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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 292 OF 2021

Mr. Vishnu Buka Shelar, Aged 40 years,
r/o H. No. Pelawada, Village Rawona,
Sattari-Goa.

... PETITIONER

Versus

1. State of Goa, Through its Chief Secretary, Secretariat, Alto Porvorim, Bardez-Goa.
2. The Assistant Engineer, Public Work Department, Valpoi, Sattari-Goa.
3. Village Panchayat Keri, Through its Secretary, Village Panchayat Keri, Sattari-Goa.
4. Shri Krishna Gopal Shelar, Aged 45 years,
5. Shri Rohidas Gopal Shelar, Aged 50 years,
6. Smt. Shakuntala Gangaram Shelar, Aged 40 years, r/o H. No. Pelawada, Village Rawona, Sattari-Goa.

... RESPONDENTS

Mr. V.R. Tamba with Mr. Paresh Sawant, Advocates for the Petitioner.

Mr. Manish D. Salkar, Government Advocate for Respondent Nos. 1 and 2.

Mr. Ashwin D. Bhobe with Ms. Ramona Prazares, Advocates for Respondent No. 3.

CORAM: B.P. DESHPANDE, J.

DATED: 31st AUGUST 2023

ORAL JUDGMENT:

1. Heard learned Counsel Mr. Tamba who appears along with Mr. Paresh Sawant for the Petitioner, learned Government Advocate Mr. Manish Salkar appearing for Respondent Nos. 1 and 2 and Mr. Ashwin D. Bhobe appearing for Respondent No. 3. None present for the other Respondents.

2. Rule. Rule made returnable forthwith. This matter is taken for final disposal with the consent and at the request of the learned Counsel for the parties.

3. The challenge in the present Petition is to the order passed by the Mamlatdar dated 29.11.2019 and thereafter, the order passed by the learned Additional Collector in Revision No. 1/2020 dated 12.04.2021.

4. Mr. Tamba appearing for the Petitioner would submit that Survey No. 13/3 of Village Gonteli in Sattari Taluka is a private property wherein the Village Panchayat and the PWD started

construction of a road without acquiring the said land or without obtaining NOC from the owners. He submits that the Petitioner received a notice from the Mamlatdar, Sattari Taluka, Valpoi dated 13.03.2019 which refers to some note and the complaint filed by Respondent Nos. 5 to 7 and others, claiming therein that the Petitioner has obstructed the traditional kacha road and asphaltting of it. The Petitioner then appeared before the learned Mamlatdar who passed the impugned order dated 29.11.2019 thereby restricting the present Petitioner from interfering with the construction of the road by the PWD in Survey No. 13/3.

5. Mr. Tamba would submit that such an order was passed without considering any provisions under the Mamlatdar's Court Act or under the Land Revenue Code. The order nowhere refers to the powers of the Mamlatdar to take up such proceedings and issue directions practically restraining the Petitioner from obstructing the road in Survey No. 13/3. Mr. Tamba would then submit that the Petitioner challenged the said order of the Mamlatdar by filing Revision Application under Section 22(2) of the Mamlatdar's Court Act before the Additional Collector. However, the said Application was dismissed on 12.04.2021. He submits that the observations in the impugned order are perverse

as no record was placed to show that the Village Panchayat passed any resolution for the construction of a road through Survey No. 13/3 and/or acquired such a portion. He submits that the decree which the learned Additional Collector has referred to was a consent decree passed between two private parties wherein some portion admeasuring 1,526 square metres was reserved as a road for the said parties. He submits that such a decree would not give any right to the Village Panchayat or PWD to construct the road without even acquiring the said land or obtaining NOC from the owners of the said property.

6. Mr. Salkar, learned Government Advocate for Respondent Nos. 1 and 2 submits that PWD was requested by the Village Panchayat to carry out asphaltting of the said kacha road and accordingly, the work started. However, he fairly conceded that a portion of Survey No. 13/3 was not acquired by the Government or by the Village Panchayat.

7. Mr. Bhobe appearing for Village Panchayat would submit that though a resolution was passed by the Village Panchayat to carry out construction of the road, it nowhere refers to Survey No. 13/3 of Village Gonteli in Sattari Taluka. However, he submits

that such a resolution was passed on the basis of a request of Gram Sabha.

8. The rival contentions fall for determination.

9. First of all, it is an admitted fact that the property in question is a private property. Though there is a decree passed on the basis of consent terms wherein there is a reference to reserving the particular area as the road to be used by the said private parties, the same would not give any right either to the Village Panchayat or to PWD to convert such portion into a public road. The consent decree is passed in Regular Civil Suit No. 5 of 1996 by the Civil Judge Junior Division, Sattari at Valpoi on the basis of consent terms by the respective parties. The consent terms which are incorporated in the decree read thus:

“CONSENT TERMS

1. That the plaintiff has filed this suit against the defendants in respect of landed property which is the subject matter of this suit bearing Sy. No. 13 sub-div 3 of Village Gonteli within the jurisdiction of Panchayat Keri, Taluka Sattari, admeasuring an area of 38,600 sq.mts.

