

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.104 OF 2019

1. Mr. Joaozinho George Rodrigues,
aged 61 years, Indian National,
resident of Bepquegal, Curchorem, Goa.

2. Mrs. Veronica Rodrigues,
through her Power of Attorney
Mr. Joaozinho George Rodrigues,
aged 61 years, Indian National,
resident of Bepquegal, Curchorem, Goa.

.... Petitioners

Versus

1. Chief Town Planner,
Government of Goa, having office
at Town & Country Planning
Department, Dempo House,
EDC Complex, Patto, Panaji-Goa.

2. Dy. Town Planner,
Government of Goa, having office
at Town and Country Planning
Department, Quepem, Goa.

3. Curchorem-Cacora Municipal
Council, through its Chief Officer,
having office at Curchorem, Goa.

4. State of Goa,
through its Chief Secretary,
having office at Secretariat,
Porvorim-Goa.

5. Shri Shaikh Abdul Rahim,
major of age, son of late
Shaikh Kassim, Businessman.
6. Shri. Shaikh Mohammad Akram,
major of age, son of late
Shaikh Kassim, Businessman,
Respondent No.6 and 7 represented
by their Power of Attorney holder,
Shri varun Shantaram Kudchadkar,
major, resident of Ahilya Shankar Farm,
Pontemol, Curchorem, Goa.
7. JMD Developers,
represented by Managing Partner,
Varun Shantaram Kudchadkar,
major of age, businessman,
having office at First Floor,
Gurudev Mansion, Curchorem, Goa.

Mr. Vivek Rodrigues with Mr. V. Naik, Advocates for the Petitioners.
Ms. Susan Linhares, Addl. Government Advocate for Respondents
No.1, 2 and 4.
Mr. Ganesh Naik, Advocate for the Respondent No.3.
Mr. C. A. Coutinho with Mr. I. Santimano, Advocates for Respondent
No.5 and 6.
Mr. Shivan Desai, Advocate for the Respondent No.7.

Coram:- M.S. SONAK &
NUTAN D. SARDESSAI, JJ.

Reserved on: 26th February, 2020

Pronounced on:- 4th March, 2020

ORAL JUDGMENT (Per M. S. Sonak, J.)

Heard Mr. Vivek Rodrigues with Mr. V. Naik for the Petitioners, Ms. Susan Linhares, learned Addl. Government Advocate for Respondents No.1, 2 and 4, Mr. Ganesh Naik for the Respondent No.3, Mr. C. A. Coutinho with Mr. I. Santimano for Respondent No.5 and 6 and Mr. Shivan Desai for the Respondent No.7.

2. This petition was tagged along with PIL Writ Petition No.2 of 2019 which we have today disposed of.

3. The petitioners in this petition, have certain grievances in relation to the property bearing Survey No.249/1 which was also the subject matter of PIL Writ Petition No.2 of 2019. The grievance of the petitioners is that the property bearing Survey No.249/1 is shown to be admeasuring 1907 sq.mtrs. However, they contend that in the year 1967 there was a partition and an area of 524 sq.mtrs. was allotted to the predecessor in title of the petitioners. Therefore they contend that this area of 524 sq.mtrs. is required to be deducted from the total area of 1907 sq.mtrs. They contend that since, this has not been done, the respondent no.7 (Builder) has misrepresented to the authorities and consumed excess FAR. On this basis, several reliefs have been applied for by the petitioners in relation to the permissions granted to the respondent no.7 to construct the building in the property bearing Survey No.249/1 at Curchorem, Cacora.

4. The respondent no.7 disputes all the aforesaid contentions and submits that this petition may not be entertained because the petitioners have already instituted a suit in the Civil Court raising all such contentions. Respondent No.7 also questions the bonafides of the petitioners in instituting the present petition.

5. The record indicates that the petitioners have already instituted a Regular Civil Suit No.4/2018/A in the Court of the Civil Judge, Senior Division at Quepem in which the petitioners, have raised all the aforesaid issues. Even otherwise, the issues raised by the petitioners in the present petition involve adjudication into the disputed questions of fact which cannot be conveniently undertaken in exercise of our extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. In any case, now that the petitioners have already instituted a suit and such suit is pending, we do not think that it would be appropriate for us to entertain the present petition.

6. Thus, leaving all contentions of all parties open to be decided in Regular Civil Suit No.4/2018/A, we dispose of this petition. There shall be no order as to costs.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.