

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO. 31 OF 2019***

Rajeninata Alias Rajaninath Shirodkar
& another.

... Petitioners

Versus

Kamakshi Saunsthan Shiroda, Ponda Goa
and others.

.... Respondents

Mr. Atul Chitale, Senior Advocate with Mr. Abhay Tikekar,
Ms. Mayuri Pawar, Mr. Venkateshwar Satyanarayanm, Advocates for
the Petitioners.

***Coram : M.S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 21 January 2019.

P.C. :

Heard Mr. Atul Chitale, learned Senior Counsel for the
petitioners.

2. By this petition under Articles 226 and 227 of the
Constitution of India, the petitioners seek the following reliefs:

- “i. Rule be issued.*
- ii. This Hon'ble Court may kindly issue writ in the
nature of Certiorari or any other appropriate writ and/or*

direction and/or order and thereby be pleased to quash and set aside the :

A1) 'Construction License' dated 23rd December 2014 issued by Respondent no.4 i.e. "impugned permission of respondent no.4", (Being Exhibit-B hereto)

B2) Impugned permission/order dated 10th August, 2011 passed by the respondent no.3 (being Exhibit-E hereto) i.e. "impugned permission of respondent no.3",

C3) Issuance impugned permission of Technical Clearance Certificate dated 15th October, 2014 by the respondent no.3 (being Exhibit-H hereto) "2nd impugned permission of respondent no.3",

D4) Impugned Order dated 22nd December, 2014 passed by the Respondent no.2 i.e. impugned permission of respondent no.2" (being Exhibit-M hereto).

iii) that this Hon'ble Court be pleased to order and direct the respondent nos.2 to 4 to verify the legality or validity or otherwise of the nature of construction carried out by the respondent no.1 in the said property and submit a detailed report to this Hon'ble Court as to the legality or otherwise of such work and further take action for removal of illegalities;

iv) that pending the hearing and final disposal of the present petition, this Hon'ble Court be pleased to stay the effect and implementation of the "Construction License" dated 23rd December 2014 issued by respondent no.4 i.e.

“impugned permission of respondent no.4”, impugned permission/order dated 10th August, 2011 passed by the Respondent no.3 (being Exhibit-E hereto) i.e. “impugned permission of respondent no.3”, impugned permission of Technical Clearance Certificate dated 15th October 2014 by the respondent no.3 (being Exhibit-H1 hereto) i.e. “2nd impugned permission of respondent no.3”, impugned order dated 22nd December, 2014 passed by the respondent no.2 i.e. “impugned permission of respondent no.2” (being Exhibit-M hereto).

v) that pending the hearing and final disposal of the present petition, this Hon'ble Court be pleased to pass an order restraining respondent no.1 from carrying out any further construction activity and/or creating any third party rights in respect of the said property and the building constructed thereon.

vi) Interim and ad-interim reliefs in terms of prayer clause (iv) and (v) above”.

3. Mr. Chitale, learned Senior Counsel for the petitioners, submits that the permissions granted in favour of the respondent no.1 are infirm and vitiated because, respondent no.1 has no title to the property whereon the constructions have commenced. He points out that the office of the Town Planner while granting Technical Clearance Certificate had specifically directed the Panchayat to verify the title of respondent no.1 and only thereafter proceed to grant permission. He

submits that respondent no.1 has produced no document of title precisely because respondent no.1 has no title to the property in question where the construction has commenced. Mr. Chitale, therefore, submits that the permissions deserve to be quashed and set aside and the construction activity be halted.

4. To a query from the Court as to whether it will not be appropriate to agitate the issues of the ownership and title by instituting a Civil Suit, Mr. Chitale submits that the petitioners have already instituted Regular Civil Suit No.11/2015. To the further query as to whether any interim relief restraining the construction, was applied for in the said suit, Mr. Chitale replies that such interim relief was applied for but, the same came to be rejected by the Trial Court, vide order dated 16.3.2017. Mr. Chitale, to the further query, as to whether any appeal was filed against the order dated 16.3.2017, replies that even the appeal against the said order has been dismissed by the Appellate Court, by order dated 27.11.2017. He admits that the Trial Court and the Appellate Court have recorded findings that the petitioners have no *prima facie* title to the property in question and this was one of the grounds for denial of interim relief.

5. The main contention raised by Mr. Chitale was that the

Panchayat ought to have verified the title of respondent no.1 before issuing permission for construction dated 22nd December 2014. He relies on Clause 11 of the Technical Clearance Order issued by the office of the Town Planner, which *inter alia* provides that the ownership of the property, tenancy as on 2.11.1999 and thereafter the traditional access, if any, passing through the property shall be verified by the Village Panchayat Office before issue of construction license.

6. In virtually, a similar fact situation, a Division Bench of this Court in the case of *Ganesh V.N.Panvelcar & Others Vs. Gram Panchayat of Verem-Betim-Reis Magos & another*¹ has held that the Panchayat is not required to verify the title of the applicant before granting permission under Regulation 83 but, the Rules envisages verification of ownership and this Rule cannot be read so as to confer power upon the Village Panchayat to determine title to the property. In the said case as well, a dispute as to the title was raised by one Chandrakant Naik and it is on the basis of such dispute the Village Panchayat kept the application for permission in abeyance. The Division Bench went on to observe that it is not difficult to imagine that such disputes are raised by people only to gain some profit when a large property is likely to be developed. In any event, it is not the

¹ 1987 (3) Bom.C.R.98

business of the Village Panchayat to keep the application for permission in cold storage on the ground that disputes in respect of title to the property should be first resolved.

