

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO. 326 OF 2023
WITH
CIVIL APPLICATION NO. 58 OF 2023**

FRAZER DSILVA THR. POA RAKESH L.
JAIN ... Petitioner.
VS
STATE REP. BY MAMLATDAR MORMUGAO
TALUKA AND 3 ORS. ...Respondents.

**WITH
WRIT PETITION NO. 327 OF 2023
WITH
CIVIL APPLICATION NO. 59 OF 2023**

FRANCISCO LOURENCO DSILVA ... Petitioner.
VS
STATE REP. BY MAMLATDAR AND 3 ORS. ...Respondents.

Mr. C. Fernandes, Advocate for the Applicant.

Mr. P. Arolkar, Addl. Govt. Advocate Advocate for Respondents.

**CORAM: M. S. KARNIK, J.
DATED: 11th JULY 2023**

ORAL ORDER:

1. Heard Mr. C. Fernandes, learned Advocate for the petitioners and Mr. P. Arolkar, learned Addl. Govt. Advocate for respondents.

2. The challenge in these petitions under Article 227 of the Constitution of India is to an order dated 8.6.2023 passed by the Deputy Collector and SDO Mormugao, Vasco Da Gama, Goa/respondent no. 2. Since common issues are involved, the petitions are heard together. The petitioners are brothers, each in

occupation of their respective portion of the alleged encroached land.

3. The respondent no.2 issued a show cause notice dated 17.5.2023 to the petitioners at the instance of the Mamlatdar of Mormugao, taluka. It was alleged that the petitioners had carried out encroachment by way of constructing residential houses admeasuring an area of 160 sq. mts. and 170 sq. mts. respectively on the land bearing PT sheet No. 147 chalta no.01(part) of Vasco without obtaining prior permissions of the concerned authorities. The land in question belongs to the Comunidade of Mormugao, Vasco. It is stated in the show cause notice that putting up the said unauthorised construction is punishable under Section 4 of the Goa Land (Prohibition on Construction) Act 1995.

4. The petitioners duly appeared before the Respondent no. 2 and submitted that the houses were assessed to house tax in the name of the petitioners. It was further submitted that the said houses were originally constructed by the parents of the petitioners namely late Felix D'Silva and late Mrs. Zemira D'Silva in the year 1982. Some time in the year 1996-1997, part of the said house was acquired by the Government for the construction of the existing Railway over bridge and the Government had allotted alternate land for the rehabilitation of the persons who were to be displaced due to the construction of the said over bridge. According to the petitioners their parents were never given the possession of the said alternate

plot or land. It is further submitted that some compensation was paid to the parents of the petitioners.

5. The land in question admittedly is of the ownership of the Comunidade of Mormugao. It was the stand of the Comunidade before the competent authority that the petitioners are rank encroachers on the Comunidade land and no permissions whatsoever were granted by the Comunidade as regards to the construction of said structure. Comunidade submitted that they have no objection to demolish the same and restore the land to its original position. The Deputy Collector directed the petitioners to remove the illegal encroachment in the aforesaid land within 10 days.

6. The land in question is required for public purpose. Admittedly there is no permission on record for construction of the said houses which are sought to be demolished. Moreover there is nothing on record to show that Comunidade had authorised the petitioners' occupation over the said land. In fact, it is the case of the petitioners that the houses constructed by his parents were acquired towards which an alternate site were allotted. It was the petitioners parents who did not accept the offer of an alternate site. It is submitted by the learned counsel for the petitioners that for part of the house which was demolished, some compensation was paid to the parents of the petitioners. It is therefore his submission that even the houses in respect of which is in petitioners possession and which is now

sought to be demolished, the petitioners are entitled for compensation.

7. The respondent no.2 has observed that on record is a letter dated 21.3.1995 issued to the petitioners father by the Deputy Collector and SDO, Mormugao that the area encroached by the petitioners father was only 74 sq.mts compared to the present encroachment of 330 sq. mts including the area of encroachment by the brother of the petitioner.

8. The learned counsel for the petitioners invited my attention to the noting at page 38 of the paper book dated 20.7.1997 to submit that the petitioners' father was accommodated in the nearby area from where the earlier house was demolished. Hence, they were not allotted another plot. This submission is made in order to contend that the petitioners cannot be termed as rank encroachers. From the record it is apparent that petitioners parents were in occupation of a house admeasuring 74 sq.mts, part of which was demolished. The land belongs to the Comunidade. It is therefore, obvious that the petitioners have made further encroachment and carried out unauthorised construction.

9. The order passed by the respondent no. 2 is well reasoned. I do not see any reason to interfere with the impugned order. Hence, the petitions are dismissed and stand disposed of accordingly. All

pending applications are disposed of. No order as to cost.

10. At this stage learned counsel for the petitioners submitted that the petitioners may be granted four weeks time to vacate the premises. Subject to the petitioners filing an undertaking within a period of one week that the premises will be vacated within a period of four weeks from today, the impugned order shall not be implemented for a period of four weeks from today.

M. S. KARNIK J.

VINITA VIKAS NAIK  Digitally signed by VINITA VIKAS
NAIK
Date: 2023.07.12 17:37:33 +05'30'