

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS. 326 & 327 OF 2021

WINSTON XAVIER AND 2 ORS.	...PETITIONERS
<i>Versus</i>	
CYNTHIA SOUZA XAVIER BARRETO AND 3 ORS.,	...RESPONDENTS

Mr. Terence Vaz, Advocate *for the Petitioners.*

Mr. A. Gomes Pereira, Advocate *for the Respondents in Writ
Petition No. 326/2021.*

Mr. Peter Fernandes, Advocate *for the Respondents in Writ
Petition No. 327/2021.*

CORAM: MANISH PITALE, J.

DATED: 8th February 2022.

P.C.:

1. By these two Writ Petitions, the petitioners have approached this Court challenging orders dated 25.02.2019, passed by the Deputy Collector/Sub-Divisional Officer, Mapusa, in proceedings for partition initiated under Section 61 of the Goa, Daman and Diu Land Revenue Code, 1968.

2. In Writ Petition No. 327/2021, additionally, the petitioners have challenged the subsequent order dated 26.03.2021, passed by the Deputy Collector.

3. The principal contention raised on behalf of the petitioners in these Writ Petitions is that the Deputy Collector committed an error in proceeding on the basis that no objection was raised with regard to the partition, either by the petitioners or by any other party, in the said proceedings. It is submitted that the replies were on record before the Deputy Collector indicating that the objections were raised, and that therefore, the impugned orders deserve to be set aside on this ground itself. An attempt was also made to contend that there was violation of principles of natural justice and therefore, the Writ Petitions could certainly be entertained by this Court.

4. This Court had issued notices in these Writ Petitions by recording the aforesaid contentions raised on behalf of the petitioners.

5. The respondents have entered their appearances and have filed their replies, to which the petitioners have also filed their rejoinder affidavits.

6. Mr. Vaz, learned Counsel appearing for the petitioners in both these Writ Petitions reiterated the aforesaid contentions when the notice was issued. By inviting attention of this Court to the impugned orders dated 25.02.2019, it was submitted that the Deputy Collector erred in proceeding on the basis that there was no objection by the co-holder of the property in the prayer made before the Deputy Collector. Additionally, in Writ Petition 327/2021, it was submitted that the matter had proceeded further and that the subsequent report submitted by the Inspector of Survey and Land Records (ISLR) was confirmed by the impugned order dated 26.03.2021 and therefore, the Writ Petitions deserve to be allowed.

7. On the other hand, Mr. Gomes Pereira, learned Counsel has appeared for the respondents in Writ Petition No. 326/2021 and Mr. Peter Fernandes, learned Counsel has appeared on behalf of the respondents in Writ Petition No. 327/2021. Both the Counsel submitted that the petitioners had an alternative remedy of filing an Appeal under the provisions of the aforesaid Code and that the petitioners were not justified in approaching this Court in writ jurisdiction. It was further submitted that there was no case made out for contending that there was violation of principles of natural justice in order to claim that the Writ Petitions were maintainable. It was submitted that the order was

passed way back on 25.02.2019 and since the remedy of an Appeal was available to the petitioners, writ jurisdiction could not have been invoked. It was also submitted that the petitioners were duly served and no case was made out to claim violation of principles of natural justice. A perusal of the replies filed before the Deputy Collector on behalf of the petitioners would show that there was no objection specifically raised with regard to the partition and all that was stated was that certain documents, including copy of a plan, would be necessary to proceed further in the matter. On this basis, it was submitted that there was no error committed by the Deputy Collector while passing the orders dated 25.02.2019. It was further brought to the notice of this Court that petitioner no. 1 in these two Writ Petitions was very much present before the Deputy Collector when the impugned orders dated 25.02.2019 were passed. In fact, the said petitioner had signed on the proceedings, which was evident from the copies of the Roznamas placed on record. On this basis, it was submitted that the petitioners could not feign ignorance of the impugned orders passed on 25.02.2019 and therefore, the Writ Petitions deserve to be dismissed.

8. Heard the learned Counsel appearing for the rival parties and perused the material on record. There is no dispute about the fact that the impugned orders in this case were passed way

back on 25.02.2019 and the Writ Petitions came to be filed in September 2021. It is also evident from the material on record that the petitioners were served with notice of proceedings before the Deputy Collector and that the petitioner no. 1 was continuously appearing before the Deputy Collector. A perusal of the Roznamas shows that in both these matters, the petitioner no. 1 was very much present before the Deputy Collector, when the impugned orders dated 25.02.2019 were passed. In fact, the Roznamas also show that the said petitioner continued to appear, at least till December 2019, before the Deputy Collector in the proceedings conducted after the impugned orders dated 25.02.2019 were passed.

9. In Writ Petition No. 327/2021, the petitioners have additionally challenged the subsequent order dated 26.03.2021, passed by the Deputy Collector, whereby the report submitted by the ISLR was confirmed. In the body of the Writ Petition there is no statement made as to why the petitioners challenged the impugned orders dated 25.02.2019 as late as in September 2021. It is only in the rejoinder affidavit filed in the said Petition that the petitioner no. 1 had made the following statement:

8. I say that it is only in the year 2021, when the impugned order dated 26/03/2021 was passed by the Hon'ble Deputy Collector, and after checking the

court file, did I come to know of impugned order dated 25/02/2019.

10. But, a perusal of the material on record shows that the aforesaid statement made in the rejoinder affidavit does not match with the record and that it is a false statement. The Roznamas show that on 25.02.2019, when the impugned order was passed by the Deputy Collector, the petitioner no. 1 was present and that he had signed on the proceedings. Yet in the rejoinder affidavit, the petitioner no. 1 has stated that he became aware of the impugned order dated 25.02.2019, only in the year 2021 after the impugned order dated 26.03.2021 was passed by the Deputy Collector and after checking the Court's file. This is a palpably false statement. On this ground alone, the Writ Petitions deserves to be dismissed. Even otherwise, a perusal of the reply before the Deputy Collector would show that the petitioners have not expressed any specific objection to the partition, and all that they have said is that they want a copy of the plan to proceed further in the matter. Only one document is said to have been filed by the respondent no. 4 in Writ Petition No. 327/2021, before the Deputy Collector. It is brought to the notice of this Court that in the said document he objected to the partition because there were no clear documents to carry out the partition. Even this document does not specifically raise any objection as to the prayer made before the Deputy Collector.

11. It is also an admitted position that the petitioners had remedy of appeal available to them to challenge the orders passed by the Deputy Collector, but they chose not to do so, at their own peril.

12. Considering the nature of powers exercised under Section 61 of the said Code, this Court is convinced that the petitioners have not been able to make out a case for this Court to exercise its jurisdiction under Article 227 of the Constitution of India. The petitioners have not approached this Court with clean hands, as is evident from the false statement made in affidavit in rejoinder as the assertion made therein is belied by the material available on record.

13. In view of the above, the Writ Petitions stand dismissed.

MANISH PITALE, J.