

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 289 OF 2018

SITARAM ATMARAM CHODANKAR., ... Petitioner

Versus

VILLAGE PANCHAYAT OF PIRNA, THR.
ITS SECRETARY AND ANR., ... Respondents

Shri Prasheen Lotlikar, Advocate for the Petitioner.

Shri Nigel Da Costa Frias, Advocate for the Respondent No. 2.

Coram:- C. V. BHADANG, J.

Date:- 30th July 2018

ORAL ORDER:

The petitioner, who is the original complainant, is challenging the judgment and order dated 18.07.2017, passed by the learned District Judge, Mapusa in Civil Revision Application No. 89/2015.

2. By the impugned judgment, the learned District Judge, while allowing the civil revision application, filed by the respondent no. 2, has set aside an order of demolition of the structure, allegedly standing in survey no. 13/4 of village Pirna, belonging to the petitioner. The learned District Judge has placed reliance on the report of the ISLR dated 19.07.2011, in order to find that there was no structure/room, standing in survey no. 13/4. Incidentally, the adjoining survey no. 13/3, is in

possession of the respondent no. 2 as a mundkar.

3. I have heard Shri Lotlikar, the learned Counsel for the petitioner and Shri Costa Frias, the learned Counsel for the respondent no. 2. None for the respondent no.1-Village Panchayat, though served. Perused record.

4. It is submitted by Shri Lotlikar, the learned Counsel for the petitioner that the report of the ISLR, pertains to demarcation of the boundary between survey nos. 13/4 and 13/5 and as such, the demarcation proceedings were not in respect of the existing structure standing in survey no. 13/4. It is submitted that in the sketch prepared by the Village Panchayat, there is a structure shown in survey no. 13/4, which according to the learned Counsel for the petitioner, is constructed by the respondent no. 2, without any construction license from the respondent no. 1.

5. On the contrary, Shri Costa Frias, the learned Counsel for the respondent no. 2 has submitted that the petitioner was present during the demarcation proceedings, conducted by the ISLR. He submitted that the report of the ISLR has been confirmed by the learned Deputy Collector on 21.06.2012. It is pointed out that in the confirmation proceedings, the petitioner was one of the applicants and therefore, the petitioner, cannot conceivably challenge the said report of ISLR. It is submitted that the learned

District Judge has rightly found that the report of the ISLR is more authentic and would have greater evidentiary value in the eyes of law, than the sketch prepared by the Village Panchayat. It is submitted that the sketch prepared by the respondent no. 1 nowhere shows the cardinal points.

6. I have carefully considered the circumstances and the submissions made. A bare perusal of the report dated 19.07.2011 shows that there is no structure shown standing in survey no. 13/4, as claimed by the petitioner. The order of the Deputy Collector dated 21.06.2012 shows that the boundaries of the adjoining sub-division namely, sub-division nos. 2, 3, 5 and 9 of survey no. 13 were taken into consideration along with the old structure/s standing therein. Thus, it cannot be accepted that only because, the report of the ISLR, pertains to demarcation of survey nos. 13/4 and 13/5, the same cannot be relied upon. In my considered view, the learned District Judge has rightly found that the sketch prepared by the Village Panchayat does not show any cardinal points. Thus, the report dated 19.07.2011 of the ISLR, would have greater probative value. That apart, if according to the petitioner, the respondent no. 2 has encroached and carried out construction in his land survey no. 13/4, the normal course would be to take recourse to appropriate civil remedy, to remove the said encroachment and/or for demolition of the said structure. The impugned order passed by the learned

District Judge does not suffer from any infirmity. Thus, reserving liberty to the petitioner to take appropriate recourse to a civil remedy, if any and if so advised, in accordance with law, the Writ Petition is dismissed, with no order as to costs.

C. V. BHADANG, J.

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