7. According to us, the issue of title, which the petitioners propose to raise in the present petition, cannot be adjudicated and the proceedings under Article 226 and 227 of the Constitution of India. These are the matters which are to be essentially resolved by instituting civil suit and seeking appropriate reliefs. In the present case, the petitioners, have already instituted Regular Civil Suit No.11/2015, in the year 2015 itself. The petitioners, it is apparent, attempted to secure interim relief restraining the construction in the property in question. However, by order dated 16.3.2017, the Civil Court, rejected such interim relief. The Appeal against such rejection was dismissed on 27.11.2017. In the present case, the issues of ownership and title have been raised by the petitioners. The petitioners claim to be owners of the said property and allege that respondent no.1 has no title to the said property. The permissions, which are impugned in the present petition, were issued way back in the year 2014, to the knowledge of the petitioners. The petitioners have already instituted a Civil Suit in respect of their alleged proprietary rights in the said property. The issues of title and ownership, in the facts and

circumstances of the present case, are disputed questions of fact. All these matters cannot be ordinarily adjudicated in exercise of extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

8. In *Jai Singh Vs. Union of India and others*² the Apex Court held that in a petition involving disputed questions of fact, the High Court should not grant relief when an alternative remedy by suit exists. The Apex Court further held that parallel remedies in respect of the same matter cannot be pursued at the same time. In *Dr. Karan Singh Vs. State of J&K and another*³ the Apex Court held that disputed questions of fact relating to adjudication of title cannot be adjudicated in writ jurisdiction. In *D.L.F. Housing Construction (P)Ltd. Vs. Delhi Municipal Corpn. and others*⁴ the Apex Court has held that where basic facts are disputed and complicated questions of law and fact depending on the evidence are involved, the writ court is not the proper forum for seeking relief. Dismissal of a petition in limine is justified in such cases and remedy of a Regular Civil Suit is a proper remedy.

9. The fact that Regular Civil Suit No.11/2015 was already

2 (1977) 1 SCC 1

3 (2004) 5 SCC 698

4 (1976) 3 SCC 160

instituted and interim relief seeking restraint on construction in the said property was denied by both the Trial Court as well as Appeal Court were extremely relevant and vital particulars, particularly since the petitioners in the present petition seek similar restraint upon respondent no.1 from undertaking any construction in the said property. The relief in the present petition is based upon the alleged title of the petitioners or rather the alleged absence of title in the respondent no.1. The basis of Regular Civil Suit No.11/2015, also appears to be the same. However, all these relevant and material particulars were suppressed by the petitioners whilst filing the present petition. There is no whisper as to all these relevant and material particulars in entire body of the petition. According to us, this constitutes material suppression on account of which, it would not at all be appropriate to exercise our extraordinary and equitable jurisdiction under Articles 226 and 227 of the Constitution of India, in favour of the petitioners.

10. In *Agricultural and Processed Food Products Vs. Oswal Agro Furane and others*⁵ the Apex Court noted that in a writ petition filed before the Delhi High Court by the respondent-Company, the fact of its earlier filing and pendency of another writ petition before

⁵ (1996) 4 SCC 297

the Punjab and Haryana High Court relating to the same matter was not disclosed. In the earlier petition, the Company had taken a contrary contention. The Apex Court held that had the Company discloses that fact before the Delhi High Court, that Court would not have entertained the petition. Therefore, on the ground of suppression of material particulars, it was held that no petition ought to have been entertained.

11. It is well settled that it is of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid and material disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, the petition can be dismissed at the threshold without considering the merits of the case. On the grounds of suppression of material particulars, this petition is required to be dismissed.

12. Further, we note that most of the permissions which have been impugned in the petition, came to be issued in the year 2014. It is not the case of the petitioners that they were unaware that such permissions were issued. Yet, this petition has been instituted only in

December 2018. The only explanation furnished is that the construction commenced in February 2018. Mr. Chitale pointed out that In February 2018 respondent no.1 trespassed the property in question and the construction started thereafter.

13. According to us, the aforesaid, is hardly any satisfactory explanation for inordinate delay all over four years in challenging the permissions. Since the petitioners were aware about issuance of permissions in the year 2014 itself, nothing prevented the petitioners from challenging the same, within a reasonable period. In fact, by instituting the suit in the year 2015, the petitioners did attempt to halt the proposed construction on the basis of the permissions issued in the year 2014. Merely because the petitioners failed to obtain any interim relief in a pending suit, the petitioners cannot be said to be justified in instituting the present petition after inordinate delay and that too, by suppressing the factum of institution of the suit and denial of interim relief. This is yet another ground for dismissal of the present petition.

14. The extraordinary and equitable jurisdiction under Articles 226 and 227 of the Constitution of India, cannot be exercised to aid the petitioners, who are not candid with the Court or who

suppress relevant and material particulars. Besides, such a jurisdiction is normally, is not exercised when the petitioners are already pursuing another remedy. As noted earlier, the issues of title and ownership also cannot be adjudicated effectively in a petition under Article 226 and 227 of the Constitution of India. The petitioners are guilty of inordinate delay as well as laches. There is no proper explanation forthcoming to explain such inordinate delay. For all these reasons, we do not deem it appropriate to entertain the present petition. Rather, we are of the opinion that this petition is required to be dismissed with exemplary costs.

15. For all the aforesaid reasons, we dismiss this petition with costs of Rs.25,000/- (Rs.Twenty five thousand) only. The costs to be paid in favour of Goa State Legal Services Authority, within a period of four weeks from today. This is because the present petition is being dismissed without issuance of notice to any of the respondents.

16. We however clarify that we have not made any observations on the merits of the petitioners' alleged title and ownership to the property in question. Therefore, nothing in this order, should be taken to the prejudice of the petitioners or for that matter to the advantage of respondent no.1, in the pending Civil Suit.

All such issues are, therefore, left open.

Prithviraj K. Chavan, J.

M.S.Sonak, J.