

Aura

IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition No.293 of 2021

1. Shri Suraj Gad,
51 years of age, Major, Occupation business
at House No.220, Tinto Gorbhatt Waddo,
Village Arpora, Taluka Bardez-Goa.

2. Pritam Gad,
49 years of age,
Major, Occupation business
at House No.220, Tinto Gorbhatt Waddo,
Village Arpora, Taluka Bardez-Goa.

Petitioners

Versus

1. Dr. Thomas Paul D'Souza,
Major, resident of House NO.223,
Gorbhatt Waddo Arpora,
Bardez-Goa, 403516.

2. Block Development Officer I and II,
Office of the Block Development Officer,
Bardez Block, Govt. Offices Complex,
2nd floor, Mapusa Bardez Goa.

3. Village Panchayat of Arpora Nagao,
Through its Sarpanch,
Office of the Village Panchayat of
Arpora Nagao.

Respondents

Ms. A. Agni, Senior Advocate with Ms. Jay Sawaikar,
Advocate for the Petitioners
Mr. A.D. Bhobe with Ms. Annelise Fernandes, Advocates ,
for the Respondent no.1.

Ms. Sapna Mordekar, Additional Government Advocate *for Respondent no.2*

Mr. Pankaj Pai Vernekar, Advocate for Respondent no.3.

CORAM: MANISH PITALE, J

DATED: 13th September, 2021

ORAL ORDER

1. By this Writ Petition, the petitioners have challenged two orders dated 23/7/2021 and 6/8/2021 passed by the Court of District Judge-I, Mapusa, being interim orders in Revision proceedings initiated by the respondent no.1. The petitioners are tenants, while the respondent no.1 is the landlord.

2. The brief facts leading up to the filing of the present Writ petition are as follows:

The petitioners being tenants had filed an application for interim relief under section 33 of the Goa, Daman and Diu Building (Lease, Rent and Eviction) Control Act, 1968, (hereinafter referred to as the Rent Control Act). The petitioners sought interim relief in the nature of carrying out repairs of the tenanted premises, on the ground that certain portions were collapsing and needed repairs. In the first instance the Rent Tribunal rejected the said application. The said order was challenged by the petitioners by filing a Rent Revision

Application before the Court of the learned District Judge, Mapusa under the provisions of the said Act. The Revision Application was allowed in the following terms:

“The Revision Application is allowed.

The Order dated 27/5/2020 passed by the learned Senior Civil Judge, /Rent Tribunal Mapusa, is quashed and set aside.

The application for interim relief at exhibit 17-D is allowed.

Consequently, the applicants/petitioners are permitted to repair-re-construct the southern side wall and the northern side wall of H. NO.220, plastering and repairs to the remaining walls of H.NO.220 and the repairs to the roof of H. NO.220 as contemplated in the Report prepared by Shri S. A. Dhuri.

The respondent is directed to permit the applicants to enter the property surveyed under no.135/5 for carrying out the repairs -re-construction of the northern and southern side wall. The applicants to carry out the said work of repairs/reconstruction, subject to the petitioners/applicants obtaining required

permissions from the authorities, at the cost of the petitioners/applicants, and comply with the directions of the Government, if any, in view of Covid-19 Pandemic.

3. The respondent no.1 challenged the said order before this Court by filing Writ Petition bearing Stamp Number Main No.1527 of 2020.

4. During the pendency of the aforesaid petition, in terms of the directions given by the District Court in the above quoted order dated 28/9/2020, the petitioners applied for permission for carrying out repairs before the respondent no.3 i.e. the Village Panchayat. The said application moved by the petitioners was referred to the Block Development Officer (BDO) i.e. the respondent no.2 and on 1/12/2020, the respondent no.2, issued a communication to the Sarpanch of the respondent no.3-Village Panchayat, directing that permission could be granted, by complying with certain terms and conditions. It appears that thereafter, the said order dated 1/12/2020 was directed to be kept in abeyance by an order dated 7/12/2020 passed by the respondent no.2. On 29/12/2020, the respondent no.2 vacated the said abeyance order, subject to final outcome of the

aforementioned writ petition filed by the respondent no.1 and pending before this Court. On 30/12/2020, the respondent no.2 passed another order, in the context of the said order dated 29/12/2020 and directed that the respondent no.3-Village Panchayat shall decide the matter pertaining to permission for carrying out repairs after final outcome of the petition before this Court.

5. The respondent no.1 was aggrieved by the order dated 29/12/2020, whereby the earlier order of keeping the order dated 1/12/2020 in abeyance was vacated.

6. It is undisputed that this Court by its detailed judgment and order dated 22/6/2021 dismissed the Writ petition filed by the respondent no.1, thereby confirming the above quoted order dated 28/9/2020 passed by the District Court allowing the application for interim relief filed by the petitioner under section 33 of the Rent Control Act. In the said judgment and order, this Court, inter alia, observed as follows:

“19. Mr. Sardesai expressed an apprehension that the tenant may proceed to undertake such work without obtaining permission from the concerned authorities. There is no basis for such an

apprehension because the revisional authority has itself made it very clear that the tenants to carry out the work subject to obtaining required permissions from the authorities. Ms Agni also made it clear that the work will be undertaken after obtaining permissions from the concerned authorities and not before. This takes care of apprehension now expressed by Mr. Sardesai.”

7. Needless to say, the dismissal of the writ petition confirmed the order passed in favour of the petitioners for carrying out repairs, subject to permission from the competent authority i.e. the respondent no.3-Village Panchayat in the present case. It is in the revision application filed by the respondent no.1 to challenge the order dated 29/12/2020 passed by the respondent no.2, that the interim impugned orders were passed. The order dated 23/7/2021, directed that status quo shall be maintained till the next date of hearing and the impugned order dated 6/8/2021 directed that the aforesaid order of status quo stood extended till further orders, during the pendency of the said revision application.

