

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 47 OF 2015

1. SHRI SUHAS DATTA NAIK,
major of age, son of Shri Datta Naik,
Indian National, r/o Flat No. S-3, 2nd
Floor, Royal arcade, Opp. Forest
Dept., Sirvoi, Quepem, Goa.
2. SMT. ANALYN DINIZ,
major of age, wife of Shri Agostinho
Diniz, Indian National, r/o. Flat
No.4, 1st Floor, Royal arcade, Opp.
Forest Dept., Sirvoi, Quepem, Goa.

...Appellants.

Versus

1. THE GOVERNMENT OF GOA,
Through its Chief Secretary,
Porvorim, Panaji, Goa.
2. SHRI FILIPE P. DA COSTA,
son of late Domingos da Costa,
2(a) Mr. Francisco Savio Da Costa,
major of age.
2(b) Mrs. Jonnse Varghese, major of
age,
2(c) Ms. Sara Carma Da Costa,
major of age,
All residing at H.No.328, 2nd Floor,
Royal arcade, Opp. Forest Dept.,
Sirvoi, Quepem, Goa.

3. SMT. RUBERTINA DA COSTA,
Daughter of late Roque Felipe Dias,
major in age, residing at H.No.328,
2nd Floor, Royal arcade,
Opp. Forest Dept. Sirvoi,
Quepem-Goa.
4. CHIEF OFFICER OF QUEPEM
MUNICIPAL COUNCIL,
Quepem, Goa.
5. DY. TOWN PLANNER,
Town and Planning Department,
Government of Goa,
Quepem - Goa.

... Respondents.

Mr. Gaurang Panandiker, Advocate for the Appellants.

Ms. Priyanka Kamat, Additional Government Advocate for the Respondents No. 1, 5 and 6.

Mr. John A. Lobo, Advocate for the Respondents No. 2(a), 2(b), 2(c) and Respondent No.3.

Mr. Ashwin D. Bhobe with Ms. Kalpa Govekar, Advocates for the Respondent No. 4.

Coram : M. S. SONAK, J.

Date : 29th October, 2020

ORAL JUDGMENT:

Heard Mr. Gaurang Panandiker, learned Counsel for the

appellants. Ms. Priyanka Kamat, learned Additional Government Advocate appears for respondents No.1, 5 and 6, Mr. John A. Lobo, the learned Counsel appears for the respondents No. 2(a), 2(b), 2(c) and 3 and Mr. Ashwin D. Bhobe with Ms. Kalpa Govekar, learned Counsel appear for the Respondent No. 4.

2. The challenge in this appeal is to the judgment and order dated 19.08.2015 made by the learned District Judge-1, South Goa, at Margao-Goa in Civil Suit No.21/2014/I rejecting the appellants'/plaintiffs' application for temporary injunction to restrain the respondents No.2(a), 2(b), (2) and 3 from proceeding with any construction in the suit property bearing Survey No.18/12-A-7 situated at Quepem.

3. Mr. Panandiker submits that this temporary injunction was applied for on several grounds including, inter alia, on the ground that the appellants were the co-owners in respect of the suit property and in any case, the proposed construction was not in accordance with law, i.e. the planning regulations, etc.

4. Mr. Panandiker, submits that the appellants had produced sufficient material on record to make out a prima facie case of co-ownership. He submits that in any case, more than prima facie case was made out to establish that the proposed construction was

not in accordance with law.

5. Mr. Panandiker points out two show cause notices dated 27.05.2014 and show cause notice to stop work order dated 27.06.2014 issued by the planning Authorities, requiring the respondents No.2(a), 2(b), 2(c) and 3 to show cause as to why the Technical Clearance/NOC dated 14.10.2010 issued earlier be not revoked. He submits that these show cause notices are, till date, not disposed of and they establish that at least, prima facie, the proposed constructions were not in accordance with law. Mr. Panandiker also points out that interim relief was granted in this appeal from order way back in the year 2015 and the same, continues in force. He submits that since the learned Trial Court has failed to take into consideration relevant and vital documents, i.e., the show cause notices issued by the planning Authorities and the impact thereof, the impugned judgment and order warrants interference.

6. Mr. Lobo, the learned Counsel for the respondents No.2(a), 2(b), 2(c) and 3 defends the impugned judgment and order based upon the reasoning reflected therein. He points out that there is no case made out by the appellants to the claim of so called co-ownership. He refers to the Sale Deed dated 21.04.2011 and clause 7 thereof to submit that the appellants had unambiguously consented to the construction in the suit property and, therefore, the appellants, now renege from this position.

7. Mr. Lobo submits that there are no breaches of any planning regulations and necessary replies have already been filed before the planning Authorities. He submits that in any case, these are matters between the respondents whom he represents and the planning Authorities. He submits that on the basis of the show cause notices, there is no case made out to interfere with the impugned judgment and order made by the learned Trial Court. He relies on the decision of the Hon'ble Apex Court in ***Wander Ltd. And Anr. v/s. Antox India P. Ltd.***¹ to submit that this Court ought not to interfere with the well reasoned interlocutory order made by the learned Trial Court.

8. Ms. Kamat, the learned Additional Government Advocate states that the show cause notices issued in this matter will be disposed of within reasonable period and the decision will be communicated to the concerned Authorities, including the appellants herein.

