

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.579 of 2018**

Comunidade of Sangolda
Rep through its Attorney .. Petitioner

Vs.

Jos Roger Fernandes and
2 Ors .. Respondents.

Shri Jose Filipe Melo and Shri J. Fernandes, Advocates for the petitioner.

Ms. P. Kalangutkar, Additional Government Advocate for the respondent no.2.

CORAM :- C. V. BHADANG, J.

Date : 17th July, 2018

ORAL ORDER :

Heard learned Counsel for the petitioner. None for the respondent nos.1 and 3, though served.

2. On 03/07/2018, this Court, after noticing the absence of the respondents and in the interest of justice, had granted opportunity to the respondents to put in appearance. However, today again, none appears for the respondent nos.1 and 3.

3. The brief facts are that the first respondent had filed a Special Civil Suit challenging the notice of demolition issued by the petitioner and for a direction to the petitioner, to decide the

application for regularisation.

4. The learned Trial Court dismissed the application for Temporary Injunction by an order dated 09/05/2017, which was challenged by the first respondent in appeal before the learned District Judge being Miscellaneous Civil Appeal No.70/2017. The learned District Judge, by a judgment and order dated 22/12/2017, has allowed the appeal in the following terms :

“The appeal stands allowed.

The impugned order dated 21/03/2017 is quashed and set aside.”

5. At the outset, it is necessary to note that the operative order is not appropriately drawn. It is necessary for the Appellate Court, if the order of the Trial Court is set aside, to state as to what relief is granted. The operative order simply mentions that the appeal is allowed and the impugned order dated 21.03.2017, passed by the Trial Court is quashed and set aside. Normally, this would not mean that the application for temporary injunction is allowed. The Court should be careful while drawing the operative order, so that there is no ambiguity left, when such orders are required to be examined in challenge thereto.

6. The learned Counsel for the petitioner has referred to

the observations in para 26 of the judgment, in order to submit that the Appellate Court had granted limited protection to the respondent no.1 /plaintiff from demolition, pending the application for regularisation being decided by the petitioner. Indeed, there are observations of this nature, which can be found in para 26 of the judgment. On a premise that such an injunction order was granted by the Appellate Court, the petitioner has approached this Court in the present petition.

7. The learned Counsel for the petitioner now submits that the regularisation application has been dismissed on 24/06/2018. An affidavit to that effect is filed by one Mr. Reinaldo D'Souza, who is the Special Attorney of the petitioner. In such circumstances, the injunction (assuming that it is granted pending the regularisation application being considered by the petitioner), would not survive. Thus, nothing survives in the petition, which is accordingly disposed of.

C. V. BHADANG, J.

SMA