

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 523 OF 2019

Mrs. Christalina Octavia Nunes,
through her legal guardian
Mr. Charles Oscar Telles,
represented by her Attorney
Mr. Larry Holmes,
S/o Frank Holmes,
Major of age,
Indian National,
Occupation Business,
R/o House No.1692,
Gumalvaddo,
Anjuna, Bardez Goa 403 509.

... Petitioner

Versus

1. The Chief Secretary,
Government of Goa,
Secretariat,
Porvorim Goa.
2. The Secretary,
Revenue,
State of Goa
Secretariat,
Porvorim Goa.
3. The Deputy Collector and
Sub Divisional Officer,
Bardez, Mapusa Goa.
4. The State Registrar,

Department of Civil Registration,
Shrama Shakti Bhavan,
Patto, Panaji Goa.

5. The Sub-Registrar of Bardez
At Mapusa, Bardez Goa.

... Respondents

Mr. Shivan Desai, Advocate for the Petitioner.

Mr. Pravin N. Faldessai, Addl. Government Advocate for Respondent
Nos.1,2,3,4 & 5.

**Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Date:- 15th October, 2019

ORAL JUDGMENT (Per M. S. Sonak, J)

Heard Mr. S. Desai, learned counsel for the Petitioner and
Mr. P. Faldessai, learned Addl. Government Advocate for the Respondents.

2. Rule. With the consent and at the request of the learned
counsel for the parties, Rule is made returnable forthwith.

3. The Petitioner is a British National and has instituted this
petition through her duly constituted guardian Mr. Charles Oscar Telles.
The guardian in turn has executed a power of attorney in favour of
Mr. Larry Holmes, who has signed the present petition and deposed to the
facts therein.

4. The Petitioner challenges the order dated 24.05.2019 passed by the Deputy Collector and Sub Divisional Officer of Bardez, Mapusa Goa, rejecting the Petitioner's application dated 15.04.2019 for issuance of "Widow Permission" to the Petitioner for execution of sale deed by which the Petitioner seeks to sell her property situated in Goa in favour of some of her relatives.

5. From the perusal of the impugned order dated 24.05.2019, it is clear that the rejection is on the sole ground that the Circular dated 06.06.2018 and order dated 22.05.2018 requires the widow seeking such permission to be personally present before the authorized officer in Goa, without which, the application seeking such permission can never be considered.

6. The Circular dated 06.06.2018 requires the Deputy Collectors, who are appointed as the competent Authorities to examine and certify the fact that the conveyance documents and mutation of widows' property is not done by the widows under coercion or undue influence. The order dated 22.05.2018, again requires the competent Authority to personally satisfy himself or herself that the conveyance and mutation is not done by the widow under coercion or undue influence. There is no direct requirement as such for personal presence of the widow in all cases though, we agree with Mr. Faldessai that ordinarily and in fact, as a matter of general rule, the competent Authorities, will be justified in insisting upon

personal presence of the widow. He points out that in some cases, when it is not possible for the widow to personally attend the office of competent Authority, some officer is deputed to visit the widow and ascertain her status with a view to satisfying whether or not any issue of coercion or undue influence is involved. However, there is nothing in the Circular dated 06.06.2018 or in the order dated 22.05.2018, which disables the competent Authority, in every case, from even considering the application for such permission unless the widow is personally present before him.

7. The facts in the present case are quite peculiar. In this case, the Petitioner has been declared by the competent Court of law in UK as unable to make various decisions for herself in relation to a number of matters concerning her property and affairs, because of an impairment of, or a disturbance in the functioning of her mind or brain. The competent Court has accordingly appointed Charles Oscar Telles as her deputy to take decisions on her behalf in relation to her property and affairs, subject no doubt the conditions and restrictions set out in the order. Several powers have been conferred upon the deputy in relation to the property of the Petitioner.

8. From time to time in pursuance of the orders made by this Court, the deputy through his Attorney and even personally, has filed the affidavits in this Court explaining the reason as to why it is virtually

impossible for the Petitioner to remain present in person before the competent Authority.

9. Upon perusal of such affidavits as well as other documents placed on record, in the peculiar facts of the present case, we are satisfied that the application made by the Petitioner is required to be considered by the competent Authority without insisting upon her personal presence. To that extent, the impugned order dated 24.05.2019 is required to be set aside and is hereby set aside.

10 The competent Authority i.e. the Deputy Collector and S.D.O., Mapusa is now directed to consider and dispose of the Petitioner's application dated 15.04.2019 for issue of widow permission, in accordance with law and on its own merits without insisting upon the personal presence of the Petitioner. This exercise is to be completed by the competent Authority within maximum period of four weeks from today.

11. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

12. All concerned to act on the basis of the authenticated copy of this order.

NUTAN D. SARDESSAI, J.
at*

M. S. SONAK, J.