

IN THE HIGH COURT OF BOMBAY AT GOA**CIVIL APPLICATION NO. 95 OF 2018****IN****FIRST APPEAL NO. 53 OF 2018**

1. State of Goa, through the
Chief Secretary, Government of
Goa, Secretariat Building, Alto,
Porvorim, Bardez, Goa.
2. The Chief Engineer, Public Works
Department, Altinho, Panaji, Goa.
3. The Assistant Engineer, S. D. IV, XX
PWD, Canacona, Goa.

..... Appellants

V e r s u s

1. Shri Damodar Ghodge, S/O Late
Shri Vasudeo Ghodge, aged about
78 years, Businessman and his wife,
2. Smt. Pramila Ghodge, aged about 69
years, housewife,
Both residents of H. No.62/B, Near
Datta Mandir, Davorlim, Taluka
Salcete, Goa.
3. Shri Pradip Vaikunth Kamat, S/O
Late Shri Vaikunth Kamat,
aged about 62 years, Businessman
and his wife,
4. Smt. Amita Pradip Kamat,
aged 54 years, housewife,
Both residents of "Supravi",
H. No.51, Neura, Taluka Tiswadi,
Goa.

..... Respondents

Coram:- C. V. BHADANG, J.

Date:- 2nd August 2018.

Mr. Pravin N. Faldessai, Addl. Government Advocate for the Applicants.

Mr. . Pankaj P. Pai Vernekar, Advocate for the Respondents.

Oral Order:

Heard the learned Additional Government Advocate for the applicant and Shri Vernekar, the learned counsel for the respondents.

2. This is an application for stay of the impugned judgment and decree dated 24/1/2018 passed by the learned District Judge, South Goa at Margao in Civil Suit No.103/2015.

3. By the impugned judgment and decree the trial court has decreed the suit filed by the respondents directing the applicants to remove the tank erected and pipeline laid in the suit property and to restore the land to its original condition and hand over the possession thereof to the respondents/plaintiffs.

4. Indisputably the tank was constructed and the pipelines laid somewhere in the year 2005. According to the respondents there was some additional construction undertaken by the respondents on the suit property in the year 2013 which led the respondents to file the aforesaid suit in the year 2015. It is a matter of record that the water tanks are catering to the needs of the Keshav

Seva Kendra at Partagal and the residents of the adjoining areas.

5. In so far as the merits are concerned, the First Appeal challenging the decree is already admitted. The question is whether there was any consent on behalf of the respondents permitting the applicants to construct the water tank and laying of the pipelines which will have to be gone into at the hearing of the First appeal.

6. It is submitted by the learned Addl. Government Advocate that if the water tanks are demolished, it will affect the water supply to Keshav Seva Kendra at Partagal and the residents of the adjoining areas. He submits that a proposal for acquisition of the land is initiated, however, according to the learned Addl. Government Advocate it requires the consent from the Ministry of Environment and Forest, as the land is a private forest area.

7. Considering the overall circumstances, and the fact that the water tank and the pipeline is in existence from the year 2005 and the immediate demolition would affect the water supply to the Keshav Seva Kendra at Partagal and the residents of the adjoining areas and further having regard to the fact that the First Appeal is already admitted, I find that the impugned judgment and decree deserves to be stayed. At this stage the learned counsel for the

respondents submits that the hearing of the First Appeal may be expedited.

8. In the result, the following order is passed:

ORDER:

- (i) The Execution and operation of the impugned judgment and decree is stayed in terms of prayer clause (a).
- (ii) The hearing of the First appeal stands expedited.

C. V. BHADANG, J.

Ap/-