

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 514 OF 2009**

Shri Somnath K. Raikar,
son of Kusta Raikar,
age 43 years, married,
Occupation – Government servant
presently residing at
C/o Chavan General Stores,
Opp. Sanguem Court,
Karkatyeaghate,
Sanguem Goa.

... Petitioner

Versus

1. State of Goa,
through the Chief Secretary
with office at Secretariat,
Goa Legislative Complex,
Porvorim Goa.
2. The Administrator of Comunidade,
North Goa,
with office at Comunidade Building,
Near Our Lady of Milagres Church,
Mapusa Goa.
3. Comunidade of Pilerne,
through its Secretary,
with its office at Comunidade Building,
Pilerne Goa
4. Shri Mushtaq Ali Usman Khan,
Resident of House No.130,
Chimulwada,
Marcela Goa.

... Respondents

Mr. Sudesh Usgaonkar, Advocate for the petitioner.

Mr. D. Lawande, Advocate General with Mr. P. Dangui, Addl. Government Advocate for the respondent no.1.

Mr. Y. V. Nadkarni & Ms. D. Shirgam, Advocates for the respondent no.3.

Mr. V. A. Lawande, Advocate for the respondent no.4.

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

Date:- 18th April, 2017

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

Heard Mr. Sudesh Usgaonkar, learned counsel appearing for the petitioner, Mr. D. Lawande, learned Advocate General appearing for the respondent no.1, Mr. Y. V. Nadkarni, learned counsel appearing for the respondent no.3 and Mr. V. A. Lawande, learned counsel appearing for the respondent no.4.

2. The challenge in the above petition is to the inaction on the part of the respondent no.3/Comunidade in forwarding the application filed by the petitioner for allotment of plot no.25 applied way back in the year 1998 in the property belonging to

the respondent no.3/Comunidade. In the alternative the petitioner has also prayed for the relief which reads thus :

“(aa) by writ of mandamus or any other appropriate writ, order, direction direct or order the respondent no.2 to consider the grant of plot no.48 to the petitioner as per the documentation and the rate of land applied for plot no.25 including the cost of development and forward the file no.1-2-2012/ACNZ/2012 along with notice of vacancy of plot no.48 for the approval of grant of plot of the land in favour of the petitioner.”

3. The matter was heard at length. The main contention of Mr. Sudesh Usgaonkar, learned counsel appearing for the petitioner is that all the formalities for the allotment of the subject plot no.25 were duly complied with and the matter was referred to the Dy. Collector for obtaining the requisite sanction in terms of the Code of Comunidade. The learned counsel further pointed out that somewhere in the year 2002, the respondent no.3 sent a notice to the petitioner to disclose his willingness to

proceed with the application filed by the petitioner for allotment of such plot. The learned counsel has also pointed out that immediately thereafter reply was filed showing the willingness of the petitioner to pursue the application for allotment of the plot. The learned counsel further submits that the petitioner learnt that the subject plot was being notified as vacant plot to seek application for allotment wherein the respondent no.4 had submitted his application. It is further submitted that the petitioner also learnt under the Right to Information Act that the Dy. Collector had returned application for allotment of plot of the petitioner to the Administrator to submit a report as to whether the plot was notified as vacant. It is further submitted that as such unless and until the application filed by the petitioner for allotment of plot is duly decided by the concerned authorities, the action on the part of the respondent no.3 to allot the plot to the respondent no.4 is null and void and cannot be sustained. The learned counsel further points out that during the pendency of the above petition, there was an interim order in operation whereby as the subject plot no.25 was in the process of

being allotted to the respondent no.4, the respondent no.3 was directed to keep one plot bearing no.48 vacant to be made available in case any relief is granted in favour of the petitioner. The learned counsel further submits that as admittedly the application filed by the petitioner for allotment of plot had not yet been decided, direction be issued to the respondent no.3 to process the application and submit the report to the Collector on the allotment of the plot to the petitioner. The learned counsel as such submits that necessary directions be issued with that regard.

4. On the other hand, Mr. Y. Nadkarni, learned counsel appearing for the respondent no.3 has submitted that admittedly as the process of allotment of the plot has not been completed, no right has accrued to the petitioner which can be protected by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. The learned counsel further submits that though the petitioner had applied for the plot way back in the year 1998, there was an objection to the process followed by the respondent no.3 in accepting the application from the petitioner

without notifying such plot as vacant. It is further pointed out that as the petitioner thereafter had not pursued the application diligently, no decision was taken with regard to the application filed by the petitioner. It is further submitted that in the meanwhile in terms of the Code of the Comunidade, the subject plot no.25 has been duly notified as vacant plot and thereafter the procedure in terms of the Code was followed to examine the allotment in favour of the respondent no.4. The learned counsel further pointed out that the petition itself is barred by laches as according to him for nearly 8 to 10 years the petitioner has not taken any steps to proceed with the application. The learned counsel further pointed out that in terms of the directions of this Court in the interim order dated 18.02.2015 plot no.48 has been duly reserved. The learned counsel as such points out that the petition be accordingly rejected.

