

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.36 OF 2012

The Goa Housing Board,
Represented through its Chairman/Board of Directors,
Having Office at Alto Betim, Appellant
Porvorim, Taluka Bardez, Goa.

Versus

1. Govindraj L. Shanbhag,
Son of Shri Laxminarayan Shanbhag,
Major of age, employed,
C/o Mrs. Davdita Fernandes,
House No.2287, Comba,
Parricotta, Cuncolim,
Taluka Salcete, Goa.
2. State of Goa,
Represented through
The Chief Secretary, Secretariat,
Porvorim, Bardez, Goa.
3. The Goa State Urban,
Development Agency,
Through Chairman,
Having office at, Panaji, Goa. Respondents

WITH
FIRST APPEAL NO.37 OF 2012

The Goa Housing Board,
Represented through its Chairman/Board of Directors,
Having Office at Alto Betim, Appellant
Porvorim, Taluka Bardez, Goa.

Versus

1. Shri. Yeshwant Narayan Redkar,
Son of Shri. Narayan S. Redkar,
Major of age, employed,
Resident of H. No. 20/6-8,
Ramnagari, St. Jose de Areal,
Mugali, Taluka, Salcete, Goa.

2. State of Goa,
Represented through
The Chief Secretary, Secretariat,
Porvorim, Bardez, Goa.

3. The Goa State Urban,
Development Agency,
Through Chairman,
Having office at, Panaji, Goa.

.... Respondents

WITH
FIRST APPEAL NO.38 OF 2012

The Goa Housing Board,
Represented through its Chairman/Board of Directors,
Having Office at Alto Betim,
Porvorim, Taluka Bardez, Goa.

..... Appellant

Versus

1. Shri. Vishwas Vithoba Kankonkar,
Son of Shri. Vitoba Kankonkar,
Major of age, employed,

Resident of Flat No. SF-42,
Shantaae Apartments, Demani,
Cuncolim, Taluka Salcete, Goa.

2. State of Goa,
Represented through
The Chief Secretary, Secretariat,
Porvorim, Bardez, Goa.

3. The Goa State Urban,
Development Agency,
Through Chairman,
Having office at, Panaji, Goa.

.... Respondents

WITH
FIRST APPEAL NO. 39 OF 2012

The Goa Housing Board,
Represented through its Chairman/Board of Directors,
Having Office at Alto Betim,
Porvorim, Taluka Bardez, Goa.

..... Appellant

Versus

1. Shri. Rajendra Kumar Mishra,
Son of late Shri. R. S. Mishra,
Major of age, employed,
Resident of Flat No. T-4,
Building B-2, Munj Vihar,
Co-operative Housing Society,
Gogol, Margao, Goa.

(Dismissed against Respondent no. 1 in view of order
dated 14/02/2013 passed by the Learned Registrar)
(Restored in view of order dated 09/11/2023 passed
by this Hon'ble Court in MCA (F) 2630/2023)

2. State of Goa,
Represented through
The Chief Secretary, Secretariat,
Porvorim, Bardez, Goa.

3. The Goa State Urban,
Development Agency,
Through Chairman,
Having office at, Panaji, Goa.

.... Respondents

Mr H.D. Naik, Advocate for the Appellant.

Mr Sudesh Usgaonkar with Ms R. Pereira, Advocates for Respondent No.1.

Mr. V. Sardesai, Addl. Govt. Advocate for Respondents No.2 and 3 in First Appeal No.36/2012 and 39/2012.

Ms. Susan Linhares, Addl. Govt. Advocate for Respondents No.2 and 3 in First Appeal No.37/2012 and 38/2012.

CORAM : VALMIKI SA MENEZES, J.

DATE : 10th November 2023

ORAL JUDGEMENT :

1. All these appeals filed by the Appellant Goa Housing Board challenge four Judgments and Decrees dated 24/11/2011 passed by the Court of Adhoc- District Judge-2 FTC-II, South Goa at Margao in four Civil Suits bearing No. 46,/2009, 23/2010, 45/2009 and 44/2009 instituted by Respondent No. 1 respectively First Appeal No.36/2012. 37/2012, 38/2012

and 39/2012. All these suits were decreed in favour of each of the Plaintiffs therein/Respondent No.1 herein. Though the evidence in each suit was led separately by the Plaintiffs, the defence taken by the Defendant/Appellant herein in common in all the four suits which pertain to four housing plots allotted to the Plaintiffs; submissions made in these Appeals by the Appellants and Respondents are common to all Appeals. Hence these Appeals are disposed of by a common Judgment.

