

IN THE HIGH COURT OF BOMBAY AT GOA**APPEAL FROM ORDER NO. 27 OF 2019**

Mrs. Sumitra Venkatesh Sawant & Ors. ... Appellants

Versus

The Chief Secretary & Ors. ... Respondents

Shri D. Zaveri, Advocate for the Appellants.

Shri Pravin Faldessai, Additional Government Advocate for the Respondents.

Coram: - DAMA SESHADRI NAIDU, J.

Date: - 6th December 2019

ORAL ORDER:

The appellants filed Civil Suit No.22 of 2017 before the District Judge, South Goa, Margao, against the Government, for a perpetual injunction.

2. All the plaintiffs belong to a joint family. They have contended that the Government has been trying to establish a crematorium on their private land, without having acquired the land. As the Government has been proceeding with the work, they also wanted *an ad interim* injunction.

3. The Government, in turn, resisted the plaintiffs' claim for interim injunction. It has pleaded that it secured no objection from a few members of that joint family. In the face of this counter assertion, the Trial Court has refused to grant the *ad interim* injunction. As seen from the record, the Trial Court has been swayed by the fact that it is a matter of public interest and

that the plaintiffs' right to property must yield to public interest.

4. I am afraid, right to property still remains a constitutional right, if not a fundamental right. No person shall be deprived of his property save by authority of law—public interest or no public interest. Securing NOC from a few members of a joint family, *prima facie*, may not entail the Government to deprive the other non-consenting members of their right to enjoy the property. But, I add, it is only a *prima facie* observation.

5. The learned Additional Government Advocate, on instructions from Shri Augusto K. Pereira, Junior Engineer, PWD (Buildings), Quepem, present in Court, has fairly submitted that though the Government has initially started the work, it has put the work on hold because of the pending litigation. The Government, according to him, will abide by the outcome of the suit. Only then, based on that outcome, will it proceed further.

6. Nevertheless, the learned AGA has submitted that in this Appeal, this Court earlier appointed a Surveyor or Court Commissioner, who has already submitted a report, dated 11.10.2019. He wants a direction to the Trial Court to take that report on file and consider it during the course of trial. The appellants' counsel wants that direction with a caveat: without prejudice to the rights of the parties to contest that report if necessary. Fair enough.

7. Under these circumstances, without going into the merits, I dispose

of the Appeal From Order, observing as follows:

- (i) The respondents will not undertake any work on the suit property until the Trial Court disposes of the suit.
- (ii) Either party may place before the Trial Court the report submitted by the Surveyor or Court Commissioner appointed by this Court.
- (iii) The report placed before it, the Trial Court may consider it in accordance with law, during the trial.
- (iv) The validity or veracity of the Report is subject to further evidence the parties may lead before the Trial Court.

8. Accordingly, the Appeal From Order is disposed of. No orders on costs.

9. At this juncture, the learned AGA persists with his plea that there may be a direction to the Trial Court to dispose of the suit in a time frame.

So, the Trial Court may make efforts to dispose of the suit expeditiously.

DAMA SESHADRI NAIDU, J.

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