

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.610 OF 2019

MAHENDRA R. DHARWATKAR AND 3 ...Petitioners
ORS.
VS
DEPUTY SUPERINTENDENT OF
POLICE, PANAJI AND 7 ORS. ...Respondents

Ms. A. Agni, Senior Advocate with Ms. Jay Sawaikar, Advocate for the Petitioners.

Mr. M. Salkar, Government Advocate for Respondent Nos.1, 2, 4 and 5.

Mr. A.D. Bhobe, Advocate for Respondent No.3.

Mr. C. Fonseca, Advocate for Respondent No.6.

Mr. Parikshit Sawant, Advocate for Respondent Nos.7 and 8.

**CORAM: MANISH PITALE AND
 R.N. LADDHA, JJ.**

DATE: 25th February, 2022

ORAL ORDER : (Per Manish Pitale, J.)

1. By this Writ Petition the petitioners have approached this Court invoking writ jurisdiction and they have made the following prayers:

a. For writ of Mandamus writ in the nature of mandamus any other writ direction or order commanding the respondents 1,2, not to interfere with the reconstruction of the damaged portion of the road passing

through the property under survey no.219/1 as shown in the plan at Exb.L colly of the compilation filed along with the petition and further not to interrupt or interfere with the user of the said road by the petitioners and members of public and further direction to the 3 -5 to maintain and safeguard the public road passing through survey no 219 / 1 and partly through 226 and as shown in the plan at exhibit K colly and further in the alternative for a direction to the respondent no.3-5 to 6 reconstruct the portion of the said road which is damaged by ow respondent 7 and 8 with the help of their personnel.

b. For restraint orders against the respondent no 7 and 8 not to damage, interfere with the road passing through survey no.219 and partly through 226 and or user thereof by the petitioners and members of public and further directing the respondent no 1,2,3-5 to take action against respondent no 7 and 8 pursuant to complaints made against respondent no 7 and 8 regarding demolition of the road.”

2. The petitioners claim that the aforesaid prayers can be granted in writ jurisdiction because there is no dispute about facts that can be established on the basis of documents placed on record alongwith the Writ Petition, as also documents that have come on record alongwith affidavits in reply filed by some of the respondents. This assertion is disputed by respondents No.7 and 8, who claim that a proper appreciation of documents on record would show that the nature of

reliefs sought by the petitioners, while invoking writ jurisdiction, cannot be granted.

3. Briefly stated, the petitioners claim that they had constructed a road passing through property under Survey nos.219/1 and 226/1 of Village Morombi-O-Grande. The petitioners claim that the said road was constructed pursuant to permission granted by the respondent No.3– Village Panchayat and that the cause of action for filing the present Writ Petition arose when an effort to reconstruct the road was interfered with by the respondents Nos.1 and 2 i.e. the Police Authorities, by giving oral directions or commands. According to the petitioners, the said road is for use of the public at large, located in a portion of the said property owned by the respondent No.6– Comunidade from whom the petitioners have already obtained a no objection for construction/reconstruction of such road. In fact, the petitioners claim that the said road is a public road and that therefore, oral directions sought to be given by the respondents No.1 and 2 to interfere with the work of reconstruction being undertaken by the petitioners, is wholly unwarranted.

4. The petitioners have also sought an order against the respondents No. 7 and 8, to restrain them from damaging the said road, which is being used by the public at large.

5. By referring to a number of documents placed on record alongwith the writ Petition, the petitioners claim that the total area of the land in question was 1,44,340 sq.mts. of which admittedly 45,260 sq.mts. was acquired by the State Government. In the balance area, a person who claimed to have a grant from respondent No.6–Communidade claimed right to the entire remaining property. Attention of this Court was invited to orders passed in a suit filed by the respondent No.6–Communidade against the said person named Mr. Braganca. The Comunidade had filed a suit for declaration in respect of the said property, which was in the first instance dismissed by the Civil Court, but First Appeal No. 129 of 1999 filed by the Comunidade before this Court was allowed. After detailed discussion and consideration of the pleadings, evidence and material on record, this Court disposed of the said appeal, holding that the said Mr. Braganca could claim an area admeasuring of only 26370 sq.mts. from the said property. A challenge raised to the said judgment in the First appeal, before the Supreme Court, admittedly met with failure and hence, the said finding attained finality.

