

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 448 OF 2014

Shri Noordin Shamshuddin Ramjee
 Alias N oordin S. Ismail
 Aged about 47 years,
 Son of Shamsuddin Ismail Ramjee
 Resident of House No.E-3
 Pajifond, Near Hari Mandir
 Margao-Goa

... petitioner

V e r s u s

1. Smt Sharmila Muzawar Shah,
 Resident of 4th Floor, Hemady Apartments,
 Major of age,
 Malbhat, Margao, Goa.

2. Margao Municipal Council,
 Through its Chief Officer,
 Having office at Municipal Building
 Margao, Goa.

3. The Minister for Urban Development
 Secretariat, Porvorim, Goa.

4. The State of Goa,
 Through its Chief Secretary,
 Secretariat Porvorim, Goa.

... respondents

Shri Kaif Noorani, Advocate for the petitioner.

Shri V. J. Daniel, Advocate for the respondent No.1-Caveator.

Shri Parag Rao, Advocate for the respondent No.2.

Shri Pravin Faldessai, Addl. Government Advocate for the
 respondent Nos.3 and 4.

Coram:- NUTAN D. SARDESSAI, J.

Judgment Reserved on : 17 November 2017

Judgment Pronounced on : 8 March 2018

JUDGMENT

This petition takes exception to the Order dated 02/05/2014 passed by the respondent No.3 by invoking the jurisdiction of this Court under Article 226 and 227 of the Constitution of India whereby the respondent No.3 allowed the Revision Petition filed by the respondent No.1 and set aside the Order dated 29.06.2012 passed by the respondent No.2 in the case filed by the respondent no.1.

2. Heard Shri Kaif Noorani, learned Advocate for the petitioner who contended that the petitioner was admittedly a licensee to the kiosk and paying sopo to the respondent No.2 who owned the kiosk. There were powers in the Chief Officer in terms of Section 257 of the Goa Municipalities Act 1968, (Act, for short) and hereinafter to expel or grant a licence. respondent No.1 had been permitted by the petitioner to use the kiosk but who had refused to vacate the same necessitating a complaint to the respondent no.2. The Chief Officer of the respondent No.2 on the consideration of material had before him by his Order dated 29.06.2012, directed the

respondent No.1 to handover the vacant possession of the kiosk to the petitioner and which was assailed by the respondent No.1 before the Revisional Authority i.e. the respondent No.3 in terms of Section 303 of the Act. The respondent No.3 by the impugned Order allowed the Petition filed by the petitioner No.1 setting aside the Order of the respondent No.2. The dispute was at large before the respondent No.2 as to who was the licensee and there was no basis for the Revisional Court to hold that it was a family dispute or to relegate the parties to the Civil Court. The husband of the respondent No.1 had filed a civil suit challenging the order of the respondent No.2 unlike the respondent No.1 who had filed the revision before the respondent No.3 and her conduct was relevant in that regard. The respondent No.2 had rather filed its reply through the Chief Officer setting out clearly that the husband of the respondent No.1 had suppressed the fact that his wife had preferred a Revision Petition before the respondent No.3 and a stay had been granted of the Order dated 29.06.2012 thereby disentitling him to any discretionary relief of injunction. The petitioner too was not made a party to the suit which reflected on the respondent No.1 whose husband had filed a suit challenging the Order of the Chief Officer of the respondent No.2 while she had challenged before the Revisional Authority.

He had filed an intervention application and thereafter he was joined as a party to the suit where he filed an application for the rejection of the plaint. An Order was passed dated 21.10.2016 pursuant to which the plaint was rejected. There was no finding in favour of the respondent No.1 by the Civil Court while the name of the petitioner was available in the records of the respondent No.2 from 2008 i.e. upon transfer of the kiosk to the name of the petitioner and which he was running from the time of the death of his uncle.

