

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1075 OF 2018**

Rajesh Kamlakant Joshi, s/o Mr. Kamlakant Joshi, aged 35 years, Indian National, R/o House No. 734, Shantinagar, Village Socorro, Bardez-Goa.

.... Petitioner

Versus

1. The Administrator of Comunidades, North Zone, office of the Administrator of Comunidades, North Zone, near Mapusa Civil and Criminal Courts, Mapusa, Bardez-Goa.
2. The Comunidade of Pilerne, office of the Comunidade of Pilerne, Pilerne, Bardez-Goa.
3. Mr. Ramnath alias Devanand R. Naik, H. No. 773/19, Opp. Bina Punjani Hair Studio, Chogm Road, Alto Porvorim, Goa.
4. Comunidade of Serula, having its office at West Coast Residency, 1st Floor, Opp. Bank of India, Porvorim, Bardez, Goa - 403521.

.... Respondents

Mr. Yogesh V. Nadkarni with Mr. Nuno Noronha, Advocates for the Petitioner.

Ms. Susan Linhares, Additional Government Advocate for Respondent No. 1.

Mr. Neelesh Takkekar, Advocate for Respondent No. 2.

Mr. Raunaq Rao, Advocate for Respondent No. 3.

Ms. P. Gavandi, Advocate for Respondent No. 4.

CORAM : C.V. BHADANG, J.

DATE : 4th July, 2019

ORAL JUDGMENT:

Rule made returnable forthwith. The learned Counsel for the respondents, waive service. Heard finally by consent of parties.

2. The challenge in this petition is to the judgment and order dated 13.06.2018, passed by the Administrator of Comunidade, Mapusa. By the impugned judgment, the complaint filed by the respondent no. 3 has been decided, directing the petitioner to remove the kiosk, erected in the property of Comunidade of Pilerne.

3. The brief facts are that the managing committee of Comunidade of Pilerne, by resolution dated 06.10.2012 had allotted a land admeasuring 70 square metres to the petitioner, purportedly from out of survey no. 53/1 of village Pilerne, for erection of a kiosk. A perusal of the resolution shows that the land is granted on permanent basis, subject to certain conditions as contained in the resolution.

4. The respondent no. 3 filed a complaint before the respondent no. 1, stating that the erection of the kiosk is illegal and unauthorized. The respondent no. 1, by the impugned

order, has allowed the complaint and has directed the removal of the kiosk.

5. I have heard Mr. Nadkarni, the learned Counsel for the petitioner, Ms. Linhares, the learned Additional Government Advocate for the respondent no. 1, Mr. Takkekar the learned Counsel for the respondent no. 2 and Mr. Rao, the learned Counsel for the respondent no. 3. Perused record.

6. It is submitted by Mr. Nadkarni, the learned Counsel for the petitioner that Article 64 of the Code of Comunidades (Code, for short), authorizes the managing committee of the Comunidade to lease out property and the allotment in favour of the petitioner, in the present case is in pursuance of the powers under Article 64 (1) of the Code. It is submitted that such an allotment in respect of an open land is not subject to any approval by the Government. The learned Counsel has pointed out Article 64(9) of the Code, in order to submit that only the deliberations conducted by the managing committee, with regard to activities mentioned in Article 64(9)(a) and (b), are subject to the sanction by the Government. The learned Counsel has then submitted that it is only in respect of the long term leases and the allotment of land for residential purpose

that a sanction is required under the provisions of the Code and the land, which granted to the petitioner does not fall in any of these categories.

7. Insofar as the dispute that the kiosk falls in the land of the Comunidade of Pilerne or Comunidade of Socorro, it is submitted that the land allotted, is part of survey no. 56/1 and 389/1 and it is on the boundary of the village Pilerne and village Socorro. The learned Counsel for the petitioner has pointed out the judgment and order dated 04.01.2006, passed by the Additional District Judge, Mapusa in Civil Suit No. 36/2015, in which, an area of 3455 square metres of land belonging to the Comunidade of Pilerne is included in survey no. 389/1 and 250 square metres of land belonging to the Comunidade of Pilerne is included in survey no. 389/1 and 390/1.

8. Mr. Takkekar, the learned Counsel for the respondent no. 2 has submitted that the Comunidade is authorized, under Article 64 of the Code to grant the lease. It is submitted that the lease, which is granted to the petitioner, is in respect of land admeasuring 70 square metres only. The said land could not have been allotted for agricultural purpose or residential purpose and thus, the managing committee of the

Comunidade was within its power to grant the lease, in order to generate revenue and the resolution of the managing committee has been approved in the general body.

9. Mr. Rao, the learned Counsel for the respondent no. 3 has pointed out to an enquiry conducted by the Inspector of Survey and Land Records, in which, the competent Authority has found that the metal kiosk erected by the petitioner is in survey no. 389/1 of village Socorro and not village Pilerne. It is submitted that Article 64(1) of the Code is a general power of the managing committee to grant leases, which is subject to approval by the Government in accordance with the provisions of the Code. It is submitted that the lease granted in the present case is in excess of 18 years and in fact, what is granted is a permanent lease, which would require sanction/approval of the Government. Mr. Rao, the learned Counsel for the respondent no. 3 submitted that a permanent lease can only be granted after auction on issuance of a public notice. The learned Counsel for the respondent no. 3 has also referred to a letter dated 30.05.2018, received from the office of the Settlement and Land Records stating that property bearing survey no. 389/1 of village Socorro is found to have been promulgated in the name of Comunidade of Serula.

10. I have considered the circumstances and the submissions made. A perusal of the impugned judgment and order shows that the submissions based on Article 64(1) along with Articles 64(1)(9), 153(9) and (10), 317, 318 and 334(1), were raised before the Administrator. However, the impugned order shows that they have not been considered. That apart, subsequent to the passing of the impugned order, the Inspector of Land and Survey Records had conducted an inquiry and has come to the conclusion that the kiosk falls in survey no. 389/1 of village Socorro. The contention of the petitioner is that although, the land may fall within the jurisdiction of Socorro village, it can belong to the Comunidade of Pilerne. All these aspects, in my considered view, can be better considered by the learned Administrator as the Administrator would now have the benefit of the report of the Inspector of Land and Survey Records.

11. In such circumstances, the following order is passed:

ORDER

- (i) The petition is partly allowed.
- (ii) The impugned order is hereby set aside.

- (iii) The matter is remanded back to the learned Administrator of Comunidade, for deciding the same afresh, in the light of the observations made above, after hearing the parties.
- (iv) The learned Administrator shall decide the matter as expeditiously as possible.
- (v) Rival contentions of the parties, on merits are left open.
- (vi) The parties to appear before the learned Administrator on 02.08.2019.
- (vii) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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