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**IN THE HIGH COURT OF BOMBAY AT GOA.
WRIT PETITION NOS.422 OF 2018 & 630 of 2018.
WRIT PETITION NO.422 OF 2018.**

1. Shri Tulsidas Bhiku Naik,
Son of late Bhiku Naik,
Major of age,
2. Smt. Kusum Tulsidas Naik
Wife of Tulsidas Naik
Major of age,
3. Shri Bhiku Tulsidas Naik,
Son of Tulsidas Naik,
Major of age,
All residents of House No. 1989,
Barbhat, Shiroda, Ponda, Goa. Petitioners.

Vs

1. Smt. Dumen Silveira,
Widow of late Inacio Silveira,
Major of age,
2. Shri Inacio Silveira,
Since deceased through legal
representatives
 - a) Mr.Ivo Silveira,
Son of late Inacio Silveira,
Major of age,
 - b) Mr. Dezly Silveira,
Husband of Ivy Silveira,
Major of age,
3. Mrs. Ivy Inacio Silveira,
Wife of Dezly Silveira,
Major of age,
All residents of Barbhat, Shiroda,
Ponda Goa.
4. Shri Caitano Silveira,
Son of Agostin Silveira,

Major of age, Resident
of Barbhat Shiroda,
Ponda, Goa.

...Respondents.

Mr. Sudesh Usgaonkar and Ms. Marie Rosette Pereira,
Advocates for the petitioner.

Mr. S. Desai and Mr. J. Ramaiya, Advocates for the
respondent nos.1.2(a), (b) and 3.

Mr. A. D. Bhobe, Advocate for the respondent no.4.

WRIT PETITION NO.630 of 2018.

Shri Caitano Silveira,
57 years of age,
Son of Agostin Silveira,
r/o Barbhat, Shiroda,
Ponda-Goa.

.... Petitioner.

Vs

1. Smt. Dumen Silveira,
Major of age,
w/o late Shri Inacio Silveira
r/o H. No. 136, Orcotto,
Sanquem-Goa.
2. Shri Inacio Silveira,
(since deceased, through LRs)
 - a) Mr.Ivo Silveira,
s/o late Shri Inacio Silveira,
major of age,
r/o H. No. 136, Orcotto,
Sanquem-Goa.
 - b) Mr. Dezly Silveira,
h/o Ivy Silveira,
major of age,
r/o H. No. 136, Orcotto,
Sanquem-Goa
3. Mrs. Ivy Inacio Silveira,
Major of age,
d/o late Inacio Silveira,
r/o. H. No. not known Barbhat,

Shiroda, Ponda-Goa.

4. Shri Tulsidas Bhiku Naik,
Major of age, Son of Bhiku
Naik, r/o. H. No. not known,
Barbhat, Shiroda, Ponda Goa.
5. Smt. Kusum Tulsidas Naik
Major of age, wife of Tulshidas
Naik, r/o. H. No. not known,
Barbhat, Shiroda, Ponda Goa.
6. Shri Bhiku Tulsidas Naik,
Major of age,
Son of Tulsidas Naik,
r/o. H. No. not known,
Barbhat, Shiroda, Ponda Goa. ... Respondents.

Mr. A. Bhobe, Advocate for the petitioner.

Mr. S. Desai and Mr. J. Ramaiya, Advocates for the
respondent nos.1.2(a), (b) and 3.

Mr. Sudesh Usgaonkar and Ms. Marie Rosette,
Advocates for respondent nos. 4 to 6.

CORAM: MANISH PITALE, J.
Reserved on : 1st December, 2021.
Pronounced on: 23rd December, 2021.

JUDGMENT:-

1. These two writ petitions are filed by the original
defendants in a suit/application filed by the contesting
respondents under the provisions of the Goa, Daman and Diu
Mamlatdar's Court Act, 1966.

2. By the impugned orders, the Mamlatdar and the
Additional Collector have found that the contesting
respondents are entitled to an order of temporary injunction,

thereby directing the petitioners to remove wooden fencing from the suit way, during the pendency of the proceedings before the Mamlatdar.

3. While assailing the concurrent orders passed by the aforesaid authorities, apart from contending that the order of temporary injunction could not have been passed in favour of the contesting respondents, the basic issue raised by the petitioners is that the Mamlatdar has no power under the provisions of the aforesaid Act to issue an order of temporary injunction.

