

Meena

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 820 OF 2023**

Mrs. Dinamati Gomes and another .....PETITIONER

V/S.

State of Goa Through Chief Secretary Govt. .....RESPONDENTS  
of Goa and others

Mr. Surendra Desai, Senior Advocate with Mr. A.V. Pavithran  
and Mr. Tejas Rane Sardesai and Mr. M. D'Souza, Advocates  
for the Petitioners.

Mr. Devidas Pangam, Advocate General with Mr. Shubham  
Sinai Priolkar, Additional Government Advocate for  
respondent Nos.1,2 & 3.

Mr Nitin Sardessai, Senior Advocate with Mr. G. Panandikar  
and Mr. K. Sabnis, Advocates for respondent No.4.

**CORAM: AVINASH G. GHAROTE &  
VALMIKI MENEZES, JJ**

**DATED: 15<sup>th</sup> March, 2024**

**ORAL ORDER:**

1. Heard Mr. Desai, learned Senior Counsel for the petitioners.  
The petition questions the Judgment dated 17/02/2023 passed by the  
Deputy Collector Tiswadi, Panaji/Respondent no.2, by which a

direction has been issued for demolition of structure admeasruing 17 sq. mts. held to be illegally constructed by the petitioners in the Government property being Survey No.249/1 of village Taliegao in Tiswadi Taluka and to restore that land in its original position immediately. This judgment has been passed in proceedings initiated by the State under provisions of the Goa Land (Prohibition on Construction) Act, 1995 in the exercise of the powers u/s. 4 and 6 of the said Act. The petition also challenges the order dated 16/01/2023 which rejects the application of the petitioners, filed for the purpose of seeking cross-examination of the complainant/State (Pg 85) and so also the applications seeking a direction to the State for production of documents. Though a challenge is also raised to the validity of the Goa Land (Prohibition on Construction) Act,1995(the Act of 1995), no arguments have been advanced on that and therefore, we are not dealing with the same.

2. The contention of Mr. Desai, learned Senior Counsel for the petitioners is that the offending construction admeasuring 17 sq.mts., is on property owned by the petitioners as well as was a construction prior to 1995, and therefore the provisions of the Act of 1995 did not apply on account of which the proceedings before the respondent No.2, were infirm being without jurisdiction. It is therefore

contended that the actions of the respondent No.2 in directing the demolition of the structure cannot be justified. It is also contended that there is a violation of principles of natural justice in as much as material documents were not directed to be produced, nor any opportunity to cross-examine has been given. It is his contention that the old acquisition records would demonstrate, that the property in question stands within the area owned by the petitioner in respect of Survey No.249/1 on which count also since there is no determination as to the date of the construction, the Act is not applicable. It is also contended that the impugned judgment is without any reasons by placing reliance upon **Central Board Of Trustees v/s. Indore composite Private Limited** [(2018) 4 SCC 443] on which count also the impugned judgment and orders are infirm.

3. The learned Counsel for the respondents while vehemently opposing the petition contended that the land in Survey No.249/1 is Government land and recorded as such in the Government records, which entries are made in Form I and XIV. It is submitted that the burden to establish that the construction was prior to coming into force of the Act of 1995 was on the petitioner, in view of the Entry made in the survey records, which has not been discharged at all on account of which also the petition is liable to be dismissed.

4. Our attention is also drawn to the finding rendered by the Civil Court in Special Civil Suit No.106/2007/B decided by the Ad-hoc Senior Civil Judge, Panaji on 18/04/2017 and specifically para 42 therein, holding that the plaintiffs in the suit (the petitioners herein) have failed to show that they have inherited 1/5th share in the suit property through their ancestors, rather on the contrary it has been established that the predecessors in title of the plaintiffs and the plaintiffs ceased to have any ownership right in the undivided estate left behind by Andre Andrade, in view of the Partition Deed dated 13/09/1963. The property in question therein was also Survey No. 249/1A, which is a part and parcel of the original Survey No.249/1. It is therefore contended that though an appeal is pending, the petitioners do not even have a title to the property in question, on account of which, also a claim which is made that it is not Government land, but a private land which the petitioners are entitled to continue to occupy, is untenable. It is therefore contended that there is no merit in the petition and the same is required to be dismissed.

5. The finding rendered by the Civil Court in para 42 of the Judgment dated 18/04/2017 in Special Civil Suit No. 106/2007/B to which the petitioners are parties would be binding upon the

petitioners/plaintiffs, unless it is set aside by the Appellate Court. The position as of now is that the finding continues to hold the field, as nothing contrary thereto has been pointed out to us.

