

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO.684 OF 2017
IN
WRIT PETITION NO. 422 OF 2008**

Aldila Braganza ... Applicant

V e r s u s

Antonetto John D' Souza & 2 Ors. ... Respondents

Applicant in person.

Shri J. E. Coelho Pereira, Senior Advocate with Shri S. Karpe,
Advocate for the Respondents.

Coram:- NUTAN D. SARDESSAI, J.

**Reserved for Order on : 19 March 2018
Pronouncement of Order on : 27 March 2018**

ORDER

1. The applicant seeks the recall of the order dated 04.05.2009 passed by this Court in the Writ Petition No.422 of 2008 and the Appeal from Order No.59 of 2008 by her application coming up for disposal today. The main plank of her case is that the wife of the respondent no.1 had used a forged letter dated 28.06.2006 bearing the details of the Goa Coastal Zone Management Authority for short GCZMA, clarifying that the survey no.163/2 of Calangute Village, Bardez Taluka, was located beyond 500 metres from the High

Tide Line in her name and used it as a genuine document by producing it in the office of the Town and Country Planning Department for license for the construction of a compound wall which falls within the area of 200 metres from the High Tide Line in the Survey nos.163/2 and 164/1 of Village Calangute. An offence was registered vide Cr. No.42/08 under sections 468, 471 and 420 of the Indian Penal Code and chargesheet had been filed under no.31/2015 dated 30.05.2015 before the learned JMFC Mapusa and pending trial. She had filed the suit for permanent injunction and other consequential reliefs including declaration before the Court of the Senior Civil Judge, Mapusa alongwith an application for temporary injunction which came to be dismissed by the order dated 13.02.2008.

2. She had preferred an Appeal from Order No.59 of 2008 being aggrieved by the said order before this Hon'ble Court. She had simultaneously filed the case before the Mamlatdar of Bardez making out a case for an access to her property and that she had later on moved the Additional Collector who was pleased to pass an exparte order dated 11.07.2008 directing the Mamlatdar of Bardez to open the gate and remove the obstacles between the Survey no.163/1

claimed by her and 163/2, 164/1 and 163/10 to and fro to make openings enough for free movement of an ambulance. The respondent no.1 had approached this Court and obtained a stay of the Order passed by the Additional Collector dated 11.07.2008 in Writ Petition no.422 of 2008. The appeal was filed at her instance and the writ petition was filed at the instance of the respondent no.1 and were tagged together as they related to the common subject matter and heard in common. The Appeal from Order no.59 of 2008 filed by her came to be disposed off as withdrawn and consequently the Writ Petition no.422 of 2008 filed by the respondents was disposed off by the common order dated 04.05.2009.

3. She had filed two applications bearing MCA No.348 of 2011 in the Writ Petition no.422 of 2008 and MCA No.349 of 2011 in the Appeal from Order No.59 of 2008 which were disposed off by this Court relegating her to the Court of the Mamlatdar to adjudicate her grievance relating to the non existence of an access. She had moved the Mamlatdar who vide its order dated 28.03.2013 rejected her application on the ground that the order dated 04.05.2009 was passed by this Court in the Writ Petition No.422 of 2008 finally deciding the issue. She had preferred a revision before the Additional Collector who also rejected her petition vide the order dated

20.09.2013 and thereupon she challenged the same in the Writ Petition no.622 of 2013 wherein this Court was pleased to quash the aforesaid orders and directed the Mamlatar to decide the matter afresh in the light of the observations made in the order dated 18.11.2013. The respondent no.1 being aggrieved by the said order had moved the Hon'ble Supreme Court in a Civil Appeal and the Supreme Court was pleased to allow the appeal and set aside the judgment and order dated 18.11.2013 with liberty to the respondents i.e. the applicant herein to move before the Court of competent jurisdiction if completion certificate was not issued by the Panchayat in terms of the order passed in the Writ Petition no.422 of 2008.