4. The contesting respondents i.e. respondent nos. 1 to 3 in both the Writ Petitions filed the aforesaid suit before the Mamlatdar under Section 4(1)(f) and (2) of the said Act, claiming that they had a right to restoration of an approach road leading to their property through the properties of the petitioners. It was claimed that such approach road of 4 mts. existed since time immemorial for the contesting respondents to approach their property and that the petitioners had encroached upon part of the same by constructing the wooden fence. The contesting respondents prayed for demolition of the wooden fence and permanently restraining the petitioners from parking their vehicles on the aforesaid

approach road. In the said proceedings, the contesting respondents also filed an application for temporary injunction, praying that during the pendency of the proceedings before the Mamlatdar, a direction ought to be given to the petitioners to remove the wooden fencing.

5. The petitioners filed their replies before the Mamlatdar and disputed the contentions raised on behalf of the contesting respondents. The petitioners in Writ Petition no.422 of 2018 filed a copy of the sale deed whereby they had purchased their property, highlighting that in the said sale deed the approach road was clearly shown as 1.5 mts in width. On this basis, it was submitted that the contesting respondents were not justified in claiming that the approach road was 4 mts wide. The petitioners stated that they were entitled to erect the wooden fencing as they had kept slightly more than 1.5 mts width of the approach road available for the contesting respondents. The petitioners specifically raised the issue regarding lack of power in the Mamlatdar under the provisions of the said Act to issue an order of temporary injunction.

6. By Judgment and order dated 28.8.2012, the Mamlatdar took into consideration the rival contentions and

found in favour of the contesting respondents. Accordingly, the Mamlatdar partly allowed the application for temporary injunction and directed the petitioners to remove the wooden fencing, which was obstructing the approach road, during the pendency of the proceedings. There was no reference made to the issue about power vested in the Mamlatdar to issue temporary injunction, under the provisions of the said Act.

7. Aggrieved by the aforesaid order passed by the Mamlatdar, the petitioners filed revisions applications before the Additional Collector.

8. By the judgment and order dated 23.11.2017, the Additional Collector dismissed the Revision applications and confirmed the order of temporary injunction granted by the Mamlatdar. Aggrieved by the same, the petitioners filed the present Writ Petitions. This Court issued notice and continued the interim stay of the order of the Mamlatdar, which had been operating during the pendency of the revision applications before the Additional Collector. Thereafter, Rule was granted and the petitions have come up for hearing.

9. Mr. Sudesh Usgaonkar, learned counsel appearing for the petitioners in Writ Petition no.422 of 2018 and Mr. A. Bhobe, learned Counsel appearing for the petitioner in Writ

Petition No.630 of 2018, submitted that the Mamlatdar had no power to entertain the temporary injunction application filed by the contesting respondents. The learned Counsel referred to various provisions of the aforesaid Act, particularly Section 4 thereof, to contend that the Magistrate had power only to finally decide a dispute raised under the provisions of the said Act and that there was no power to issue an order of temporary injunction. It was submitted that since the Court of Mamlatdar was a creation of the aforesaid statute, in the absence of specific power vested in the Mamlatdar's Court for issuing an order of temporary injunction, no such order could have been passed by the Mamlatdar in favour of the contesting respondents. The learned Counsel relied upon the judgment of a learned Single Judge of this Court in the case of **Shri Sandip Bhagatrao Bhakare Vs Shri Santosh Mohanlal Dave and anr.** (Judgment and order dated 30.9.2021 passed in Writ Petition No. 2713 of 2021), concerning *pari materia* provision under the Mamlatdar's Court Act, 1906, applicable in the State of Maharashtra. It was brought to the notice of this Court that Section 5 of the said Act, applicable in the State of Maharashtra, is *pari materia* with Section 4 of

the aforesaid Act applicable in the State of Goa. It was submitted by the learned Counsel that this Court in the aforesaid judgment rendered at the Nagpur Bench of this Court considered various aspects of the matter and found that the Mamlatdar had no power to issue an order of temporary injunction. It was submitted that on this ground alone the impugned orders deserved to be set aside.

10. It was further submitted by the learned Counsel appearing for the petitioners that even otherwise, no case was made out for grant of temporary injunction, for the reason that the contesting respondents approached the Mamlatdar under Section 4(1) (f) of the aforesaid Act for restoration of right of way. The relief granted by way of temporary injunction in the present case amounted to granting final relief at interim stage, which was impermissible. It was further submitted that there was documentary material on record to show that the width of the approach road was only 1.5 mts and that the wooden fence erected by the petitioners did not encroach upon the aforesaid width. In this situation, there was no reason for the Mamlatdar to have directed removal of the wooden fence at interim stage, during the pendency of the proceedings before the Mamlatdar. The

Additional Collector also failed to appreciate this aspect of the matter. Both the authorities below failed to apply the test of strong *prima facie* case, balance of convenience and grave and irreparable loss, while holding in favour of the contesting respondents. On this basis, it was submitted that the impugned orders deserved to be set aside.

