

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1159 OF 2018**

Sudesh Vishram Samant & Another Petitioners

Versus

Uday Dadu Samant & 5 Others Respondents

Mr. Premanand Anand Kholkar, Advocate for the Petitioners.

Mr. Pranay A. Kamat, Advocate for Respondent Nos. 1, 2 and 3.

CORAM : C.V. BHADANG, J.

DATE : 27th August, 2019

ORAL ORDER:

The challenge in this Petition is to the following two orders:-

(i) An order dated 18.12.2014, passed by the Additional Collector-II, North Goa, Panaji in Case No. MCA/AC-II/REV/01/2013.

(ii) An order dated 21.08.2018, passed by the Additional Collector-III, South Goa, Ponda in Case No. AC-III/MCA/APPL/07/2016/711.

2. The brief facts are that the petitioners are having their property bearing survey no. 11/8 situated at village Conxem, Ponda. The property of the respondents is to the western side of the property of the petitioners and is bearing

survey no. 11/7. The dispute between the parties dates back to the year 1979 and there were cross suits filed by the parties against each other.

3. The petitioners had filed an application under Section 4 of the Mamlatdar's Court Act, 1966 (Act, for short), seeking removal of the obstruction for free flow of water from a pond, which was allegedly obstructed by the respondents. The petitioners had sought temporary injunction restraining the respondents from obstructing the free flow of the water, which application was dismissed by the learned Mamlatdar on 27.09.2012, which order has been confirmed in Appeal on 18.12.2014. This is the first order, which the petitioners are seeking to challenge after a period of about four years. There is no explanation, much less, an acceptable one, forthcoming, for such gross delay and laches in challenging the said order. Even otherwise, by the order dated 27.09.2012, the learned Mamlatdar has only dismissed the application for temporary injunction and the main application is still pending before the learned Mamlatdar. Thus, I am not inclined to entertain the challenge insofar as the order dated 18.12.2014 is concerned.

4. The respondents also filed an application under Section 4 of the said Act against the petitioners, claiming access i.e. footpath through the land of the petitioners. The Mamlatdar by an order dated 17.08.2016 has refused to grant temporary injunction in favour of the respondents, which order was challenged by the respondents in an Appeal and the learned Additional Collector, by an order dated 21.08.2018 has temporarily restrained the petitioners or any body on their behalf from interfering with or obstructing the pathway/access till the disposal of the main application by the learned Mamlatdar.

5. Here again, I do not find that any case for interference is made out. *Prima facie*, at this stage, it appears that the Courts below after placing reliance on a resolution passed by the Village Panchayat and the report of the Talathi, has *prima facie* found that there exists a pathway, as claimed by the respondents. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity so as to require interference.

6. At this stage, the learned Counsel for the parties submit that the main applications are pending before the

Mamlatdar from the year 2010 and they be expedited.

7. In the result, the petition is dismissed, with no order as to costs. The learned Mamlatdar shall proceed to decide the pending applications as expeditiously as possible and preferably within a period of one year from the receipt hereof. Parties to co-operate for time bound disposal of the applications. Rival contentions of the parties, on merits, are left open.

C. V. BHADANG, J.

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