

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1176 OF 2016

MR. CAETANO F. RAPOSO., ... Petitioner
Versus
STATE OF GOA, THR. ITS CHIEF
SECRETARY AND 3 ORS., ... Respondents

Shri Sandesh D. Padiyar and Shri P. Arolkar, Advocates for the petitioner.
Shri Sagar Gurudas Dhargalkar, Addl. Govt. Advocate for the respondent nos.1 & 2.
Respondent no.4 present in person.

Coram:- CHIEF JUSTICE &
F. M. REIS, JJ.

Date:- 27th January, 2017

P.C.

The petitioner is before us complaining in action on the part of the respondent/authority not taking suitable action i.e initiating proceeding for inquiry into alleged illegal construction said to have been made by the respondent no.4. According to the petitioner, the respondent/authority have indicated about seven illegal constructions noticed by them. It is also placed on record way back in 2013, the petitioner approached Civil Court seeking an order of injunction against the 4th respondent and was also successful in obtaining an order of injunction restraining the respondent from putting up construction beyond sanction plan.

2. When he made an application to take action against the defendants for violating the order of injunction, the Court passed

an order in favour of the petitioner/plaintiff against which appeal came to be filed by the defendant. Before the Appellate authority when the defendant produced sanctioned plan etc, the learned Judge of the Appellate Court called upon the appellant to file an undertaking and accordingly the appellant filed an undertaking that he would strictly put up the construction only in accordance with the sanctioned plan, however, the respondent/defendant did not comply with the undertaking given by him and blatantly violating the same proceeded to put up illegal construction which resulted in damaging the property of the petitioner, since the property of the petitioner and the respondent are adjacent to each other separated by a common wall.

2. When the matter stood as stated above, the petitioner is before this Court complaining against the respondent authority for not initiating action. Whether the petitioner has violated the sanctioned plan by putting up construction beyond the sanctioned plan and whether such violation or illegal construction deserves to be demolished or whether there is any other procedure for compounding such illegal construction to what extent could be compounded or not would depend upon the establishment of material facts of alleged illegalities in construction. This definitely needs factual ascertainment and cannot be decided before this Court. Instead of waiting for a decision in the Civil Court and then seek proper relief against the

respondent authority, it is open to the petitioner to implead the respondent/authority to the Civil Suit already pending between him and the private party so that in one litigation all the issues can be set at naught.

3. Reserving such liberty to the petitioner, we dispose off the petition.

F. M. REIS, J.

CHIEF JUSTICE, J.

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