8. Ms. A. Agni, the learned Senior Counsel appearing for the petitioners submitted that the Court of District Judge-I, Mapusa could not have passed the impugned interim orders in the face of the judgment and order dated 22/6/2021 passed by this Court dismissing the writ petition of the respondent no.1 and thereby confirming the order dated 28/9/2020 passed by the District Court allowing the Revision application of the petitioners. It was submitted that the dismissal of the writ petition filed by the respondent no.1 confirmed the order whereby the petitioners were granted permission to carry out repairs, subject to obtaining the required permission from the respondent no.3-Village Panchayat. It was further pointed out that the revision application challenged only the order dated 29/12/2020 passed by the respondent no.2 and the subsequent order dated 30/12/2020, in effect, took care of the grievance of the respondent no.1. The writ petition filed by the respondent no.1 was eventually dismissed on 22/6/2021, thereby showing that nothing remained in the revision application filed and pending before the District Court at the behest of the respondent no.1.

9. On this basis, it was submitted that the impugned orders deserved to be set aside and a direction was required to be issued to the Village Panchayat to immediately pass orders in

accordance with law on the permission sought by the petitioners for carrying out repairs in the tenanted premises.

10. Mr. A. D. Bhobe, the learned counsel appearing for the respondent no.1 submitted that the said respondent was aggrieved by the order dated 29/12/2020, for the reason that the earlier order of abeyance was vacated without affording an opportunity of hearing to the respondent no.1, although such an order vacating the earlier order of abeyance was prejudicial to the said respondent. It was further submitted that the subsequent order dated 30/12/2020 was of no consequence and that the respondent no.1 had serious grievance in respect of the order dated 1/12/2020 passed by the respondent no.2-BDO. It was further submitted that the respondent no.1 could not have disputed the fact that by the dismissal of his writ petition and confirmation of the order 28/9/2020, the petitioners could carry out repairs of the tenanted premises in accordance with law and subject to obtaining the required permission from the respondent no.3-Village Panchayat. It was submitted that if the prayers made on behalf of the petitioners were to be granted, the pending revision application before the District Court would be rendered infructuous.

11. Mr. P. Vernekar, the learned counsel appearing for the respondent no.-3-Village Panchayat submitted that if this Court issued a direction to the said respondent to decide the application moved by the petitioners for grant of permission for repairs of the tenanted premises, the same would be decided in accordance with law.

12. Ms. S. Mordekar, the learned Additional Government Advocate appearing for the respondent no.2-BDO adopts the said submission.

13. The impugned orders passed in the present case are interim orders in a Revision application filed by the respondent no.1, which is pending adjudication before the Court of District Judge. It cannot be disputed that upon dismissal of the Writ petition filed by the respondent no.1 (landlord), the above quoted order dated 28/9/2020 passed by the District Judge has attained finality. The effect of the said order is that the petitioners are entitled to carry out repairs in the tenanted premises, subject to obtaining required permission from the competent authority, which is the respondent no.3-Village Panchayat. It is undisputed that the petitioners have indeed applied for such permission before the respondent no.3. The said application seeking

permission is yet to be finally decided by the respondent no.3- Village Panchayat and what has happened in the interregnum has resulted in filing of the present Writ Petition.

14. The record shows that during the pendency of the Writ Petition filed by the respondent no.1 which was eventually dismissed on 22/6/2021, there were certain proceedings undertaken by the respondent no.3 before the respondent no.2 and the communications/orders issued by the respondent no.2 have led to the respondent no.1 approaching the District Court again in a revision application. The grievance appears to be that the communication/order dated 1/12/2020 granting permission for repairs subject to certain terms and conditions was initially kept in abeyance and subsequently such order of abeyance was vacated by the respondent no.2. The Revision application pending before the District Court concerns the grievance of the respondent no.1 that such an order vacating the order of abeyance was passed behind his back. The scope of the said revision application is thus limited to challenge to the order dated 29/12/2021 passed by the respondent no.2.

15. It can also not be denied that when the impugned interim orders were passed by the District Court, this Court had already

dismissed the writ petition filed by respondent no.1 by the judgment and order dated 22/6/2021. Considering the fact that the Writ Petition stood dismissed and the apprehension expressed on behalf of the respondent no.1 was adverted to and taken care of by the above quoted observations made by this Court in the said judgment and order dated 22/6/2021, the District Court in the pending revision application could not have passed the order of status quo. This would amount to overreaching the order of this Court, which confirmed the order dated 28/9/2020 passed by the District Court, whereby the application for grant of permission to carry out repairs by the petitioners was allowed, subject to the rider that such repairs would be carried out with due permission from the concerned authorities. The District Court certainly could not have directed the authorities to maintain status quo, and, thereafter, to extend the same during the pendency of the revision application. This Court is of the opinion that for this reason alone the impugned orders are unsustainable and liable to be set aside.

16. At the same time, to cut the controversy short, it would be appropriate to give a direction to the respondent no.3-Village Panchayat to proceed expeditiously in so far as the question of

grant of permission to the petitioners for carrying out the repairs is concerned.

17. In view of the above, the Writ Petition is allowed. The impugned orders are quashed and set aside. The respondent no.3-Village Panchayat is directed to immediately take up the application for permission to carry out repairs moved by the petitioners. The Village Panchayat shall decide the application strictly in accordance with law within a period of two weeks from today. Needless to say, the party aggrieved by the order passed by the respondent no.3 would be at liberty to challenge such an order in accordance with law and all questions in that regard are kept open.

MANISH PITALE, J.