3. Shri Kaif Noorani, learned Counsel for the petitioner further contended that the Order passed by the respondent no.3 was a non-speaking Order and liable for interference. The respondent No.1 was in illegal occupation of the kiosk and the respondent No.2 recognised the petitioner as its licensee. The respondent No.2 through its Chief Officer had filed a written statement in defence in the suit filed by the husband of the respondent No.1 clearly spelling out that the petitioner had been permitted by it to do the business of the suit shop in payment of sopo charges and that his name stood recorded in their records maintained by it unlike the husband of the respondent No.1 who had no relation whatsoever with the suit premises. This specific case was verified on the basis of records by the Chief Officer. The petitioner had issued a

legal notice to the respondent No.1 calling upon her to handover the premises to the petitioner but who had not filed any reply to such notice. The Order passed by the respondent No.3 could not be countenanced and as it tantamounted to a violation of the fundamental right of the petitioner under Article 19-1(g) of the Constitution of India, there was no question of relegating the parties to the Civil Court as it did justify interference in this Petition.

5. Shri V. Daniel learned Advocate for the respondent No.1 submitted that the respondent No.1 had clearly set out a case that upon the death of her paternal uncle her father had requested her to continue the business since 1991 and which was exclusively operated by her and her husband at their own cost and expenditure and even the taxes were paid by her. She had been filing the returns on the basis of the income derived from the business carried out from the said kiosk and besides she had obtained a loan from a Nationalised Bank. There was no basis in the case of the petitioner that her use of kiosk was permissive and/or that she had no nexus with the kiosk in question. It was his contention further that there was no illegality in the order passed by the respondent No.3 as to exercise jurisdiction and the power of superintendence in terms of Article 227 of the Constitution of India. He placed

reliance in *Jai Singh & Ors vs. Municipal Corporation of Delhi* [(2010) 9 SCC 385], *Shalini Shyam Shetty vs Rajendra Shankar Patil* [2010 (8) SCC 329; dealt with the power of the Chief Officer in terms of Section 257 of the Act and further relied in *Amina Bi Shaikh vs Chief Officer Bicholim Municipal Council* [2015 Law Suit (Bom) 1604, a Judgment of the learned Single Judge of this Court. He also placed reliance in *Bicholim Municipal Council vs Rajiv Sardessai* [1996 (2) GLT 287] to buttress her plea that there was no authority in the respondent No.2 to authorize the eviction of a person except by filing a suit for the recovery of the premises.

6. Shri P. Faldessai, learned Addl. Government Advocate for the respondent No.3 invited attention to the application of the petitioner himself dated 08.04.2011 in which he had stated that he had entrusted the suit shop to the respondent No.1 for carrying on the business for an year and that her possession was illegal unlike the reply filed by the respondent No.1 in which she claimed her possession to be legal. The respondent No.3 was justified in passing the impugned Order and remitting the parties to the Civil Court which alone was competent to determine the rights of a full fledged trial. There was no justification to interfere with the order under challenge and hence the petition had to be

dismissed.

7. Shri P. S. Rao, learned Advocate for the respondent No.2 has adverted to the definition of "Municipal market" contained in Section 2(28) of the Act and then to the duties and functions of the Council and the Municipal Executive contained in Section 51 of the Act. He referred to Section 74 of the Act prescribing the powers and duties of the Chief Officer, the power to acquire and hold property, the provision regarding transfer of Municipal property contained in Section 88, the power to provide and maintain municipal markets contained in Section 257(3) contemplating punishment for user of any stall, shop, etc., etc. without a licence in favour of a party but which did not extend to the licence being transferred from one licensee to another being personal in nature. The Order passed by the respondent No.3 was without the application of mind and therefore it called for an interference in this petition.

8. Shri Kaif Noorani learned Advocate for the petitioner in reply adverted to Section 257(2) of the Act which empowered the Chief Officer of the respondent No.2 to issue a licence to every person otherwise to occupy or use any stall, shop, stand, etc., etc. The Judgment in Jai Singh relied upon

by the respondent No.1 was clearly distinguishable and do not apply to the facts of the case and so to the Judgment in Bicholim Municipal Council (supra).