6. The petitioners also relied upon a written statement filed by the respondents No.7 and 8 in land acquisition proceedings wherein they themselves claimed that their predecessor was a declared tenant in

Survey No.219/1 to the extent of 20970 sq.mts. It was further claimed that since the aforesaid road, in the context of which the present Writ Petition has been filed, was constructed and was now sought to be reconstructed in that portion of land which has nothing to do with that area of 26370 sq. mts. granted to the said Mr. Braganca wherein the respondents No.7 and 8 themselves claimed to be tenants to the extent of 20970 sq.mts., there is no question of any dispute, particularly when the respondent No.6–Communidade itself had granted no objection for the construction/re-construction of the road and the respondent No.3- Village Panchayat had also granted permission. On this basis, it was claimed that the respondents No.1 and 2 had no business issuing oral directions or commands to the petitioners interfering with their work of re-construction of the road.

7. As opposed to this, the respondents No.7 and 8 claimed that there are serious disputed questions of facts in the present matter. It was claimed that reliance placed on the written statement filed in the land acquisition proceedings was misplaced, because the affidavit in evidence of the son of the declared tenant in the said proceedings itself clarified that the said person was declared as tenant of the entire property admeasuring 1,44,340 sq.mts. in Survey No.219/1. Apart from this, reliance was placed on orders passed in Civil Suit

filed by the proprietorship firm of the petitioner No.1, wherein according to the respondents No.7 and 8, similar relief was sought. It was emphasized that in the said proceedings the proprietary firm was unable to get an injunction for construction of such a road on the claim of having an easementary right in that regard. It was further emphasized that after the Supreme Court dismissed the appeal and confirmed the judgment and order of this Court in First Appeal No.129 of 1999, filed by the respondent No.6–Communidade, the consequence of which was that the Comunidade stood declared as entitled to property in survey No.219/1, after deducting 26370 sq.mts. to which the said Mr. Braganca was found entitled, the respondents No.7 and 8 had initiated proceedings before the Mamlatdar claiming to be declared as tenants of the respondent No.6–Communidade for the entire balance area of land. The said proceedings bearing No.TNC/DETL/MOG/09/2021/JM3 are still pending before the Mamlatdar.

8. It is in the backdrop of such material placed before this Court that Ms. A. Agni, learned Senior Counsel for the petitioners submitted that there could not be a situation of serious disputed questions of facts in the present matter and that as long as the petitioners were not constructing/ re-constructing the road in the

property to which the respondents No.7 and 8 themselves had raised a claim to the extent of only 20970 sq.mts. or for that matter the area of 26370 sq.mts to which Mr. Braganca was found to be entitled, this Court could certainly entertain the Writ Petition and issue appropriate directions to respondents No.1 and 2, not to interfere with re-construction of the road. It was further contended that restraint order against the respondents No.7 and 8 was sought only as a matter of interim order from this Court and considering the material on record indicating admitted position on facts, writ jurisdiction could certainly be exercised.

9. Mr. P. Sawant, learned Counsel appearing for respondents No.7 and 8 relied upon the above mentioned documents to contend that there are indeed serious disputed questions of facts. It is submitted that there is no demarcation of pieces of land even if the contentions raised on behalf of the petitioners were to be accepted and that therefore, reliefs sought in the present Writ Petition cannot be granted, particularly when there is already a First Information Report (FIR) registered in respect of the dispute between the parties and the respondents No.1 and 2 would certainly be entitled to invoke their powers to ensure that there is no breach of peace. It was submitted

that in the face of the material on record the Writ Petition deserves to be dismissed.

10. Mr. Salkar, learned Additional Government Advocate for the respondents No.1, 2, 4 and 5 submitted that in the first place even if the petitioners claimed that they had obtained a no objection from the respondent No.6, the said respondent had not placed any material on record to show that the Administrator of the Comunidades had agreed to such a no objection being given on behalf of the Comunidade. Apart from this, it was submitted that there is no material placed on record, as to whether the petitioners had taken permission from the Planning Authority for construction/reconstruction of the road. The permission granted by the respondent No.3–Village Panchayat clearly stated that it would be necessary for the petitioners to take permission from the competent Authority prior to starting the work. In this backdrop, it was submitted on behalf of the said respondents that the proper approach on the part of the petitioners would have been to first ensure demarcation of the portions of land in the said survey numbers before proceeding to construct/reconstruct the road.

11. Mr. Bhobe, learned Counsel for the respondent No.3–Village Panchayat referred to the permission granted by the Village

Panchayat on 13/11/2018 to the petitioners and highlighted that the said permission was subject to further permission/no objection being obtained from the competent authority prior to starting the work.

