a citizen's land without following the due process of law. The State was expected to follow the provisions under the Land Acquisition Act, while acquiring the lands of a citizen. Even in a case of urgency, the State could not take possession of the land without following the provisions under Section 17 of the Land Acquisition Act. Secondly, to take possession of a citizen's land de hors the provisions of law and then to contend that they are not entitled to rental compensation, does not lie in the mouth of the State, which was expected to be a model litigant. In the brief facts of the case, the possession of the lands of the petitioners was taken for a medium irrigation project as back as in the year 1993. However, the awards came to be passed only in the year 1998. The petitioners who are entitled to the rental compensation, made representations to the respondents-authorities on 22.7.2010 and as the representations were not decided, the petitioners had approached this court. The petitions were opposed by the State, on the ground that though the possession of the lands was taken in the year 1993 and the awards were passed in the year 1998, the petitioners had approached the Government for rental compensation only in the year 2010 and, therefore, the petitions were liable to be rejected on the ground of delay. In those facts, it was held by the

Division Bench as before and had issued a notice to the two officers of the respondents and the notices issued to them were discharged on accepting their unconditional apology.

13. In **Salem Advocate Bar Association T.N.** (supra), the Hon'ble Apex Court emphasized the merit and necessity of the issuance of the notice in terms of Section 80 C.P.C. The two months period has been provided for so that the Government shall examine the claim put up in the notice and has sufficient time to send a suitable reply. The underlying object is to curtail the litigation and also to curtail the area of dispute and controversy. Wherever the statutory provision requires service of notice as a condition precedent for filing of suit and prescribed period therefore, it is not only necessary for the governments or departments or other statutory bodies to send a reply to such a notice but it is further necessary to properly deal with all the material points and issues raised in the notice. The Governments, Government departments or statutory authorities are defendants in large number of suits pending in various courts in the country. Judicial notice can be taken of the fact that in a large number of cases either the notice is not replied or in few cases where reply is sent, it is generally vague and evasive. The result is that the object underlying Section 80 of the Code and similar provisions gets

defeated. It not only gives rise to avoidable litigation but also results in heavy expense and cost to the exchequer as well. Proper reply can result in reduction of litigation between State and the citizens. In case proper reply is sent either the claim in the notice may be admitted or the area of controversy curtailed or the citizen may be satisfied on knowing the stand of the State. There was no accountability in the Government, Central or State or the statutory authorities in violating the spirit and object of Section 80.

14. An issue was raised by Shri A. D. Bhole, learned Advocate for the appellants that the suit and the application for injunction were defeated by delay and laches and on that premise too the respondent no1/ plaintiff was not the entitled to the equitable relief of injunction. Shri N. Sardesai, learned Senior Counsel on the aspect of delay and laches submitted that the plaintiff learnt about the activity sometime in December, 2014, thereafter issued the notice and only then filed the suit alongwith the application for injunction and there being no delay and laches, she could not be denied a relief of injunction. In **Austra-IDL Limited** (supra), the learned Judge of this Court dealt with the contention on behalf of the defendant that the plaintiff was guilty of gross delay in approaching the Court and was therefore not entitled to any interim relief. It was equally seized of the contention on

behalf of the plaintiff that the plaintiff was not guilty of any delay in approaching this Court. Rather immediately on acquiring knowledge of the defendant marketing its product 'Betalong', the Plaintiff had served a notice upon the defendant on November 18, 1987 which was replied by the defendant on January 4, 1988 to which a rejoinder was given by the plaintiff on January 28, 1988. Since there was no compliance by the defendant, a further notice by way of a reminder was served upon the defendant on March 17, 1988 and the suit was thereafter filed. The Court observed that even assuming that there was some delay on the part of the plaintiff in approaching the Court as contended by the defendant, firstly the question of delay had to be balanced against the likelihood of the plaintiff ultimately succeeding in the action and where the strength of the plaintiffs prima facie case is very strong, the plaintiff's delay in filing the action would not disentitle the plaintiff to the relief and it would be right to grant rather than to withhold the interlocutory injunction prayed for. In his opinion, the plaintiff had made out a very strong prima facie case for the grant of interlocutory relief and under the circumstances it held that the delay, if any, on the part of the plaintiff in filing the suit did not disentitle her to the interlocutory relief.

15. Considering the factual matrix it cannot be heard on

behalf of the appellants that the suit and the application for injunction were defeated by delay and laches and also giving due weightage to the judgment in **Austra-IDL Limited** (supra). The appellants as a body corporate which was funded by the Government and Government for all purposes and effects had acted in a roughshod manner and without any semblance of any acquisition, had taken possession of the respondent's property and carried out works therein to her disadvantage. Besides, the whole conduct of the officials of the appellants smacked of malafides when they did not pursue the legal process to acquire the land and instead tried to justify their act of taking possession of the plaintiff's lands on the premise that there was an oral consent at her instance without in any manner spelling out the terms and conditions for such possession. I find myself in agreement with the contention of Shri Nitin Sardesai, learned Senior Advocate for the respondent no.1 that the Officers concerned in the entire episode of taking such possession ought to be fastened with the responsibility for such gross act and the appellants as a model litigant ought not to be allowed to take undue advantage of its position and to trample upon the proprietary rights of the private parties. In any view of the matter, there is no merit in the appeal inasmuch as the appellants have failed to show any error committed by the Trial Court in deciding on the aspects of a prima facie case, the balance of

convenience and irreparable loss and injury which are the conditions for the grant of an equitable relief of injunction. Rather, the learned Trial Court had appropriately applied its mind in considering the case of the plaintiff and that of the defendants and properly concluded that the appellants had without undertaking any acquisition proceedings had started the project of the construction of a bridge at an estimated cost of ₹76,77,000/- and that the construction activity tantamounted to an illegal construction. The learned Trial Court for that matter had rightly concluded that the appellants as the defendant had acted in a highhanded manner and carried out the construction activity in the plaintiff's property without her consent and permission much the less the acquisition by of the land in question in respect of the project involving crores of rupees and for a public cause. The order passed by the learned District Judge therefore does not warrant any interference in appeal and in view thereof i pass the following

O R D E R

The appeal is dismissed and the impugned order securing the respondent / plaintiff with an order of injunction is confirmed. The learned Trial Court shall however in the course of the proceedings fasten the responsibility on the erring officials of the appellants / defendant who had undertaken the activity in the plaintiff's property without recourse to a legal procedure and in

flagrant violation of the proprietary rights of the plaintiffs.

NUTAN D. SARDESSAI,J.

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