

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 313 OF 2023.

DR. SUBHASH P. P. DESAI AND ANR. BOTH
REP. BY POA PRASHILA C. NAIK GAUNKAR ... Petitioner
VS
ALCHEMIST ASSET RECONSTRUCTION
COMPANY LTD. REP. BY AUTH. OFFICER,
AKSHAT SHARMA. ...Respondent.

Mr. Rohan Rama Dessai, Advocate for the petitioners.

Mr. S. D. Lotlikar, Senior Advocate with Mr. J. Karn and Mr. K. Batura, Advocate for the respondent.

CORAM: PRAKASH D NAIK, J

DATED: 8th AUGUST 2023

ORAL ORDER:-

1. Petition is preferred under Article 227 of the Constitution of India challenging the judgment and order dated 17.4.2023 passed by learned Additional Collector-II, South Goa, District Margao, dismissing the appeal preferred by the petitioners and order dated 22.2.2023 passed by the Deputy Collector and SDO Canacona allowing the appeal preferred by respondent setting aside the mutation order passed by Mamlatdar.

2. Petitioners through power of attorney filed an application for mutation on 9.11.2021 to include their names in the occupant columns of the survey holding viz. 101/1 and 101/3 of village Agonda. Mutation application was registered as mutation case No.Mam/Mutation/14535/Agonda/2021. Mamlatdar allowed the application for mutation filed by the petitioners. Respondent filed an appeal against the order of Mamlatdar along with application for condonation of delay which was registered as Mutation Appeal No.3/2022. Delay was condoned. The Deputy Collector and SDO allowed the appeal filed by the respondent vide judgment and order dated 22.2.2023 and set aside the mutation order. Matter was remanded back to the Mamlatdar to decide it fresh on its own merits.

3. Petitioners filed an appeal before the Collector of South Goa at Margao challenging the judgment and order dated 22.2.2023. Appeal was dismissed by judgment and order dated 17.4.2023.

4. Learned Advocate for the petitioners submitted that authorities had erroneously concluded that the respondent was necessary party for deciding the application for mutation filed by the petitioners. The name of respondent and his alleged predecessor was not reflected in survey records of the

properties. There is decree of declaration of ownership and possession in respect of the properties in favour of the petitioners and there was acquisition of right in terms of section 96 of Goa Daman and Diu Land Revenue Code 1968 ("The Code" for short). Civil Suit and application for recall of consent decree was pending before the Civil Court. The issue of title is to be decided by the Civil Court. Scope of mutation proceedings were limited to recording of acquisition of rights. Respondent was not a necessary party. Authorities ought not to have disturbed the order of the Civil Court. Petitioners are co-owners of the bigger properties bearing area 1125 sq. mts in the property surveyed under survey no.101/1 and area of 833.30 sq. mts in the property bearing survey no. 101/3 of village Agonda. In the survey records of properties bearing nos.101/1 and 101/3 of Village Agonda, there is original entry in the name of Mr. Sadanand Anand Naik Gaonkar and others. Due to trespass and construction activity of Sadanand Anand Naik Gaonkar, petitioners filed a Civil Suit before Civil Judge, Senior Division, Margao. Consent terms were filed in the suit and the suit was disposed of declaring the petitioners to be owners in possession of the properties.

5. The learned Advocate for the petitioners has relied following decisions:-

(i) Maina Sada Gaude alias Sangodkar and others Vs State of Goa, through its Chief Secretary, Secretariat and Another.¹

(ii) Shri Higinio V. de M. Viegas and ors. Vs Thomas Dias and anr.²

6. Learned Advocate for respondent submitted that no interference is warranted in the impugned order. Deputy Collector has remanded the application back to the Mamlatdar for fresh consideration. Deputy Collector has not set aside the Civil Court's order. Mamlatdar would decide the applications preferred by the petitioner as well the respondent. The petitioner had encroached upon the land mortgaged to the respondent in connivance with the defaulting borrower. Petitioners had filed Special Civil Suit No.21/2007 for injunction against the other co-owners of the properties. Vide interim order dated 31.08.2008, the Civil Court had held that petitioners are not owners of the properties and their relatives had already sold shares in their properties. Parties to the suit then entered

1 2013(2) ALL MR 652

2 2014 ALL MR 731

into consent terms culminating into consent decree dated 14.11.2008. Consent decree was collusive.

7. Petitioners case is that they are co-owners of the properties named as “**Tambdem**” having area of 1125 sq. mts in survey no.101/1 and area of 833.30 sq. mts in survey no.101/3 of village Agonda, Canacona. Based on the consent terms filed in the Court of Adhoc District Judge-2, Fast Track Court-II, Margao, Special Civil Suit No. 21/2007 was disposed of by declaring the petitioners as co-owners of the properties. Petitioners have acquired the said property and requested the Mamlatdar to mutate the survey record of survey nos. 101/1 and 101/3 of village Agonda by including the names of the petitioners in the occupant column of survey nos.101/1 and 101/3 of village Agonda, Canacona. Application was allowed.