2. *The total area is divided between plaintiff and defendants. Besides the above area a specified portion is marked as pathway or as common road as shown in the annexed plan. As there exists six dwelling houses the total area of 1800 sq. mts. is reserved at the rate of 300 sq. mts, to each existing house in the property as shown in the annexed, plan, which shall form part and parcel of this consent terms.*

3. *That the plaintiff is entitled for the total area of 17,637 sq. mts. forming part "B" and identified as plot B1, B2, B3 and B4 with corresponding plot area as 1090 sq. mts., 14,555 sq. mts., 1328 sq. mts. and 664 sq. mts. respectively as shown in the annexed plan.*

4. *That the defendants shall have and own the total area of 17,637 sq. mts. forming part "A" comprising eight plots identified from A1 to A8 as shown in the annexed plan. The defendant Krishna Gopal Cellar shall own two plots A1 and A2 with corresponding area of 2565 sq. mts. and 664 sq. mts. The defendant Rohidas Gopal Cellar shall have Plot A3 admeasuring 3655 sq. mts. and plot A4 with area of 1850 sq. mts. The defendant Gangaram Gopal Cellar will get plot A5 with area 1675 sq. mts., A6 with area 245 sq. mts. and A7 admeasuring an area of 664 sq. mts. The plot A8 is kept as common property with an area of 4449 sq. mts. forming part A, for the use and benefit to 3 defendants as mentioned above.*

5. *That the pathway and or common road is identified to the extent of 1526 sq. mts. and is shown in the plan annexed hereto.*

6. *That there are already six dwelling houses in the suit property belonging to different person marked from H1 to H6 on the plan and an area of 300 sq. mts. each per house is allotted and or retained to the respective house owners forming a total area 1800 sq. mts. from the suit property.*

7. *The above division is done by hiring the services of surveyor Mr. Shrikant Chari, Bicholim-Goa by the parties themselves as per their mutual understanding and in accordance with the settlement reached between them.”*

10. Condition No. 5 refers to a pathway and/or common road identified as 1,526 square metres and is shown in the plan annexed to the decree.

11. The above consent terms and the decree drawn by the Civil Court clearly show that the property bearing Survey No. 13/3 of Village Gonteli is private property and the same is divided among the Plaintiffs and the Defendants therein with a common

pathway/common road as shown in the plan annexed to the decree.

12. Admittedly, there is no resolution passed by the Village Panchayat to asphalt the said portion of 1,526 square metres identified as a pathway/common road in the plan annexed to the decree. Similarly, there is no resolution passed by the Village Panchayat either to acquire such a portion or to obtain NOC from the co-owners so as to convert it into a road. Therefore, the request made by the Village Panchayat to PWD to asphalt the said road without acquiring the said portion or without obtaining NOC from the co-owners is clearly affecting the rights of the co-owners over the said property. Though the decree refers to a common road/pathway, it is between the Plaintiffs and the Defendants who agreed to maintain such an area as a common pathway/common road for the purpose of the said parties to be used. This by no stretch of imagination gives right to the Panchayat or the PWD and that too, without obtaining NOC from the concerned co-owners for converting it into a road.

13. Be that as it may, the question remains as to the provisions under which the learned Mamlatdar issued notices and took up

the matter thereby restraining the Petitioner from obstructing the work of construction of the road in Survey No. 13/3. The impugned order passed by the learned Mamlatdar dated 29.11.2019 is clearly silent about the powers exercised and the provisions under which such proceedings were taken up.

14. The learned Additional Collector in the impugned order dated 12.04.2021 has observed that since the plan annexed to the decree shows a road, the Petitioner has no right to object. Such observations are clearly perverse as admittedly, the land in question is part of Survey No. 13/3, which is private property and in the absence of any acquisition or NOC from the concerned co-owners, neither the Panchayat nor the PWD is entitled to carry such construction of road. The rights of the co-owners are clearly affected by the action on the part of the Village Panchayat and that of the PWD, which has not been considered at all by both the Authorities.

15. Considering the facts discussed above, both the impugned orders need to be interfered with as the same are without showing any provisions and secondly, the main contention of the

Petitioner has not been considered at all. The Petition, therefore, stands allowed as per prayer clause (a), which reads thus:

(a) For an appropriate writ, order or directions under Arts. 226 & 227 of the Constitution of India, quashing the Judgment and Order dated 29/11/2019 passed by the Mamlatdar Sattari Goa in Case No. MAM/SAT/C.I.-II/MISC/2019 and confirmed by Judgment and Order dated 12/04/2021 passed by the Additional Collector-II, North Goa District, Panaji-Goa in Case No. MCA/AC-II/REV/1/2020.

16. Rule is made absolute in the above terms.

17. The Petition stands disposed of.

B.P. DESHPANDE, J.

VAIGANKAR
ESHA SAINATH

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