

Maria S.

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.44 OF 2022**

Nilkant Y. Fadte And 2 Ors.

.Petitioners

Versus

State of Goa thr. the Chief Secretary And 4 Ors. **...Respondents**

Mr. Vijay A. Palekar, Advocate for the Petitioners

Mr. Devidas J. Pangam, Advocate General with Mr. Geetesh R. Shetye, Additional Government Advocate for the Respondents No.1, 2 and 5.

Mr. Arjun Naik, Advocate for the Respondents No.3 and 4.

Ms. Kalpa Govenkar, Advocate for the Intervenor.

**CORAM: M. S. SONAK &
 R. N. LADDHA, JJ.**

Date: 7th March, 2022

ORAL ORDER:(Per: M. S. Sonak, J)

In the order dated 28.02.2022, substitute the word 'sewage' with 'sluice'. The necessary correction to be carried out in the original order as also the order uploaded on the website.

2. Heard learned Counsel for the parties.
3. At the request of and with the consent of the learned

Counsel for the parties, matter is taken up for final disposal.

3. The main grievance of the petitioners is that no public auction in respect of the fishing rights concerning The Dhado Khazan Tenants Association and sluice gate is being held by the respondent No.2.

4. The respondent No.4 has filed an affidavit before us submitting that the sluice gate and the bundh is damaged and this is the reason why no auction proceedings are being held.

5. On the other hand, the petitioners allege that it is the respondent No.4, as Chairperson of the Dhado Khazan Tenants Association who has removed the sluice gate and damaged the bundh simply to prolong the holding of the auction. The petitioners allege that in the meanwhile, the respondent No.4-Chairperson, is actively engaged in fishing activity at the site thereby causing financial loss to the Association and private gain to himself at the cost of the Association.

6. The allegations are, no doubt, denied by both the parties. However, according to us, there is no good reason to go on postponing the auction or not holding the auction within the prescribed period particularly because there are Discharge of Joint

Responsibility Rules which require the timely holding of such auction.

7. The learned Advocate General now states that the Mamlatdar of Tiswadi will issue notice tomorrow itself for holding the auction. He states that in terms of the Rules, 15 days notice is required to be given and, therefore, the auction will be held within 3 weeks from today. The learned Advocate General also states that the auction will be held in the office of the Mamlatdar of Tiswadi itself, since, some apprehensions are expressed about the conduct of the auction at the site by the parties. All these statements are accepted and the Mamlatdar of Tiswadi is directed to act accordingly.

8. Mr. Arjun Naik, learned Counsel for the respondents No. 3 and 4 states that presently no fishing activity is going on at the site. Without prejudice to this statement, Mr. Arjun Naik states that Mr. Nazareth Demello- respondent No.4, who is present in the Court, undertakes that he will not carry out any fishing at the site nor will he permit any other person to carry out fishing at the site until the auction is held and the auction bidder selected. This statement is accepted as an undertaking to this Court and Mr. Demello will have to abide by the same.

9. The respondent No.5, i.e. the Police Station, Old Goa Police Station shall also ensure that the aforesaid undertaking is implemented and there is no fishing at the site until auction is concluded and the auction bidder is selected.

10. Ms. Kalpa Govenkar, learned Counsel for the Intervenor points out that the Intervenor had been selected as the auction bidder in the auction recently held. She admits that the said auction has been now cancelled but points out that 25% of the bid price deposited by her with the respondent No.3 continues to remain with the respondent No.3 and that the same should be immediately refunded.

11. Ms. Govenkar states that the Intervenor should also be allowed to participate in the fresh auction that will now be held. Mr. Arjun Naik, learned Counsel for the respondent No.3 states that the amount deposited by the Intervenor will be refunded to the Intervenor within 2 days from today. This statement is also accepted.

12. There can be no difficulty for the Intervenor participating in the public auction, provided, the Intervenor complies with the rules and regulations as to eligibility, etc. as may be prescribed.

13. The petition is disposed of by accepting aforesaid statements and directing the concerned respondents to act in accordance with such statements. It is made clear that this Court has not gone into the allegations and counter-allegations since, the focus of this Court was to ensure that rules are complied with and auction is held in a timely manner.

14. Mr. Palekar, learned Counsel for the petitioners states that they are willing to carry out the fishing at the site, in the interregnum. Now that the auction is to be held within 3 weeks from today, there is no question of entertaining any such request at the behest of the petitioners. In any case, there will be other issues for entertaining of such a request. Mr. Palekar, on instructions, states that if the petitioners decide to bid at the public auction, then they will submit a bid which will be at least 25% more than the highest bid submitted at last year's auction. This statement is also accepted. This means that, if the Mamlatdar finds that the bid of the petitioners is less than this amount, the Mamlatdar will be entitled to reject this bid.

15. The petition and the application for intervention are disposed of in the aforesaid terms. There shall be no order for costs.

16. All concerned to act based on the authenticated copy of this Order.

R. N. LADDHA, J.

MARIA
SUZANA
REBELLO

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MARIA SUZANA
REBELLO
Date: 2022.03.07
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M. S. SONAK, J.