

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 252 OF 2009**

Mr. Umesh Pundlik Pednekar,
Major of age,
resident of House No.E-7/23,
Saunta Vaddo, Calangute,
Bardez-Goa.

.... Petitioner

V e r s u s

1. The State of Goa,
through the Secretary (Panchayats),
with his office at the Secretariat,
Porvorim , Goa.*

2. The Director of Panchayats,
Government of Goa,
With his office at Junta House,
Panaji, Goa.*

3. The Village Panchayat of Calangute,
Through its Secretary,
with office at Calangute,
Bardez-Goa.*

3A) Town and Country Planning Department,
North Goa District,
3rd floor, Government Building Complex,
Mapusa, Goa.

4. Mr. Joseph Sequeira,
Sarpanch,
Village Panchayat of Calangute,
with office at Calangute, Bardez-Goa.*

5. Mrs. Ruth Fernandes,
Major of age,
resident of Cobrawaddo, Calangute,
Bardez-Goa.

.... Respondents

Adv. Ashwin D. Bhobe, for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. S. Redkar, Addl. Government Advocate for Respondent nos. 1, 2 and 3A.

Adv. Preetam Talaulikar for Respondent no.5.

**Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.
Date:- 4th September, 2019.**

Judgment (Per M. S. Sonak, J):

Heard Mr. Bhobe, the learned counsel for the petitioner, Mr. Pangam, the learned Advocate General along with Mr. Redkar, the learned Additional Government Advocate for respondent nos.1,2 and 3A and Mr. Talaulikar for respondent no.5.

2. By this petition under Article 226 of the Constitution of India, the petitioner seeks the following substantive reliefs:

1. For a Writ of mandamus, or any other writ, order of direction in the nature of mandamus, directing the respondent no.3 to forthwith recall and cancel the License dated 31/5/2008 (Exhibit-G) granted by it in favour of the Respondent no.5.

1a) For a Writ of Mandamus, or a writ, order or direction in the nature of mandamus, directing the respondent no.3A to forthwith recall and cancel the N.O.C dated 8/5/2009 granted

to the respondent no.5 for construction of the first floor on the existing Ground floor in the property surveyed under no.229/33, as also direct the respondent no.3 to forthwith recall and cancel the licence dated 18/5/2009 granted by it in favour of the responded no.5, to carry out construction of the first floor on the existing ground floor in the property surveyed under no.229/33.

ii) For a Writ of Mandamus or any writ, order of direction in the nature of mandamus, directing the respondent no.3 to take immediate action agonist the construction carried out by the respondent no.5, including ordering its stoppage and demolition under the provisions of the Goa Panchayat Raj Act 1994.

3. Mr. Bhobe, the learned counsel for the petitioner submits that the petitioner is the owner of the property surveyed under no.229/25 at Calangute village. He submits that this petition concerns the construction put up by respondent no.5 in the adjacent property bearing survey no.229/33 of Calangute village.

4. Mr. Bhobe submits that the licence issued by the Village Panchayat of Calangute on 29/3/1995 expired within three years from the date of its issue. The Panchayat, however, renewed the said licence on 31/5/2008. Mr Bhobe submits that since the original licence had already expired there was no

question of renewal of the same. In any case he submits that the renewal application in the present case, should have complied with all the procedural formalities necessary for seeking fresh licence. He submits that since this admittedly not done, the renewal granted on 31/5/2008 warrants interference.

5. Mr. Bhobe states that without prejudice to the aforesaid contention both the original licence as well as the renewal licence had imposed a specific condition upon the respondent no.5 to provide 3 metres access on the western side from north to south upto 11 metres and 1.5 metres from 11 metres till the widening of the road from north to south as marked in the approved plan. He submits that this condition had admittedly not been complied by the respondent no.5 and therefore appropriate orders must be issued directing either demolition of the structure put up by the respondent no.5 or to enforce such a condition.

6. For the aforesaid reasons Mr. Bhobe submits that the petitioner is entitled for reliefs as prayed for in this petition.

7. Mr. Talaulikar, the learned counsel for the respondent no.5 points out that there was a civil litigation between the petitioner and the respondent no.5 precisely on the issue of access referred to in the condition of the pachayat

licence. He submits that the condition was imposed only in order that some access is available to the petitioner, in case the civil dispute is decided in favour of the petitioner. He points out that the Civil Court has ultimately dismissed the claim of the petitioner for access and this dismissal has attained finality up to the stage of the Hon'ble Apex Court. He in fact places on record on the judgment and order made by this Court in S.A. No.59/2003 (Pundalik Narayan Xet Pednekar Vs. Augusto Fernandes), which decision is reported in 2013 (1) Mh.L.J. 259. Besides, Mr. Talaulikar, the learned counsel for the respondent no.5 claims that the respondent no.5 has already got approvals for revised plans and the construction put up by the respondent no.5 is in accordance with the said revised plan.

8. According to us, the construction put up by the respondent no.5 is complete in all respects since last several years. The condition referred to by Mr. Bhole, in all probability was imposed only to ensure that no situation of *fait accompli* is pleaded by the respondent no.5, in the event the petitioner was able to establish the right to easmentary access.

9. Admittedly, the petitioner's claim of easmentary access, consistent to the condition of which he seeks enforcement, came to be dismissed. Such dismissal has attained finality up to the stage of the Hon'ble Apex Court.

10. The photographs placed on record along with the affidavit of respondent no.5 at page 183 of the paper book also makes it clear that the petitioner has more than ample access to his own property/house. In these circumstances, we do not feel that any case is made out for grant of the relief in this petition.

11. Even on the aspect of renewal, we are not satisfied that any case is made out to warrant interference at this stage. Ultimately this was civil dispute between the petitioner and the respondent no.5. The civil dispute has ultimately been decided in favour of respondent no.5 right up to the stage of the Hon'ble Apex Court. Mr. Talaulikar has submitted that plans were revised subsequently and the construction is in accordance with the revised plan.

12. In the aforesaid circumstances, there is no case made out for grant of any reliefs in this petition. This petition is therefore dismissed. There shall be no order as to costs.

NUTAN D. SARDESSAI, J

M. S. SONAK, J.

ap/-

ap/-

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.