4. She had received a letter from the Police Inspector Crime Branch, Ribandar dated 08.06.2017 that the wife of the respondent no.1 had used forged letters from the GCZMA and thereby obtained fraudulent NOC from the Town and Country Planning Department and on the basis of the fraud had misled this Hon'ble Court successively at all stages with a manufactured story of an alternate access. The order dated 04.05.2009 passed in the Writ Petition No.422 of 2008 and in the Appeal from Order No.59 of 2008 was obtained by misrepresentation and by hoodwinking this Hon'ble Court in accepting the proposition of an alternate access in order to

cause undue hardship to the applicant. The order dated 04.05.2009 therefore had to be recalled with immediate effect and the order passed by the Additional Collector dated 11.07.2008 be implemented.

5. The respondent no.1 opposed the application on the premise that it was not tenable in law and the same being filed with an oblique motive to mislead this Court and to harass the respondent without any basis to file the application under reply. It was in fact an abuse of the process of this Court and needed to be dealt with strictly inasmuch as similar applications were filed by the applicant in this Court making similar grievance namely MCA No.348 of 2011 and MCA No.349 of 2011 which came to be disposed off on 18.04.2012 and on 14.03.2012. The order dated 04.05.2009 was sought to be recalled by her after a period of almost 18 months by filing similar applications which ultimately were disposed off by this Court acknowledging the fact that an access of 1.5 was available to the applicant to go to her property from the northern side. The applicant by hook or by crook was trying to get the order dated 04.05.2009 revived by filing applications on flimsy and untenable grounds. The issue of the purported fraud committed by the wife of the respondent no.1 was adjudicated and raised by the applicant in the earlier

proceedings in CMA No.1028 of 2011, CMA No.286 of 2012 and Writ Petition No.304/2012. These proceedings came to be disposed off by orders passed by this Court in the respective applications.

6. The applicant had filed the suit and claimed the relief of injunction which came to be dismissed after hearing the parties and feeling aggrieved she had preferred the Appeal from Order No.59 of 2008. She had instituted parallel proceedings before the Court of the Mamlatdar and sought the same reliefs which application came to be dismissed for non-prosecution by the order dated 07.01.2008. She had filed a restoration application which was restored and thereafter the respondent herein preferred a revision before the Additional Collector. During the pendency of the revision proceedings, the applicant claimed urgency for the opening of the access and persuaded the Additional Collector to pass interim directions without powers to do so. The Additional Collector passed the order dated 11.07.2008 and the respondent no.1 challenged the same in the Writ Petition no. 422 of 2008 wherein the order of the Collector came to be stayed. The appeal from order filed by the applicant and the writ petition filed by the respondent no.1 came to be heard together and in the course of the hearing and based on the submissions made

before the Court where the applicant was duly represented by a learned Senior Advocate apart from the respondent no.1, an order was made disposing off the Writ Petition No.422 of 2008 and allowing the Appeal from Order No.59 of 2008 to be withdrawn.

7. The applicant after a span of almost two years chose to file the Misc. Application No.348 of 2011 seeking to recall the order dated 04.05.2009 on the ground that there was a misrepresentation before this Hon'ble Court and there was no suitable access available to her. This Court vide the order dated 14.03.2012 directed a Surveyor to be appointed from the office of the Mamlatdar who was directed to conduct a site inspection and ascertain whether the suit access of 1.5 metres was available at loco. A survey was conducted and the report was furnished to the Court pursuant to which it was ascertained that the alternate access was having a width of 1.5 metres except at two places where the coconut trees were existing and the width was 1.30 mts and 1.41 mts. The applicant was given liberty to file necessary application before the Mamlatdar to ascertain and determine the access available with regard to her claim of alternate access and the Mamlatdar was directed to decide the claim in accordance with law. In the light of the said orders, all the applications came to be

