

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.609 OF 2014**

BHAGWATI RAVALNATH
DEVASTHAN COMMITTEE,
through its Attorney,
having office at Malpe, Pernem-Goa. Petitioner.

Versus

1) GOA HUMAN RIGHTS
COMMISSION,
through its Secretary, having office at Old
Directorate of Education Building,
Panaji-Goa.

2) THE DIRECTOR OF
PANCHAYATS,
Government of Goa, Directorate of
Panchayats, Junta House, Panaji-Goa.

3) THE SARPANCH, Village Panchayat
of Virnoda,
Virnoda, Pernem-Goa.

4) THE PRINCIPAL CHIEF
ENGINEER,
Government of Goa, Public Works
Department, Altinho, Panaji-Goa.

5) SHRI PRAKASH L.
KAUTHANKAR, resident of Malpe,
Pernem-Goa (Major in age).

6) KESHAV V. PANSHIKAR,
Resident of Malpe, Pernem-Goa.

..... Respondents.

Mr Parikshit Sawant, Advocate for the Petitioner.

**Mr Iftikhar Agha, with Mr Ketan Morajkar, Advocates
for Respondents No. 5 & 6.**

CORAM : M. S. SONAK, J.

DATE : 23rd February 2023.

ORAL JUDGMENT:-

1. Heard Mr Parikshit Sawant for the Petitioner and Mr Iftikhar Agha for Respondents No.5 and 6. Other Respondents, though served, do not appear at the stage of the final hearing.

2. With the consent of the learned Counsel for the parties, the Petition is taken up for final disposal considering the order dated 5th December 2014. By this order, Rule was granted in this Petition. Accordingly, the hearing was expedited, and this matter was directed to be placed for a final hearing in February 2015.

3. The Petitioner-Devasthan, under the Devasthan Regulations, challenges the order/report/recommendations dated 4th June 2014 made by the Goa Human Rights Commission (GHRC), primarily on the ground that the GHRC lacked the

jurisdiction to entertain the complaints made by Respondents No.5 and 6 about denial of vehicular access through the Devasthan's property to their respective properties.

4. Respondents No. 5 and 6 filed a complaint dated 3rd September 2012, transcribed in paragraph 2 of the impugned order. The complaint reads as follows :

*"1) Prakash L. Kauthankar,
2) Keshav V. Panshikar,
Malpe-Pernem-Goa
Date : 03/09/2012*

*To,
The Sarpanch
Village Panchayat Virnoda, Pernem — Goa.*

sub: Request for providing access road to our private property at Mulvir Temple at Malpe, Pedne, Goa.

Sir,

We are a resident malpe pedne Goa, having our ancestral property in the proximity of Mulvir Temple. In the event of untoward incidents and emergencies, we have been facing a number of hardships since generations.

It is regrettable to note that even after the period of nearly 50 years of Goa's liberation we have been deprived of our basic right of having the facility for access road to our vehicle to our own property.

I hope you will definitely agree and appreciate our request, to be thoughtful and sympathetic to relieve us from our anguish and provide us with access road to our private property.

*Thanking you,
Yours faithfully,*

Sd/-

Sd/-

2) Prakash Kauthankar

2) Keshav V. Panshikar.

Copy to

1) The Hon. Chief Minister of Goa Mr. Manohar Parrikar.

2) The Hon. MLA & Speaker of Goa Mr. Rajendra Arlekar.

3) The Hon. Panchayat Minister of Goa Mr. Laxmikant parsekar.

4) The Hon. PWD Minister of Goa Mr. Sudin Dhaviikar.

5) The Hon. Leader of opposition Of Goa Mr. Pratapsing Rane.

6) The president — Devastan Committee — Pedne Goa.

7) The Director Human Resource Development. Human Rights Commission

8) The Director of Panchayat."

5. Mr Agha, however, points out that the complaint incorporated by the GHRC in its impugned order was a complaint made to the Village Panchayat of Virnoda. Further, he submits that another complaint, dated 3/1/2013, was made to the Chairman of the GHRC, and the same is on page 21 of the paper book of this Petition.

6. There is no clarity on whether the GHRC took cognizance of the complaint dated 3/1/2013. However, since the issue of

jurisdiction is now raised, even the contents of the complaint dated 3/1/2013 are transcribed below for the convenience of reference :

"1) Prakash L. Kauthankar,

*2) Keshav V. Panshikar,
Malpe-Pernem-Goa*

Date : 03/01/2013

To,

The Chairman,

Human Right Commission, Panaji-Goa.

Respected Sir,

In continuation to our earlier letter and their after our meeting with you on 06/12/2012, we take this opportunity to elaborate little more on the issue to express our expectations from your good self.

1) The survey plan availed from Directorate of Land Survey does not show any sign of structure, either of steps or of 'pimpal katta' on the road. The relevant copy of the plan is enclosed with this letter for your pertual.

2) The public road, we have been asking for is in "PWD's power which is a government authority, here your interference is most justifiable.