9. Shri Daniel contended on behalf of the respondent No.1 that there was no power in the Chief Officer of the respondent No.2 to order the eviction of the respondent No.1 from the suit shop even on reading of Section 257(1) of the Act.

10. Shri Kaif Noorani in further reply submitted that the decision in Amina Shaikh (supra) was clearly distinguishable and so to that in Bicholim Municipal Council which referred to a lease. There was no basis in the case set up by the respondent No.1 and hence the order passed by the respondent No.3 had to be quashed and set aside.

11. i would consider their submissions in the light of the relevant provisions of the Act, the Judgments relied upon and distinguished by each of them and consider whether the impugned Order justifies interference being an outcome of an exercise of power beyond the jurisdiction of the respondent No.3 or otherwise.

12. In *Jai Singh* (supra), the Hon'ble Apex Court held that the High Court under Article 227 of the Constitution of India has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognised constraints. It cannot be exercised like a "bull in a china shop", to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

13. Shalini Shyam Shetty (supra), on a consideration of various judgments including that in *Surya Dev Rai vs Ram Chander Rai and others* [(2003) 6 SCC 675] culled out the following principles on the exercise of the High Court jurisdiction under Article 227 of the Constitution :

a. A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

b. In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

c. High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power,

act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

d. The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

e. According to the ratio in *Waryam Singh* (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

f. In order to ensure that law is

followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

g. Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

h. In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

i. High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic

structure of the Constitution by the Constitution Bench of this Court in the case of *L. Chandra Kumar vs. Union of India & others*, [(1997) 3 SCC 261] and therefore abridgement by a Constitutional amendment is also very doubtful.

j. It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code ,(Amendment) Act 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

k. The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

l. On a proper appreciation of the wide and unfettered power of the High Court under Article 227 it transpires that the main object of this Article is to

keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

m. The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

n. This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be

unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

o. An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

14. In Amina Shaikh (supra), the short issue which arose for consideration was whether the Municipal Council while deciding an application for building permission could entertain the claim of a third party as regards access and refuse building permission by adjudicating upon the issue of access. In brief facts, the petitioner was a owner of the property and intending to carry out construction, applied to the Chief Officer of respondent for building permission alongwith the accompanying documents. Permission was granted by the office of the Deputy Chief Engineer and when the matter came up for consideration of the Chief Officer, a complaint was made by the respondent Nos.2 to 4 that permission should not be granted to the petitioner as access to their land would be affected. The Chief Officer with others inspected the site, considered the objections and held that the access of the respondents would be affected and refused the application of the petitioner giving rise to the petition.

15. In Amina Shaikh (supra), the learned Single Judge of this Court considered that the Goa (Regulation of Land Development and Building Construction) Act of 2008 and the Regulations of 2010 and observed that it would not be permissible for the Chief Officer to carry out an enquiry to consider the case of access put up by a third party as it would mean that the Chief Officer could decide the issues of easementary rights. It was further held that the Planning Authority would not enter into private dispute and decide interse rights. Besides, the Chief Officer had no judicial power to decide a dispute as regards access and refused permission and hence the order passed by him was without jurisdiction calling for an interference. This Judgment is clearly distinguishable and does not buttress the case of Shri Daniel, learned Advocate for the respondent No.1 and when it was otherwise not shown from any material on record that the Chief Officer of the respondent No.1 had assumed any judicial authority of determining the rights of a party even considering the order dated 29.06.2012.

