

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.427 OF 2021

Shri Santosh E. Akhadkar & 7 Ors.

...Petitioners

Versus

Corporation of city of Panaji and 4 ors.

...Respondents.

Mr. Gajendra Usgaonkar, Advocate for the Petitioners.

Mr. Gaurish Agni, Advocate for Respondent No.1.

Mr. Geetesh Shetye, Additional Government Advocate for Respondent No.2

Mr. J. Godinho, Advocate for Respondents No.3 to 5.

**CORAM: M. S. SONAK &
 BHARAT P. DESHPANDE, JJ.**

Dated : 10th October, 2022

ORAL ORDER : (Per Bharat P. Deshpande, J.)

Heard learned Counsel Shri G. Usgaonkar, appearing for the petitioners.

2. The present petition is filed for the following reliefs:

a. *This Hon'ble Court be please to issue writ of mandamus or any other direction in the nature of mandamus commanding the Respondent No.1 to hold an inquiry into the ownership title of the Respondent No.3 to 5 to the suit property and Writ of Certiorari or any other writ in the nature of certiorari quashing the impugned construction license issued by the Respondent*

No.1 to the Respondent No.3 to 5 allowing him to construct the compound wall to the suit property.

b. Pending the hearing of this Petition, the impugned construction license granted by Respondent No.1 to construct compound wall be stayed until the present writ petition is decided.

c. Ad interim relief in terms of prayer (b) above.

d. Any other order deem fit and proper in the circumstances of the case.

3. In nutshell, it is the contention of the petitioners that they are in physical possession of part of the plots No. 56 and 57 of Chalta No.1 of P.T. Sheet No.14 of the City Survey Panaji, which is hereinafter referred to as "suit property" situated at Ribander ward of Corporation of City of Panaji, through its rightful owner Gangabai Balcrishna Probo Mambro, who was allotted the suit property in Orphans Inventory Proceeding No.150 of the year 1933 initiated after the death of her father Atmaram Porobo Sinari on 21/03/1965. It is further contention of the petitioners that however as of today the legal heirs of deceased Gangabai are not known and, therefore, as per the Goa Succession Act, in case there is no successor, such immovable property vests in the Government of Goa. It is then claimed by the petitioners that at about three years back respondents No.3 and 4 through their Attorney i.e. respondent No.5 started claiming that the suit property was gifted by their grandfather Pandurang Raghunath Sinari. According to Respondents No.3 to 5 said gift is based on a forged Will. However, respondents No.3 to 5 are not having any ownership title to the suit property and made an attempt to put barbed wire fencing around the suit property,

wherein there is a Goalpost of a football ground. The said respondents also attempted to erect a compound wall around the suit property even though they are not having any title.

4. The petitioners who are the residents of the said locality raised objections. However, respondent No.1/The Corporation of City of Panaji on the advice of their lawyer rejected to conduct any inquiry into the titles of respondents No.3 and 4 as provided under Section 364 of the City of Panaji Corporation Act. Thus, the petitioners approached this Court seeking quashment of the construction license issued in favour of respondents No.3 to 5.

5. On perusal of the entire petition, it is clear that the petitioners are only residents of ward Fordvem situated at Ribander and claiming to be members of the Youth Sporting Club of Ribander. The petitioners are not having any right, title or interest over the suit property nor do they have any way related to the deceased Gangabai. Their only contention is that residents/villagers are using various parts of the suit property for various social purposes such as sports, cultural activities, parking of vehicles and seat out for the elders. They contend that the suit property is used prominently as open space. Similarly, it is claimed that the suit property is idle for many years and that the villagers know that the same belongs to Gangabai Balcrishna Probo Mambro. It is their condition that respondents No.3 to 5 fabricated the Will and started claiming the suit property.

6. It is clear from the averments made in the petition that the petitioners are having no right over the suit property though their claim was that they

used it as open space, sport, cultural activities etc. It is admitted fact that the said property belongs to the deceased Gangabai Balcrishna Probo Mambro. The petitioners are not at all related to said Gangabai Balcrishna Probo Mambro. Since it is private property and respondents No.3 to 5 claiming to be legal heirs of late Gangabai, the petitioners are not having any right to challenge such succession. There are no pleadings with regard to any easementary right or any other right over the suit property qua the petitioners. The contention of the petitioners that the Will is a fabricated document, is a disputed question of fact, which cannot be gone into in writ jurisdiction.

7. The only contention of the learned Counsel Shri Usgaonkar is that respondent No.1 failed to conduct any inquiry into the title for the said land. First of all the petitioners are not having any right over the said property and, therefore, they cannot by way of the present petition seek any direction for cancelling or quashing the license issued in favour of respondents No.3 to 5 who are claiming to be successors of late Gangabai. *Locus standi* of the petitioners is not established at all. Similarly, the present petition is not public interest litigation.

8. Having said so, the contentions raised by the petitioners in the present petition along with the grounds are devoid of merit. We are not inclined to exercise extraordinary jurisdiction of this Court in the above circumstances, Hence, the following:

O R D E R

1. The petition stands dismissed.
2. The parties shall bear their own costs.

BHARAT P. DESHPANDE, J

M. S. SONAK, J

MEENA
VISHAL
BHOIR

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by MEENA
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