3) The present government road in use, is wide enough for accommodating our vehicles, and as such an alternative arrangement of provisional road is not necessary.

4) You will also agree that the road is one of the basic necessity for our life, which is closely linked with our health, education, transport, emergencies and what not.

In the democratic country like ours, every citizen has got Right of Duties towards the nation and Right of Demand for basic necessities. It is regrettable to mention that in spite of our repeated appeals to the Panchayat and Devasthan Committee they have done nothing.

We are sure the competent legal body and authority like Goa Human Rights Commission will make timely interference with the concern authority to give justice to the common citizens like us.

In support of our demand we have pleasure to enclose with this a copy of joint declaration taken from our nabors for your kind consideration and to ascertain the authenticity of the matter. We are confident, you will take necessary initiative to guide us and find out the solution.

We always remains.

Yours faithfully,

Sd/-

Sd/-

1) Mr Prakash Kauthankar 2) Keshav V. Panshikar."

7. On perusal of both complaints, it is evident that Respondents No.5 and 6 allege that they do not have appropriate access or a road through Devasthan's property and up to their personal properties. The complaint is not that there is no access at all. The complaint is that there is no road over which a vehicle can pass connecting the existing public roads to the personal properties of Respondents No.5 and 6. The complaint is that the Public Works Department (PWD) makes such roads available to

provide vehicular access to the personal properties of Respondents No.5 and 6. Mr Agha submits that the complaint is about a public road blocked by the Devasthan for several years.

8. Based on the complaint dated 3/1/2013 (referred to in paragraph 2 of the impugned order), the GHRC took cognizance and issued notices to the Petitioner and Respondents No.2, 3 and 4. Additionally, the GHRC members conducted an inquiry and inspected the site. Finally, the GHRC concluded that there are five steps in the Devasthan property. Therefore, if even a part of such steps is removed, vehicular access can be provided by Devasthan and the PWD to the house properties of Respondents No. 5 and 6.

9. Accordingly, the GHRC, by the impugned order/report, made the following recommendations :

"In the above background, we make the following recommendations:

The steps which have been unauthorisedly constructed without taking any permission either from the Panchayat or from PWD are required to be demolished so that vehicular access can be provided to the occupants to properties abutting the road. The question whether only part of the steps should be demolished or the entire steps and the pimpal ped should be demolished, is a matter left to the discretion of the PWD. PWD can make

appropriate arrangement to ensure that only vehicles can go upto the houses of the Complainants and not upto the temple to prevent any unnecessary clogging of the road near the temple."

10. Mr Sawant, learned Counsel for the Petitioner, submits that providing vehicular access through the property of the Devasthan was a purely civil dispute concerning property rights. He presents that the GHRC had no jurisdiction even to entertain such a dispute, considering the provisions of Section 12 of the Protection of Human Rights Act, 1993 and Regulation 9 of the Goa Human Rights Commission (Procedure) Regulations, 2011. He submits that even on merits, such steps have existed for several years, and Respondents No.5 and 6 have no right to insist that such steps should be removed to provide private vehicular access. He relies on *G. Manikamma and ors. vs. Roudri Cooperative Housing Society Limited and ors.*¹ and *Leelamma Rajan @ Sosamma vs. State of Kerala and ors.*² in support of his contentions.

11. Mr Agha, learned Counsel for Respondents No.5 and 6, defends the impugned order/recommendations based on the reasoning reflected therein. First, he submits that access to one's house is a human right; therefore, the GHRC had the

1. (2014) 15 SCC 197

2. WP (C) No. 13288 of 2021 decided on 22/9/2021

competence and jurisdiction to entertain the complaint. He offers that Devasthan has constructed the steps on Government property or a public road. Finally, he submits that permissions from any authorities do not back the construction of steps; consequently, the same is illegal and unauthorized. Mr Agha, therefore, presents that this Petition may be dismissed.

12. The rival contentions now fall for my determination.

13. In this Petition, by order dated 22nd September 2014, this Court had stayed the operation of the impugned order/recommendations. Further, after the Rule was issued on 5th December 2014, the interim relief continued until the Petition's final disposal. Thus, the interim relief has operated from 2014 till date.

14. The GHRC is constituted under the Protection of Human Rights Act 1993 (said Act). Its functions are spelt out in Section 12 of the said Act, and the same read as follows :

' 12. Functions of the Commission.—The Commission shall perform all or any of the following functions, namely:—

(a) inquire, suo-motu or on a petition presented to it by a victim or any person on his behalf 1[or on a direction or order of any court], into complaint of

—

*(i) violation of human rights or abetment thereof;
or*

*(ii) negligence in the prevention of such violation,
by a public servant;*

*(b) intervene in any proceeding involving any
allegation of violation of human rights pending
before a court with the approval of such Court;*

*(c) visit, notwithstanding anything contained in
any other law for the time being in force, any jail or
other institution under the control of the State
Government, where persons are detained or lodged
for purposes of treatment, reformation or protection,
for the study of the living conditions of the inmates
thereof and make recommendations thereon to the
Government;*

*(d) review the safeguards provided by or under the
Constitution or any law for the time being in force
for the protection of human rights and recommend
measures for their effective implementation;*

*(e) review the factors, including acts of terrorism,
that inhibit the enjoyment of human rights and
recommend appropriate remedial measures;*

*(f) study treaties and other international instru-
ments on human rights and make recommendations
for their effective implementation;*

*(g) undertake and promote research in the field of
human rights;*

*(h) spread human rights literacy among various
sections of society and promote awareness of the
safeguards available for the protection of these rights
through publications, the media, seminars and other
available means;*

(i) encourage the efforts of non-governmental organization and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the promotion of human rights."

