

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NOS. 962, 963, 964, 967 & 978 OF 2017****WRIT PETITION NO. 962 OF 2017**

Comunidade of Sangolda Petitioner

Versus

Ganapat Badiger & Another Respondents

Shri Jose Filipe Melo, Advocate for the Petitioner.

Shri Joaquim Godinho, Advocate for the Respondent No. 1.

Shri Arun Talaulikar, Additional Government Advocate for the Respondent No. 2.

WRIT PETITION NO. 963 OF 2017

Comunidade of Sangolda Petitioner

Versus

R. Anthony Samy Gaunder & Another Respondents

Shri Jose Filipe Melo, Advocate for the Petitioner.

Shri Joaquim Godinho, Advocate for the Respondent No. 1.

Shri Sagar Dhargalkar, Additional Government Advocate for the Respondent No. 2.

WRIT PETITION NO. 964 OF 2017

Comunidade of Sangolda Petitioner

Versus

R.A. Jebanesam & Another Respondents

Shri Jose Filipe Melo, Advocate for the Petitioner.

Shri Joaquim Godinho, Advocate for the Respondent No. 1.

Ms. Neha Kholkar, Additional Government Advocate for the Respondent No. 2.

WRIT PETITION NO. 967 OF 2017

Comunidade of Sangolda Petitioner

Versus

Chandrashekhar Badiger & Another Respondents

Shri Jose Filipe Melo, Advocate for the Petitioner.

Shri Joaquim Godinho, Advocate for the Respondent No. 1.

Ms. Neha Kholkar, Additional Government Advocate for the Respondent No. 2.

WRIT PETITION NO. 978 OF 2017

Comunidade of Sangolda Petitioner

Versus

Pooja Prakash Hoble & Another Respondents

Shri Jose Filipe Melo, Advocate for the Petitioner.

Shri Joaquim Godinho, Advocate for the Respondent No. 1.

Ms. Neha Kholkar, Additional Government Advocate for the Respondent No. 2.

CORAM : C.V. BHADANG, J.

DATE : 13th APRIL 2018

ORAL ORDER:

All these petitions involve a common issue and they can be conveniently disposed of by this common order.

2. The respondent no. 1, in all these petitions, had filed separate civil suits, challenging the notice of demolition, issued by the petitioner and for a direction to the petitioner to decide the application for regularisation.

3. The learned Trial Court, had dismissed the application for temporary injunction by separate orders dated 21.03.2017. Feeling aggrieved, the plaintiffs in the said suits, had approached the learned District Judge in appeal. The appeals came to be disposed off by a judgment and order dated 31.05.2017 in the following terms:

“The appeal stands allowed.

The impugned order dated 21.3.2017 is quashed and set aside.”

4. At the outset, it is necessary to note that the operative order is not appropriately drawn. It is necessary for the Appellate Court, if the order of the Trial Court is set aside, to state as to what relief is granted. The operative order simply mentions that the appeal is allowed and the impugned order dated 21.03.2017, passed by the Trial Court is quashed and set aside. Normally, this would not mean that the application for temporary injunction is allowed. The Court should be careful while drawing the operative order, while deciding a suit or appeal, so that there is no ambiguity left, when such orders are required to be examined in challenge thereto.

5. The learned Counsel for the petitioner has referred to the observations in para 26 of the judgment, in order to

submit that the Appellate Court had granted limited protection to the respondent no. 1/plaintiff from demolition, pending the application for regularisation, being decided by the petitioner. Indeed, there are observations in this nature, which can be found in para 26 of the judgment. On a premise that such an injunction is granted by the Appellate Court, the petitioner has approached this Court in the present petition.

6. This Court by an order dated 23.02.2018 had noted that all the relevant documents, for the purpose of regularisation, were submitted to the petitioner. This Court noted the statement on behalf of the petitioner that the procedure as prescribed in notification dated 22.11.2001, shall be followed and the outcome of the regularisation application shall be placed before this Court on affidavit. It appears that subsequently, the petitioner has considered the application for regularisation and the same has been dismissed. The petitioner has filed an affidavit to that effect along with a copy of the order, dismissing the application for regularisation.

7. Shri Godinho, the learned Counsel for the respondent no. 1 submits that the petitioner has not followed due procedure as per the notification of the year 2001 and all

other applicable provisions, while deciding the regularisation applications. I am afraid, this issue cannot be gone into the present petitions, which is filed by the petitioner-Communidade. The respondent no. 1 will have to take recourse to a remedy, if any, available in law, against the rejection of the application for regularisation, which they may avail, if so advised.

8. In such circumstances, nothing survives in the present petitions, which are accordingly disposed of, with no order as to costs. It is made clear that this Court has not expressed any opinion on the merits of the order, rejecting the application for regularisation.

C. V. BHADANG, J.

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