

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 966 OF 2017

Smt. Maria Quiteria Rodrigues alias
Maria Rodrigues (deceased)
through legal heirs,

- 1 Mrs. Annie Rodrigues,
Widow of Inacio Xavier Rodrigues,
Aged 57 years
- 2 Mr. Nelson Benny Rodrigues,
Son of late Inacio Xavier
Rodrigues,
Aged 27 years
- 3 Mr. Anthony Rodrigues,
Son of late Custodio Rodrigues,
Age 56 years,
- 4 Mrs. Milagrine Rodrigues,
Wife of Anthony Rodrigues,
Aged 54 years,
- 5 Mrs. Philomena Rodrigues,
Widow of Paulo Rodrigues,
Aged 51 years,
- 6 Miss Palifa Rodrigues,
Daughter of late Paulo Rodrigues
Aged 22 years
- 7 Princeton Rodrigues
Son of late Paulo Rodrigues,
Aged 18 years.

All resident of H.No.168,
Manchovod / Bairro- Alto,
Assagao, Bardez- Goa.

... Petitioners

Versus

- 1 Village Panchayat of Assagao,

Through its Sarpanch / Secretary,
Having their office at
Assagao, Bardez- Goa.

- 2 Smt. Kalpana Vithal Nagvekar,
Wife of Vithal Nagvekar,
Major of age
r/o flat No.2D,
Hill Crown Apartments,
Near Saldanha Business Tower,
Mapusa, Bardez- Goa.
- 3 Mr. Nelvis Custodio Rodrigues,
Son of late Inacio Xavier Rodrigues,
Age 29 years
- 4 Mr. Patrice Rodrigues,
Son of late Custodio Rodrigues,
Aged 55 years
- 5 Mrs. Della Rodrigues,
Wife of Patrice Rodrigues,
Aged 51 years,
- 6 Mr. Agnelo Rodrigues,
Son of late Custodio Rodrigues,
Aged 47 years
- 7 Mrs. Serra Rodrigues,
Wife of Agnelo Rodrigues,
Aged 47 years.

All resident of H.No.168,
Manchovod/ Bairro Alto,
Assagao, Bardez – Goa.

... Respondents

Shri A.D. Bhobe, Advocate for the petitioners.

Shri S. Narvekar, Advocate for the respondent Nos.2 to 7.

CORAM : NUTAN D. SARDESSAI, J.

RESERVED ON : 5th June 2018.

PRONOUNCED : 7th June, 2018.

JUDGMENT :

1. Rule. Heard forthwith with the consent of the learned Counsels. The learned Counsel appearing for the respondent Nos.2 and 7 waives service.

2. Heard Shri A.D. Bhobe, learned Advocate for the petitioners and Shri S. Narvekar, learned Advocate for the respondent Nos.2 to 7, there being no contest by the respondent No.1 despite being the author of the demolition order ultimately culminating in the revision proceedings before the learned District Judge, FTC, Mapusa and giving rise to the impugned judgment.

3. The petition takes exception to the judgment and order dated 31/07/2017 passed by the Adhoc District Judge, FTC, Mapusa by which the learned District Judge dismissed the revision application filed by the petitioners herein and maintained the judgment and order dated 10/09/2015 passed by the Additional Director of Panchayats who confirmed the order dated 30/03/2009 passed by the respondent No.1 directing the demolition of the structure of the petitioners alleged to be illegal. It was the contention of Shri A.D. Bhobe, learned Advocate for the petitioners that a complaint was lodged by the respondent No.2 with the respondent No.1 alleging illegal construction by the

original petitioner, since deceased, and thereupon a Show Cause Notice was issued by the respondent No.1 to her alongwith the Panchanama and a sketch showing the nature of the alleged illegal construction. She had filed the reply denying that any illegal construction was done by her. He next referred to the letter issued by the respondent No.1 to the petitioners dated 19/08/1987 which would go to establish that the structure was in existence since 1987. A suit was filed by the respondent No.2 alongwith an application for injunction against the petitioners.

4. However, the Civil Court passed the order on the injunction application dismissing the same and clearly holding that no extension or encroachment was done by the petitioners and after taking into consideration the Panchanama and the sketch apart from the Show Cause Notice issued by the Panchayat. This order of the Civil Court which decided the rights of the parties dated 30/10/2012 was binding on the parties. However, the learned Additional Director of Panchayats while dealing with the petitioners' appeal merely reproduced the contentions filed by the parties and hastily concluded that there was no substance in the appeal and confirmed the order of demolition passed by the respondent No.1 which suffered from perversity. The petitioners had preferred a revision before the District Court assailing the

order of the Additional Director of Panchayats but the learned District Court sitting in revision dismissed the same without dealing with the reasons assigned by the Trial Court. The impugned order which was illegal, arbitrary and perverse was therefore liable to be interfered with and quashed and set aside.