15. Section (2)(d) of the said Act defines "*human rights*" to mean the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

16. In the exercise of the powers conferred by Section 10(2), read with Section 29 of the said Act, Regulations have been framed called "Goa Human Rights Commission (Procedure) Regulations, 2011" (said Regulations). Regulation 9 provides that the Commission may not entertain the complaints "*which raise dispute of civil nature, such as property rights or contractual obligations*". This regulation also provides that the Commission may not entertain complaints "*which do not make out any specific violation of human rights*".

17. From a perusal of the two complaints made by Respondents No.5 and 6 in denying vehicular access to their houses through the Devasthan's property, it is difficult to accept that such complainants relate to the infringement "*human rights*" of Respondents No.5 and 6. Instead, the complaints raise a dispute

of civil nature concerning vehicular access through Devasthan's property to the houses or the properties of Respondents No.5 and 6. There are routine civil disputes based upon easementary rights or otherwise. These are regular civil disputes based upon allegations of illegal construction of steps, etc.

18. From the perusal of the two complaints, it is evident that there was not even any allegation of illegal construction. The only plea was to provide for road or vehicular access through Devasthan's property and up to the properties or houses of the two complainants. Though the complaint dated 3/1/2013 refers to the declaration from neighbours, it is evident that this was purely a civil dispute involving the two complainants and Devasthan. The GHRC should not have entertained such a dispute given the provisions of Section 12 of the said Act and Regulation 9 of the said Regulations.

19. In *G. Manikyamma and ors.* (supra), the Human Rights Commission entertained a complaint about encroachment on some public properties and directed the removal of hutments. Further, directions were issued to rehabilitate the hutment dwellers after their huts were removed and they were evicted from the encroached properties.

20. The Hon'ble Supreme Court, on considering the provisions of Section 12 of the said Act, held that the Human Rights Commission was not a competent forum for examining the complex issues like whether the property encroached upon was indeed Government property and whether the hutments had encroached upon the same. The Hon'ble Supreme Court held that the Human Rights Commission would not be competent to examine such issues. Both the First Respondent-Society and the encroachers wrongly invoked the jurisdiction of the Human Rights Commission instead of pursuing the appropriate remedies available to them in law, and the Human Rights Commission was too willing to exercise authority without any jurisdiction. After considering Section 12 of the said Act, the Hon'ble Supreme Court held that there was nothing in Section 12 which authorizes the Human Rights Commission to adjudicate upon the disputes of title and possession of the property.

21. In *Leelamma Rajan @ Sosamma* (supra), the Division Bench of the Kerala High Court, in the context of the provisions of Section 12 of the said Act and Rule 17 of its Regulations, held that a complaint which was primarily relating to a pathway to the house of the complainant being a civil dispute, could not have been entertained by the Kerala State Human Rights Commission.

The Division Bench held that such a complaint should have been dismissed in limine because Regulation 17 had provided that the issues relating to civil disputes should be dismissed in limine by the Commission.

22. If it was indeed the case of Respondents No.5 and 6 that any illegal or unauthorized steps had been put up by the Devasthan without obtaining permissions from any authorities, then it was for the Complainants to have taken out appropriate proceedings under the Goa Panchayat Raj Act or to have instituted a civil suit on the issue of access. But, there was no scope to approach the GHRC to secure adjudication in such matters. In any case, the GHRC had no jurisdiction to entertain such complaints or adjudicate upon such disputes. The two decisions relied upon by Mr Sawant support Devasthan's contention. Based upon the above-referred provisions of the said Act and Regulations, and the decisions cited, the GHRC was not quite competent to entertain the complainant's grievance about vehicular access.

23. Accordingly, for all the above reasons, the impugned order/report/recommendations dated 4/6/2014 is set aside, and the Rule is made absolute in terms of prayer clause (A) of this Petition.

24. However, it is clarified that this order will not prevent Respondents No.5 and 6 from availing of appropriate remedies that the law provides them for the redressal of their grievances. The observations in this Judgment and Order are only to determine whether the GHRC had any jurisdiction to entertain complaints of this nature. Such observations do not decide the issues of rights, title, access, etc. All such matters are expressly left open.

25. The Rule is made absolute in the above terms. There shall, however, be no order for costs.

M. S. SONAK, J.

SANTOSH S MHAMAL
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