6. The question of construction has to be viewed in light of the position that right from the beginning, the erection of construction was governed by one or the other law and the construction could not be made without any permission being sought from the appropriate authority in that regard. The repealing provision namely Section 142 in the Goa, Daman and Diu Town and Country Planning Act,1974 indicates as many as Seven Regulations from 1940 till 1965 holding the field in that regard. There is also the Panchayat Regulation,1971, which was in force prior to the enactment of Act of 1974, which also contemplated grant of permission for the purpose of making construction of house. When a question was put to Mr. Desai, learned Senior Counsel for the petitioners as to whether any such permission was available with the petitioners, he submits that there must be a permission but as of now the petitioners are not in possession of the same. That cannot be, in our considered opinion a position which could be considered as the reason for holding that the construction was earlier in point of time to the Act of 1995, as the burden would be upon the petitioners to establish the position that

the construction existed before 25/8/1995, the date on which the Act of 1995 came into force. Since there is no such permission produced on record, we are not in a position to agree with the contention of learned Senior Counsel for the petitioners that the construction was earlier to the Act of 1995. A perusal of the Act of 1995, specifically Section 6, would demonstrate that what all is required to be considered by respondent No.2 for the purpose of holding whether the construction is illegal and there is an encroachment, and for issuing a direction for removal of the same, is an Entry in Form I & XIV of the records as maintained under Rule 3 and 6 of the Goa, Daman and Diu Land Revenue (Record of Rights and Register of Cultivators) Rules,1969. The respondent No.2 in the impugned judgment categorically records a finding of such an entry exists in Form I and XIV under the aforesaid Rules of 1969, in the favour of the State, which entry has not been disputed by the petitioners, considering which respondent No.2, does not have any other choice but to issue a direction u/s 6 of the Act of 1995.

7. Though a challenge is also raised to orders dated 16/01/2023, to the rejection of the applications for permission to cross-examine and direction to the State to produce documents, we find that the rejection is justified for the reason that the proceedings before the

respondent No.2 under the Act of 1995 are not adversarial in nature, but are summary proceedings which empower the respondent No.2, based upon the entries made in Form I and XIV to issue direction u/s 6 of the Act of 1995. The applications filed by the petitioners of the nature as indicated above, had the effect of converting the proceedings before the respondent No.2 into an adversarial proceedings which could not be permitted. The orders dated 16/01/2023 therefore rejecting these applications in our view are fully justified.

8. The further contention based upon **Indore composite Pvt Ltd.** (supra) that the impugned judgment dated 17/02/2023 is sans any reasons also does not appeal to us for the reason as already indicated above that all that the respondent No.2 is required to consider is the entry in the relevant records, of the Government holding the property and based upon such entry direct demolition. The impugned judgment dated 17/02/2023 considers the entry made in the relevant records, which are in favour of the State in view of which the direction to remove the offending structure has been directed, and rightly so.

9. Mr. Pangam, learned Advocate General for Respondent No.1, 2 and 3 has tendered across the bar a photograph, which is taken on record and marked 'X' for the purpose of identification, a perusal of which indicates that the offending structure, covers a major portion on the footpath, the extent of which construction, is 17 sq.mtrs. The situation as indicated in this photograph, is admitted to be correct by Mr. Desai learned Senior Counsel for the petitioners, who however tries to justify it by contending that the construction is within the land owned by the petitioners, which as indicated above has not been demonstrated. The other photographs placed on record also do not indicate that the structure is an old one, to even otherwise claim the benefit of the plea of non-applicability of the Act of 1995. The basic burden, when a plea is raised that the Act of 1995 is not applicable would rest upon the person raising such a plea, to demonstrate that the construction existed prior to 25/8/1995, which in this case was on the petitioner. However, considering the documents and material on record, the burden has not been discharged.

10. We, therefore, do not find any merit in the petition and accordingly dismiss the same. Needless to say that the respondent no.2 would be free to proceed with the implementation of its order.

11. At this stage, a request is made by Mr. Desai, learned Senior Counsel for the petitioners to stay the effect and operation of the judgment dated 17/02/2023, for some time. Considering the nature of the construction, which is right on the footpath and the finding which has been rendered by us that there is no permission for such construction, the request is declined.

**VALMIKI MENEZES,J**

**AVINASH G. GHAROTE, J**

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VISHAL BHOIR

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