5. Mr. V. A. Lawande, learned counsel appearing for the respondent no.4 has submitted that the petitioner has no locus to file the above petition as according to him as the process itself is

vitiating as due procedure in terms of the Code of Comunidade had not been followed, no benefit can accrue to the petitioner on the basis of a defective procedure. It is further pointed out that the subject plot no.25 has been duly allotted to the respondent no.4 in terms of the Code of Comunidade and consequently, there is no reason for any interference in such decision taken by the respondent no.3. The learned counsel further submits that the petitioner is also in-eligible to get the plot in terms of the Code of Comunidade as according to him the petitioner is an encroacher in Government land. The learned counsel further submits that as the petitioner does not have the requisite eligibility criteria, the question of examining the alleged claim of the petitioner in the above petition would not at all be justified. The learned counsel further pointed out that the very fact that the petitioner has chosen to file the above petition by inordinate delay itself shows that no relief can be granted to the petitioner in exercise of jurisdiction under Article 226 of the Constitution of India as the petition is hopelessly barred by laches. The learned counsel as such submits that the petition be accordingly rejected.

6. Mr. Sudesh Usgaonkar, learned counsel appearing for the petitioner in reply to the contentions raised by the learned counsel appearing for the respondents has pointed out that the subject plot was duly notified for objection and as such the procedural requirements have been duly complied with in terms of the Code of Comunidade. The learned counsel has also seriously disputed the contention of Mr. Lawande, learned counsel appearing for the respondent no.4 that the petitioner was in-eligible for the plot as according to him the petitioner has produced on record the material to show the application for regularisation of the encroachment which has been rejected by the concerned authority. The learned counsel as such points out that the petitioner is entitled for the relief sought in the above petition.

7. We have duly considered the submissions of the learned counsel and we have also gone through the records. As pointed out herein above, the records clearly reveal that though the application was filed in the year 1998, the petition was filed

nearly 10 years thereafter. No doubt, the petitioner is trying to justify the delay on the ground that the petitioner has been visiting and contacting the concerned officials of the respondent no.3 to find out the outcome of his application for allotment of plot. But the fact remains that during the interregnum the respondent no.3 proceeded to publish a notice in the Official Gazette with regard to the availability of the vacant plot no.25 upon which applications were filed by different persons including the respondent no.4 for allotment of the subject plot. This delay in not approaching this Court diligently has in fact created a situation which would disentitle the petitioner to get a relief in respect of the subject plot no.25 as claimed in the above petition. The delay in the present case led the respondent no.3 to assume that the petitioner was not interested to pursue his application for allotment of the plot to proceed with the process of a fresh allotment in terms of the Code. In such circumstances, the question of exercising jurisdiction under Article 226 to that effect would not arise. Apart from that, admittedly, no rights have crystallised in favour of the petitioner to get an allotment of

the subject plot no.25 as the application filed by the petitioner had not reached its logical conclusion. But however, the obligation of the respondent no.3 and the Administrator to take a decision on the application filed by the petitioner for allotment of the plot expeditiously in terms of the provisions of the Code of Comunidade cannot be forgotten.

8. In the present case, the petitioner has admittedly paid a substantial amount towards the development charges and other expenses in connection with the subject plot. There is no plausible explanation to justify the delay on the part of the respondent no.3 in taking a final decision on the application filed by the petitioner for allotment of the subject plot. In such circumstances, taking note of the interim order passed by this Court on 18.02.2015, we find that in the peculiar facts and circumstances of the case and in the interest of justice, as there was inaction and lack of diligence on the part of the petitioner as well as the respondent nos. 2 and 3 in taking a decision on the application filed by the petitioner which is pending from the year

1998, it would be appropriate to examine the relief which can be granted to the petitioner in terms of the alternate prayer sought in the above petition. It is pointed out by Mr. Y. Nadkarni, learned counsel appearing for the respondent no.3 that the subject plot no.48 has been kept vacant in terms of the directions issued in the above petition. The petitioner also on 02.12.2011 without prejudice to his rights and contentions filed his application for allotment of the plot no.48 to the respondent no.3 and the vacancy was gazetted on 25.02.2010 which is still under consideration. During the course of the hearing, there was a dispute about the whereabouts of the application dated 02.12.2011 filed by the petitioner. In case the original application is not available, the parties shall act on a copy of the application duly certified by the petitioner. No doubt, to process the said application, the petitioner would have to meet the eligible criteria in terms of the Code of Comunidade. Mr. Nadkarni, learned counsel appearing for the respondent no.3 submits that the question of granting the prayer of the petitioner in alternative to state that the price should be as prevailing in the

year 1998 is totally unjustified and untenable as according to him at the most the price would be as on in the year 2011. We find force in the contention of Mr. Nadkarni, and considering that the petitioner has not shown due diligence in pursuing the application, the price would have to be assessed on the basis as prevailing in December, 2011. No doubt, the said application filed by the petitioner would have to be considered in accordance with law subject to the petitioner satisfying all conditions as laid down in the Code of Communitade. Any amount paid by the petitioner would have to be adjusted towards the amount payable by the petitioner based on the direction in the present petition.

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

ORDER

(i) The petition is partly allowed.

(ii) The respondent nos./ ^{1,} 2 and 3 are directed to proceed to examine the application filed by the petitioner dated 02.12.2011 for allotment of plot no.48 located in the property surveyed under no.31/1

of Village Pilerne in the light of the observations made herein above and in accordance with law **by 31.12.2017.**

(iii) Rule is made absolute in the above terms.

(iv) The petition stands disposed of accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

at*

Corrections
carried out as per
order dated
3.7.2017 passed
in CAREV
No.16/2017