In all these Appeals, each of the Respondent No.1 is referred to as Plaintiff while the common Defendant Housing Board is referred to as the Defendant.

2. The District Court by its Judgment and Decree dated 24/11/2011 decreed the suit filed by the Plaintiffs ordering that the Appellant/ Defendant is directed to hand over the possession of the suit plot or an equivalent area of 300 sq. mts to the Plaintiff from the land surveyed under No.146/1, 146/5 and 146/6 of Village Cuncolim and to complete further formalities of transfer of the said plot/equivalent area of land in favour of Plaintiff by following procedure as prescribed by law and finally by executing the Deed of Sale on payment of balance amount under the letter of allotment, by the Plaintiff to the Defendant/Appellant.

3. It was the case of the Plaintiffs that the Defendant formulated a scheme for sale/allotment of residential plots on the aforementioned land which were to be allotted in terms of the provisions of The Goa Housing Board (Regulation, Allotment and Sale of Plots) Regulations, 1982. Pursuant

to an advertisement inviting applications for allotment of plots to eligible persons, each of the Plaintiffs was declared as successful allottee with respect to the suit plot and paid the initial allotment amount which was accepted by the Defendant. However, subsequently, the Defendant has failed and neglected to follow the procedure under the aforesaid Regulations and to make a final allotment of these plots to the Plaintiffs who were ready and willing to pay the balance consideration. Hence, the four suits for specific performance of the allotment and direction to execute a sale deed with respect to the suit plot.

4. The defence in all the written statements admits that the suit plots were developed but that no NOC was issued by the local authority and therefore the Defendant could not allot plots to the allottees; it was a further defence that certain other Government agencies had made a request for the area of which the four plots comprised, for establishing of an engineering college and a football academy and in that view of the matter, the Defendant stated that they were unable to perform the agreement.

After evidence was led by the parties, the District Court decreed all four suits in favour of the Plaintiffs.

5. I have heard the submissions of the learned Counsel for the parties. I have perused the entire evidence on record and the impugned Judgments. The point for determination that arises, for my consideration in these Appeals is, whether the Judgment and Decree of the Trial Court suffers from any illegality or is in any manner contrary to the evidence on record.

6. During the hearing of the present Appeals, it is submitted by the learned Advocate for the Appellant that on account of subsequent developments after the final allotment Order, the suit Plots allotted to the respective Plaintiffs are not available for allotment as the area where the plots were located have been encroached by a third party. Further, during the course of the hearing, to support this contention, the learned Advocate for the Appellant has produced before this Court a Judgment and Decree dated 6/9/2023 passed in RCS 153/2012/C between the Appellant as Plaintiffs and Antonio Silvano da Assumcao Fernandes defendant no.1 therein and Bright Developers the Defendant No.2 in that Suit; this suit was instituted by the Appellants in the Court of Civil Judge, Jr. Division at Margao seeking a decree for damages against the Defendants for causing loss to the Appellant by destroying the development carried out by the Appellant in the land under Survey No.146/1, 146/2, and 146/16 of Village Cuncolim. It was submitted that this Court should take on record this judgment which is a court record and read the same in evidence, which contains a subsequent event therein which has a direct bearing on the decision in the present appeal.