5. Shri S. Narvekar, learned Advocate for the respondent Nos. 2 to 7 referred to the suit filed by the said respondents in which the relief of injunction and removal of encroachment by way of mandatory injunction was sought by the respondent No.2 against the petitioners herein. The records clearly revealed that the petitioners had carried out illegal construction which precipitated the notice for demolition at the instance of the respondent No.1. The Additional Director of Panchayats had rightly dismissed the appeal and the learned District Judge the revision petition filed by the petitioners herein. There was no error in the order passed by the learned District Court and therefore the petition had to be dismissed. Moreover, there was no clash of orders considering that passed by the Civil Court dismissing the injunction application with the orders passed by the other authorities. The right of the petitioners had also not crystallized in the suit structures and a purchase application was pending at their instance. The petition had therefore to be dismissed with costs.

6. It is borne out from the records referred to by Shri Bhobe, learned Advocate for the petitioners that initially a notice was issued to the original petitioner in terms of Section 66(3) of the Goa Panchayat Raj Act, 1994 Act for short hereinafter, accompanied by the Panchanama and a sketch showing the purported extension carried out by her. However, he adequately invited attention to the reply filed by the original petitioner in which she had categorically denied having carried out any unauthorised and illegal construction to her house and the shop and in the dimension as alleged in the order cum notice dated 26/02/2009. However, the respondent No.1 despite the reply and her assertion that she had not done any construction, had proceeded to issue the order of demolition dated 30/03/2009 which came to be assailed by the petitioners in the proceedings before the Additional Director of Panchayats. The Additional Director of Panchayats without much ado and merely reproducing the contentions on behalf of the parties hastily concluded that the petitioners herein had illegally extended the house and constructed a shop without the permission of the respondent No.1 and in that view of the matter dismissed the appeal and confirmed the order of demolition by his judgment and order dated 10/09/2015. This is despite the fact that the petitioners had relied on the NOC dated 19/08/1987 issued by the respondent

No.1 in favour of the daughter-in-law of the original petitioner pursuant to which the respondent No.1 had conveyed its no objection to install/ start a grocery shop in between her house and 5 metres from the dwelling house in Survey No.174/16.

7. The learned Additional Director clearly lost sight of the fact that these structures were in existence even as early as 1987 and there was due NOC by the respondent No.1 to carry out commercial activities therein and yet mechanically confirmed the order of demolition passed by the respondent No.1 which in turn had ignored the case set out by the petitioners that no illegal construction / encroachment was carried out in the suit property in Survey No.174/16. The Civil Court before whom the respondent No.2 had filed the suit seeking assertion of her rights to the suit property in Survey No.174/16 had by its order dated 30/10/2012 on considering the documents namely the Show Cause Notice and the demolition order issued by the respondent No.1, the NOC dated 19/08/1987 apart from the Panchanama and the sketch and on consideration of the case of the parties, had clearly come to a finding that no case had been made out from the material on record that the petitioners had carried out illegal construction in the suit property and that the respondent No.2 had not made out a prima facie case to injunct the petitioners from carrying out any

commercial activities in their shop/ gada. The Trial Court on considering the inconvenience and hardship which would be caused to the petitioners had clearly held that the respondent No.2 had not made out any case for the grant of temporary injunction and dismissed her application.

8. The finding of the Civil Court ought to have weighed with the District Court while sitting in revision under the said Act against the order of the Additional Director of Panchayats and deciding the revision petition filed by the petitioners. However, despite all this material being available at large before her, the learned District Judge was unduly swayed by the Panchanama and the sketch accepting it as if it were the gospel truth and concluded that the petitioners had carried out illegal construction to the house in the suit property. The learned District Judge also did not give due weightage to the NOC issued by the respondent No.1 itself to the petitioners as early as 19/08/1987 and proceeding on the basis of the Panchanama and the sketch and clearly ignoring the order of the Civil Court dated 30/10/2012 held that no case was made out by the petitioners assailing the order of the Additional Director of Panchayats and dismissed the revision petition. The order so passed by the learned District Judge is not only arbitrary but also perverse and contrary to the records which justifies interference

in this petition. In view thereof, the order passed by the learned District Court in the Civil Revision Application No. 95/2016 dated 31/07/2017 as also the judgment of the Additional Director of Panchayats dated 10/09/2015 confirming the order passed by the respondent No.1 are quashed and set aside.

9. In the result, i pass the following:

ORDER

The Writ Petition is allowed. Rule is made absolute. There shall be no order as to costs.

NUTAN D. SARDESSAI, J.