12. In the backdrop of such material and rival submissions, this is Court is called upon to consider whether the above quoted prayers can be granted to the petitioners in writ jurisdiction. We have perused the entire material on record. While the petitioners claim that the respondents No.7 and 8 cannot raise any objection to the construction/reconstruction of the road for the reason that their rights, as per the documents on record, are restricted to 20970 sq.mts or at the most 26370 sq.mts., particularly when the road is sought to be constructed/reconstructed in a portion of the land beyond the aforesaid area, the respondents No.7 and 8 have seriously disputed the same on the basis of the material on record. The respondents No.7 and 8 have heavily relied upon the orders passed in earlier proceedings by the Civil Court and this Court to claim that even as on today there is no clarity that the area of the land on which the petitioners propose to construct/reconstruct the road is exclusively within the domain of the respondent No.6 and having obtained the no objection from the said respondent the petitioners are entitled to undertake such activity.

13. We have perused the documents placed on record and we find that although it was found by this Court while disposing of First Appeal No.129 of 1999 that the said Mr. Braganca was entitled only to 26370 sq.mts. of land out of the total area of the land in Survey No.219/1 and the said finding had attained finality, there is material placed on record to indicate that the respondents No.7 and 8 claim to be entitled to possession as tenants of the property in Survey No.219/1, which has remained balance property after deducting 26370 sq. mts to which Mr. Braganca was found to be entitled. Apart from this, despite the claim made by the learned Senior Counsel appearing for the petitioners that there are plans on record to show demarcation, we are of the opinion that there is nothing in the form of record of rights/mutation entries on record to show that there has been demarcation of the land in the aforesaid Survey No.219/1 in pursuance of various orders passed by the Courts. It is also an admitted position on record that while the respondent No.3 Village Panchayat gave permission by its communication dated 13/11/2018 for construction of the road, it was subject to necessary permissions from the competent authorities. There is nothing on record to show that the petitioners ever approached respondents No.4 and 5 or any

other competent authority to undertake construction of the road in question.

14. As regards the no objection obtained from the respondent No.6 – Comunidade, the learned Counsel appearing for the said respondent has submitted that there is no requirement in law for the respondent No.6 to take permission from the Administrator of Comunidades for granting such a no objection to the petitioners for construction of the road since the land has not been alienated while granting no objection to the construction of the road.

15. Be that as it may, considering the material on record and the nature of the disputes that have arisen, particularly in the backdrop of proceedings now said to have been initiated before the Mamlatdar on behalf of the respondents No.7 and 8, claiming tenancy and possession of the entire balance area of Survey No.219/1, coupled with the fact that there is indeed material to show that disputes have resulted in even registration of FIR at the behest of the respondents No.7 and 8, it cannot be said that the respondents No.1 and 2 would not be within their powers to take necessary steps to ensure that there is no breach of peace. If in that process, the respondents No.1 and 2 have interacted or communicated with the petitioners to ensure that there is no breach of peace, it cannot be said that this would amount

to an interference with the rights of the petitioners justifying invoking writ jurisdiction of this Court.

16. We are not convinced that in the present case there are absolutely no disputed questions of facts. The nature of dispute has resulted in filing of at least one FIR at the behest of the respondents No.7 and 8. The question whether the road constructed or sought to be constructed/re-constructed by the petitioners falls within an area with which the respondents No.7 and 8 have no concern is also disputed a question of fact, which the writ Court will find difficult to resolve on the basis of materials placed on record. There is also nothing to show that there is demarcation of various portions of land in Survey No.219/1 and that there are appropriate entries in the record of rights to show as to in which portion the petitioners have constructed/re-constructed the road in the said property. The material on record clearly indicates that the dispute that has arisen between the parties cannot be resolved in writ jurisdiction and it cannot be said that the petitioners have made out a case for grant of a direction to the respondents No.1 and 2, not to interfere with the work of re-construction sought to be undertaken by the petitioners, if there is breach of peace.

17. We refrain from commenting upon the contentions raised by the parties as regards their rights in the aforesaid property. At the same time, we are of the firm opinion that the nature of dispute that has arisen in the present case cannot be resolved under writ jurisdiction.

18. In view of the above, we find that no relief can be granted to the petitioners and accordingly, the Writ Petition is dismissed.

19. The parties are at liberty to avail such remedies that may be available in law. All questions in that regard are kept open.

R.N. LADDHA, J.

MANISH PITALE, J.