

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.635 OF 2019

- 1 M/s. Sheraton Hotels LLP,
A Partnership Firm, Having Office at
1002, Pali Palms, Pali Village, Bandra
(W) Mumbai, Thr. Authorised
representative Mr. Suresh
Tekchandani, Son of Jairam
Tekchandani, Major of age, Indian
National Having Office at 1002, Pali
Palms, Pali Village, Bandra (W),
Mumbai.
- 2 Karishma S. Tekchandani, W/o. Mr.
Suresh Tekchandani, Aged 42 years,
Business, married, Partner of
petitioner no.1, resident of 603, B
Wing, Casurina, Evershine Greens
Adarsh Nagar, Link Road, Andheri
West, Azad Nagar, Mumbai,
Maharashtra - 40053
- 3 Simran S. Tekchandani,
D/o. Mr. Suresh Tekchandani, age 23
years, business, unmarried, partner
of Petitioner no.1, resident of 603, B
Wing, Casurina, Evershine Greens
Adarsh Nagar, Link Road, Andheri
West, Azad Nagar, Mumbai,
Maharashtra - 40053
(Registered Address)

..... Petitioners

V e r s u s

- 1 Mr. Anthony Mascarenhas
s/o Late Basil Mascarenhas
Age 81 years, retired, married,
represented by his son Mr. Owen
Victor Savio Mascarenhas, s/o
Anthony Mascarenhas, age 37 years,
Bachelor, both resident of House
No.1/285, Near Tarcar Ice Factory,

Gaurawada, Calangute, Bardez, Goa
– 403516.

- 2 The Village Panchayat of Calangute,
Through its Secretary having its
office at Calangute-Anjuna Rd. Naika
Waddo, Khobra Waddo, Calangute,
Bardez Goa, 403516.

(Registered Address)

... Respondents

Mr. S. S. Kantak, Senior Advocate with Mr. J. Supekar, Mr. Kher
Simoes and Mr. Sufiyan Sayed, Advocates for the Petitioners.

Mr. G. Panandikar, Advocate for the Respondent No.1.

Coram :- C. V. BHADANG, J.

Date :- 23rd September, 2019.

ORAL JUDGMENT

1. Rule, made returnable forthwith. The learned Counsel
for the contesting respondent no.1, waives service. Heard
finally by consent of parties.

2. The challenge in this petition at the instance of the
petitioners, who are the defendants in Regular Civil Suit
No.53/2019/A is to the judgment and order passed by the
Appellate Court on 24.06.2019 in MCA No.29/2019. By the
impugned judgment and order, the Appellate Court while
allowing the appeal has restrained the petitioners or anybody

on their behalf from doing any work of construction in the suit property pending the disposal of the suit.

3. The brief facts are that the petitioners are having their property bearing survey no.132/15 at Village Gaurawada, Calangute. The land of the first respondent bearing survey no.132/16 is to the south of the land survey no.132/15. There is a Major District Road (MDR) running north-south to the eastern side of the survey no.132/15 as well as survey no.132/16. The first respondent filed Regular Civil Suit No.53/2019/A against the petitioner and the second respondent for a declaration that the first respondent has acquired easementary right of an access of three metres though the suit property i.e. survey no.132/15 and for injunction restraining the appellants from making any construction therein. The first respondent also sought an order directing the second respondent (the defendant no.4) to cancel and revoke the construction licence granted to the appellant.

4. Both the Trial Court as well as the First Appellate Court have concurrently found that the first respondent has failed to, prima facie, establish a case of easementary right of access. The learned Trial Court after having held so and further having

regard to the fact that construction licence cannot be challenged before the Civil Court had refused to grant injunction by order dated 08.04.2019. Feeling aggrieved, the first respondent had challenged the same before the learned District Judge in MCA No.29/2019.

5. A perusal of the impugned judgment and order passed by the Appellate Court, shows that the Appellate Court has also found that the property of the first respondent is not landlocked and the finding to that effect of the Trial Court was confirmed. However, the Appellate Court went upon examining the challenge to the permission granted to the petitioner by the Panchayat as well as the North Goa Planning Development Authority (NGPDA) and has found that the documents, prima facie, show that the construction of the seven storeyed commercial building by the petitioner required a set back of 6.00 metres to be maintained and not 4.5 metres as shown in the approved plan. It is in these circumstances, that the Appellate Court has granted the injunction and allowed the application.

6. I have heard Mr. Kantak, the learned Senior Counsel for the petitioners and Mr. Panandikar, the learned Counsel for the contesting respondent no.1. With the assistance of the learned

Counsel appearing for the parties, I have gone through the records.

7. It is submitted by Mr. Kantak, the learned Senior Counsel for the petitioners, that the Appellate Court having concurred with the finding of the Trial Court about the first respondent having failed to, prima facie, show the existence of the easementary right, could not have granted the injunction by examining the legality of the permission granted by the NGPDA, moreso, in the absence of the NGPDA being a party-defendant to the suit. The learned Senior Counsel has placed reliance on the decision of this Court in the case of **Satish s/o Gayacharan Trivedi vs. Dr. Gopal Ramnarayan Mundhada & Ors. 2015 (5) Mh. L. J.**, in order to submit that while interpreting Section 149 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act, for short) which is pari materia with Section 129 of the Goa Daman and Diu Town and Country Planning Act, 1974 (TCP Act, for short), this Court has found that the Civil Court has no jurisdiction to go into the validity of the permission. The learned Senior Counsel pointed out that the remedy, if any, of the party aggrieved is to approach the concerned authority under Section 50 of the TCP Act.

8. Mr. G. Panandikar, the learned Counsel for the respondent no.1, in all fairness does not dispute that the permission granted by the NGPDA is neither subject matter of challenge nor the NGPDA is a party-defendant to the suit. He submits that the suit is primarily based on the easementary right claimed by the first respondent towards the northern side of the land survey no.132/16.

9. I have carefully considered the circumstances and the submissions made. I do not find that the impugned order can be sustained. Prima facie, the Courts below have rightly come to the conclusion that the land bearing survey no.132/16 is not landlocked and, as such, the first respondent has failed to show any, prima facie, case of existence of an easementary right through land survey no.132/15 of the petitioner. Once having held so, it was not open for the Appellate Court to have gone into examining the validity of the permission granted by the NGPDA and that too as has been rightly submitted by the learned Senior Counsel for the petitioner in the absence of any such challenge in the suit and the NGPDA not being a party-defendant in the suit. A conjoint reading of Section 121 and Section 129 of the TCP Act, would make it explicit that the Civil Court lacks jurisdiction to examine the validity of the permission granted and the only exception as culled out in the

case of **Satish** (supra), which arises out of similar provisions under the MRTP Act is that the Civil Court can consider whether the construction carried out is as per the sanctioned plan, which is not the case made out by the first respondent. Thus, the jurisdiction of the Civil Court to entertain any such challenge is clearly barred. For the aforesaid reasons, the impugned order, in my considered view, cannot be sustained.

10. In such circumstances, the petition is allowed. The impugned order is hereby set aside. The order passed by the learned Trial Court dismissing the application for temporary injunction is restored.

11. Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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