

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.425/2019

RUBEN FRANCO

... PETITIONER

Versus

**DEPARTMENT OF TOURISM,
GOVT. OF GOA, PANAJI**

... RESPONDENT

Mr Rohit Bras De Sa with Mr P. Navti, Advocates for the
Petitioner.

Ms S. Mordekar, Additional Government Advocate for
the Respondent-State.

CORAM: M. S. SONAK, J.

DATED: 22nd February 2023

P.C.:

- 1.** Heard Mr D'Sa for the petitioner and Ms Mordekar,
learned Additional Government Advocate for the respondent.
- 2.** The properties under Survey Nos.175/19, 175/18, 175/17,
175/2, 175/1, 176/16-B, 176/25-A, 176/24-A, 176/14 and
176/1-A are properties which are adjoining the Calangute beach.

3. Since there were some issues about the occupants of these properties encroaching upon the Government property i.e. the public beach, an order to verify whether indeed there is any encroachment, the Deputy Collector, on an application from the Department of Tourism, ordered demarcation vide order dated 26.03.2018.

4. The order dated 26.03.2018 reads as follows:-

“ORDER

WHEREAS, vide application bearing No. 7/7(402)/2018-DT/5145 dated 01/03/2018 the Assistant Director (R), Directorate of Tourism, Patto, Panaji Goa has prayed for demarcation of the properties bearing survey number 175/19, 175/18, 175/17, 175/2, 175/1, 176/16-B, 176/25-A, 176/24-A, 176/14, and 176/1-A of Calangute village of Bardez taluka in terms of U/s 114 of the Goa Land Revenue Code, 1968.

The applicant, in support of the application dated 01/03/2018, produced the copy of Survey plan and Form I & XIV.

Accordingly the Inspector of survey and Land Records, City Survey, Mapusa, Bardez Goa is hereby directed to carry out the process of demarcation in properties bearing survey number 175/19, 175/18, 175/17, 175/2, 175/1, 176/16-B, 176/25-A, 176/24-A, 176/14, and 176/1-A of Calangute village of Bardez Taluka and submit the compliance report, for further orders on said application.

Given under my hand and seal of this Court on this 26th day of March, 2018.

(Gaurish J. Shankhwalkar)
Deputy Collector & S.D.O. Mapusa
Sub-Division Mapusa Goa”

5. Against this order, the petitioner instituted an appeal before the Administrative Tribunal invoking the provisions of Section 188 of the Goa Land Revenue Code. The Tribunal, by order dated 28.11.2018 has held that the order dated 26.03.2018 was not a final order and therefore, no appeal lay against the same.

6. The petitioner has instituted this petition to challenge the order dated 26.03.2018 and the Tribunal's order dated 28.11.2018.

7. Mr De Sa, the learned counsel for the petitioner submits that the principles of natural justice should have been complied with before alleging an encroachment on Government property or public beach. He submits that demarcation cannot be ordered without compliance with the principles of natural justice and in the absence of some material to make good the allegations of encroachment.

8. Ms Mordekar defends the impugned orders based on the reasonings reflected therein.

9. On perusing the material on record and examining the two orders, I am satisfied that no case is made out to interfere with them. It is the duty of the Tourism Department to ensure that there are no encroachments on Government property including in particular the public beaches. Since there were allegations about encroachment, it is only appropriate that the Tourism Department takes effective and immediate steps to at least look into these allegations and if there is merit in these allegations, to take immediate steps. As a part of this process, the Department of Tourism quite justifiably applied to the Revenue Authorities for demarcation. The Revenue Authorities have accordingly ordered demarcation and required the inspector of Survey and Land Records to submit a compliance report. Such an exercise, does not in any manner prejudice the petitioner who claims that he has not undertaken any encroachment on Government property or on public beach. Such a demarcation will in fact assist the petitioner in clarifying his stand in the matter.

10. Therefore, the contention based on compliance with the principles of natural justice is quite misconceived. It is possible that the petitioner, is resisting demarcation and in fact, appears to have succeeded in delaying demarcation for last four to five years. Mr De Sa points out that there is no interim relief granted.

However, it is possible that the authorities on account of the pendency may not have proceeded with the demarcation process.

11. Be that as it may, there is no error, much less any jurisdictional error in the impugned orders.

12. The petition is dismissed. The demarcation exercise to be completed, if not already done. Compliance report must be filed in terms of the impugned order dated 26.03.2018. Based on the compliance report if any encroachment is noticed then, further action in terms of law including, by way of compliance with principles of natural justice can be resorted to.

13. Accordingly, this petition is dismissed. There shall be no order for costs.

M. S. SONAK, J.