

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.535 OF 2019

DIVYA DEVENDRA
GOVENKAR

....PETITIONER

Versus

STATE, THR. MAMLATDAR
OF TISWADI, PANAJI AND 2
ORS.

....RESPONDENTS

Mr Joaquim Godinho, Advocate for the Petitioner.
Ms Ketaki Pednekar, Advocate for Respondent No.2.
Ms Varsha Parab, Advocate for Respondent No.3.

CORAM : M. S. SONAK, J.

DATE : 23rd FEBRUARY 2023

ORAL ORDER :

1. Heard Mr J. Godinho for the Petitioner, Ms Ketaki Pednekar for respondent no.2 and Ms Varsha Parab for respondent no.3.

2. The challenge in this petition is to the order dated 19.11.2018 by which the Tribunal has declined the Petitioner leave to file an appeal against the order dated 27.06.2018 passed by the Deputy Collector, Panaji.

3. Mr Godinho, the learned Counsel for the Petitioner, states that the Petitioner is the occupant of the structure in respect of which the Deputy Collector ordered demolition on 27.06.2018. He states that the Petitioner possessed this structure in pursuance of an Agreement of Sale. He states that leave should therefore be granted to the Petitioner to appeal the order dated 27.06.2018, directly affecting the Petitioner.

4. Ms Pednekar and Ms Parab point out that the structure in question was not backed by any conversion sanad or any permissions from any authorities. They point out that even if the Petitioner's claim based upon the Agreement of Sale is to be accepted as correct, still Agreement of Sale never creates any rights in the property. Therefore, they submit that the impugned order should not be interfered.

5. The rival contentions now fall for my determination.

6. Firstly, a mere Agreement of Sale creates no interest in the property based upon which leave could have been insisted as a matter of right. Secondly, respondents nos. 2 and 3, from whom the Petitioner has purchased the suit structure, stated that the same was not backed by any conversion sanad or other permissions from the authorities. Therefore, the Petitioner cannot put up a case better than respondents no.2 and 3 because the Petitioner's alleged interest in the suit structure is based upon the Agreement of Sale by respondents nos.2 & 3.

7. Accordingly, there is no jurisdictional error in the impugned order declining leave to the Petitioner.

8. Mr Godinho, however, states that even if it is assumed that there is some illegality or irregularity in the suit structure the Petitioner occupies, the Petitioner can always apply for regularisation. Therefore, he submits that at least this opportunity should not be denied to the Petitioner.

9. The plea for regularization presupposes the illegality or irregularity of the structure. Therefore, the Petitioner does not need to challenge the Dy Collectors' order to apply for regularisation.

10. The learned Counsel for the respondents dispute the above position. However, considering Mr Godinho's submission that the Petitioner resides in the suit structure, the Petitioner is granted liberty to apply for regularisation, assuming that the same is permissible under the law.

11. Mr Godinho states that such an application will be made within a month from today. If such an application is indeed made, then a copy of the same should be served upon respondents nos.2 & 3 before the same is filed.

12. The competent authority must dispose of such an application within six months from the date the same is filed. Finally, the competent authority must grant an opportunity of hearing to the petitioner and respondent nos.2 & 3 and pass final orders.

13. If the regularisation application is found to be not maintainable or otherwise no regularisation is possible, the impugned order of the Deputy Collector dated 27.06.2018 should be enforced without much delay. If the regularisation order is made, there would be no occasion for implementing the impugned order dated 27.06.2018.

14. Accordingly, this petition is disposed of in the above terms. There shall be no order for costs. All concerned to act on an authenticated copy of this order.

M. S. SONAK, J.

NITI K
HALDANKAR

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