

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO. 109 OF 2019.

RADHA NANDALAL KALRO AND ... Petitioners.
ANR.
VS
ULHAS S. KERKAR AND 14 ORS. ... Respondents.

Mr. J. J. Mulgaonkar, Advocate for the Petitioners.

Mr. A. Naik and Mr. A. Phadte, Advocates for the respondent nos.
3,4,6 & 8.

CORAM: G. S. KULKARNI, J.
DATE: 12 SEPTEMBER 2022.

P.C.:

1. On the backdrop of the previous listing of the present proceedings before the coordinate Benches, today this petition is listed for hearing.

2. The genesis of the proceedings is an order dated 21.3.2013 passed by the learned Deputy Collector and SDM, Bicholim Sub Division, Bicholim Goa(for short “**the First Authority**”). In a report made by the police inspector, Bicholim under Section 145 of the Cr.P.C., the First Authority held that the respondent-M/s Sesa Goa Ltd

is in possession of the beneficiation plant and the property in survey no. 88/0 of village Cudnem, Bicholim Goa. It was held that M/s Sesa Goa Ltd is also in possession of the relevant accessories/ancillaries as described in paragraph 1 of the impugned order. As a consequence of such order, it was directed that the petitioners shall not interfere in any manner with the peaceful possession of M/s Sesa Goa Ltd. of the beneficiation plant and the property in any manner with the peaceful possession of M/s.Sesa Goa Ltd of the tailing pounds, Water tanks, and the access/approach road situated in survey no. 91/0 and 93/0 of village Cudnem.

3. Against such order passed by the learned First Authority, the petitioners preferred a revision to the Court of Additional Sessions Judge Mapusa (Criminal Revision Application No. 37 of 2013), which came to be dismissed by the impugned judgment of an order dated 6.7.2018.

4. Being aggrieved by such concurrent findings in both the proceedings, the petitioners have filed this petition which was pending hearing. It clearly appears from the record that the status in relation to the property as observed in the order passed by the First Authority and

as confirmed by the order passed on the Criminal Revision Application by the learned Additional Sessions Judge, has continued to operate till date. It is clear that the proceedings in question are under Section 145 of the Cr.P.C. The object of the provision is to prevent breach of peace and to preserve law and order by maintaining one or the other disputing party in possession. The First Authority in the present case found that M/s Sesa Goa was in possession when the dispute had arisen. Such orders which are passed are orders purely for the purpose and intent of Section 145 of the Cr PC. The purport of the provision being to prevent a breach of peace, the findings which are recorded are strictly required to be construed in the context of such proceedings and in no manner would determine any civil rights of the parties.

5. In aforesaid circumstances, in my opinion, it would be appropriate to order that if the petitioners intend to take recourse to any civil proceedings to establish their independent right which they intend to assert, it will be always open for them to pursue such remedy as may be available in law and if such a remedy is pursued by the petitioners, all rights and contentions of the petitioners in that regard

are certainly required to be kept open. If any such civil proceedings are initiated before the appropriate forum, such forum shall decide such proceeding on its own merits and without in any manner being influenced by the orders passed either First Authority order or by the Revisional Court. Ordered accordingly.

6. In view of the above observations and in the peculiar facts and circumstances of the case, the present proceedings would not warrant any further adjudication. The Writ Petition accordingly stands disposed of in the above terms. No costs.

G. S. KULKARNI,J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK
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