withdrawn by the applicant unconditionally. The applicant approached the Mamlatdar who by his order dated 28.03.2013 dismissed the claim against which a revision came to be filed at her instance and that too was dismissed and finally a writ petition was filed bearing no.622 of 2013 which was partly allowed by this Court by quashing and setting aside the orders passed by the Mamlatdar and the Additional Collector. The learned Single Judge remanded the matter to the Mamlatdar to decide the application in accordance with law. This order was challenged by the respondent no.1 in a Special Leave Petition before the Hon'ble Supreme Court which allowed the appeal holding that it was not open for the High Court in a subsequent writ petition to pass any order enlarging the order and direction issued by the High Court in the earlier Writ Petition No.422 of 2008 and consequently set aside the judgment of this Court with liberty to the applicant to move before the Court of competent jurisdiction as regards obtaining a completion certificate if the same was not issued by the Panchayat.

8. The respondent no.1 also took a plea that the present application was in fact a replica of the earlier application filed by the applicant before this Court and which came to be withdrawn as the same had become infructuous.

The application was based on false and concocted averments. There was no basis in her case that she learnt for the first time in June 2017 that an offence was registered by the Crime Branch against the wife of the respondent no.1. The applicant had instituted proceedings before the learned JMFC Panaji, seeking directions to expedite an inquiry in the year 2009 and 2010 and the present application was filed by suppressing a material fact with an intention to mislead this Hon'ble Court and no forgery was committed by his wife nor had she prepared the letter dated 28.06.2006 which was issued by the office of the GCZMA and forming a part of its record. The chargesheet in the offence of the Crime Branch was filed in the year 2015 which was to the knowledge of the applicant who has only made an application belatedly to the Crime Branch and got a reply in the year 2017 to form the basis of her application. The applicant has been claiming an alternate access through another property at Candolim carving out the ground of illness of her father in law apart from the access claimed through the property of the respondent no.1. The applicant had all along been represented by an Advocate including a learned Senior Advocate at the time of passing of the order dated 04.05.2009 which is clear and unambiguous and narrates the correct facts which had transpired before this Court. There was no basis in the application filed by the

applicant for recall of the order and therefore the application had to be dismissed with exemplary costs.

9. The applicant placed her written submissions on record reiterating the contents of her application and that the order dated 04.05.2009 was obtained by fraud and concealment of facts. It was also her contention in reply that she was not served in the Appeal From Order No.59 of 2008 and therefore whatever transpired in the Court was not within her knowledge nor was she a party to do it. The order had therefore to be recalled.

10. Shri J. E. Coelho Pereira, learned Senior Advocate at the outset contended that the application had to be dismissed with exemplary costs since the application was filed initially through a Lawyer, thereafter the Lawyer had withdrawn his appearance and a similar application filed earlier was also withdrawn. The application for recall was sought for the relief of recalling the order dated 04.05.2009 passed in Writ Petition No.422 of 2008. It was her case that the letter of the GCZMA dated 28.06.2006 was a forged document by the wife of the respondent no.1 on the basis of which permission was obtained by the respondent no.1. He referred to the Civil Suit filed by the applicant against the respondent no.1 before the learned Senior Civil Judge, Mapusa which was for

declaration of access, injunction and consequential reliefs and that the application came to be dismissed giving rise to the Appeal from Order at her instance. She had simultaneously filed the proceedings before the Mamlatdar under the Mamlatdar's Courts Act for opening of the access which came to be dismissed. The application for restoration filed at her instance was allowed and the matter was challenged in revision by the respondent no.1. However, during the pendency of these proceedings, the applicant had sought for mandatory relief which the Additional Collector went ahead beyond his powers and granted relief to her vide the order dated 11.07.2008 giving rise to the Writ Petition No.422 of 2008 at the instance of the respondent no.1. Since the issues in both the proceedings were common, the Writ Petition No.422 of 2008 filed by the respondent no.1 and the Appeal from Order No.59 of 2008 filed by the applicant were tagged together in which the order came to be passed dated 04.05.2009 which was sought to be recalled by the application under consideration.

