

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 60 OF 2020**

ELDRIN JOSEPH FERNANDES AND ANR. ... Petitioners

Versus

STATE OF GOA, THR. THE CHIEF
SECRETARY AND 7 ORS. ... Respondents

Mr. Rohit Bras De Sa and Ms. V. Shet, Advocates for the Petitioners.

Mr. Manish Damodar Salkar, Government Advocate for Respondent
Nos.1,3,4,5 & 6.

Mr. H. D. Naik, Advocate for Respondent No.2.

Mr. J. Godinho, Advocate for Respondent Nos.7 and 8.

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

Date:- 9th March, 2020

P.C.

Heard Mr. Rohit Bras De Sa, learned counsel for the
Petitioners, Mr. M. Salkar, learned Government Advocate for
Respondent Nos.1, 3, 4, 5 and 6, Mr. H. D. Naik, learned counsel for
Respondent No.2 and Mr. J. Godinho, learned counsel for Respondent
Nos.7 and 8.

2. The Petitioners challenge the communications dated 7th
December, 2018 issued by the North Goa Planning and Development
Authority (NGPDA) and 2nd December, 2019 issued by the Electricity
Department *inter alia* on the ground that the NGPDA and the Sub
Divisional Engineer of the Electricity Department had no jurisdiction to

issue such communications.

3. The Petitioners case is that three metres access touching the Petitioners properties bearing survey Nos.146/3/A and 146/3/B at Candolim, Bardez Goa, is a private access and not a public road or public access, on the basis of which the Respondent Nos.7 and 8 can claim any rights in respect of their property bearing survey No.146/3 of Candolim, Bardez Goa.

4. Mr. De Sa submits that merely because the Petitioners, whilst seeking approval from the Planning Authorities way back in the year 1989 may have indicated such access on the plans, such indication does not convert such private access into a public access.

5. Mr. De sa submits that both Authorities by issuing impugned communications have virtually given a declaration that this access is a public access, through which the Respondent Nos.7 and 8 can avail electricity connection by laying of cables. He submits that neither of these Authorities have jurisdiction to issue this kind of declaration. He submits that in case the Respondent Nos.7 and 8 have any rights, it is for them to agitate such rights before the Civil Court and obtain appropriate declaration and injunction in the matter.

6. Mr. De Sa submits that the impugned communications

including in particular communication dated 7th December, 2018 issued by the NGPDA has effect of amending ODP which, incidentally, does not indicate the disputed access at all. He submits that if at all any ODP has to be amended then the procedure prescribed under Sections 34 to 39 (both inclusive) of the Goa Town and Country Planning Act, 1974 has to be followed. He submits that without following all these procedures and affording the Petitioners reasonable opportunity to demonstrate to the contrary, impugned communications have been issued and same are clearly *ultra vires*, null and void. Mr. De Sa submits that the Respondent Nos.7 and 8 in fact have an alternate access which is indicated in the ODP. Mr. De Sa submits that the impugned communications are occasioning very serious prejudice to the Petitioners and therefore they warrant interference.

7. Mr. Naik, learned counsel for the NGPDA submits that this very access was indicated by the Petitioners as an access not only to their sub divided plots but also to the property bearing survey No.146/3. He refers to Regulation 4.2 of the Goa Land Development and Building Construction Regulations, 2010 to submit that there is absolutely nothing wrong to the impugned communication dated 7th December, 2018 issued by the NGPDA.

8. Mr. Godinho, learned counsel for Respondent Nos.7 and 8 points out that the Petitioners and the Respondent Nos.7 and 8 are

related to each other and their predecessor in title were in fact the owners of the common property surveyed under No.146/3. He points out that it is in pursuance of partition, the Petitioners have acquired the portions of this common property which were sub divided and indicated as survey No.146/3/A and 146/3/B. He submits that even the title documents contemplate the access to the property bearing survey No.146/3, in which, the Respondent Nos.7 and 8 have their structures. He submits that it is for these reasons that even the Petitioners, in the year 1989 indicated this access in their plans and now, it is impermissible for the Petitioners to contend otherwise. Mr. Godinho therefore submits that this petition may be dismissed.

9. The rival contentions now fall for our determination.

10. According to us, the crux of the matter is whether the access touching the properties bearing survey No.146/3/A and 146/3/B is a public access or in any case, an access to which the Respondent Nos.7 and 8, who have their structures in the property bearing survey No.146/3 can claim any rights.

11. In the affidavit filed on behalf of the NGPDA, the Member Secretary has stated that the record reveals that the property bearing survey No.146/3 was originally admeasuring 10843 square metres. It is this property which was latter on partitioned and separate survey

Nos.146/3/A and 146/3/B came to be carved out and allotted to the Petitioners. Remaining portion of the property bearing survey No.146/3 is possessed by the Respondent Nos.7 and 8.

12. It is in the aforesaid context the plans submitted by the Petitioners way back in the year 1989 have been construed by the NGPDA. The plans indicated access not merely to the plot of the Petitioners but access runs upto the remaining portion of the plot surveyed under No.146/3 which is presently possessed by the Respondent Nos.7 and 8.

13. The issues as to whether this is a public access or whether this is an access restricted only for the use of the Petitioners or whether this is an access restricted for the use of the Petitioners as well as Respondent Nos.7 and 8 are really the matters which will have to be decided by the Civil Court. From the perusal of the impugned communications, it cannot be said that the NGPDA or the Electricity Department has already determined this issue one way or other. The impugned communications only point out to the earlier plans submitted by the Petitioners themselves. The impugned communications, at the highest seek to interpret the position at site. However this is far from saying that the impugned communications, are some sort of declarations in relation to the status of the access or entitlement of the parties.

14. According to us, the impugned communications also, do not amount to any amendment to the ODP as such. Ultimately, as noted earlier, the crux of the matter is whether this access which, undoubtedly exists at the site, is a purely private access of the Petitioners as claimed by them or whether it is a public access. The issue also is whether the Respondent Nos.7 and 8 have right to use such access even assuming that such access may not be a public access. Again, we feel that all these are matters which will have to be determined by the Civil Court in appropriate proceedings, if initiated by the parties.

15. In the meanwhile, however we are not persuaded to interfere with the impugned communications. This is more so because the impugned communications refer to the plans submitted by the Petitioners themselves way back in the year 1989. The other circumstance is that the entire property surveyed under No.146/3 was one property and it is only at a latter stage the same came to be partitioned between the Petitioners and the Respondent Nos.7 and 8. The Respondent Nos.7 and 8 wish to avail of electricity connection and for this purpose there is necessity of laying of cables through this access. In these circumstances, we see no serious jurisdictional error on the part of the Respondents in issuing the impugned communications.

16. However, we wish to clarify that notwithstanding with the aforesaid communications or our non interference with the same, the

Civil Court if approached will have to determine true nature of this access. The Civil Court, will not be entitled to go by the impugned communications or on the basis of the impugned communications decide the status of the disputed access. The issue of disputed access will have to be decided independently and without being influenced by the impugned communications.

17. With the aforesaid clarification, we decline to entertain the present petition.

18. The petition is therefore disposed off. There shall be no order as to costs.

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.

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