

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1172 OF 2016**

Mario Lourenco Dias Do Rosario & Another		Petitioners
Versus		
Maria J.C. Pereira & 8 Others		Respondents

Mr. Rohit Bras De Sa, Advocate for the Petitioners.

Mr. Galileo Teles, Advocate for the Respondent No. 1.

CORAM : C.V. BHADANG, J.

DATE : 5th February, 2019

ORAL ORDER:

Heard Mr. De Sa, the learned Counsel for the petitioners and Mr. Teles, the learned Counsel for the respondent no. 1, for some time.

2. The respondent no. 1 filed an application dated 23.12.2008, before the learned Deputy Collector and SDO, Panaji, claiming that the boundary stones of land bearing survey no. 2/5 of village Mercurim of Tiswadi Taluka, belonging to the respondent no. 1, have been removed and therefore, land admeasuring 475 square metres, belonging to the respondent no. 1 cannot be identified. The respondent no. 1 requested for re-fixation of the boundary marks.

3. The learned Deputy Collector by an order dated 03.02.2009, directed the Directorate of Settlement and Land Records in terms of sub-section (1) of Section 114 of the Goa, Daman and Diu Land Revenue Code, 1968 (Code, for short) to carry out the demarcation of the boundaries between the survey nos. 2/5, 2/6 and 2/14 of village Mercurim of Tiswadi Taluka, as per the existing survey plan. The office of the Directorate of Settlement and Land Records, by a letter dated 17.03.2009 has submitted a report dated 26.02.2009, which is pending confirmation by the learned Deputy Collector.

4. The learned Deputy Collector by an order dated 28.10.2010 found that already there were demarcation proceedings undertaken at the instance of the respondent no. 1 and as per the order dated 30.04.1993, re-fixation of the boundary marks of property survey no. 2/5 was carried out, as such, he refused to entertain the second application. Feeling aggrieved, the respondent no. 1 challenged the same before the Administrative Tribunal in Land Revenue Appeal No. 76/2010. The learned Administrative Tribunal by judgment and order dated 16.12.2015 has allowed the appeal, remanding the matter to the Deputy Collector for confirmation of the report, after hearing the parties. It is this order, which is subject

matter of challenge in this petition.

5. I have heard the learned Counsel for the parties. With the assistance of the learned Counsel for the parties, I have gone through the record.

6. Mr. De Sa, the learned Counsel for the petitioners submitted that a claim for identification of the boundary marks or their absence would not constitute a “dispute”, within the meaning of Section 114 of the Code. It is submitted that already demarcation proceedings were carried out in the year 1991, at the instance of the parties and demarcation exercise cannot be taken up again and the Administrative Tribunal was in error in remanding the matter for confirmation of the report.

7. Mr. Teles, the learned Counsel for the respondent no. 1 has supported the impugned order. It is submitted that the Tribunal is justified in holding that the law of limitation would not apply and that the cause of action having accrued in the year 2008, fresh demarcation proceedings can be initiated.

8. I have considered the submissions made. Section 113 of the Code contemplates disputes regarding boundaries

between villages, survey numbers and sub-divisions and provides that if, any dispute arises concerning the boundary of a village or a field or a holding, which has not been surveyed or if at any time after the completion of a survey, a dispute arises concerning the boundary of any village or survey number or sub-division of a survey number, it shall be decided by the Collector after holding a formal inquiry.

9. Under Section 114 of the Code the Collector may, on the application, demarcate the boundaries of a survey number or of a sub-division and construct boundary marks thereon. It would be significant to note that under Section 118 of the Code, the Collector is in charge of the boundary marks. The said Section provides that after the introduction of survey and settlement in a district, the charge of the boundary marks and survey marks shall devolve on the Collector and it shall be his duty to construct, maintain and repair and for this purpose, the Collector is clothed with the powers conferred on the Survey Officer by Section 116 of the Code.

It can thus be seen the under Section 118 of the Code, it is the statutory duty of the Collector to construct, repair and maintain the boundary marks.

10. Coming to the contentions as raised on behalf of the petitioners, it cannot be accepted that the demarcation in the year 1991, can come in the way of the parties in seeking demarcation again, if in the interregnum, the boundary marks are destroyed or interfered with, in which case, the learned Collector can take appropriate measures in re-constructing or repairing the boundary marks. According to the petitioners in the year 2008, the boundary marks have been removed.

11. I have carefully gone through the impugned order passed by the learned Tribunal and I do not find that it suffers from any infirmity, so as to require interference. In any event, as directed by the Tribunal, the learned Deputy Collector will have to pass appropriate orders after hearing the parties. In that view of the matter, the petition is disposed of, with no order as to costs. The learned Deputy Collector shall proceed to decide the matter as expeditiously as possible.

C. V. BHADANG, J.

EV