

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 576 OF 2018

Anil Parmekar

...Petitioner

Versus

1. The Village Panchayat at Penha De Franca

Thr. Its Secretary & 3 Ors.

...Respondents

Mr. V. A. Lawande and Ms. Ankita Kamat, Advocates for the Petitioner.

Ms. Susan Linhares, Additional Government Advocate for the Respondent Nos.2, 3 and 4.

Mr. Pravin Faldessai, Advocate for the Applicant in MCA No.440 of 2018.

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

Date: 14 June 2018

P.C.

1. We have heard Mr. V. A. Lawande, learned Counsel appearing for the Petitioner, Ms. Susan Linhares, learned Additional Government Advocate appearing for the Respondent Nos.2, 3 and 4 and Mr. Pravin Faldessai, learned Counsel appearing for the Applicant in MCA No.440 of 2018, which is filed for intervention.

2. By this Petition, the Petitioner has sought a direction restraining the Respondent Nos.1 to 4 from carrying out any demolition sought to be undertaken by Respondent Nos.1 to 5 till final decision by the Respondent No.2 on the application for regularisation.

3. Learned Counsel for the Petitioner submits that the Petitioner has withdrawn its statutory appeal and has filed an application for regularisation. These two actions pre-supposes that the structure is not legal, without which a regularisation application cannot be filed. The learned Counsel for the Petitioner states that the regularisation application be disposed of within a time bound period and till then the structure be not demolished.

4. Learned Counsel for the Applicant in MCA No.440 of 2018 made a serious grievance that the Applicant was the complainant and he was also a party in the proceedings of the Appeal and in Revision and also that this Court in Writ Petition No.66 of 2016 had directed that the Applicant be made party-Respondent. He submitted that without joining the Applicant as a party, the Petition is moved and ad-interim order was passed in the summer vacation.

5. Once the Applicant was a necessary party, he ought to have been joined in the Writ Petition. On this ground alone, we could have vacated the interim order. However, by way of pure indulgence, we have not done so. The Petitioner who was duty bound to join the Applicant as party-Respondent having not done so, the Applicant had to incur cost of filing the application

which the Petitioner must reimburse if he wants continuance of the indulgence.

6. Accordingly, the Writ Petition is disposed of by directing the Respondent No.2 to decide the application for regularisation on its own merits within a period of three weeks from today. Till the decision is so taken, ad-interim order passed by the learned Vacation Judge to continue.

7. The Civil Application for intervention is allowed. The Petitioner shall pay costs of ₹7500/- to the Applicant within a period of one week from today.

8. The learned Counsel for the Petitioner states that if the order of regularisation is against the Petitioner, the stay be extended. If the order of regularisation is against the Petitioner, the Authorities before carrying out demolition will no doubt give sufficient advance notice to the Petitioner and therefore the Petitioner is adequately protected.

Prithviraj K. Chavan, J.

N. M. Jamdar, J.