

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.247 OF 2019**

Mr. Armando Luis (dec.)
through LR's Mrs. Colina E.
D'Silva alias Colina Luis & Ors.

....Petitioners

VERSUS

Shri Arjun Anthony D'Costa & Ors.

....Respondents

Shri J.A. Lobo, Advocate for the Petitioners.
Shri T. Vaz, Advocate for the Respondent No.1.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 1 February 2021

ORAL ORDER:**Facts:**

The land belongs to the first respondent, who is a subsequent purchaser from the original owner. On a part of that land, there exist structures; these structures belong to the petitioners. The structures, in fact, have been around for about 50 years. The question is, have all those structures remained unaltered in all these years, or have they been recently altered illegally?

2. A decade or so ago, the landowner complained to the civic authorities about illegal addition to the existing structures. That alleged addition was by the petitioners' predecessor. After his death, now his legal representatives are on record. Indisputably, the petitioners or their predecessor had no title to the structures, but they possess them. Form I and XIV of the revenue records bear out this fact.

3. If we trace the litigation's genesis, we may note that in August 2003, the first respondent complained to the Village Panchayat about an illegal extension to the existing structures. When the Village Panchayat

had not acted on the complaint, he then complained to the Deputy Director of Panchayats, South Goa. After receiving that complaint, the Deputy Director required the Block Development Officer (BDO) to inspect the construction and submit a report. The BDO, in turn, put the petitioners and the first respondent on notice, inspected the site, and submitted a report. Based on the report, the Deputy Director, through judgment dated 30.11.2007, ruled that the petitioners illegally added portions to the existing structures. And those offending parts should be demolished.

4. Aggrieved, the petitioners appealed to the Director of Gram Panchayat but could not succeed. The appellate authority dismissed the appeal through judgment dated 27.09.2011. Further aggrieved, the petitioners filed a revision under Section 201-B of the Goa Panchayat Raj Act before the Principal District Court-I, South Goa. Again, through judgment, dated 20.10.2018, the revisional Court refused to interfere. Thus, after these concurrent failures, the petitioners have filed this Writ Petition under Article 227 of the Constitution of India.

Submissions:

Petitioners:

5. Shri Lobo, the learned counsel for the petitioners, has submitted that the Deputy Director, to begin with, has no jurisdiction to entertain the complaint. To elaborate, he has submitted that the BDO, after inspecting the site, reported that the structures must have been raised 10 years before his inspection. That means the structures had been raised before 1994 when the Panchayat Raj Act came into force. Therefore, the Authorities under that Act have no jurisdiction to act.

6. Shri Lobo has also contended that though the petitioners have raised a specific ground on that count, none of the authorities below, including the revisional Court, has addressed that issue. He has eventually submitted that there is no material before the authorities concerned to

hold that the petitioners have indulged in any illegal construction in the last many years. On this score, he has pointed out that the complaint would read as if the structures were being raised when the first respondent approached the authorities—that is, in 2003. But the BDO found that the structures had been in existence even a decade before the complaint. At any rate, Shri Lobo has pointed out that the sketch submitted by the BDO has never been conclusive, nor does it contradict the revenue record in any manner. Therefore, the authorities below have erred both on facts and on the law. As a result, he wants this Court to interfere in the matter.

Respondents:

7. On the other hand, Shri T. Vaz, the learned counsel for the first respondent, predictably, points out that the Writ Petition is under Article 227 of the Constitution of India. According to him, the supervisory jurisdiction does not aim at correcting the errors, if any. He, nevertheless, hastens to add that there are no errors to be corrected. Then, the learned counsel has taken me through a particular portion of the revisional order to emphasize that the revisional court has justly refused to exercise its limited jurisdiction vis-a-vis the concurrent findings of fact by the competent authorities.

8. In this context, Shri Vaz has emphasized the plan submitted by the BDO, which, according to him, exposes the petitioners' falsity. Compared with the site plan as was available in the revenue record, the BDO's site plan does reveal the additional portions. Therefore, he has urged this Court to dismiss the Writ Petition.

9. Heard Shri J.A. Lobo, the learned counsel for the petitioners; and Shri T. Vaz, the learned counsel for the first respondent.

Discussion:

10. To begin with, on the first respondent's complaint, the Deputy Director is said to have acted under section 33 of the Land Revenue Act.

On this count, Shri Lobo, the learned counsel for the petitioners, has pointed out the inapplicability of that provision. But the revisional Court has given cogent reasons while stressing the well-established principles. In this case, section 66 (5) of the Goa Panchayat Raj Act squarely confers powers on the Deputy Director to act on any complaint when the Village Panchayat abdicates its responsibility. Therefore, once the revisional Court has justly concluded that the whole inquiry began under section 66(5) of the Goa Panchayat Raj Act, the invocation of any wrong provision does not affect the authority's jurisdiction. We need not further labour on that point.

11. On the merits, the bone of contention is whether the petitioners have raised any structures illegally. That is essentially a question of fact, and that question of fact has been held against the petitioners at three stages earlier. When a party has not been provided with any remedial provision, then that party usually invokes Article 227, this Court's supervisory jurisdiction.

12. And the circumstances under which this Court may invoke its supervisory jurisdiction is too often repeated to be restated. It is not to correct the errors, the errors that allegedly remained beyond appellate and revisional echelons. It is definitely not to correct the errors of fact, as is the case here—if we were to assume that there were errors.

13. Here, the statute has provided a three-tier remedy to the petitioners: first, the Village Panchayat or the Deputy Director, as the primary authority; second the Director of Gram Panchayat, as the appellate authority; and finally, the District Court, as the revisional authority. Indeed, the writ remedy under Article 227 is a superimposed constitutional remedy. Extraordinary as this remedy is, it ought to be used sparingly; it is not for a mere asking.

14. That said, I still would like to move further and examine further whether the age of the structures would have any impact on the result of the proceedings.

15. Shri Lobo submits that once the structures existed before the Panchayat Raj Act came into force, the authorities under that Act would have no jurisdiction to entertain any complaint about those structures. In fact, that Act, relatively a new piece of legislation, has only succeeded earlier enactments. Before the Panchayat Raj Act, there had been analogous legislations empowering the civic authorities to act against illegal structures. At least, the Panchayat Raj Act has not declared that all illegal structures that existed before it came into force are immune from any action.

16. The BDO's report contains a sketch, and that shows additional structures. That apart, the BDO's report has also noted that those structures are without any valid permission. His observation that they must have been put up a decade ago could not detract the structures from the illegality in any manner. And the revenue record, which also contains a rough sketch of the structures, as compared by the authorities, does reveal that the additional structures have been put up without any permission from the authorities.

17. Under these circumstances, I refuse to interfere with a well-reasoned revisional order impugned in this Writ Petition.

As a result, I dismiss the writ Petition, with no order on costs.

DAMA SESHADRI NAIDU, J.

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NITI K

HALDANKAR

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