7. In order to consider the relevance of the production of this Judgment and Decree I have perused its contents and from the same it appears that that suit was founded upon a claim that the Appellants had developed land under Survey No.146/1, 146/15 and 146/16 believing that it had acquired all that area. The defence taken in that suit was that a part of that land claimed by the Appellant actually comprising land under Survey No.146/19 was owned by the Defendants therein and actually covered that part of land under Survey

No.146/1, 15 and 16 wherein the suit plots No.14 (in First Appeal no.36/2012), No. 75 (in F.A. 37/2012), Plot No.69 (in FA. 38/2012) and Plot No.23 (in F.A.No.39/2012) were situated. In that suit, the Court held that the area comprising survey No.146/19(which covered the suit plots in these appeals) at loco, actually was in ownership and possession of the defendants and that the plaintiff/appellants had no right over the same. That being the case, the production of Judgment and Decree dated 6/9/2023 in Regular Civil Suit No. 153/2012/C which had a direct bearing on the decision in these Appeals and to test whether the Decree passed by the Trial Court requires modification to make the relief complete becomes relevant. Hence, in my opinion, I allow the request of the Appellants to take on record Judgment and Decree dated 6/9/2023 and mark the same as Exhibit “A” to be read in evidence along with the record of the suits.

8. Further, during course of the hearing of the argument learned Advocate for the Appellants with consent of the Respondents in these Appeals produced a Plan which is countersigned by Shri Ramesh Raikar, Housing Engineer of the Appellants who is present in the court and identifies his signature at point X on the plan, to contend that the area under SurveyNo.146/19 claimed by the Defendants in RCS 153/2012/C actually covers the suit plots No.14, 23, 75 and 69 which are respectively depicted in pink, yellow, green and blue outline. The learned Advocate for the Respondents, accepts this position as to the location of these plots on that survey holding. This plan is marked by me as Exhibit “B”.

9. The Appellants have also placed on record during the hearing today an affidavit of the Housing Engineer Shri Ramesh Raikar who is present in the Court along with the Shri Siddhakant Arsekar, Assistant Engineer of the Appellants, to support the above contention that the suit plots are not in possession of the Appellants and at site, the suit plots are taken over and in possession of the Defendants in RCS No.153/2012. The Affidavit states that at present, and also in terms of the Judgment and Decree passed in RCS No.153/12/C, the Appellants are not in possession of the suit plots and, therefore, the Decree to the extent that the suit plots are required to be allotted to the Plaintiffs is inexecutable and the alternate direction to allot different plots, if available at site, would have to be adhered to. The said affidavit is taken on record and marked Exhibit "C".

10. To avoid any further controversy in the matter, I had directed the Appellant to produce on record a Plan depicting the entire housing scheme at Panzorconi Cuncolim, which was produced by the said Shri Ramesh Raikar, Housing Engineer of the Defendant and is taken on record and marked Exhibit "D". A copy of the plan was furnished to the Respondents/original Defendants who are present in the Court today either in person or through their representatives. The plan depicts the existence of eight free plots which can be allotted or auctioned to eligible persons, which are numbered as Plots 2, 3, 41, 42 in Sector B, Plots 76, 77, 78 and 79 in Sector D. From the area statement, these plots have varying areas and may not be equivalent in area to the four plots originally allotted to the Plaintiffs in the four suits. Considering this situation, the Plaintiffs/ Respondents were

called upon to express their desire as to whether they would be satisfied by allotment of plots from amongst these eight free plots, and to state their preference from amongst these eight plots. The Plaintiffs expressed their desire to opt for allotment of four plots as alternate relief in terms of the alternate direction in the operative part of the decree i.e. “and equivalent area of 300 sq. metres to the Plaintiffs”. The Plaintiffs/Respondents herein have chosen the following plots:

(A) Plot No. 3 (Section B area 285 sq. metres), to Govindraaj Shanbag in Civil Suit No.46/2009,

(B) Plot No. 41 (Sector B area 315 sq. metres) to Yeshwant Redkar in Civil Suit No. 23/2009.

(C) Plot No. 2 (Sector B area 285 sq. metres) to Vishwas V. Kankonkar in Civil Suit No.45/2009; and

(D) Plot No.42 (Sector B area 315 sq. metres) to Rajendra Mishra in Civil Suit No. 44/2009.

11. This procedure has been followed in order that the alternate relief, as directed in the decree, should be complete and the litigation between the parties should be brought to an end in a fair and just manner. Having considered the evidence on record, I find no infirmity in any of the impugned Judgments and Decrees passed by the Court below, which Judgments and findings therein shall stand confirmed. The point for determination is answered in the negative.

