

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.668/2023

MANGALA MANOHAR NAIK

... PETITIONER

Versus

**THE STATE OF GOA REP BY ITS
CHIEF SECRETARY AND 3 ORS.**

... RESPONDENTS

Mr Andre Pereira, Advocate for the Petitioner.

Mr D. Pangam, Advocate General with Ms Maria Correia,
Additional Government Advocate for the State.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED: 9th OCTOBER 2023

P.C.:

1. Heard Mr Andre Pereira for the petitioner and Mr D. Pangam, learned Advocate General who appears along with Ms Maria Correia, learned Additional Government Advocate for the State.

2. The petitioner's husband, Manohar Harishchandra Naik, carried out an illegal construction. Therefore, the fourth respondent (Deepak) instituted Writ Petition No.79/2023 seeking direction to the Panchayat and other authorities for the demolition of such construction.

3. Writ Petition No.79/2023 was disposed of by this Court by Judgment and Order dated 13.02.2023 after the petitioner's husband filed an undertaking dated 13.02.2023, not only apologising for the illegal construction carried out by him but giving an undertaking that he would remove the construction, i.e. House No.413 of Mettawada, Collem, Dharbandora, Goa within a month. This declaration cum undertaking is recorded in paragraph 6 of Judgment and Order dated 13.02.2023, by which the Writ Petition No.79/2023 came to be disposed of. This Court accepted the petitioner's husband's undertaking, and the petition was disposed of by directing the Panchayat to file a compliance report.

4. The Panchayat filed a compliance report of which cognisance was taken in our Order dated 10.07.2023. Before that, Deepak complained about non-compliance by Manohar and therefore, an order was made on 05.06.2023 recording how, at least prima facie, Manohar had breached the undertaking given by him.

5. Admittedly, the illegal construction is demolished. After the demolition, Manohar's wife, i.e. the present petitioner, instituted this petition. Her case is that the wrong construction was demolished. Mr Pereira states that an appeal was also filed before the Block Development Officer raising this very complaint, and this appeal is disposed of by Order dated 02.08.2023. Mr Pereira was unclear whether the Petitioner had any grievances against the said order.

6. Mr Pereira, with his usual vehemence, raises all sorts of arguments on behalf of Manohar's wife. He says that the Panchayat had no jurisdiction in this matter because all the Panchayats in the State Of Goa are "unconstitutionally established" in the absence of the establishment of "Revenue Villages" under the Land Revenue Code. Therefore, Mr Pereira argues that Panchayats cannot take any action against illegal constructions.

7. We find that practically in all matters, this kind of contention is raised by Mr Pereira for and on behalf of different petitioners. Based on such arguments, even the constitution of civil courts is questioned. Even today, we disposed of Writ Petition No.422/2023, in which a similar contention was raised. The AG pointed out that a similar contention was raised in Writ Petition No.2188/2021 (F), which was dismissed by a Coordinate Bench comprising G. S. Kulkarni and Bharat P. Deshpande, JJ. Mr Pereira invariably argues that the dismissal applies only to the particular case dismissed, and he can again raise the very same contention in a different Petition.

8. The present petition is instituted without impleading Manohar as a respondent. Most of the orders made in the earlier proceedings are not even enclosed along with this petition. The petition raises disputed questions of fact. There is no explanation for why the petitioner's husband, Manohar, did not react to the alleged mix-up. There is not even an assertion backed by prima facie material about the demolished construction being legal or

authorised. In such circumstances, no relief can be granted to the petitioner, who appears to be a front put up by her husband Manohar.

9. Mr Pereira now says that Writ Petition No.79/2023 itself was not maintainable because the State of Goa was not impleaded as a respondent. He relies on the *Chief Conservator of Forests, Govt. of A.P. v/s. Collector and Others – (2003) 3 SCC 472* in support of this contention. He says that petitioner's Husband's undertaking in proceedings, which, according to him, were not competent for failure to implead the State of Goa as a party, was of no avail.

10. In Writ Petition No.79/2023, the State was not a necessary party. The authorities under the Panchayat Raj Act, like the Block Development Officer, Deputy Director of Panchayats, were impleaded as respondents because, under the Panchayat Raj Act, there are certain statutory duties that they are required to perform. The complaint was that they were not performing their statutory duties. Accordingly, the decision in the *Chief Conservator of Forests, Govt. of A.P. (supra)* is inapplicable.

11. In any case, the orders made in Writ Petition No.79/2023 against the present petitioner's husband cannot be challenged by the petitioner raising such grounds or in such collateral proceedings. The alleged non-joinder of the State does not affect the competency of the proceedings or the orders made therein. The contention is therefore, misconceived.

12. For all the above reasons, we dismiss this petition. There shall, however, be no order for costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.