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IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 79 OF 2017

Keshav S Palyekar & Anr

...Appellants

Versus

The Goa Tourism Development Corporation Ltd
& Anr

...Respondents

Mr Ashwin Bhobe, *for the Appellant.*

Mr Pravin Faldessai, GA, *for the Respondent-State.*

CORAM: G.S. Patel, J.

DATED: 14th September 2017

PC:-

1. Mr Bhobe seeks leave to delete the 2nd Respondent. Leave to amend without need of reverification.

2. The two Appellants and original 2nd Respondent were the Plaintiff in Special Civil Suit No. 4/07/A before the Civil Judge Senior Division at Mhapsa. They sought a declaration and permanent injunction against the 1st Respondent, the Goa Tourism Development Corporation Limited (“GTDC”). They said they were owners in possession of a certain property where they had their business premises and houses. Their area was surrounded by a compound wall that had existed for four decades and, they said, somewhere in 1979 the State Government sought to acquire a part of the suit property, as a result of which the Appellants were

constrained to file a writ petition in this Court challenging that acquisition. That writ petition came to be disposed of. On 5th January 2017, the Appellants received a notice of alleged encroachment issued by the Deputy General Manager of the GTDC saying that the Vagator property had been transferred to the GTDC by a Notification dated 18th August 2014 and an encroachment by the Plaintiffs had been noted during this survey. The Plaintiffs were called upon by this notice to demolish the encroached construction. This was the basis of the suit.

3. The GTDC opposed the suit and filed a preliminary objection as to the maintainability on 15th January 2007 saying that the suit and the application for interim relief were barred by the provisions of Sections 5 and 10 of the Goa Public Premises Act. This was opposed by the Plaintiffs who said that the provisions of the Goa Public Premises Act were inapplicable.

4. On 6th February 2007, the Civil Judge Senior Division, Mhapsa dismissed the suit as not maintainable in view of Sections 19 and 20 of the Act. Regular Civil Appeal No. 10 of 2010 was dismissed on 12th June 2015. Hence, this Second Appeal.

5. The Second Appeal can be disposed of on the simple ground that there is no question of applicability of Sections 19 and 20 of the Goa Public Premises Act. No proceedings have been initiated under that Act by the Respondent at any stage. If the Estate Officer appointed under that Act initiates any proceeding, then of course this will have to be dealt with in the manner provided under that Act

but absent any such foundational proceedings there cannot be such ouster of a Civil Court's jurisdiction.

6. In the result, the Second Appeal will stand admitted on the following substantial questions of law.

"(a) Whether both the Courts below have failed to appreciate that provisions of Sections 19 and 20 of Goa Public Proviso Act and Rules and the case sought to be put forth by the Respondent was itself not attracted and as such the impugned orders are liable to be quashed and set aside?

(b) Whether the conclusions drawn by the Appellate Court in the judgment/decreed dated 12th June 2015 with regard to the action of the Respondent in good faith is perverse and illegal?"

7. Rule made returnable forthwith.

8. The foregoing discussion is sufficient. The Second Appeal succeeds.

9. The impugned order dated 12th June 2015 as also the order dated 6th February 2007 passed by the learned Civil Judge Senior Division, Mhapsa are set aside. Special Civil Suit No. 4/07/A in the Court of Civil Judge Senior Division at Mhapsa is restored to file along with accompanying application for interim relief.

10. Parties will appear before the Civil Judge on 27th September 2017. The Trial Court will act on an authenticated copy of this order.

11. The Trial Court will pass necessary directions regarding filing of written statement and afford sufficient time for that purpose. The Trial Court is requested to dispose the suit at the earliest, and if possible within one year from today. It is also requested to dispose of the application for interim relief after passing necessary directions by 3rd November 2017.

12. In the meantime, the Respondents are restrained from taking any coercive action for demolition against the Appellants.

13. The Second Appeal is disposed of in these terms. All contentions are specifically left open.

(G.S. Patel, J)