11. It was his contention that once the appeal from order was withdrawn by the petitioner and the writ petition disposed off consequent to the said order, no order remained on record to be recalled. He referred to the Appeal Memo filed

by the applicant no.1 herein in which amongst others she had taken the same ground of the forged document from the GCZMA by the respondent to obtain a license to the compound wall. She had taken the same ground about the illness of her father-in-law in the proceedings before the learned Additional Collector. She had moved an application for recall of the same order dated 04.05.2009 in MCA No.348 of 2011 and in which she had again made a reference to the forged document of the GCZMA to fraudulently obtain NOC unlike the ground urged in the appeal from order. An order was passed by this Court on the recall application dated 10.05.2012 and where the applicant was duly represented by an Advocate who on instructions had appeared at her instance and stated that he would not press for the other contentions raised in the application but had to be given an opportunity to file an appropriate application before the Mamlatdar to get his grievances ventilated. Another application was also filed to recall the order dated 04.05.2009 and which came to be withdrawn vide the order dated 13.12.2012. Therefore, considering the chequered history of the case, the application which was without any basis and contumacious had to be dismissed with exemplary costs.

12. i have considered the written synopsis filed by the

applicant, the submissions of learned Senior Advocate Shri J. E. Coelho Pereira for the respondent no.1 and the order dated 04.05.2009 sought to be reviewed. At the outset, it needs reckoning that the applicant has been throughout represented by an Advocate including the filing of the present application where she was represented by an Advocate for sometime and who thereafter withdrew his appearance and she was represented by another Advocate who too withdrew his appearance under notice to her. At the stage when the appeal from order was heard before a learned Single Judge of this Court, the applicant was represented by a learned Senior Advocate and which was heard alongwith the Writ Petition no.422 of 2008 as the issues in both the proceedings were common. It is while considering the said proceedings namely the Writ Petition No.422 of 2008 alongwith the Appeal from Order No.59 of 2008 that the learned Senior Advocate appearing for the applicant sought for a withdrawal of the appeal from order as the appellant therein i.e. the applicant herein had been granted a satisfactory access and consequently the learned Single Judge recorded that the petitioner's relief for setting aside the order of the Mamlatdar dated 07.03.2008 and 11.07.2008 was required to be granted. There was also a fair concession on behalf of the applicant in the Appeal from Order No.59 of 2008 that the lis in the

Mamlatar's Court no longer remained and there was a submission on her behalf by the learned Senior Advocate that he would withdraw the application in the Mamlatdar's Court. The learned Single Judge had however observed that the office of the Panchayat shall issue the completion certificate requested by the applicant which could not be issued due to elections and that the completion certificate would be issued on or before 31.05.2009. In view thereof, the Writ Petition No.422 of 2008 was disposed off and the Appeal from Order no.59 of 2008 was allowed to be withdrawn. There is no ambiguity whatsoever in this order recorded by the learned Single Judge as early as 04.05.2009 which is now sought to be recalled by the applicant by her application dated **27.07.2017**. It is not as if the applicant had knowledge about the letter of the GCZMA purportedly forged by the wife of the respondent no.1 now but this fact was within her knowledge much earlier even when she filed an Appeal from Order No.59 of 2008 in which one of the grounds taken in the Appeal Memo was that the respondent no.1 on the basis of the forged letter of the Goa Coastal Zone Management Authority had obtained the license for the construction of the compound wall. The matter does not rest easy for the applicant inasmuch as it has been shown from the records that she had earlier moved applications for recalling of the same order dated 04.05.2009

which came to be either withdrawn and/or disposed off by this Court with no relief in her favour. It has been amply demonstrated from the records and by the conduct of the applicant that she herself had indulged in subterfuge and by her contumacious conduct had misled the Court to believe that the order dated 04.05.2009 was sought to be recalled for the first time by her application now under consideration and on the purported discovery of the chargesheet filed by the Crime Branch in **2015** against the wife of the respondent no.1. Without getting into the merits of such contentions about the letter being forged as alleged by her and being an original record of the office of the GCZMA as contended on behalf of the respondents, the fact remains that the applicant who was duly represented by a learned Senior Advocate had withdrawn the appeal from order under consideration and therefore it is not at all available to the applicant to seek for the relief of the recall of the order dated 04.05.2009.

