

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.217 OF 2019

1. Shri Gopal Shiva Naik,
Son of Shiva Naik,
60 years of age, Indian National,
and his wife
2. Smt. Gautami Gopal Naik,
Wife of Shri Gopal Naik,
56 years of age,
Both residing at Kasswadda,
Taulim, Ponda-Goa. ... Petitioners

V e r s u s

1. Shri Nonu Krishna Naik,
Son of lagte Krishna Naik,
69 years of age, married,
Retired, residing at House No.118/1,
Kasswadda, Taulim, Ponda-Goa.
2. Village Panchayat Wadi Taulim,
Through its Secretary,
with office at Wadi, Taulim,
Ponda, Goa. ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. Aditi Naik,
Advocate for the Petitioners.
Mr. J. E. Coelho Pereira, Senior Advocate with Mr. V. Braganza,
Advocate for the Respondent no.1.
Mr. Jitendra D. Naik, Village Panchayat Secretary, present in
person for Respondent no.2.

Coram :- C. V. BHADANG, J.

Reserved for Judgment on : 18th July 2019.

Judgment Pronounced on : 20th July, 2019.

JUDGMENT

1. Rule made returnable forthwith. The learned Counsel for the respondent, waives service. Heard finally by consent of parties.

2. The challenge in this petition is to the judgment and order dated 28.12.2018 passed by the learned District Judge, Panaji, at Ponda in MCA No.90/2018. By the impugned judgment, the learned District Judge while dismissing the appeal filed by the petitioners has confirmed the order dated 18.08.2018, below exhibit D-3, passed by the learned Civil Judge, Junior Division at Ponda in Regular Civil Suit No.50/2018/B, thereby granting the application for temporary injunction filed by the first respondent and restraining the petitioners from carrying out any construction in the suit property till the disposal of the suit.

3. The brief facts are that the first respondent has filed the aforesaid suit against the petitioners and the second respondent for permanent prohibitory and mandatory injunction and for certain other reliefs. The subject matter of dispute happens to be land survey no.25/23 of Village Talaulim, Ponda, in which admittedly the petitioners and the first respondent are having their houses. According to the first respondent, the name of 'Ravalnath God', is wrongly shown in

Form I and XIV. The name of Krishna Naik, the late father of the first respondent as well as Shiva Naik, the late father of the petitioner no.1 figures in the other rights column of the said property.

4. It is undisputed that the petitioners are having a house in the suit property since more than 25 years and that the said house was gutted in a fire somewhere in the first week of April 2018. According to the first respondent, the suit house of the petitioners consisted of three rooms having a total area of 30 square metres constructed in laterite stones covered with cement and zinc sheets. Taking advantage of the fact that the said house was gutted in fire, the petitioners made an attempt to reconstruct the same by erecting RCC columns and without obtaining any permission/license from the second respondent. It was in these circumstances, that the first respondent filed the aforesaid suit for an injunction restraining the petitioners from carrying out any construction in the suit property and for a mandatory injunction directing them to demolish the construction already made and to restore the land to its original condition.

5. The first respondent filed an application, exhibit D-3, for temporary injunction restraining the petitioners from carrying

out or continuing with the work of construction in the suit property.

6. The petitioners resisted the suit as well as the application for temporary injunction on the ground that the suit house was in existence since more than 37 years and was completely destroyed in fire in April 2018 and all that the petitioners are doing is to reconstruct the house on the same plinth area. It was pointed out that the first respondent along with others had filed Regular Civil Suit No.90/1981 against 'Ravalnath God', and others for a declaration which suit was decreed. The petitioner no.1 along with others had challenged the same in Regular Civil Appeal No.8/1999 before the learned District Judge, which appeal was allowed on 29.04.2003 and Regular Civil Suit No.90/1981 was dismissed, which order has attained finality by virtue of the dismissal of the Second Appeal No.78 of 2003 on 12.06.2012. It is thus submitted that the claim of the first respondent about he being a co-owner of the suit property i.e. land survey no.25/23, has been negated by this Court which finding has attained finality. It was pointed out that this fact was suppressed by the first respondent in the suit which alone is sufficient to refuse any equitable relief in the form of injunction.

7. The learned Trial Court by the order dated 18.08.2018, granted the injunction, inter alia, on the ground that the petitioners are not entitled to carry out the construction without permission after the house was destroyed by fire. In that view of the matter, the Trial Court has granted injunction which has been confirmed in appeal.

8. I have heard Mr. Lotlikar, the learned Senior Counsel for the petitioners, Mr. J. E. Coelho Pereira, learned Senior Counsel for the first respondent and Mr. Naik, the Secretary of the Village Panchayat for the second respondent. Perused record.

