

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 591 OF 2019

TULSHIDAS SUBHA KAVLEKAR ... Petitioner

Versus

STATE OF GOA, THR. CHIEF SECRETARY

AND 5 ORS. ... Respondents

Mr. Preetam Talaulikar, Advocate for the petitioner.

Mr. D.J. Pangam, Advocate General with Mr. Shivadatta Prakash Munj, Additional Government Advocate for respondent Nos.1, 2, 3 & 5.

Ms. M. Desai, Advocate for respondent No.4.

Mr. V.P. Thali, Advocate for respondent No.6.

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

Date:- 17th July 2019

P.C.:

Heard Mr. P. Talaulikar, learned Advocate for the petitioner, Mr. D.J. Pangam, learned Advocate General for the respondent Nos.1,2,3 and 5, Ms. M. Desai, learned Advocate for the respondent No.4 and Mr. Thali, learned Advocate for the respondent No.6.

2. In this petition, the petitioner seeks a writ of mandamus particularly against the respondent No.4 to take some action against the respondent No.6 for undertaking a construction, which,

according to the petitioner, is a illegal or unauthorised construction. Mr. Talaulikar, learned Counsel for the petitioner points out that there is a civil suit pending between the petitioner and the respondent No.6 in which also, restraint order has been issued. Mr. Talaulikar, learned Advocate for the petitioner further submits that the respondent No.6 in disobedience of such restraint order, insists on continuing with the construction. He points out that on the previous occasion also the respondent No.6 had breached injunction order and the petitioner was required to spent almost 8 years to seek redressal in that regard.

3. The record indicate that the respondent No.4 - Panchayat has issued a stop work order. Mr. Thali, learned Counsel for the respondent No.6 submits that the stop work order relates to activities which are already completed. Mr. Thali, learned Counsel disputes the contention raised by Mr. Talaulikar, learned Counsel on behalf of the petitioner. He submits that Civil Suit is pending between the parties so the present petition should not be entertained.

4. Since, the Panchayat, has already issued a stop work order, it is for the Panchayat to go into the issue as to whether or not their stop work order is being defied by the respondent No.6.

5. Accordingly, we trust that the Panchayat will look into the matter and take steps as may be permissible in law in relation to the petitioner's complaint. No doubt whilst doing so, the respondent No.4, will also offer opportunity of hearing to both the petitioner as well as the respondent No.6 so that there is no complaint of any failure of natural justice. However, since some action is already initiated by the respondent No.4, we do not think any further directions are necessary.

6. Insofar as the petitioner's complaint with regard to the breach of injunction order of the Civil Court is concerned. Mr. Talaulikar, learned Counsel for the petitioner on the basis of the instructions states that he will take out appropriate proceedings before Civil Court including but not restricted proceedings under order 39 Rule 2A CPC and seek redressal therein. We are sure that if such proceedings are taken out by the petitioner, the learned Trial Court, will dispose of the same as expeditiously as possible, on their own merits and in accordance with law.

7. We, however, make it clear that we have not examined the merits of the matter or adjudicated upon the rival contentions, particularly the contentions raised by the petitioner and the respondent No.6. Therefore, all contentions of the parties are left open to be adjudicated and addressed before the appropriate forum.

8. We dispose of the petition in the aforesaid terms. There shall be no order as to costs.

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

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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