

vinita

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 177 OF 2024

WITH

MISC. CIVIL APPLICATION NO. 618 OF 2023.

ISPRAVA VESTA PRIVATE LTD.
(formerly known as M/s. Isprava Technologies Private Ltd.) A company incorporated under Indian Companies Act, having its registered office at Impression House, 42-A, G.D. Ambekar Marg, Wadala (W), Mumbai, 400 031, represented through its authorized representative Ms. Amruta Kamat, Daughter of Rajendra Kamat, Wife of Mr. Shabarinath V.K, About 36 years, married, service, Indian National, resident A-11, Vanarai Cooperative Housing Society, St. Inez, Goa, 403 001.Petitioner.

versus

1. MR ANDREW MASCARENHAS,
Son of Mr. Mascarenhas, major in age, married, Indian National, Resident of H. No:33, Thorlebag, Kerim, Pernem, Goa.
2. MRS LIBERATA NATALINA FERNANDES ALIAS LIBERATA NATALINA MASCARENHAS E FERNDANDES ALIAS LIBERATA FERNANDES, wife of Mr. Joseph Fernandes, major in age, married, Indian National, resident of Rosary House, Domnic Colony, Ist Tank Road, Orlem, Malad, (East), Mumbai,
3. MR. JOSEPH FERNANDES, Son of Mr. Fernandes, major in age, Indian National, married, Indian National, resident of Rosary

House, Domnic Colony, Ist Tank
Road, Orlem, Malad, (East),
Mumbai,

4. CENTRAL BANK OF INDIA,
Through its authorized
representative, Assets Recovery
Branch, Having office at 346,
Standard Building, 3rd floor, Dr.
D.N. Road, Fort, Mumbai, 400023
5. THE JOINT MAMLATDAR-I OF
PERNEM, Office of the Mamlatdar
of Pernem, Pernem, GoaRespondents.

Mr Shivan Desai and Ms Maria Viegas, Ms Tahira Menezes,
Advocates for the petitioner.

Mr Amey Sinai Kakodkar, Advocate for respondent no.1.

Ms Susan Linhares, Addl. Govt. Advocate for respondent no.5.

CORAM:

BHARAT P. DESHPANDE, J.

DATE:

24th APRIL 2024

ORAL JUDGMENT.:

1. Rule is made returnable forth with.
2. Though respondent nos. 2 to 4 are served, none appeared for them.
3. For the order which I proposed to pass, hearing of the respondent nos.2 to 4 is not necessary.
4. Mr Desai, learned counsel appearing for the petitioner submits that he is an auction purchaser of a land which was put in auction by respondent no.4. However, he submits that in order to deny the right of the petitioner qua the said land, a fraud has been played by

respondent nos.1 to 3 by filing tenancy proceedings before the Mamlatdar and obtaining order immediately by consenting thereby inserting the name of respondent no.1 in the tenancy column. He submits that when the petitioner got the knowledge, he preferred an application for review/recall of the judgment dated 26.12.2008. However, learned Mamlatdar without hearing the applicant and even the other parties or giving any opportunity, pass the impugned order dated 6.2.2023, thereby rejecting such review.

5. Mr Desai submits that learned Mamlatdar is having power to review under Section 193 of the Land Revenue Code and inherent powers to recall its own order if such order is obtained by fraud.

6. Besides, Mr Desai would submit that order suffers from non application of mind as well as violation of principles of natural justice as no opportunity was given to the petitioner to either argue the application and to point the relevant provisions for review.

7. This fact is not disputed as the impugned order dated 6.2.2023 clearly revealed that application was rejected only on the ground that the Mamlatdar Court is not having jurisdiction to review its own judgment and order.

8. What was expected from the concerned quasi judicial authority is to grant an opportunity to the petitioner of hearing to satisfy the concerned authority about such power. By not granting such

opportunity, there is clear violation of principles of natural justice.

9. Accordingly, impugned order is required to be quashed and set aside and application for review/recall is required to be remitted to the Court so that petitioner could get an opportunity of arguing the application and try to satisfy the concern authority.

10. It is made clear that this Court has not gone into the merits of the contention raised by the petitioner in connection with the review or grounds mentioned therein.

11. Respondents are also entitled to contest such proceedings and the learned Mamlatdar shall afford an opportunity to all the parties before passing orders on such application. Needless to say that all contentions of all parties are kept open.

12. In view of the above observations, Rule is made absolute in above terms.

13. Parties shall appear before the concerned Mamlatdar on 24.6.2024 at 3.00 p.m. Learned Mamlatdar shall give an opportunity to the petitioner as well as to the respondents and thereafter decide such application on its own merits.

14. Writ Petition stands disposed of.

15. Misc. Civil Application No.618/2023 filed along with this

petition is also disposed of.

16. Parties to act on the duly authenticated copy of this order.

BHARAT P. DESHPANDE, J.

VINITA VIKAS NAIK  Digitally signed by VINITA VIKAS
NAIK
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