

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.10 OF 2020

MR. RANGANATH GURUDAS NAIK

Son of late Gurudas Naik

R/o H. No. 46, Valwada,

Concoliem, Mardol, Ponda, Goa.

... Petitioner.

Versus

1. MR. RAMDAS GURUDAS NAIK

Son of late Gurudas Naik

R/o H. No. 46/1, Valwada,

Cuncoliem, Mardol, Ponda, Goa.

2. VILLAGE PANCHAYAT OF

VELING, PRIOL, CUNCOLIM,

Ponda, Goa.

Through its Secretary/Sarpanch.

... Respondents.

Mr. Rohit Bras de Sa, Advocate for the Petitioner.

Mr. Iftikhar Agha, Advocate for Respondent No. 1.

Mr. Jatin Ramaiya, Advocate for Respondent No.2.

Coram: M.S. SONAK, J.

Date: 23rd June, 2021

ORAL JUDGMENT:

Heard Mr. Rohit Bras de Sa for the Petitioner, Mr. Iftikhar Agha for Respondent No.1 and Mr. J. Ramaiya for Respondent No.2.

2. Rule. The rule is made returnable forthwith with consent of learned Counsel for the parties.

3. Heard learned Counsel for the parties. Mr. Agha has correctly pointed out that the Petitioner has alternate and efficacious remedy under the Panchayat Raj Act. However, Mr. Rohit Bras de Sa, the learned Counsel for the Petitioner invited this Court to peruse the impugned order. He submits that the impugned order is riddled with such gross illegality that the Petitioner in the peculiar facts of the case, be relegated to the alternate remedy.

4. In this petition, the Petitioner at paragraph 14 has pleaded that he has no alternate or efficacious remedy. This is totally incorrect. The Petitioner, was required to plead that there is an alternate remedy but thereafter, the Petitioner could have explained as to why the Petitioner should not be relegated to such alternate remedy. The Petitioner could have also explained, how, in the peculiar facts of the case, the alternate remedy could not have been efficacious. Mr. de Sa offers to amend the petition and assures this Court that in any case care will be taken when it comes to pleadings about availability of alternate remedy.

5. On the invitation of Mr. de Sa, I have perused the impugned order. From the perusal of the impugned order, it does appear that the Additional Director of Panchayats has totally misdirected himself in law. The Additional Director has accepted that the structure put up by Respondent No.1 is without permission from the authorities. However, the Additional Director has directed that the demolition notice dated 31.07.2017 should be kept in abeyance merely because a Civil Suit is pending between the parties.

6. According to me, this is not the proper approach. The Civil Suit is for the purposes of deciding the civil rights of the parties. The proceedings under the Panchayat Raj Act are to determine whether the structures are put up by obtaining necessary permissions from the local authorities or whether the structures are in accordance with the building rules, bye-laws that regulate the construction of such structures. The authorities under the Panchayat Raj Act are really not concerned with the private dispute between the parties. Therefore, there was no justification for directing the demolition notice dated 31.07.2017 to be kept in abeyance only on the ground of pendency of Civil Suit between the parties.

7. Mr. Agha, the learned Counsel for Respondent No.1 points out that the structure was put up with the permission of the Petitioner who is his brother. Mr. Agha points out that consent terms have now been filed in the Civil Suit in terms of which the Respondent No.1 has consented to a road being put up by the Petitioner and the Petitioner has consented to the structure being put up by the Respondent No.1.

8. According to me, the parties, by granting consents to one another have flouted the provisions of the Panchayat Raj Act or any other building regulations, in terms of which they are required to obtain permissions from the local authorities. In fact, the authorities under the Panchayat Raj Act have been created precisely to prevent the mushrooming of illegal and unauthorized constructions. Therefore, based upon mutual consents, the parties, cannot breach the provisions of the Panchayat Raj Act or the regulations.

9. If the Respondent No.1 has any complaints about the road to be put up by the Petitioner, the Respondent No.1 can lodge complaints before the appropriate authorities who would be obliged to look into such complaints and dispose of such complaints in accordance with law. In this case, however, the order made by the Additional Director of Panchayats cannot be sustained. The same is required to be set aside. The matter is required to be restored to the file of the Collector because Mr. Agha, the learned Counsel for the Respondent No.1 submits that the Respondent No.1 will have other defenses, which may not have been raised at the time when the impugned order dated 11.11.2019 was made.

10. Accordingly, the rule is made absolute in this petition and the impugned order dated 11.11.2019 made by the Additional Director of Panchayats is hereby set aside. The proceedings in P.A.MAR-I/74/2017 are restored to the file of the Additional Director of Panchayats – II (South) at Margao, Goa and the Additional Director is directed to dispose of such proceedings afresh on their own merits and in accordance with law. The Additional Director will no doubt grant opportunity of hearing to all the parties.

11. The parties to appear before the Additional Director of Panchayats on 19.07.2021 at 3:30 p.m. and file authenticated copy of this order.

12. The Additional Director of Panchayats to dispose of this appeal expeditiously and without being influenced by any consent terms that may be filed by the parties in Civil Suit No. RCS/10/2017/B.

M.S. SONAK, J.