16. Bicholim Municipal Council (supra) had invited bids by a public notice for lease of mine shops set out therein as is

where is basis. The respondent No.1 was allotted a shop being the highest bidder and called upon to execute a lease deed and a copy of the draft of the lease deed was given to him. The possession of the shop was given to him followed by an assurance at his instance that he would sign the agreement. Disputes arose between the parties as the respondent alleged that the shop did not have electricity connection and he was not liable to pay any lease rent. The respondent maintained the suit as a notice was published in the local daily that the shop was being auctioned and that no such auction could be held as he was in possession of the shop as a lessee. He had prayed to be declared as a tenant and to restrain the Council from holding fresh auction affecting and/or interfering with his possession. The Council contested his claim alleging that he was duty bound to pay the lessee amount from the date he was put in possession and when he had knowledge that there was no electricity connection to the premises. A plea was also taken that the respondent was evicted from the suit premises under due process of law and that acting on the basis of the ad-interim injunction, he had taken possession of the suit shop but as a trespasser. The Civil Court held that there was a valid and binding contract between the parties and that during the substance of the valid and binding contract, the Council could not advertise for a

fresh auction before terminating the present contract which was challenged in Appeal.

17. In Bicholim Municipal Council (*supra*), the learned Single Judge held on hearing the parties and on a perusal of the provisions of the Act that there was no provision whereby the Council was authorised to evict a person from the premises except by filing a suit for recovery of the premises and that the claim of the appellant that they have attached the goods of the respondent and have duly evicted him from the premises cannot stand legal scrutiny and the possession of the respondent had to be protected till he was evicted after due process of law. This Judgment too is distinguishable in the facts of the case which related to the lease of the premises and can find no parity to the case of the respondent No.1.

18. The petitioner had clearly carved a case that his paternal uncle was granted the license of the suit premises i.e. the kiosk by the respondent no.2 and upon his death, his father was running the same. His father had transferred the licenced premises in his name by making an application to the respondent no.2 since he was conducting the business therein for the last 15 years and accordingly the suit premises stood transferred in the name of the petitioner by a procedure

established by law. The petitioner had supported his case by producing the application made by his father to the respondent no.2 dated 01.07.2008 pursuant to which the name of the petitioners stood recorded in the list of sopo payers in the records of the respondent no.2 qua the suit kiosk. Besides, the petitioner had supported his case viz a viz the suit kiosk by producing the list of sopo payers and various tax challans to substantiate his right to the suit kiosk. It was also his case that on account of the illness of his father, he had entrusted the running of the suit kiosk to the respondent no.1 for a year which was due to expire on 31.03.2011 and that the respondent no.1 had declined to hand over its possession back to the petitioner precipitating a complaint at his instance to the respondent no.2.

19. The petitioner had relied on the notice issued to the respondent no.1 to hand over the business in the suit kiosk to him and then made a complaint to the respondent no.2 on 08.04.2011 bringing to the attention of the respondent no.2 that he had orally requested the respondent no.1, his sister, to run the shop for a year till 31.03.2011 and that she had not given back the possession and the shop was in her illegal possession thereby requesting necessary action including her eviction from the suit kiosk. He had also relied

on another letter to that effect and thereupon the respondent no.2 on hearing the parties based on the complaint lodged by the petitioners had recorded his findings and rightly so that the petitioners had produced documents such as electricity bills and sopo fee receipts to show that he was the occupier of the suit kiosk. Unlike the respondent no.1 who had produced the statement of account and Income Tax Returns which did not show any relevance to the disputed kiosk and ultimately in exercise of his powers in terms of section 257(4) of the Act had directed her to hand over the suit kiosk in favour of the petitioner.

20. A bare reading of section 257(4) of the Act reveals that "it shall be lawful for the Chief Officer or any officer in charge of a Municipal market or a slaughter-house to **expel** from the market or slaughter-house any person (i) occupying any stall, shop, stand, shed, pen or space in such market or slaughter-house or exposing for sale therein any articles **without a licence** from the Council...." amongst other powers vested in him. Therefore, it cannot at all be heard on behalf of the respondent no.1 in particular that the Chief Officer of the respondent no.2 acted beyond his jurisdiction to order the expelment of the respondent no.1 from the suit kiosk and with

a direction to give vacant possession to the petitioner. Therefore, the contention of Shri V. Daniel, learned Advocate for the respondent no.1 questioning the source of power of the respondent no.1 to pass the order as he did is drawn from section 257(4)(i) of the Act and hence his contention questioning his source of power is without any basis.