8. The order passed by the Mamlatdar in Mutation Case no.Mam/Mutation/14535/Agonda/2021 was challenged by respondent. It was contended that respondent is assignee of the loan taken by one SIMA Hotels Private Limited wherein Dugal Projects Development Company Pvt. Ltd. were corporate guarantor for the loan. Land belonging to Dugal Projects Development Company Pvt. Ltd. including survey nos. 101/1 and 101/3 of village Agonda was mortgaged to financial institution.

SIMA Hotels Private Limited defaulted on loan and Civil Suit no.2654/1990 for recovery was filed by financial institutions against SIMA Hotels Private Limited and Dugal Projects Development Company Pvt. Ltd before High Court at Bombay. Court receiver was appointed who took possession of the property from Dugal Projects Development Company Pvt. Ltd. and SIMA Hotels Private Limited. The suit was transferred to Debt Recovery Tribunal wherein vide judgment and order dated 6.5.2022, Tribunal ordered recovery of Rs.6,04,77,858.50. Resolution Professional took possession from the Court Receiver and realised that mutation has not been carried out in survey records for the land purchased by Dugal Projects Development Company Pvt. Ltd. Respondent had also filed application dated 14.8.2020 with certifying officer/Mamlatdar for creating lien/mortgage in the name of respondent in respect of the land owned by Dugal Projects Development Company Pvt. Ltd. in survey no.101/1 and 101/3. While the said application was pending, the petitioner filed an application for mutation of the property before the Mamlatdar which was allowed. The contention of the respondent is that petitioners are not the owners of any portion of the property in survey no. 101/1 and 101/3 of village Agonda as their forefathers had already sold

their shares to Dugal Projects Development Company Pvt. Ltd. Petitioners had played fraud by using consent decree dated 14.11.2008 which is under challenge.

9. First Appellate Court vide order dated 22.2.2023 allowed the appeal preferred by respondent and set aside impugned mutation order passed by the Trial Court and cancelled the mutation entry in favour of the petitioners. The trial Court was directed to give fair opportunities to the parties and decide the matter on merits. Thus, the respondent had preferred application for mutation and petitioners had also preferred application for mutation. Respondent is also claiming right in respect of the suit properties and apparently pending their application, the Mamlatdar had allowed the application preferred by the petitioners. It is pertinent to note that Deputy Collector while allowing the appeal preferred by respondents has not disturbed decree passed by the Court and has only remanded the application for mutation preferred by respondent as well as petitioners after setting aside the order passed by the Mamlatdar.

10. Petitioners were aggrieved by the order passed by Deputy Collector and SDO and hence preferred appeal before Additional Collector, South Goa under Section 188(2)(a) of the Code.

Petitioners contended before said authority that order dated 22.2.2023 is erroneous by way of consent decree dated 14.11.2008 passed by Civil Judge, Senior Division, Margao in Special Civil Suit No. 21/2007. Petitioners were declared as owners in possession of portion of the suit property and the name of the forefather are appearing on form I and XIV. Respondent is stranger to the proceedings and has no locus to challenge the mutation order. On the other hand, respondent contended that consent decree dated 14.11.2008 is collusive in nature and challenged by respondent before the Civil Judge by preferring CMA No. 89/2022 which is pending.

11. Additional Collector vide order dated 17.4.2023 observed that Dugal Projects Development Company Pvt. Ltd. filed an application dated 20.3.2023 before the Mamlatdar seeking entry of name of Dugal Projects Development Company Pvt. Ltd. as co-owner under Section 96 of the Code. Application was preferred for creating lien/mortgage in respect of the properties mentioned in the memorandum of entry dated 30.6.1998. No objection was issued by the respondent for mutation filed by the Dugal Projects Development Company Pvt. Ltd. Mamlatdar was hearing on the application of Dugal Projects Development Company Pvt. Ltd and entertained subsequent application filed

by the petitioners for the same survey number and passed mutation order in favour of the petitioners without notice to Dugal Projects Development Company Pvt. Ltd through its resolution professional or respondent. Additional Collector is a Second Appellate Authority. The Second Appeal as per law can be entertained on the substantial questions of law. There are pending trial disputes, which parties need not enter into as appropriate Civil Court are seized with the matter. There is no infirmity in the order passed by the Deputy Collector.

12. Thus orders passed by Deputy Collector as well as Additional Collector are well reasoned. Authorities have set aside the order of the Mamlatdar and directed to give opportunities to the parties and decide the matter on merits. The orders does not amount to setting aside decree referred to hereinabove.

13. In the light of the factual analysis referred to above, there is no reason to interfere in the impugned orders. Authority would decide the matter on its own merits after giving opportunity to the parties.

14. Decisions relied upon by the learned counsel for the petitioner were delivered in facts of those cases. There is no debate about law laid down therein. However, in the present

case no interference is warranted.

15. Petition is devoid of merits and deserves to be dismissed.

ORDER

Writ Petition No.313 of 2023 is rejected.

PRAKASH D NAIK, J.

VINITA VIKAS
NAIK

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