

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 925 OF 2018**

Mathews Cardozo (Dec) Thr. LRs. Petitioner
Versus
Magdalina Dias & Another Respondents

Mr. John Abreu Lobo, Advocate for the Petitioner.

Mr. R.G. Ramani, Advocate for the Respondent No. 1.

CORAM : C.V. BHADANG, J.

DATE : 29th January, 2019

ORAL ORDER:

Heard Mr. Lobo, the learned Counsel for the petitioner and Mr. Ramani, the learned Counsel for the respondent no. 1. Perused record.

2. On the basis of the complaint filed by the respondent no. 1, Smt. Magdalina Dias, the Deputy Director of Panchayat assumed powers and after issue of show cause notice to now deceased Mathew Cardozo (the predecessor of the petitioners) had passed the following order on 28.06.2011.

“The application filed by the applicant before Director of Panchayats on 01/10/2002 and redirected to this office on 04/10/2002 stands

allowed. The above suit structure admeasuring 52 square metres constructed by encroaching the paddy field to the extent of 13.50 square meters in Survey No. 207/9 of village Curtorim is illegal and therefore needs to be demolished by the legal heirs of respondent no. 1 within 30 days failing which Secretary of respondent no. 2 to demolish the same within next 30 days and recover the expenses of demolition from legal heirs of respondent no. 1 by adopting the normal laid down procedure."

3. This order has been confirmed by the learned Additional Director of Panchayat on 06.01.2015 and further, by the learned District Judge in Civil Revision Application No. 10/2015, vide judgment and order dated 05.07.2018. Feeling aggrieved, the petitioner is before this Court.

4. I have heard Mr. Lobo, the learned Counsel for the petitioner and Mr. Ramani, the learned Counsel for the respondent no. 1. None appears for the respondent no. 2. With the assistance of the learned Counsel for the parties, I have gone through the record.

5. Mr. Lobo, the learned Counsel for the petitioner has raised two contentions (i) that the authorities under the Goa

Panchayat Raj Act have relied upon the findings recorded by the Civil Court, which was not permissible, once the execution application filed by the respondent no. 1 was dismissed, as it was barred by limitation and (ii) the order of demolition cannot be sustained, once the respondents had failed to execute the decree as per law. Except this, there are no other contentions raised.

6. Mr. Ramani, the learned Counsel for the respondent no. 1 has supported the impugned order. The learned Counsel for the respondent no. 1 has taken me through the judgment of the learned District Judge, in order to submit that the learned District Judge has considered all the relevant aspects and has confirmed the order of demolition as passed.

7. I have carefully considered the rival circumstances and the submissions made. Undisputedly, the show cause notice was issued by the Deputy Director of Panchayat and thereafter, the order of demolition was passed. It is a matter of record that even the Village Panchayat had issued a demolition notice on 15.02.2003, after holding a site inspection. It is a further matter of record that there was a suit filed by now deceased, Mr. Cardozo, in which, there was a counterclaim filed

by the respondent no. 1, seeking mandatory injunction for demolition. It is undisputed that the suit filed by now deceased, Mr. Cardozo, was dismissed and the counterclaim filed by Magdalena for declaration was allowed and confirmed in appeal. The execution application filed by Magdalena was dismissed as being barred by limitation. However, this cannot affect the finding recorded in the said judgment. The fact that the execution application was barred by limitation, would not make such relief impermissible. It was all along the case of the petitioner that the suit structure was an existing old structure, which was only repaired. However, the petitioner has not demonstrated that there was already a structure existing and has also not produced any permission/licence for such repairs, as claimed. That apart, the petitioner had filed an application for regularisation, which was also dismissed. The fact that the application for regularisation was filed, presupposes that the construction was not regular.

8. I have carefully gone through the impugned orders passed by the Deputy Director of Panchayat, Additional Director of Panchayat and the judgment and order passed by the learned District Judge, and I do not find that they suffer 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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