11. On the other hand, Mr. S. Desai and Mr. J. Ramaiya, learned Counsel appearing for the contesting respondents submitted that all the aspects of the extent of power available to the Mamlatdar under the provisions of said Act were not brought to the notice of the learned Single Judge of this Court when the judgment in the case of ***Shri Sandip Bhagatrao Bhakare Vs Shri Santosh Mohanlal Dave and anr (supra)***, was rendered. Attention of this Court was invited to Section 4 of the said Act, placing much emphasis on the words “immediate” and “attempt has been made”, in the context of urgent nature of relief sought under the said provision of the Act and the manner in which the Mamlatdar is expected to act quickly, to ensure that appropriate interim relief is granted in the facts and circumstances of a given case. By referring to ***judgment and order dated 13.8.1997*** passed by this Court in ***Writ Petition No.270 of 1992*** in

the case of ***Shri Agostinho Joaquim Francisco Noronha and anr. Vs Premanand Gajanan Naik and anr***, the learned Counsel appearing for the contesting respondents submitted that in exceptional cases the Mamlatdar would certainly have power to grant interim relief by way of temporary injunction, because waiting for the proceeding to culminate into a final order may result in irreparable loss to the applicant/plaintiff before the Mamlatdar. The learned Counsel for the contesting respondents relied upon the judgments of the Hon'ble Supreme Court in the case of ***Sukhwant Singh and others Vs. State of Punjab (2009)7 SCC 559*** and in ***case of Super Cassettes Industries Ltd. Vs Music Broadcast Pvt. Ltd (2012)5 SCC 488***. It was further submitted that these aspects were not brought to the notice of the learned Single Judge when the judgment in the case of ***Shri Sandip Bhagatrao Bhakare Vs Shri Santosh Mohanlal Dave and anr.***(supra) was rendered at the Nagpur Bench of this Court and that therefore, this Court may refer the matter to a larger Bench.

12. In so far as the grant of order of temporary injunction in the facts of the present case is concerned, it was submitted

by the learned counsel for the contesting respondents that a clear case for grant of relief was made out, for the reason that the approach road to the property of the contesting respondents was blocked because of the wooden fence erected by the petitioners and that the Mamlatdar took into consideration affidavits filed by the contesting respondents and others, justifying their claim of grant of temporary injunction during the pendency of the proceedings. The tests for grant of temporary injunction were indeed applied by the authorities below while holding in favour of the contesting respondents. On this basis, it was submitted that the Writ Petitions deserved to be dismissed.

13. Before considering the question as to whether a case for grant of temporary injunction was made out by the contesting respondents, it would be necessary to first deal with the question that goes to the very root of the matter. It has been specifically argued before this Court that the Mamlatdar has no power to issue an order of temporary injunction under the provisions of the aforesaid Act, applicable in the State of Goa.

14. In order to support the aforesaid contention raised on behalf of the petitioner, reliance has been placed on judgment of the learned Single Judge of this Court rendered in the case

of ***Shri Sandip Bhagatrao Bhakare Vs Shri Santosh Mohanlal Dave and anr***, (supra) at the Nagpur Bench. In the said case, this Court was concerned with the provisions of the Mamlatdar's Court Act, 1906, applicable in the State of Maharashtra. For the purpose of examining the said contention and the applicability of the law laid down by the learned Single Judge of this Court in the aforesaid judgment, it would be necessary to first compare the provisions of the aforesaid Act applicable in the State of Goa with the provisions of the Act applicable in the State of Maharashtra.

15. A perusal of both the statutes shows that while the powers of Mamlatdar's Court in the aforesaid Act applicable to the State of Goa are specified in Section 4 of the said Act, such powers of the Mamlatdar's Court in the Act applicable to the State of Maharashtra are specified in Section 5 thereof.

16. A perusal of the two provisions in the aforesaid Statute show that they are indeed *pari materia*. The Mamlatdar's Court is given the power to remove any impediment erected otherwise than under due authority of law, to give immediate possession of any lands or premises/dwelling house, as also to restore a right of way which has been obstructed or encroached upon otherwise than under the due authority of

law. It is prescribed that the Mamlatdar's Court shall exercise power in the context of removal of such impediment where it has been erected or an attempt has been made to erect the same. In such circumstances, the Mamlatdar's Court has the power to issue an injunction to restrain the person erecting such impediments or attempting to erect the same.