9. Mr. Bhobe, the learned Counsel appearing for the Quepem Municipal Council, submits that, inter alia, show cause notice was issued to the respondents whom Mr. Lobo represents, but after appreciating the cause, the show cause notice has been withdrawn.

¹ 1990 Supp (1) SCC 727

10. The rival contentions now fall for my determination.

11. The scope of an appeal from order of this nature is quite limited. Therefore, unless, the appellant is able to point out to perversity or non-consideration of relevant and vital material, ordinarily, there is no scope for interference. This is in terms of the law laid down in the Hon'ble Apex Court in the case of ***Wander Ltd.*** (supra). Insofar as the issue of co-ownership is concerned, it cannot be said that at least a strong prima facie case was made out by the appellants, and, therefore, the observations made in the impugned judgment and order on this aspect may not warrant any interference.

12. This is more so because such observations are only to operate during the pendency of the suit. These observations, are not to influence the learned Trial Judge whilst disposing of the suit finally based upon the evidence which the parties will ultimately lead before it. This is more so on account of clause 7 of the Deed of Sale dated 21.04.2011, in terms of which, apartments in the property adjacent to the suit property came to be sold to the appellants by the respondents No.2 and 3.

13. The clause 7 of the Sale Deed dated 21.04.2011 reads as follows:

“7. The VENDORS shall be free to develop the said plot to its all permissible coverage and floor

area ratio and construct all permissible construction and premises on the said plot and free to dispose of the same. The PURCHASER shall have no claim to all such construction, premises and remaining part of the said plot and the PURCHASER besides the said flat shall have no claim against the rest of premises already constructed and to be constructed.”

14. The aforesaid clause 7 indicates that the respondents No.2 and 3 and now their successors, are free to develop the suit plot to its permissible coverage and floor area ratio and undertake construction as permissible and, thereafter, even dispose of the same. The appellants marked in the aforesaid clause declared that they have no claim on such constructed premises or the remaining part of the suit property.

15. Therefore, on the aspect of co-ownership, no prima facie case was made out by the appellants.

16. At the same time, clause 7 itself refers to respondents No.2 and 3 or their successors undertaking development to the extent of permissible coverage. The clause, also refers to undertaking construction as “permissible”. This obviously means that only constructions as are permissible under the various planning regulations and Municipal regulations, can be undertaken in the suit property by respondents No.2 and 3 or their successors.

17. Therefore, in the context of the second or alternate contention raised by the appellants, that the proposed construction was not in accordance with law, the learned Trial Judge, was duty bound to look into the show cause notices dated 27.05.2014 and 27.06.2014, which were part of the record before him.

18. Perusal of the show cause notices would indicate that at least, prima facie, several violations were noticed and on the basis thereof, the planning Authorities, who had themselves earlier granted clearance/NOC dated 14.10.2010, had required respondents no. 2 and 3 to show cause as to why such NOC would not be revoked. The show cause notice dated 27.06.2014 had also directed respondents No.2 and 3 and, consequently, their successors, not to carry out any construction work in the suit property other than re-filling/backfilling of excavated portion beyond the foundation area.

19. The learned Trial Judge, has failed to take into consideration this vital material in the form of show cause notices and stop work orders issued by the planning Authorities. Based upon this material, limited injunction was required to be granted to restrain the respondents No.2(a), 2(b), 2(c) and 3 from proceeding with the construction in the suit property, at least, until the two show cause notices issued by the planning Authorities were disposed of.

20. On this ground, some modification is warranted in the impugned judgment and order even by applying the principles set out in the case of ***Wander Ltd.*** (supra).

21. Accordingly, this appeal is disposed of by passing the following Order:

ORDER

- a) The respondents No.2(a), 2(b), 2(c) and 3 are restrained from undertaking any development or construction activities in the suit plot until the planning Authorities dispose of show cause notices dated 27.05.2014 and 27.06.2014.
- b) In case the planning Authorities revoke the NOC dated 14.10.2010, then, the respondents No.2(a), 2(b), 2(c) and 3 are restrained from undertaking development or construction in the suit plot until the disposal of the suit or until, these respondents obtain fresh permissions from the planning Authorities.
- c) In case the planning Authorities dispose of the show cause notices in favour of the respondents No.2(a), 2(b), 2(c) and 3 and do not interfere with the NOC dated 14.10.2010, then, the respondents No.2(a),

2(b), 2(c) and 3 can proceed with the construction in the suit property, subject, no doubt, to the final orders in the suit. No equities shall be claimed by the respondents in respect of such construction.

- d) In case the show cause notices are disposed of in favour of the respondents No.2(a), 2(b), 2(c) and 3 by imposing conditions, then, such respondents can proceed with the construction or development by complying with the conditions so imposed.
- e) It is made clear that nothing in this order shall restrict the rights, neither of the appellants or the respondents No.2(a), 2(b), 2(c) and 3, to challenge the decision of the planning Authorities in case they are aggrieved by the same.
- f) The learned Trial Court to dispose of the suit on its own merits without being influenced by any observations in the impugned order or for that matter, the present order.
- g) The impugned judgment and order to stand modified to the aforesaid extent.

to file appropriate applications before the learned Trial Court. Such applications will have to be disposed of in accordance with law and on their own merits.

23. There shall be no order as to costs.

24. All concerned to act on the basis of the authenticated copy of this Order.

M. S. SONAK, J.

msr.