

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1152 OF 2018

Mrs. Maria Fernandes,
wife of Late Mr. Jose Caetan Fernandes,
Major in age,
R/o H. No.26, Gorvotte,
Nuvem, Salcete Goa.

.... Petitioner

Versus

1. Village Panchayat of Nuvem,
Through Sarpanch/Secretary
having its office at Nuvem,
Salcete Goa.
2. Secretary of Village Panchayat of Nuvem,
Nuvem Salcete Goa.
3. Director of Panchayat,
Junta House, 18th June Road,
Panaji Goa.
4. Deputy Director Panchayat,
South Goa,
At Margao Goa.
5. Deputy Collector and
Incharge of Demolition Squad
Sub Division Margao,
At Margao Goa.
6. Block Development Officer,
Salcete, Margao Goa.

7. Executive Engineer,
Works Division VI (Roads)
PWD, Fatorda Goa.
8. Executive Engineer, W.D.XVI,
Electricity Department,
Aquem Margao Goa.
9. Police Inspector,
Maina Curtorim Police Station,
Curtorim Goa.
10. Jose Inacio Fernandes,
r/o 28, Gorvotte,
Nuvem Salcete Goa.

.... Respondents

Mr. V. A. Lawande and Mr. P. Redkar, Advocates for the Petitioner.
Mr. S. Sayed holding for Mr. J. P. Supekar, Advocate for Respondent No.1.
Mr. J. R. Serrao, Advocate for Respondent No.10.

WITH
WRIT PETITION NO.530 OF 2019

Mrs. Maria Fernandes,
wife of Late Mr. Jose Caetan Fernandes
major in age,
R/o H.No.26, Gorvotte,
Nuvem, Salcete Goa.

.... Petitioner

Versus

1. The Secretary,
Village Panchayat of Nuvem,
having its office at Nuvem,
Salcete Goa.

2. Block Development Officer,
Matanhy Saldanha Administrative Complex,
Margao Goa.
3. The Deputy Director of Panchayats,
Matanhy Saldanha Administrative Complex,
Margao Goa.
4. Additional Director Panchayat,
Matanhy Saldanha Administrative Complex,
Margao Goa.
5. The Director of Panchayats,
3rd Floor, Junta House,
Panaji Goa.
6. The Deputy Collector of Salcete,
Incharge of Demolition Squad
Collectorate Building,
Salcete Goa.
7. The Mamlatdar/Joint Mamlatdar III
Mathany Saldanha Administrative Complex,
Margao Goa.
8. Executive Engineer,
PWD, VI Road,
Fatorda Goa.
9. Police Inspector,
Maina Curtorim Police Station,
Curtorim Goa.

10. The Dy. S. P.
South Goa District Headquarters,
Margao Goa.

11. The Superintendent of Police,
South Goa District Headquarters,
Margao Goa.

12. The Government of State of Goa
Through its Chief Secretary,
Secretariat, Porvorim, Bardez Goa.

13. Jose Inacio Fernandes,
Major in age,
son of late Mr. Piedade Fernandes,
and his wife.

14. Mrs. Domiana Fernandes,
major in age,
Both residents of H.No.
Major in age,
r/o 28(2), Gorravott,
Nuvem, Salcete Goa.

.... Respondents

Mr. V. A. Lawande and Mr. P. Redkar, Advocates for the Petitioner.

Mr. S. Sayed holding for Mr. J. P. Supekar, Advocate for Respondent No.1.

Ms. N. Kholkar, Addl. Government Advocate for Respondent Nos. 2 to 12.

Mr. J. R. Serrao, Advocate for Respondent Nos.13 and 14.

***Coram : M.S. Sonak &
Nutan D. Sardesai, JJ.***

Date : 26th August, 2019

Oral Judgment (Per M. S. Sonak, J)

Heard the learned counsel for the parties.