21. It is another matter that the respondent no.1 challenged the order passed by the respondent no.2 dated 29.06.2012 before the respondent no.3 who, by the impugned judgment merely reproduced the case of the parties, the written synopsis placed on record, formulated the question whether the respondent no.2 herein had jurisdiction to entertain the complaints of the petitioner and hastily concluded that the respondent no.2 assumed powers which were to be exercised by the Civil Court. Furthermore, the respondent no.3 without any sound basis and reasoning, recorded that without going into the merits of the case, the respondent no.2 should have directed the petitioner to approach the Civil Court for redressal of his grievances and hastily concluded that it was concurring with the contention of the respondent no.1 and set aside the order passed by the respondent no.2 herein. What was materially lost on the respondent no.3 was the issue before the respondent no.2 as

to who was the licensee of the premises of the suit kiosk and there was no basis whatsoever for the Revisional Court i.e. the respondent no.3 to hold that it was a family dispute or to relegate the parties to the Civil Court for adjudicating their claims, interse.

22. Moreover, there is another interesting facet to this case inasmuch as the husband of the respondent no.1 filed a civil suit challenging the order of the respondent no.2 unlike the respondent no.1 who filed a revision before the respondent no.3. The respondent no.2 had contested the suit to which the petitioner was not made a party and where the respondent no.2 had taken a specific plea that the husband of the respondent no.1 had indulged in suppressing by withholding the fact that his wife i.e. the respondent no.1 had challenged the order of the respondent no.2 in the revision proceedings before the respondent no.3. It is another matter that the petitioner had intervened in the said proceedings and moved an application for the rejection of the plaint followed by an order of the Civil Court allowing the application and rejecting the plaint. The Civil Court had also not rendered any finding in favour of the respondent no.1 in the proceedings filed by her husband. Besides, there was no rebuttal of the fact that the

name of the petitioner was found reflected in the records of the respondent no.2 qua the suit kiosk from 2008 and that the business in the suit kiosk was run by him since then and that the kiosk also stood transferred in his name from that of his father. The order passed by the respondent no.3 is apparently a non-speaking order unlike that passed by the respondent no.2 which recognised the petitioner as a licensee and that the respondent no.1 had no nexus whatsoever with the suit kiosk in question.

23. The contention therefore of Shri V. Daniel, learned Advocate for the respondent no.1 that there was no illegality in the impugned order as to invoke jurisdiction of this Court under Article 227 of the Constitution of India cannot stand the test of scrutiny. Besides, the principles culled out in *Jai Singh* (supra) and *Shalini Shyam Shetty*(supra) do not advance his case that this Court ought not to exercise its jurisdiction in terms of Article 227 of the Constitution of India to correct the illegality committed by the respondent no.3 in passing the impugned judgment as it did. What was also lost on the respondent no.3 is that though the respondent no.1 came up with a case that she was running the business in the suit kiosk from 1991 with her husband, no material whatsoever was

produced by her which could establish her nexus with the suit kiosk in question particularly when the respondent no.2 had clearly held that the documents produced by her including the Income Tax Returns did not establish any nexus with the suit kiosk in question. Moreover, unlike the petitioner whose name stood recorded in the records of the respondent no.2, the respondent no.1 had no such contemporaneous records to establish her nexus with the suit kiosk. Besides, it was the respondent no.2 alone which could grant the license and it was not as if one licensee could transfer it to another being personal in nature. The order passed by the respondent no.3 is therefore vitiated and in exercise of jurisdiction not vested in it by law warranting interference by this Court in exercise of its supervisory jurisdiction in terms of Article 227 of the Constitution.

24. i therefore pass the following :

ORDER

The Writ Petition is allowed and the impugned order dated 02.05.2014 is quashed and set aside and that passed by the respondent no.2 dated 29.06.2012 is restored.

NUTAN D. SARDESSAI J.