

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 98 OF 2010

Comunidade of Margao,
represented by its Attorney
Mr. Celestino Noronha,
son of Luis Noronha, aged 47 years,
businessman, resident of H.No.76,
Opp. Holy Spirit Institute,
Margao, Goa.

.... Petitioner.

Versus.

1. The State of Goa,
through the Secretary Revenue,
Secretariat, Porvorim 403 521
2. The Administrator of Comunidades,
South Zone,
Margao 403 601
3. Mrs. Francisca de Cruz e Rodrigues
(since deceased)
3. A. Adelaide Maria Rodrigues,
R/o. Flat No.2, Assherton Bennett,
St. Mark's Hill, Surbiton,
KT6 4LS. UK
3. B. Delfina Monteiro
R/o. 8 Woodcote Avenue,
Wallington, SM60QS,
Surrey. UK

3. C. Francisco Rodrigues,
R/o. 32, Beresford Avenue,
Tolworth, Surrey. UK.

..... Respondents.

Mr. F. E. Noronha, Advocate for the Petitioner.

Mr. D. J. Pangam, Advocate General, with Ms. Neha Kholkar,
Additional Govt. Advocate for Respondent No.1.

Mr. Valmiki Menezes, Advocate for Respondents No.3(a) and 3(b).

Mr. Dinesh Eknath Naik, Advocate for Respondent No.3(c).

***Coram : M.S. Sonak &
C.V. Bhadang, JJ.***

Date : 27th November, 2019.

ORAL JUDGMENT : (Per M.S. SONAK, J.)

Heard Mr. F.E. Noronha for the Petitioner, Mr. D. Pangam, learned Advocate General with Ms. Neha Kholkar, learned Additional Govt. Advocate for Respondent No.1, Mr. Valmiki Menezes for Respondents No.3.A and 3.B and Mr. Dinesh Naik for Respondent No.3.C.

2. The challenge in this Petition is to the order dated 16th June, 2009, made by the under Secretary (Revenue-I), conveying approval of the Government in terms of Articles 327 and 329 of the Code of Comunidades for grant of a Comunidade plot surveyed

under Chalta No. 52 of P.T. Sheet 140 of Margao City Survey, belonging to the Comunidade of Margao, having an area of 222 sq. metres at an annual lease rent of Rs.35,520/-, to Respondent No.3. Respondent No.3 has since expired and her interests are represented by her legal representatives, who are impeaded as Respondents No.3.A, 3.B and 3.C.

3. Mr. Noronha, learned Counsel for the Petitioner-Comunidade submits that even the Petitioner was processing the file for allotment of land to Respondent No.3, to be used as an access to her property bearing Chalta No. 53 of P.T. Sheet 140. He points out that before this process could be completed, the impugned order came to be issued, which has an effect of completely destroying the Comunidade's remaining property bearing Chalta No. 52 of P.T. Sheet 140. He refers to the plans at pages 38 and 40 of the paper book to point out that the proposal of the Petitioner-Comunidade was much more reasonable inasmuch as it provided more than ample access to Respondent No.3 and at the same time, did not destroy the remaining property of the Petitioner.

4. Mr. Menezes and Mr. Naik, learned Counsel for Respondents No.3.A, 3.B and 3.C submit that they have no objection to allotment of the access in terms of the plan at page 40 of the paper book. Such Respondents, at least for the present, are not

made to pay foro/annual lease rent for the property in excess of 222 sq. metres. They submit that if, ultimately, the Comunidade is going to allot an additional area so as to provide access not only to their property at Chalta No. 53 of P.T. Sheet 140, but also the properties bearing Chalta Nos. 49 and 50 of P.T. Sheet 140, then, even they are not averse to paying some increased charges on proportionate basis. However, Mr. Menezes and Mr. Naik submit that there is nothing inherently wrong in the allotment ordered by the impugned order.

5. The learned Advocate General submits that the State is also not averse to modify the order dated 16th June, 2009, so as to make the same consistent with the allotment of land as depicted in the plan at page 40 of the paper book.

6. We have perused the plans at page 38 and 40 of the paper book. The impugned order dated 16th June, 2009 is in the context of the plan at Exhibit 10 (page 38). If the allotment is to be ordered in terms of the plan at page 38, then, the remaining property of the Petitioner-Comunidade bearing Chalta No.52 P.T. Sheet 140 will be virtually bifurcated and rendered useless. Ultimately, in such matters, the Authorities have to see that the landlocked properties may be granted access, but at a minimum inconvenience to the Comunidade, who is the owner of the property.

7. The plan, which is proposed by the Comunidade at page 40 not only grants more than ample access to Respondents No.3.A, 3.B and 3.C, but also provides for an access to other landlocked properties bearing Chalta Nos.49 and 50 of P. T. Sheet 140 of Margao City Survey. This plan salvages a significant portion of the Petitioner's property bearing Chalta No.52 of P. T. Sheet 140.

8. Accordingly, we see no reason as to why the impugned order dated 16th June, 2009 is not suitably modified or suitably substituted, so as to bring the same in tune with the plan at page 40 of the paper book.

9. Accordingly, we quash and set aside the impugned order dated 16th June, 2009, but, at the same time direct Respondents No.1 and 2 to issue a fresh order within 4 weeks from today, making the allotment consistent with the plan at page 40 of this paper book. While making such order, Respondents No.1 and 2 to specify that for the present, the liability of Respondents No.3.A, 3.B and 3.C for payment of the annual lease rent/foro, shall be proportionate to 222 sq. metres. However, a provision may be made for charging Respondents No.3.A, 3.B and 3.C additional annual lease rent/foro on proportionate basis, once the liability of payment of annual lease rent/foro for the properties bearing Chalta Nos. 49 and 50 of P.T.

Sheet 140 of City Survey Margao is ultimately determined. The issue of such determination will arise only if the owners of the said landlocked properties apply for access.

10. If the proposal is putforth by the Petitioner in terms of the plan at page 40 of the paper book, the same will enure to the benefit of not only Respondents No.3.A, 3.B and 3.C, but also the owners of the plots bearing Chalta Nos. 49 and 50, P.T. Sheet 140 should they wish to avail such access. In that eventuality, however, Respondents No.3.A, 3.B and 3.C will have to bear an additional foro/annual lease rent on proportionate basis.

11. We make it clear that though we are quashing and setting aside the order dated 16th June, 2009, we are really not finding any fault with the allotment of the land to Respondents No.3.A, 3.B and 3.C for the purpose of access to their property. Accordingly, Respondents No.1 and 2 will have to issue the necessary orders within four weeks from today.

12. For the sake of convenience, we annex the plan which is at page 40 of the paper book, as an annexure to this order. This plan is, therefore, to be read as a part of this order itself.

13. Rule in this Petition is made absolute to the aforesaid

extent. There shall be no order as to costs.

14. In case there is any difficulty in implementation of this order, we grant the parties liberty to apply.

C.V. Bhadang, J.

M.S. Sonak, J.