

IN THE HIGH COURT OF BOMBAY AT GOA**APPEAL FROM ORDER NO. 47 OF 2019**

Radhabai Krishna X. Tilve & 9 Others

.... Appellants

Versus

The Dy. Collector & SDO, Office of Dy.
Collector & SDO, Panaji & 4 Others

.... Respondents

Mr. Premanand A. Kholkar, Advocate for the Appellants.

Mr. Ashwin D. Bhobe, Advocate for Respondent No. 3.

Mr. Nikhil Vaze, Advocate for Respondent No. 4.

CORAM : C.V. BHADANG, J.**DATE : 26th August, 2019****ORAL ORDER:**

The challenge in this Appeal is to the order dated 31.07.2019, passed by the learned Adhoc District Judge-1 at Panaji in Civil Suit No. 32/2019, by which, an application (Exhibit D/3), seeking temporary injunction filed by the appellants/plaintiffs, has been dismissed.

2. The brief facts are that the appellants/ plaintiffs have filed the said suit for declaration that they are owners in possession of an area of 1451.83 square metres from out of Chalta No. 187 of P.T. Sheet No. 45, more specifically shown in

the plan annexed to the plaint and for injunction restraining the respondents from proceeding with the construction activity of a bridge on the suit property. The appellants are also claiming injunction to restore the suit property to its original condition.

3. The appellants filed an application for temporary injunction, restraining the respondents or anybody on their behalf from proceeding with the construction activity in the suit property.

4. Undisputedly, land Chalta No. 187 of P.T. Sheet No. 45, is recorded in the name of respondent no. 5, Comunidade of Morombi-O-Pequeno. It appears that 550 square metres of land from out of Chalta No. 187 of P.T. Sheet No. 45 is acquired by the Government somewhere in 1980, for which, compensation has been paid to the respondent no. 5. The said portion is acquired for the purpose of the respondent no. 3-Economic Development Corporation Limited (EDC). However, the same has been placed at the disposal of the respondent no. 4-Goa State Infrastructure Development Corporation (GIDC), for construction of a bridge connecting the area better known as Patto to Mala. The bridge comprises of two lanes, the southern lane (first lane) and the northern lane (second lane).

Undisputedly, the southern lane has been completed somewhere in 2017 and has been thrown open for traffic. The appellants came to know about the construction somewhere in February, 2018, on an attempt by the respondent no. 4 to construct the northern lane and hence, the suit as aforesaid, came to be filed on 07.05.2019. Undisputedly, about more than 40% of the northern lane (second lane) is also complete.

5. The learned Trial Court has dismissed the application for temporary injunction *inter alia* on the ground that already 40% of the northern lane (second lane) is complete and it is a public project, which cannot be stalled as there is serious dispute as to the title of the suit property. The learned Trial Court after placing reliance on the decision of the Madhya Pradesh High Court in the case of **Dhaniya Bai Vs. Jiwan Bhaiyalal, AIR 2003 MP 71** and the decision of the Supreme Court in the case of **Real Estate Agencies Vs. State of Goa & Others (2012) 12 SCC 170**, has held that when there is dispute as regards title, a public project cannot be stalled. Feeling aggrieved by the dismissal of the application for temporary injunction, the present Appeal is filed.

6. I have heard Mr. Kholkar, the learned Counsel for the petitioners, Mr. Bhobe, the learned Counsel for the respondent no. 3 and Mr. Vaze, the learned Counsel for the respondent no. 4. Perused record.

7. Mr. Kholkar, the learned Counsel for the petitioners has strenuously urged that 1451.83 square metres of land belonging to the Government was allotted to the ancestors of late Vithal Tilve and after the death of Vithal Tilve on 24.05.1938, his son Krishna Tilve became the owner of the suit property. It is pointed out that in Inventory Proceeding No. 60/1972, the suit property came to be allotted to Krishna Tilve in respect of which, mutation was effected in 1936 and Plan No. 12083 was issued showing details of the property. The learned Counsel has taken me through the relevant documents and in particular, the Title of Assignment of the year 1983, in which, the suit property is described in schedule annexed thereto. In short, it is contended that there are sufficient documents to show that the appellants are owners in possession of 1451.83 square metres of land from out of Chalta No. 187 of P.T. Sheet No. 45, in which, the proposed construction is being undertaken.

8. The learned Counsel has placed reliance on the decision of the Supreme Court in the case of **Vikram Singh Junior High School Vs. District Magistrate (Fin. & Rev.) & Others (2002) 9 SCC 509**, in order to submit that merely because the said land is recorded in the name of respondent no. 5, it cannot confer title to the property on the respondent no. 5. Reliance is then placed on the decision of the Karnataka High Court in the case of **State of Karnataka Vs. Basalingappa 1990 (1) Civil LJ 379**, in order to submit that the Government cannot take law in its own hands in proceeding to construct the bridge in the private property of the appellants.

9. Mr. Vaze, the learned Counsel for the contesting respondent no. 4 has supported the impugned order. It is submitted that the respondent no. 4 is only an executing agency of the public project and the bridge is on the portion of the land admeasuring 550 square metres, which has been acquired by the Government somewhere in the year 1980. It is submitted that the first lane is already complete and is thrown open for traffic and even the second lane is complete to the extent of more than 40%. It is submitted that there is clear delay and laches on the part of the appellants and the injunction has been rightly refused.

10. I have carefully considered the rival circumstances and the submissions made. *Prima facie*, it appears that although, according to the appellants, they are owners in possession of 1451.83 square metres of land from Chalta No. 187 of P.T. Sheet No. 45, the same is recorded in the name of respondent no. 5. The record also *prima facie* discloses that 550 square metres of land was acquired by the Government in the year 1980 for which, compensation has been paid to the respondent no. 5. The survey was promulgated somewhere in the year 1973 and till today, the appellants have not taken any steps for correction of the survey records. If according to the appellants, they are owners of 1451.83 square metres of land, they ought to have taken steps for correction of the survey records. The Trial Court, in my considered view, is right in holding that there is serious dispute as to the title and ownership of the suit property and as to whether, the proposed construction is in the land, which is owned and possessed by the appellants. *Prima facie*, it appears that although, the construction of the first lane was completed somewhere in the year 2017, no action was taken by the appellants. Even insofar as the second lane is concerned, the appellants on their own saying came to know of the alleged construction in February,

2018. However, the suit came to be filed on 07.05.2019. Thus, there is clear delay and laches on the part of the appellants in approaching the Court. The learned Trial Court is right in holding that if, ultimately, it is found that the construction is being carried out in the property of the appellants, they can be appropriately compensated.

11. Reliance placed on the decision of the Karnataka High Court in the case of **Basalingappa** (supra) is misplaced. In that case, it was undisputed that the State had made construction of a road in a private property without its acquisition. In the present case, there is serious dispute as to the construction of the second lane, on the land allegedly owned and possessed by the appellants. In the case of **Vikram Singh Junior High School** (supra), the survey record was not corrected, although, there was specific order for correction of the record, which order had attained finality. It was in these circumstances held that continuance of the wrong entry as lessee in the said record was of no consequence. In the present case, the survey having been promulgated in the year 1973, the appellants have not taken any steps for correction of the said record.

12. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity so as to require interference. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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