17. The other provisions of both the statutes are similar in nature and the entire scheme is found to be identical.

18. In the judgment rendered by the learned Single Judge of this Court at Nagpur Bench in the case of ***Shri Sandip Bhagatrao Bhakare Vs Shri Santosh Mohanlal Dave and anr.*** (supra), the entire scheme of the aforesaid Act applicable to the State of Maharashtra has been taken into consideration and the question of availability of power with the Mamlatdar to issue an order of temporary injunction, has been examined from various angles. In the exhaustive judgment rendered in the aforesaid case at the Nagpur Bench of this Court, a number of judgments have been considered and it is found that the Mamlatdar, while exercising powers under the provisions of the said Act applicable to the State of Maharashtra, has no power to issue an order of temporary injunction. It is found that the relief in the nature of the

temporary injunction is jurisdictionally impermissible for the Mamlatdar to grant and that the Mamlatdar has the power only to finally decide an application or suit filed for either removal of impediment or for handing over immediate possession or thwarting an attempt at erection of an impediment. It has been categorically held that when the Court is the creature of a statute, it can exercise power limited to the power granted under the provisions of such statute and nothing can be imported into the statute to read a power beyond what is specifically granted to the concerned Court.

19. This Court is of the opinion that ratio of the aforesaid judgment rendered by the learned single Judge at the Nagpur Bench in the case of ***Shir Sandip Bhagatrao Bhakare Vs Shri Santosh Mohanlal Dave and anr.***(supra), applies to the present case also because the power being exercised by the Mamlatdar in the State of Goa under the provisions of said Act is identical to the power being exercised by the Mamlatdar under the provisions of the Act applicable to the State of Maharashtra.

20. The learned counsel for the contesting respondents vehemently submitted that all the aspects regarding the scope and amplitude of power available to the Mamlatdar under

Section 4 of the aforesaid Act, applicable in the State of Goa, were not brought out before the learned Single Judge at the Nagpur Bench when the aforesaid judgment in the case of ***Shri Sandip Bhagatrao Bhakare Vs Shri Santosh Mohanlal Dave and anr.*** (supra) was rendered. The learned Counsel specifically invited attention of this Court to the words “to give immediate possession” and “when an attempt has been made to erect, disturb or obstruct” in Section 4 of the aforesaid Act applicable to the State of Goa. It was submitted that since the Mamlatdar has power to thwart even an attempt made by the parties to either erect any impediment or to disturb or obstruct possession of another person, the power to issue interim orders and orders of temporary injunction ought to be read into Section 4 of the aforesaid Act. In order to buttress the said submission, learned counsel for the contesting respondents heavily relied upon the judgment and order passed by this Court in ***Shri Agostinho Joaquim Francisco Noronha and anr. Vs Premanand Gajanan Naik and anr.***(supra). It was brought to notice of this Court that although it was found that under the provision of Goa Daman and Diu Buildings (Lease, Rent & Eviction) Control Act, 1968, there was no specific

power to grant an interim order, this Court in the facts and circumstances of the said case held that the Rent Tribunal would certainly have jurisdiction to grant interim relief even though there may not be specific provision to that effect under the said Act. It was held that the tenant in the said case ought not to be made to wait for the final order, which would take a long time to come and that looking to the danger to the premises, interim order could certainly be granted. The learned Counsel also placed emphasis on judgment of the Hon'ble Supreme Court in the case of ***Super Cassettes Industries Ltd. Vs. Music Broadcast Pvt. Ltd.***(supra), to contend that incidental powers were certainly available to the concerned authority in order to preserve the status quo and that therefore, there was no substance in the contention raised on behalf of the petitioners that the Mamlatdar has no power to issue an order of temporary injunction.

21. This Court is of the opinion that judgment in the case of ***Shri Agostinho Joaquim Francisco Noronha and anr. Vs Premanand Gajanan Naik and anr.***(supra), has considered peculiar facts and circumstances that arose in the said matter, wherein a property required immediate repairs, failing which it would have collapsed leading to

terrible consequences. It is in such a backdrop that this Court held that the tenant of the said property could carry out the repairs to prevent the collapse of the structure. While taking the said view, this Court has not discussed the position of law which lays down that when the Court or Tribunal is a creature of a statute, it can exercise powers only as specified and granted under the provisions of the Statute. The said judgment does not lay down the broad proposition that even when there is no provision for grant of temporary injunction by a Court or Tribunal created by a statute, an application for temporary injunction can be entertained and considered by such a Court or Tribunal. Therefore, reliance on the said judgment on behalf of the contesting respondents is misplaced.