2. Rule. Rule made returnable forthwith with the consent and at the request of the learned counsel for the parties.

3. Learned counsel for the respective Respondents waive service.

4. The Writ Petition No.1152 of 2018 was instituted by the Petitioner to seek implementation of demolition orders made by the Panchayat as also other Authorities under the Panchayat Raj Act.

5. During the pendency of the said petition, it appears that Respondent No.10 in Writ Petition No.1152 of 2018, who is alleged to have carried out illegal construction instituted a Civil Suit No.28/2018 before the District Judge-2, South Goa at Margao and therein, on 15.11.2018, the District Judge has made the following order : -

“In view of the urgency of the matter as argued by Id. Adv. Shri J. Serrao as demolition is scheduled on 23.11.2018 at 9.30 a.m., and the matter is subjudice before this Court, hence the Defendants shall maintain status quo till further orders. The Plaintiffs to intimate this order to the Defendants and file the same in Court showing its service to the Defendants.”

6. The Petitioner, has thereupon instituted a Writ Petition No.530 of 2019 to *inter alia* contend that the Civil Court has no jurisdiction to entertain such a suit since, statutory finality has been accorded to the Authority under the Panchayat Raj Act. The learned counsel for the Petitioner submits that there are several other grounds as well in support of Petitioner's contention that the Civil Court lacks jurisdiction in a matter of this nature.

7. According to us, the reliefs in Writ Petition No.1152 of 2018 are now rendered infructuous in view of the order of the District Court dated 15.11.2018.

8. Similarly, in so far as the issue of jurisdiction now sought to be raised by Mr. Lawande is concerned, we are of the opinion that the same can as well be raised before the District Court in opposition to the application for interim relief taken out by the Respondent No.10/Plaintiff in the Civil Suit No.28/2018. If such objections are raised, the learned District Judge is bound to consider the same while deciding whether or not to confirm the interim order dated 15.11.2018.

9. We note that the Plaintiffs in Civil Suit No.28/2018 did not even bother to implead the present Petitioner as Defendant in the suit. According to us, this was not at all proper, considering the fact that it is the

Petitioner in this petition who was pursuing the matter of construction undertaken by the Plaintiffs before the Panchayat as well as other Authorities under the Panchayat Raj Act. The Plaintiffs were also aware that the Petitioner has instituted a Writ Petition No.1152 of 2018 to seek implementation of the orders of demolition. In such a situation we do not approve the action of the Plaintiffs in not even impleading the Petitioner as Defendant in the said suit.

10. However, it is not necessary to dilate on this aspect any further because, by now, there is no dispute that the Petitioner has already been impleaded as Defendant in the suit, in pursuance of the intervention applied for by the Petitioner.

11. In the aforesaid circumstances, we direct the District Judge to dispose of the application for interim relief in Civil Suit No.28/2018 as expeditiously as possible and in any case within six weeks from the date the parties lodge an authenticated copy of this order.

12. In case, any of the Defendants in the suit wish to file any reply to the application for interim relief, they may do so within maximum period of two weeks from today by serving advance copy to the learned counsel appearing for the Plaintiffs. Rejoinder, if any, to be filed within one week thereafter.

13. The learned District Judge to dispose of the application for interim relief within a period of three weeks thereafter. In disposing of such an application for interim relief, we have no doubt that the learned District Judge will consider not only the case of the Plaintiffs but also all the objections to its jurisdiction which may be raised by the Defendants in the suit.

14. We dispose of these two writ petitions with the aforesaid directions. We make it clear that we have not examined the rival contentions on merits and therefore, all contentions of parties are left open.

15. The parties to appear before the learned District Judge on 6th September, 2019 and file authenticated copy of this order. This is in order to enable the learned District Judge to fix time schedule for disposal of the application for interim relief within the timeline indicated by us.

16. The petitions are disposed of in the aforesaid terms.

17. There shall be no order as to costs.

Nutan D. Sardesai, J

M.S. Sonak, J

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