13. The applicant has been indulging in all sorts of subterfuge and moving applications before this Court for one or the other relief by withholding facts. The applicant had filed proceedings before the Mamlatdar to re-open the proceedings who had dismissed the same by the Judgment dated 28.03.2013 and the revision against it was also dismissed by

the order dated 20.09.2013. The applicant preferred a Writ Petition No.622 of 2013 and a learned Single Judge of this Court while setting aside the order passed by the Mamlatdar and the revisional authority allowed the revision partly, remanded the matter to the Mamlatdar to decide the application in accordance with law and kept the contentions of the parties open. This matter was taken to the Hon'ble Apex Court at the instance of the respondent no.1 in which a detailed reference is made to the various proceedings filed by the applicant, the order dated 04.05.2009 passed by this Court in Writ Petition No.422 of 2009 and appeal from order No.59 of 2008, the subsequent applications filed by the applicant **to recall the order dated 04.05.2009** on the premise that there was misrepresentation and the disposal thereof by this Court dated 14.03.2012 with directions to the Mamlatdar to inspect and verify the width of the alternate access.

14. The Hon'ble Apex Court also took note of the petition filed by the applicant in Writ Petition No.622 of 2013 and the order passed by a learned Single Judge partly allowing the petition and on hearing the parties held that it was not open for the High Court in the subsequent writ petition to pass any order enlarging the order and direction issued by the High

Court in the earlier Writ Petition no.422 of 2008. The Hon'ble Apex Court for that matter had also observed that the dispute between the respondent no.1 and the applicant herein had reached finality when the High Court disposed off the Writ Petition No.422 of 2008 by order dated 04.05.2009 wherein she had conceded that the lis in the Mamlatdar's Court no longer remained and on her instructions, the learned Counsel undertook to withdraw the application in the Mamlatdar's Court. The Apex Court had set aside the judgment and order passed by the learned Single Judge dated 18.11.2013 in Writ Petition No.622 of 2013 granting liberty to the applicant to move the Court of competent jurisdiction if completion certificate had not been issued by the Panchayat of Calangute in terms of the order passed in Writ Petition No.422 of 2008 or if the applicant did not satisfy with such completion certificate. Looking thus to the chequered history of the case, there is no basis whatsoever in the application filed on behalf of the applicant for recall of the order dated 04.05.2009 on any premise whatsoever. There is no dispute with the proposition laid down in *Prestige Lights Ltd. vs. State Bank of India* [2007 (8) SCC 449] followed in *Dalip Singh vs State of Uttar Pradesh & Ors.* [2010(2) SCC 114] and also that in *S.P. Chengalvaraya Naidu (Dead) vs. Jagannath (Dead) by LRs. & ors.* [1993 (6) SC 331]. However, it does not buttress the case of the

applicant on any premise whatsoever. The applicant has throughout been represented by an Advocate and the applications appear to have been drafted by the Advocates representing her interest. It is only at the stage of hearing that the applicant has placed on record the written submissions which too appear to have been drafted by a Lawyer and rather not a projection of what a layman applicant would file in Court.

15. Looking thus to the chequered history of the case, the conduct of the applicant being found contumacious and otherwise wasting the time of the Court in such applications apart from the merits of the case, i do not find any merit in her application for recall of the order dated 04.05.2009 passed in the Writ Petition No.422 of 2008 and Appeal from Order No.59 of 2008 and dismiss the same with exemplary costs of ₹2,00,000/- which the applicant shall deposit in the office of the State Legal Services Authority within four weeks from today.

NUTAN D. SARDESSAI J.