22. In so far as the judgment of the Hon'ble Supreme Court in ***Super Cassettes Industries Ltd. Vs. Music Broadcast Pvt. Ltd.***(supra), is concerned, the said judgment nowhere lays down that a Court or Tribunal discharging quasi-judicial functions and having the trappings of a Court has power to grant temporary injunction in the absence of any provision under the concerned statute granting such powers for issuing orders of temporary

injunction. In fact, it is held that if incidental powers are to be read into the power available to the Court or Tribunal under the Statute, at best such powers could exist in order to preserve the status quo. Thus, reliance placed on said judgment can be also be of no assistance to the contesting respondents. Similarly, the Judgment of the Hon'ble Supreme Court in the case of ***Sukhwant Singh and others Vs Stat of Punjab(supra)***, can also be of no consequence, because in the said judgment it was merely held that when a Court has power to grant bail, it does have inherent power to grant interim bail also. The said judgment is in the context of Article 21 of the Constitution of India, in the backdrop of an application for anticipatory bail filed under Section 438 of Cr.P.C. and the same is of no relevance for the issue being discussed in the present case.

23. This Court is of the opinion that the contesting respondents have not made out any case for referring the issue to a larger Bench. The ratio of the judgment of the learned Single Judge rendered at the Nagpur Bench of this Court in ***Shri Sandip Bhagatrao Bhakare Vs Shri Santosh Mohanlal Dave and anr.*** (supra) is fully applicable. In so far as the emphasis placed by the learned

Counsel for the respondents on the use of words “when an attempt has been made to erect, disturb or obstruct” in Section 4 of the aforesaid Act applicable to the State of Goa, suffice it say that the said words cannot lead to a conclusion that the Mamlatdar has the power under the said Act to issue an order of temporary injunction. The said words only indicate that when an attempt is made or an impediment is created, the Mamlatdar assumes jurisdiction to consider the application/suit filed by the aggrieved person seeking removal of such obstruction or thwarting of an attempt to create such an obstruction. In either case, the Mamlatdar is required to consider the application/ suit on merits and to finally decide the same in a summary manner under the provisions of the said Act. No case is made out for reading power vested in Mamlatdar under the provisions of the said Act to issue an order of temporary injunction.

24. At this stage, it would be appropriate to refer to the nature of the application/suit filed by the contesting respondents before the Mamlatdar. Admittedly, the contesting respondents are seeking restoration of right of way under Section 4(1) (f) of the said Act. It is not the case of the contesting respondents that they are seeking thwarting of an

attempt on the part of the petitioners in obstructing the way. Yet, the Mamlatdar in the present case directed removal of the wooden fence, which amounts to restoring right of way, thereby granting final relief sought by the contesting respondents at an interim stage during pendency of the proceedings, even when there is no power in the Mamlatdar to issue an order of temporary injunction. Therefore, the erroneous approach adopted by the Mamlatdar becomes evident, which the Additional Collector completely failed to appreciate while dismissing the revision application.

25. Even otherwise, the material on record indicates that *prima facie* there does exist an approach road to the property of the contesting respondents, but the said material, particularly the sale deed executed by the erstwhile owner in favour of the petitioners indicates that the approach road has width of 1.5 mts. The contesting respondents have approached the Mamlatdar by claiming that the width of the approach road is 4 mts. The material on record *prima facie* indicates that even after erection of wooden fence by the petitioner, about 1.8 mts of width of the approach road is available. Yet, the Mamlatdar directed removal of the wooden fence by way of temporary injunction, indicating that the test

for issuance of order of temporary injunction was not properly applied in the facts and circumstances of the present case. This Court is of the opinion that the contesting respondents failed on all counts i.e. strong *prima facie* case, balance of convenience and grave and irreparable loss. Yet, the Mamlatdar passed the order of temporary injunction in favour of the contesting respondents.

26. The Additional Collector also failed to appreciate that the order passed by the Mamlatdar virtually granted final relief at interim stage, even when there is no power vested in the Mamlatdar to issue an order of temporary injunction.

27. In view of the above, the Writ Petitions are allowed. The Impugned orders passed by the Mamlatdar and the Additional Collector are quashed and set aside and the application for temporary injunction filed by the contesting respondents is dismissed. Rule made absolute in above terms. Considering the fact that the matter has been pending before the Mamlatdar since 2006, the proceedings before the Mamlatdar are expedited.

MANISH PITALE, J.