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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 460 OF 2018

CELSO J. CARDOZO, ...PETITIONER
Versus
THE STATE REP. BY THE CHIEF
SECRETARY. GOVT. OF GOA & 12 ORS. ...RESPONDENTS

Mr. Vivek Rodrigues with Mr. Vithal Naik, Advocates *for the Petitioner.*

Mr. Shivdatt P. Munj, Additional Government Advocate *for Respondent Nos. 1, 4, 7 and 8.*

Ms. Raagini Rao, Advocate *for Respondent No. 10(a).*

CORAM: MANISH PITALE, J.

DATED: 21st February 2022.

P.C.:

1. By this Writ Petition, the original plaintiff has approached this Court challenging the order dated 11.12.2017, passed by the Court of District Judge-1, South Goa, Margao, whereby an Application (Exhibit-93), seeking amendment of the plaint has been dismissed.

2. In the present case, the petitioner has filed a suit before the aforesaid Court, seeking a declaration that the sale deed executed by some of the defendants is null and void. There are several other reliefs sought against the defendants, which include the

State and its Authorities, seeking injunction and directions to such Authorities and private parties in the context of the alleged construction undertaken on land acquired by the State. According to the petitioner, the alleged construction is leading to inconvenience to the public, including narrowing of a road.

3. The petitioner moved an Application for amendment of the plaint in the pending suit in August 2017.

4. Several paragraphs were sought to be added in the plaint pertaining to allegations against the private parties as well as State Authorities in respect of the alleged violation of orders of the Court, including the order for temporary injunction granted on 25.08.2015. The said Application was opposed by the defendants. By the impugned order, the aforesaid Court dismissed the Application on the ground that what was proposed to be added by way of amendment could not be said to be pleadings. It was also observed that while making allegations against the defendants, reference was made to certain persons, who were not even parties to the suit. It was then observed that the amendment is not necessary for determination of the issues in the suit and the Application stood dismissed.

5. Mr. Rodrigues, learned Counsel appearing for the petitioner invited the attention of this Court to the plaint, the

proposed amendment and several documents to emphasize that the proposed amendment was necessary in order to assist the Court in deciding the issues being raised in the suit and in aid of the prayers made in the plaint. It was submitted that certain facts were to be brought on record including the fact about the respondents having violated the directions of the Court. It was submitted that the Court below erred in dismissing the Application.

6. Mr. Munj, learned Additional Government Advocate has appeared on behalf of the respondent-State Authorities. He submitted that the impugned order was justified for the reason that a bare perusal of the plan would indicate that the allegations made by the petitioner are not justified. It was further submitted that the elaborate amendment sought on behalf of the petitioner was not justified in the facts and circumstances of the present case.

7. Insofar as the private respondents are concerned, only respondent no. 10(a) has entered appearance through Advocate Raagini Rao. The other respondents have been served and they have chosen not to appear before this Court.

8. This Court has considered the material on record. A perusal of the impugned order shows that the amendment

Application has been dismissed only on the ground that the material sought to be placed on record would not qualify as pleadings and certain allegations have been made against some persons, who are not even parties to the suit.

9. A perusal of the amendment Application shows that the petitioner has sought a decree for declaration that the sale deed executed by some of the defendants is null and void. Apart from this, the petitioner has sought permanent injunction and restraintment orders against the respondents-State Authorities, including directions for revocation of technical clearance and revocation of construction license and consequent demolition of the alleged illegal construction.

10. A perusal of the amendment Application filed before the aforesaid Court shows that the petitioner intended to add certain paragraphs in the plaint, not only to elaborate the reliefs sought, but also to show that there was violation of the directions given by the Court as well as the order of temporary injunction, passed by the Court. There is detailed reference to the manner in which the respondent no. 8 is likely to commence work of tarring/construction of road, which would amount to frustrating the aforesaid directions given by the Court. There is indeed

reference to one person in the proposed amendment, but no relief or direction is sought against the said person.

11. An overall assessment of the material on record shows that the proposed amendment does not change the nature of the suit. It is also found that the details sought to be placed on record are in the aid of the reliefs sought by the petitioner and for elaborating the pleadings found in the plaint. It cannot be said that the proposed amendment seeks to incorporate material which does not qualify as pleadings. In fact, if such material is permitted to be brought on record, it would assist the Court in deciding the issues raised in the suit.

12. In view of the above, this Court is of the opinion that the aforesaid Court erroneously rejected the Application for amendment. Accordingly, the Writ Petition is allowed in the following terms:

- (a) The impugned order dated 11.12.2017, passed below Exhibit D-93, is quashed and set aside.
- (b) The Application for amendment at Exhibit D-93 is allowed in terms of the prayers made therein.
- (c) Consequently, the amendment to be carried out within three weeks from today.

- (d) The respondents shall be at liberty to carry out the amendment in their pleadings, consequent to the amendment Application of the petitioner being granted.
- (e) If the respondents wish to carry out any such amendment in their pleadings, the same may be done within four weeks from the petitioner carrying out their amendment in the plaint.

13. The Writ Petition is disposed of.

14. Needless to say that the interim order granted by this Court on 16.04.2018, stands vacated.

MANISH PITALE, J.