

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO.943 of 2015**

Mr. Vithoba Raghoba Fatrekar,  
Aged 51 years,  
son of late Raghoba Fatrekar  
resident of H. No.434/4,  
Daushirem, Usgao, Ponda Goa. .. Petitioner

Vs.

1. Shri Gajanan Fatrekar,  
Major of age (not known),  
R/o H.No. (Not known),  
Daushirem,  
Usgao- Goa.
2. Shri Pundalik V. Fatrekar,  
Major of age (not Known)  
R/o H.No. (Not known),  
Daushirem,  
Usgao- Goa. .. Respondents.

Mr. G. Agni, Advocate for the petitioner.

Mr. A. D. Bhobe and Ms. S. Bhobe, Advocates for the respondents.

**CORAM :- C. V. BHADANG, J.**

**DATE:- 16<sup>th</sup> February, 2017**

**ORAL JUDGMENT :**

Rule, made returnable forthwith. Shri Bhobe, the learned Counsel for the respondents waives service. Heard finally by consent of the parties.

2. The petitioner is challenging the order dated 30/09/2015, passed by the learned Deputy Collector, Ponda, by which, an

application filed by the petitioner for production of the following documents in the enquiry before the learned Deputy Collector, has been dismissed :

- 1. Letter dated 4/10/2013 of people of Dharbandora to Comunidade of Usgaon.*
- 2. Letter from Comunidade of Usgao to Gajanan Faterekar.*
- 3. Proceeding of Extraordinary Meeting of the Comunidade of Usgao.*

3. The petitioner had filed a complaint of illegal conversion and user of the land Survey No.240/1 of village Usgaon, as a Crematorium. The Administrative Tribunal, by an order dated 25/03/2013, had remanded the matter to the Deputy Collector to ascertain the facts and hold an enquiry in accordance with law and then pass a speaking order. After this order of remand, the petitioner filed an application on 02/12/2014, claiming production of the aforesaid documents. The learned Deputy Collector has found that the proceedings of illegal conversion of the land had commenced in September/ October, 2012 and the documents sought to be relied upon, are of the year 2014. The learned Deputy Collector has also noticed certain discrepancies in the seal on the document at Exh.CB-4 and the seal at Exh. CW/4. The learned Deputy Collector has further found that the possibility of the petitioner improving his case, cannot be ruled out and in that view of the matter, has rejected the application.

4. I have heard the learned Counsel for the parties and perused the record and the impugned order passed.

5. Indisputably, the land belongs to the Comunidade of Usgaon, of which the respondents claim to be allottees. On behalf of the respondents, a No Objection Certificate (NOC) dated 05/01/2002 issued by the Comunidade, has been produced on record. A perusal of the NOC shows that the Comunidade had given no objection for the Crematorium in the subject land. The documents, which are sought to be produced, pertain to a letter from the Comunidade of Usgaon to respondent no.1 stating that there are no records with the Comunidade, showing the issuance of the letter dated 18/12/1999 and the NOC dated 05/01/2002 nor the same is supported by any resolution. The Comunidade also found that there is no approval from the Administrator of the Comunidade to the aforesaid letter and the NOC. Next document is a resolution in the extraordinary meeting of the Managing Committee of the Comunidade, held on 24/10/2014, 'withdrawing' the possession certificate and the NOC issued to the first respondent.

6. The learned Counsel for the petitioner states that the scope of enquiry is limited and circumscribed by Section 33 of the Goa Land Revenue Code and the question of the legality of the

allotment or the NOC cannot be gone into by the Collector. It is submitted that the question is limited as to whether the land has been illegally put to use as a Crematorium. It is, thus, submitted that the documents are not relevant for the purpose of the enquiry.

7. On the contrary, it is submitted by the learned Counsel for the respondents that once the respondents are relying upon the NOC, which is produced before the Collector, the letter of Comunidade and the resolution would be relevant.

8. I have considered the rival circumstances and the submissions made.

9. It is apparent that the respondents have produced NOC purportedly issued by the Comunidade, giving no objection for use of the land as Crematorium and if that be so, the subsequent letter and the resolution, to my mind, can be looked into and would be relevant. It is trite that subsequent developments, documents which are relevant, can always be taken on record. Considering the fact that the respondents themselves are relying upon the NOC, I find that it would be appropriate if production of documents at serial nos.2 and 3 above, is permitted. However, there is no justification for producing the document at Sr. No.1.

10. In the result, the petition is partly allowed. The

impugned order is hereby modified. The petitioner is permitted to produce the letter of Comunidade dated 31/10/2014 and the resolution of the Extraordinary Meeting dated 24/10/2014 before the Deputy Collector. Needless to mention that the proof and probative value of the documents shall be gone into by the Deputy Collector, during the course of the trial.

11. Rule is partly made absolute in the aforesaid terms, with no order as to costs.

**C. V. BHADANG, J.**

SMA