12. Consequently, all four appeals are dismissed and the impugned judgments and decrees dated 24/11/2011 in Civil Suits bearing No. 46,/2009, 23/2010, 45/2009 and 44/2009 stand confirmed with the modification that instead of allotment of Plots 14, 23, 75 and 69 respectively in First appeals No.36/2012, 39/2012, 37/2012 and 38/2012 to the Plaintiffs, the alternate relief is granted whereby the Appellants/Defendant Goa Housing Board is directed to allot Plots No. 3(Sector B area 285 sq. metres), 41 (Sector B area 315 sq. metres), 2 (Sector B area 285 sq. metres) and 42(Sector B area 315 sq. metres) respectively to the Plaintiffs in Civil Suits No.46/2009 (Govindraj Shanbag), 23/2010 (Yeshwant Redkar), 45/2009 (Vishvas V. Kankonkar) and 44/2009 (Rajendra Mishra). The Decree shall stand modified to that extent.

13. The Defendant is directed to hand over possession of these plots to the respective plaintiffs from survey No.146/15 of Village Cuncolliem.

14. For the purpose of handing over possession of these plots to the respective Plaintiffs, and in order to facilitate the entire process of allotment and handing over possession, it is directed as follows :

(a) Each of the Plaintiffs shall make an Application/Letter to the Appellant/Defendant No.1 with a request to allot Plots selected by them as set out in para 12 above within one week of this Order;

(b) The Appellant Board shall by its executive decision allot the aforementioned four plots in the manner stated in para 12 above to each of the Plaintiffs within a period of 4 weeks of filing such request.

(c) The Appellant Board is directed to hand over possession of the allotted plots to the Plaintiffs without any delay.

(d) The Appellant Board shall obtain all necessary permissions/approvals including final N.O.C. from the competent authority within a period of 8 weeks.

(e) If any application is filed for such permission / N.O.C to the competent authorities of Respondent No. 2, such authorities shall grant the permission as expeditiously as possible and not exceeding period of 45 days from the date of application.

(f) Upon receipt of final N.O.C. from the competent authorities including Municipal Council, the Appellate Board will intimate the same to the Respondent No. 1 within 15 days of the NOC, calling upon the Plaintiffs to make the balance payment of the allotment. Since the area of the Plots to be allotted is different from the area of the Plots allotted in the agreement, pro-rata increase or decrease balance payment will be effected by the Plaintiffs to the Defendant.

(g) Upon receipt of the balance payment the Appellant/Defendant will forthwith handover the possession of the Plots allotted to the respective Plaintiffs in any case not later than 4 weeks from the payment.

(h) The Plaintiffs shall erect the building in the allotted Plots within a period of 3 years from the date of handing over of possession of the Plots and intimate completion thereof to the Defendants.

(i) That upon receipt of the intimation of the completion of the building the respective plots allotted shall be conveyed in favour of each of the Plaintiffs by executing Deed of Sale in favour of the Plaintiffs in terms of the Regulations of the Appellant Board i.e. The Goa Housing Board (Registration, Allotment and Sale of Plots) Regulations 1982, as amended by Regulations, 2001.

(J) The balance payment to be made by the Plaintiffs for their respective plots shall be made within 15 days of the Appellants/Original Defendants notifying the allottees of the same.

15. At this juncture, learned Advocate for the Appellants submits that considering the long duration of time that has elapsed from the date of allotment, the Plaintiffs be directed to pay some interest on the balance amount due on taking over possession. He submits that in the interest of justice, it would be in the fitness of things to direct at least the bank rate of interest of 6% per annum from the date of allotment, which would be the fair price to be paid for the newly allotted plots at today's value. Considering that the Plaintiffs were required to litigate since the year 2011 and further considering that the Appellants/Defendants in the suit appeared to have knowledge that the original suit plots were in fact not available at site and never made this fact a part of the record of this Court, I reject this submission

as it would be unfair, considering the conduct of the Appellants, to saddle the original plaintiffs with any additional financial burden.

16. For the reasons stated above, the Appeals stand dismissed. However, the impugned decrees stand modified in terms of the directions contained in paragraphs 12, 13 and 14. Decree to be drawn accordingly.

VALMIKI SA MENEZES, J.

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S MHAMAL

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