

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO.30 OF 2012

IN

WRIT PETITION NO.228 OF 2010

MR. CAMILO DOMINGOS FERNANDES
AND ANR.

.... Petitioner.

V/s.

1. SHRI RAJESH NAIK, MEMBER
SECRETARY AND 2 ORS.,

.... Respondents

Mr. Ryan Da Piedade Menezes, Advocate for the petitioner.

Mr. Menino Pereira, Advocate for the respondents no.1 and 2.

**Coram : M. S. SONAK &
SMT. M.S. JAWALKAR, JJ.**

Date : 3rd February, 2020.

P.C. :

Heard Mr. Ryan Menezes, the learned Counsel for the petitioner and Mr. Menino Pereira, the learned Counsel for the respondents no.1 and 2.

2. In this case, what is alleged is the contempt for having disobeyed the directions issued by us in our Order dated 4.8.2010 in the Writ Petition No.228/10.

3. In our Order dated 4.8.2010, we had recorded and accepted the statement made on behalf of the Planning and Development Authority that the Completion Certificate to the structure erected by the RPC Builders will not be granted, unless a road/access having actual width of 6 metres is found to be on the site in terms of the Regulations no.4 (A).4 of the Development and Planning Regulations 2000.

4. The petitioner contends and it is even accepted by Mr. Pereira, the learned Counsel for the Planning and Development Authority that the statement was made in the context of road/access on the western side of the suit property where the structure erected by RPC Builders had already come up.

5. Mr. Pereira also agrees that even till date, on the western side there is no road/access having actual width of 6 metres at the site. However, Mr. Pereira points out that the Completion Certificate was issued on the basis of the road/access having actual width of 6 metres on the eastern side of the said property and after RPC

Builders purchased an adjoining property and amalgamated the said property. Mr. Pereira points out that as a result of this purchase/ amalgamation, the said property acquired access on the eastern side, which was sufficient in terms of the Development and Planning Regulations 2000.

6. Mr. Pereira further points out that certain residents of the locality, including the present petitioner had himself instituted a Civil Suit No.55/2011 in the Court of the Adhoc District Judge-1, South Goa, Margao, urging that the access on the eastern side is only a private access and not a public road having actual width of 6 metres, could have placed reliance. He has placed on record the Judgment and Decree dated 20.11.2013, by which, such suit came to be dismissed by recording a finding that the access on the eastern side is a public road which could have been taken into consideration by the Planning and Development Authority.

7. On behalf of the petitioner, however, it is pointed out that the First Appeal No.16/2014 was filed before this Court impugning the Judgment and Decree dated 20.11.2013 in Civil Suit No.55/2011, which is pending adjudication.

8. According to us, looking to the aforesaid circumstances,

there is really a no case of contempt as such made out, though, we feel that the Planning and Development Authority should have applied to this Court and secured a clarification before it proceeded to issue the Completion Certificate.

9. In any case, now that there is Judgment and Decree dated 20.11.2013, it cannot be said that the Planning and Development Authority has intentionally or willfully disobeyed the orders made by us or reneged on its statement made to this Court as recorded by us in our Order dated 4.8.2010.

10. Accordingly, we dispose of this Contempt Petition by only observing that in case First Appeal No.16/2014, is ultimately allowed and it is held that the access on the eastern side is not a public road/access upon which the Planning and Development Authority could have relied upon, then, subject to the rights to further challenge which parties would have, the Planning and Development Authority, will have to revoke the Completion Certificate/Occupancy Certificate, which it has granted on the basis of the access on the eastern side.

11. This Contempt Petition is disposed of in the aforesaid

terms.

SMT. M.S. JAWALKAR, J. *M. S. SONAK, J.*
*af**