

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 34 OF 2019

SHERATON HOTELS LLP, THR. AUT.
REP., SURESH TEKCHANDANI,

... Appellant

Versus

KAMAL G. KUDNEKAR AND 6 ORS.,

... Respondents

Mr. S. Kantak, Senior Advocate with Mr. J.P. Supekar, Advocate
for the Appellant.

Mr. Gaurang Panandiker, Advocate for Respondent Nos. 1, 2 and
3.

Mr. Tukaram Gawas, Advocate for Respondent Nos. 4 and 5.

Mr. H.D. Naik, Advocate for Respondent No. 6.

Mr. Kapil Kerkar, Advocate for Respondent No. 7.

Coram:- C. V. BHADANG, J.

Date:- 19th July, 2019

ORAL ORDER:

Heard the learned Counsel for the parties.

2. The challenge in this Appeal is to the order dated 03.06.2019, passed by the learned Trial Court, granting an application for temporary injunction, filed by the respondent nos. 1, 2 and 3. The dispute appears to be about an alleged access of six metres width over plot no. 132/15, where the appellant is undertaking certain construction after obtaining the permission/license from the North Goa Planning and

Development Authority (NGPDA) and the Village Panchayat. The respondent nos. 1, 2 and 3 are also claiming that the NOC granted by the NGPDA and the Village Panchayat are also illegal and are in breach of the provisions of the Goa (Regulation of Land Development and Building Constructions) Act, 2008.

3. On behalf of the appellant, it is contended that, there are no sufficient pleadings in the plaint to show that the respondent nos. 1, 2 and 3 have easementary right of access of six metres width and secondly, the Civil Court cannot sit in Appeal over the license granted by the competent Authority.

4. A perusal of the impugned order shows that the Trial Court has not at all adverted to the alleged claim of easementary right by the respondent nos. 1, 2 and 3. Even as to the aspect of bar of jurisdiction, the learned Trial Court has not considered the same, except reproducing the provisions of the Act in the said order. Such a situation cannot be countenanced. I am constrained to say that there is total lack of reasoning by the learned Trial Court, on the aspect of the easementary right claimed by the respondent nos. 1, 2 and 3 and as to the bar of jurisdiction of the Civil Court. Faced with this situation, it was submitted that the application may be remitted back to the learned Trial Court for deciding it afresh, in accordance with law.

5. In the result, the Appeal is disposed off in the following terms, by consent of parties:

- (a) The appeal is partly allowed.
- (b) The impugned order is hereby set aside.
- (c) The application (Exhibit-D/3) is restored back to the file of the learned Trial Court for deciding it afresh, on its own merits and in accordance with law.
- (d) Rival contentions of the parties are left open.
- (e) The learned Trial Court shall decide the application as expeditiously as possible and preferably within a period of three months from the receipt hereof.
- (f) Ad-interim relief, as was granted by the Trial Court on 17.04.2019, shall continue to operate, pending disposal of the application.
- (g) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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