

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 833 OF 2017

Shri Narayan Kashiram Salgaonkar
Son of late Kashiram Narayan Salgaonkar
Aged 59 years, occupation Mason & Agriculturist
Resident of H. No. 35, Satche Bhatlem
Naik wada, Mandrem
Pernem-Goa

.... Petitioner

Versus

1. Shri Tukaram Babal Salgaonkar
s/o late Bablo alias Babal Loximona Salgaonkar
major of age
resident of Satche Bhatlem
Naik wada, Mandrem
Pernem-Goa
2. Smt. Jijabai Tukaram Salgaonkar
w/o Shri Tukaram Babal Salgaonkar
major of age
resident of Satche Bhatlem
Naik wada, Mandrem
Pernem-Goa
3. Shri Sadanand Tukaram Salgaonkar
S/o Tukaram Babal Salgaonkar
major of age
resident of Satche Bhatlem
Naik wada, Mandrem
Pernem-Goa
4. Village Panchayat of Mandrem
through its Secretary/Sarpanch
Office at Mandrem, Pernem, Goa.

.... Respondents

Mr. Ashwin D. Bhobe, Advocate for the Petitioner.
Mr. K. T. Sawant, Advocate for the Respondent no. 1, 2 and 3.

Coram :- C. V. BHADANG, J
Date : 21st November, 2017.

ORAL JUDGMENT:

Rule made returnable forthwith. Mr. K. T. Sawant, learned

Counsel for the contesting Respondent no. 1 to 3 waives service. None appears for Respondent no. 4. The Respondent no. 4 had left the matter of impleadment to the discretion of the Additional Director. In other words, the Respondent no. 4 did not contest the application. The Petition is heard finally by consent of parties.

2. The Petitioner is challenging the Order dated 12.07.2016 passed by the learned Additional Director of Panchayat refusing leave to the Petitioner to intervene in the Panchayat appeal. That Order has been confirmed in Civil Revision Application No. 86 of 2016 by the learned District Judge by Order dated 03.08.2017.

3. The brief facts are that the Petitioner claims to be a co-owner of the property on which the Respondent no. 1 has put up certain construction, which, according to the Petitioner and the fourth Respondent, is without the necessary licence. It appears that the Petitioner had filed a suit against the Respondent no.1 to 3 in which temporary injunction was granted, thereby restricting the Respondent no.1 to 3 to effect the construction within the plinth area. The matter was initially carried in appeal before the learned District Judge and then before this Court in Writ Petition no. 531 of 2014. While refusing to interfere with the order of temporary injunction, this Court in para 6 of the Judgment and Order dated 14.08.2014 observed that the Petitioner can approach the authorities to examine the aspect of the disputed

construction being effected without any licence from the statutory authorities. It appears that the Petitioner thereafter lodged a complaint with the fourth Respondent/Village Panchayat which has directed demolition of the entire construction. That Order is subject matter of Appeal before the learned Additional Director of Panchayat. The Petitioner filed an application for intervention before the learned Additional Director which has been rejected. That order has been confirmed by the learned District Judge in revision application.

4. I have heard Shri A. D. Bhobe, the learned Counsel for the Petitioner and Mr. Sawant, the learned Counsel for Respondent no. 1, 2 and 3. With the assistance of the learned Counsel for the parties, I have gone through the records.

5. It is submitted by Mr. Bhobe, the learned Counsel for the Petitioner that this Court had observed while deciding the Writ Petition no. 531 of 2014 that the Petitioner can approach the statutory authorities in the matter of the disputed construction being effected without a licence. It is submitted that the Petitioner is a co-owner and, thus, is interested in the outcome of the appeal. It is submitted that only because the Village Panchayat has taken action on the basis of the complaint of the Petitioner the intervention could not have been rejected. Mr. Bhobe, the learned Counsel points out that the reliance placed by the learned Additional Director in the case of **Mr. Alwyn**

D'Cunha V/s. Village Panchayt of St. Lawrence in Writ Petition no. 371 of 2006, is misplaced, in as much as, in that case the intervention was sought by a stranger. On behalf of the Petitioners reliance is placed on the decision of this Court, in the case of **Bholu V. Naik versus Village Panchayat** (Writ Petition no. 12 of 2010 decided on 23rd April, 2010) and **Narendra Naik versus Village Panchayat, Penha-de-Franca**, (Writ Petition no. 255 of 2009 decided on 02nd May, 2009).

6. On the contrary, it is submitted by Mr. Sawant, the learned Counsel for Respondent no. 1, 2 and 3 that the Trial Court and the District Court, while deciding the application for temporary injunction arising out of Regular Civil Suit no. 42 of 2012 has observed that the Petitioner had not approached the Court with clean hands. It is submitted that the Courts have found that the parties were enjoying separate and distinct portions of the property and it was not shown that the Petitioner was a co-owner. It is submitted that once the Petitioner has not approached the Court with clean hands the intervention could not be allowed. Learned Counsel also points out that the application for intervention is an attempt to settle scores as the Respondents had filed a complaint against the Petitioner.

7. I have carefully considered the rival circumstances and I have considered the submissions made.

8. The only question involved in this Petition is whether the intervention of the Petitioner is to be allowed or not. This Court in the case of **Bholu V. Naik versus Village Panchayat** and **Narendra Naik versus Village Panchayat, Penha-de-Franca**, has taken a view that where the rights of the Petitioner are affected by the subject construction, such intervention can be allowed. In the present case, the Petitioner claims to be a co-owner of the property. This Court while deciding Writ Petition no. 531 of 2014 had observed that the Petitioner can approach the concerned statutory authorities in the matter of the alleged illegal construction. It is on the basis of the complaint lodged by the Petitioner that the Village Panchayat has taken action of demolition. Merely because the Village Panchayat has taken similar stand as that of the Petitioner, in my considered view, will not be sufficient to refuse such intervention. This Court in the case of **Narendra Naik versus Village Panchayat, Penha-de-Franca** has, inter alia, held that it cannot be said that the interventions, (even if they have locus) cannot be allowed to appear and bring forth before any authority or the Court all the relevant facts which will be necessary to decide the dispute between the parties. The reliance by the learned District Judge in the case of **Alwyn D'Cunha V/s. Village Panchayt of St. Lawrence** is misplaced, in as much as, that was a case, where the intervention was sought by a stranger. The contentions raised on behalf of the Respondents have no bearing on the limited question involved in this Petition, as to whether the intervention is to be allowed or not.

9. Considering the above circumstances, I find that this is a fit case where the intervention is to be allowed.

10. In the result, the Petition is allowed. The Impugned order dated 03.08.2017 passed in Panchayat Revision Application no. 86 of 2016 is set aside. The application for intervention dated 29.07.2015 stands allowed. Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J

msr.