

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.310 OF 2015

1. Smt. Maria J. Fernandes e Pereira
alias Jacinta Pereira,
major of age, Villa alegre, Patto,
Ribander, Tiswadi, Goa.

2. Agnes Fernandes,
major of age,
r/o. Sodiem, Siolim, Bardez Goa.

3. Maria Marta Fernandes e Vaz,
major in age,
Resident of Sodiem, Bardez, Goa.

..Petitioners

Versus

1. State of Goa
Through its Chief Secretary
Having office at Secretariat,
Porvorim, Goa.

2. The Chief Engineer
Water Resources Department
Junta House, Panaji Goa.

3. The Sarpanch/Secretary
Village Panchayat of Siolim,
Siolim, Bardez Goa.

4. The Member Secretary
Goa Coastal Zone Management Authority
Dempo Towers, Patto, Panaji, Goa.

5. The Captain of Ports
Having office at Captain of Ports
Panaji Goa.

6. The Executive Engineer
Works Division-I
Water Resources Department
Panaji Goa.

...Respondents

None for the Petitioners.

Mr. Pravin N. Faldessai, Additional Government Advocate
for the Respondents No.1, 2, 4, 5, and 6.

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

Date: 28th January 2022

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

None for the petitioners. Heard Mr. Pravin N. Faldessai, learned Additional Government Advocate for the Respondent State.

2. On 22.04.2015, this Court (F. M. Reis and K. L. Wadane, JJ) made the following Order:-

'Heard Shri S. S. Kantak, learned Senior Counsel appearing for the petitioners. Issue notice before admission to the respondents, returnable on 15th June, 2015. Shri P. Faldessai waives notice for the respondents No.1, 2, 4, 5 and 6.

2. Shri P. Faldessai, learned Additional Govt. Advocate appearing for the respondents had sought time to make a statement with regard to the position at loco, on the last date of hearing. Shri Faldessai, learned

Additional Govt. Advocate, upon instructions of Shri Badani, Executive Engineer/respondent No.6 has made a statement that no work is going on at the site, in question, at present and no work will be carried out thereon upto the next date of hearing.

3. Hence, accepting the statement of the learned Additional Govt. Advocate, time granted. S.O. 15th June, 2015.'

3. Thereafter, the matter was adjourned from time to time to enable the respondents to file a reply. The interim order was continued. Finally, on 25.08.2015, after hearing the learned Counsel for the parties, this Court issued Rule and directed the interim relief to continue.

4. Today, when the matter has come up for final hearing we find that the respondents have not bothered to file any reply to date.

5. The allegation in the petition is that the respondents are undertaking certain construction activities, including by way of the construction of a road through the petitioners' private property survey under No.117/16 in the Village of Oxel, Siolim, Bardez-Goa.

6. In the absence of any response from the respondents,

we will have to grant the petitioners relief in terms of prayer clause (a) which reads as follows:

(a) A Writ of Mandamus or a Writ in the nature of Mandamus directing the Respondents to stop from interfering and to forthwith stop construction of road or any other construction and further from interfering in whatsoever manner in the Petitioners' property surveyed under survey no.117/16.

7. In ***Tukaram Kana Joshi And Others v/s. Maharashtra Industrial Development Corporation And Others¹***, the Hon'ble Supreme Court has held that the property right is now considered to be, not only a constitutional or a statutory right but also a human right though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in the realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment, etc. Now, however, human rights are gaining an even greater multi-faceted dimension. The property right is considered, very much to be a part of such a new dimension.

8. In the case before the Hon'ble Supreme Court there was no acquisition. Therefore, the Hon'ble Supreme Court held

¹ (2013) 1 SCC 353

that in a democratic body polity, which is supposedly governed by the Rule of Law, the State cannot be allowed to deprive a citizen of his property, without adhering to the law. The Hon'ble Supreme Court observed that the matter would have been different had the State pleaded that it has a right, title, and interest over the said land.

9. The petitioners have also prayed for relief of restoration of the property to its original condition and use in prayer clause (b) which reads as follows:

(b) A writ of Mandamus or a writ in the nature of Mandamus directing the Respondents to restore the property surveyed under no.117/16 of the Petitioner to its original condition and use.

10. According to us, no such relief can be granted at this stage by this Court in the absence of proper material establishing what was the original condition and use of the property. However, we grant liberty to the petitioners to make appropriate representation by placing all details/material to the respondents. If such representation is made within 2 months from today, then, the respondents should dispose of such representation within 4 months thereafter. The decision will have to be communicated to the petitioners within 4 months.

11. In this matter, we make it clear that the relief in terms of prayer clause (a) as aforesaid is granted mainly because no reply has been filed even though Rule was issued almost 7 years earlier. However, this does not mean that we have decided the issue of the right of user or title one way or the other. Therefore, if the State indeed has any right or title to the property in question or has a right to use the property for the purpose which it was using, then, it will be open to the State to exercise such right by adopting the due process of law. If the State indeed proceeds to adopt the due process of law, then, this decision will not come in the way of the State and such proceedings will have to be decided on their own merits and in accord with the law. This clarification is issued because, ultimately, the State is, to a greater extent, an impersonal agency that functions through its Officers. Therefore, we do not wish to prejudice the interest of the State, if any, simply because no reply has been filed in this matter.

12. The Rule is made absolute in terms of prayer clause(a) subject to aforesaid riders and liberties. There shall be no order for costs.

R. N. LADDHA, J

M. S. SONAK, J