

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.493 OF 2017

Vasudev Vasant Gaonkar,
s/o. Vasant Rama Gaonkar,
aged 67 years, r/o. House No.103,
Gaonkarwada, Bicholim, Goa.

..... Petitioner.

Versus.

1. The Bicholim Municipal Council,
Office of the Bicholim Municipal Council,
Bicholim, Goa through its Chief Officer,

2. The Administrator of Comunidades,
North Zone,
Mapusa, Bardez, Goa.

3. Comunidade of Bicholim,
Gaonkarwada, Bicholim, Goa
through its Attorney
Shamba Dattu Gaonkar,
aged 48 years,
r/o. Gaonkarwada, Bicholim, Goa.

4. Gopal Madeo Gaonkar,
Former President of the
Comunidade of Bicholim,
Major in age,
r/o. Gaonkarwada, Bicholim, Goa.

5. Vaikunth Vinayak Parab Gaonkar,
Former Attorney of the
Comunidade of Bicholim,
major in age,
r/o. Gaonkarwada, Bicholim, Goa.

6. Sunil Damodar Parab Gaonkar,
Former Treasurer (also present Treasurer)
of the Comunidade of Bicholim,
major in age,
r/o. Gaonkarwada, Bicholim, Goa.

7. The Department of Town &
Country Planning,
Town Centre Building,
Bicholim, Goa.

..... Respondents.

Mr. Ashwin Bhobe and Ms. Shraddha Bhobe, Advocates for the
Petitioner.

Mr. Sandesh Padiyar and Mr. P. Arolkar, Advocates for Respondent
No.1.

Mr. Pravin Faldessai, Additional Govt. Advocate for respondents
No.2 and 7.

Ms. D. Shirgam, Advocate for Respondent No.3.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 6 March 2018.

ORAL JUDGMENT: (Per N.M. Jamdar, J.)

Rule. Rule made returnable forthwith. The respondents waive service. Taken up for disposal.

2. This Petition has been filed by the Petitioner in the capacity as a Component of the Respondent No.3-Communidade of Bicholim. It is the case of the Petitioner that the property bearing Survey No. 112/2 of Village Bicholim is owned by the Respondent No.3-Communidade. According to him, this property was being used as a play ground known as “Shivaji Maidan”. Respondent No.1-Municipal Council approached the Comunidade with a proposal to develop the property by constructing an office cum recreation and commercial building. This proposal was based on an approval granted by the Director of Municipal Administration/Urban Development. An Extraordinary General Meeting of the Respondent No.3-Communidade was convened on 9 September 2012, where the proposal of the Municipal Council was accepted, subject to certain terms and conditions. It is the grievance of the Petitioner that the Respondent-Municipal Council and the State Government have not adhered to their commitments and the Respondent No.3-Communidade has not benefited from the development. The

Petitioner has filed this Petition with a prayer to direct the Respondent No.1-Municipal Council to hand over the possession and/or the management and control of the structures/facilities made available in the development and also direction for an investigation into the irregularities in respect of the development of the property.

3. Respondent No.1-Municipal Council has filed reply, contending that though the property in question belongs to the State Government, it has been in possession of the Municipal Council since the year 1940. Respondent No.3-Communidade has filed an affidavit supporting the stand of the Petitioner that the land belongs to the Comunidade.

4. On 25 September 2017, when the Petition came up before the Division Bench, the Court was informed that there is an inquiry pending before the Collector under Section 14(3) of the Goa Land Revenue Code, 1968. The Collector was directed to dispose of the proceedings within a period of eight weeks. However, it appears that there was a change in the incumbent holding the inquiry due to some administrative difficulties. This inquiry has not been completed as on date.

5. We have heard Mr. Ashwin Bhobe, learned Counsel for the Petitioner, Mr. Sandesh Padiyar, learned Counsel for Respondent No.1, Mr. Pravin Faldessai, learned Additional Govt. Advocate for respondents No.2 and 7 and Ms. D. Shirgam, learned Counsel for Respondent No.3.

6. What we notice is that there is a dispute between the State Government and the Comunidade as regards the title of the said property. The relief prayed for by the Petitioner would obviously depend on the decision as regards the title of the land. Section 14 of the Land Revenue Code reads thus.

“ **14. Title of Government to lands, etc.—** (1) *All lands, public roads, lanes and paths and bridges, ditches, dikes and fences on or beside the same, the bed of the sea and of harbours and creeks below the high water mark, and of rivers, streams, nallas, lakes and tanks, and all canals and water courses, and all standing and flowing water and all rights in or over the same or appertaining thereto, which are not the property of any person, are and are hereby declared to be the property of the 7[] Government subject to right of way, and all other rights, public and individual, legally subsisting.*

Explanation:— *In this section, "high water-mark" means the highest point reached by ordinary spring tides at any season of the year.*

(2) *Unless it is otherwise expressly provided in any*

law for the time being in force or in the terms of a grant made by the Government, the right to mines, minerals and mineral products shall vest in the 8[] Government and it shall have all the powers necessary for the proper enjoyment of such rights.

(3) Where any property or any right in or over any property is claimed by or on behalf of the 9[] Government or by any person as against the 10[] Government and the claim is disputed, such dispute shall, after due notice has been given and after holding a formal inquiry, be decided by the Collector or 11[an officer authorised by the Government in this behalf.].

(4) Any person aggrieved by an order made under sub-section (3) or in appeal or revision there from may institute a civil suit to contest the order within a period of one year from the date of such order, and the decision of the civil court shall be binding on the parties.

(5) Any suit instituted in any civil court after the expiration of one year from the date of any order passed under sub-section (3) or, if appeal or revision application has been made against such order within the period of limitation, then from the date of any order passed by the appellate or revisional authority, shall be dismissed (though limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that the plaintiff has had due notice of such order.

(6) Any person shall be deemed to have had due notice of an inquiry or order under this section if notice thereof has been given in accordance with rules made in this behalf by the Government.”

This Section lays down a self-contained mechanism for resolution of the dispute where the Government claims title. A Civil Suit has also been provided under Section 14. Since the outcome of the Writ Petition would depend on resolution of the dispute as regards the title of the land, and the parties have already approached the Competent Authority for adjudication of such dispute, we do not find that the Writ Petition needs to be kept pending any more. Depending on the outcome of the inquiry, parties will be at liberty to take further steps.

7. There is, however, merit in the contention of Mr. Bhobe that the inquiry needs to be completed early. Mr. Faldessai, states that in view of certain objections raised by the parties, the inquiry could not be completed and states that the inquiry can now be completed within a period of 12 weeks. We have already noted in the order dated 20 February 2018, that the learned Counsel for the parties had stated that they have no objection to the matter being heard by the Deputy Collector-II, Mapusa. In view of this position, all that remains is adjudication of the rival contentions on merits .

8. We direct the Deputy Collector-II, Mapusa to dispose of the proceedings within a period of three months from today. All

parties shall cooperate with the Deputy Collector for early disposal of the proceedings. The Writ Petition is accordingly disposed of. Rule made absolute in above terms. No costs.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.