9. Mr. Lotlikar, the learned Senior Counsel for the petitioners, submitted that the construction is being carried out on the same plinth area. It is pointed out, that admittedly, the petitioners are having their house since about 37 years and the name of the father of the petitioner no.1 is recorded in the other rights column. The learned Senior Counsel pointed out that there is clear suppression of fact by the first respondent on account of non disclosure of the dismissal of Regular Civil Appeal no.8/1999 and for this reason alone, the application for injunction was liable to be dismissed. It is submitted that the first respondent has no locus standi to file

the suit or to seek injunction. The learned Senior Counsel has referred to the photographs produced on record to show that the construction is within the old compound wall and is thus confined to the original plinth area. The learned Senior Counsel has referred to a report dated 20.04.2018 from the Officer in charge of the Ponda Fire Station which shows that the area of the suit house is 60 square metres. It is submitted that this is an official document which belies the case of the respondents that the suit house was only 30 square metres.

10. Mr. J. E. Coelho Pereira, the learned Senior Counsel, for the first respondent, has supported the impugned order. It is submitted that the suit house in possession of the petitioners was only 30 square metres and, according to the first respondent, the petitioners have constructed another house near the road leading from Ponda to Durbhat, on the southern side of the suit property, in a plot of land purchased by them in a property which was earlier owned by Bandekar family from Vasco. It is pointed out that the petitioners have constructed a two storeyed structure on the said plot and the petitioners are using the ground floor for business purpose and are residing on the first floor. It is thus submitted that there is absolutely no irreparable loss if the petitioners are restrained

from carrying out any construction moreso without obtaining any permission/license.

11. During the course of the arguments at bar, a letter dated 02.07.2019 from the Block Development Officer (BDO), Ponda, has been produced on record which shows that the repair permission sought by the petitioners for repair of existing house bearing no.120 has been rejected. It is thus submitted by the learned Senior Counsel for the first respondent that no case for interference in the impugned order is made out.

12. I have carefully considered the rival submissions made. It is a matter of record that land survey no.25/23 has been recorded in the name of 'Ravalnath God', in which the name of Krishna Naik, the late father of the first respondent also appears in the occupants column presumably as Wahiwatdar. The name of Shiva Naik, the late father of the petitioner no.1 also appears in the Other Rights Column of the said property. According to the first respondent, the house of the petitioners is existing in the suit property since last more than 25 years. According to the petitioners, the house was in existence at least since last 37 years. It is also undisputed that the suit house was gutted in a fire in the first week of April 2018 and it is also not in dispute that the petitioners are claiming to

reconstruct/repair the said house. There is however some dispute as to the area of the suit house while, according to the first respondent, the area was 30 square metres. The petitioners have relied upon the report of the fire Officer which shows that the area was 60 square metres. Admittedly, the petitioners have not obtained any permission either for repairs or for reconstruction of the suit house. This is the principal reason why the Courts below have granted the application for temporary injunction in favour of the first respondent.

13. The learned Senior Counsel for the appellant has placed strong reliance on the fact that the petitioners have not disclosed the outcome of the previous suit namely Regular Civil Suit No.8 of 1999 which was dismissed by the first Appellate Court and the said judgment has been confirmed by this Court in Second Appeal No.78 of 2003 on 12.06.2012. It is true that there are at least two circumstances which weigh against the first respondent in this case. The first is with reference to the non-disclosure of the outcome of Regular Civil Appeal No.8 of 1999 in which the first respondent and others claiming to be the co-owners of the suit property as against 'Ravalnath God' have failed to obtain a declaration of co-ownership. It may be mentioned that the petitioner no.1 was the defendant no.27 in the said suit. Secondly, there was an

alternate submission made before this Court in Second Appeal No.78 of 2003 that the relief may be moulded and a declaration could be given as far as the possession of the first respondent and others who were the appellants in the Second Appeal over the suit property. That has also been refused by this Court. However, at the same time, the construction undertaken by the petitioners is without any permission whatsoever from the second respondent. In my considered view, the said circumstance which is against the petitioners, outweighs all other considerations.

14. The letter dated 02.07.2019 from the BDO, Ponda Goa, shows that an inspection of the suit house was carried out on 13.05.2019 and the report of the inspection team which also included the Secretary of the second Respondent showed that the photographs of the existing structures produced by the petitioners were different from the structure which was standing at the site and, therefore, the BDO has found that the repair permission of the existing house bearing no.120 of the petitioners cannot be granted. The Court in such a case, has to balance equities and in an appropriate case has to mould the relief. The Courts below have granted blanket injunction against the petitioners from carrying out any construction. I find that the petitioners can be restrained from carrying out

any construction till they obtain necessary permission from the competent authorities. It is for the petitioners to challenge the rejection of the permission, if so advised. However, the petitioners cannot be permitted to carry out the construction when the fact that the petitioners had not obtained any permission prior to the commencement of the construction and that now the permission has been refused as per the letter dated 02.07.2019 has been brought to the notice of the Court.

15. In such circumstances, the petition is partly allowed. The impugned order passed by the learned Trial Court is hereby modified : "The petitioners (the defendant nos.1 and 2), their agents, servants, family members or anybody acting on their behalf are hereby restrained from carrying out or continuing with the work of construction in the suit property till they obtain permission/license from the competent authority."

16. Rule is made partly absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

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