

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.809 OF 2018

Filomena Joanita Menezes ... Petitioner
Versus
Kamat Real Estate Developers & Ors. ... Respondents

Mr. Nigel Da Costa Frias and Ms. M. Correia, Advocates for the
Petitioner.

Mr. S. D. Lotlikar, Senior Advocate with Ms. A. Araujo, Advocate for
Respondent Nos.1 to 4.

Mr. S. Mahambrey, Advocate for Respondent No.5.

Mr. B. Thali, Advocate for Respondent No.6.

***Coram : M. S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 11th February, 2019

P.C.

Heard Mr. Nigel Da Costa Frias, learned counsel for the
Petitioner, Mr. Lotlikar, learned Senior Advocate for Respondent
Nos.1 to 4, Mr. B. Thali, learned counsel for Respondent No.6 and
Mr. Mahambrey, learned counsel for Respondent No.5.

2. The challenge in this petition is to the development permissions dated 25th October, 2012, 30th September, 2014 and 21st March, 2018 issued by the North Goa Planning and Development Authority to undertake the construction and development of the property under Chalta Nos.28/1, 2 and 3 of P.T. Sheet No. 146 of the city survey of Panaji as also the construction licence dated 19th April, 2013 issued by Respondent No.6.

3. The case of the Petitioner is that the property in respect of which the aforesaid permissions have been granted is a property, which belongs to the Petitioner. Admittedly, the Petitioner has already instituted a Special Civil Suit No.36/2017/B in the Court of Civil Judge Senior Division, Panaji, in which the Petitioner has applied for injunction to restrain the Respondent Nos.1 to 4 from undertaking any construction in the property in question.

4. Mr. Costa Frias, learned counsel for the Petitioner submits that the present petition was instituted because the contesting defendants to the suit may urge that there is statutory bar to questioning the permissions issued under the Goa Town and Country Planning Act.

5. According to us, merely because the permissions have been granted that does not mean that the permission holders can act on the basis of the said permissions, in case the property in question, does not belong to them or they are otherwise not contractually entitled to construct on the property in question. In this view of the matter, there is absolutely no necessity to entertain the present petition. The Petitioner has alternate and efficacious remedy which has already been availed of by the Petitioner.

6. In somewhat similar circumstances, the Division Bench of this Court in the case of *Raja Bahadur Motilal and Another Vs State of Maharashtra and Others*¹ had clarified that the provision of Section 149 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP) does not bar any suit whereby a party to it can be prevented from acting on an action and order made under the Act. The statutory bar under Section 149 of the MRTP therefore held to be of very limited in nature.

7. Accordingly, after clarifying the aforesaid position, we see no reason to entertain the present petition. We however, further clarify that we have not adjudicated into the rival contentions of the

¹ 2003 1 BomCR 251

Petitioner and the Respondent Nos.1 to 4 and therefore, all such issues as to the title and entitlement to construct are left open to be decided by the Civil Court in accordance with law and on its own merits.

8. With the aforesaid clarification and observations, this petition is disposed of. There shall be no order as to costs.

Prithviraj K. Chavan, J.

M. S. Sonak, J.

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