

Niti

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

**APPEAL FROM ORDER NO.24 OF 2022  
AND  
CIVIL APPLICATION NO.77 OF 2022**

DIGAMBAR ATMARAM  
MALVANKAR

...APPELLANT

*Versus*

OUR LADY OF MIRACLES  
CHURCH, MORJIM, THR. ITS  
MAN. COMMITTEE OF FABRICA  
DE IGREJA DE MORJIM AND ANR. .... RESPONDENTS

Mr Akshay Naik and Mr Amey Kakodkar, Advocates for the Appellant.

Mr Nigel Da Costa Frias, Advocate for Respondent No.1.

**CORAM: M. S. SONAK, J.**

**DATE : 15<sup>th</sup> FEBRUARY 2024**

**ORAL ORDER :**

1. Heard Mr A. Naik for the appellant and Mr Costa Frias for respondent no.1 (contesting defendant no.1).
2. This appeal is directed against an order dated 04.07.2020 dismissing the appellant's application for a temporary injunction to restrain the respondent from undertaking any activities in the suit property.

**3.** On 27.10.2023, this Court ordered the parties to maintain the status quo till the next date. This order dated 27.10.2023 reads as follows:

“P.C.:

*1. Issue notice to the respondents returnable on 08.12.2023.*

*2. In addition to the usual mode of service, private service/humdast is allowed.*

*3. On the assurance of Mr Kakodkar that the process fees and copies will be supplied positively within a week from today, it is directed that the parties will maintain status quo till the next date.*

*4. The appellant should place on record within one week from today the latest photographs of the site so that there is no ambiguity about the status quo at the site. Mr Kakodkar states that presently the CRZ authorities have demolished the temporary structures put up by some of the respondents unauthorisedly in the suit property.”*

**4.** The status quo order was continued vide orders dated 08.12.2023 and 15.12.2023.

**5.** On 21.12.2023, upon hearing the parties, this Court made the following order:-

“P.C.:

*1. Mr Nikhil Pai appears for the appellant and Mr Nigel da Costa Frias appears for the respondents.*

2. Learned counsel for the parties point out that there is an error in order dated 15.12.2023. The matter was to stand over to 21.12.2023 and not 21.01.2024. Accordingly, the date of 21.01.2024 in the order dated 15.12.2023 is substituted by 21.12.2023.
3. Necessary correction to be carried out in the original order as well as the order uploaded on the website.
4. Mr Costa Frias tenders affidavit in reply on behalf of the first respondent. Mr Pai also files an additional affidavit on behalf of the appellant.
5. This Court had directed the parties to maintain status quo and even extended the status quo by order dated 15.12.2023 because there was no clarity on the issue of respondents or their licensees putting up any temporary structures on the suit property backed by permissions from various authorities.
6. The affidavit filed by the first respondent encloses permission from GCZMA and the Village Panchayat. Mr Pai points out that even these permissions contemplate further permissions from various authorities like the GSPCB, Station Fire Officer, Health Department, Excise, etc.
7. Mr Costa Frias states that no huts would be erected and operations commenced until all permissions from all the authorities are obtained. He however submits that the Trial Court has rejected the application for injunction filed by the appellant and now that permissions have been obtained and will be obtained, the status quo order by this Court may not be extended any further.

8. Since a statement is made that no temporary huts/shacks would be erected until permissions from all the authorities are obtained, status quo is modified by clarifying that once such permissions are obtained, the first respondent or his licensee, without prejudice to the rights and contentions of the appellant would be permitted to act in terms of the permissions issued by the GCZMA and the Panchayat. However, it is further clarified that in case the appellant challenges these permissions and obtains any interim orders from the appropriate authorities, the status quo as of now will have to continue.

9. The appeal from order is now posted for admission/final disposal on 08.02.2024.”

6. Mr A. Naik, learned Counsel for the appellant, submits that obtaining permissions and clearances from the requisite Authorities is a must before any activities can be undertaken in the suit property. He pointed out that this is irrespective of the issue of title and possession. He submits that the learned Trial Judge has failed to appreciate this aspect.

7. Mr Costa Frias submits that the Trial Court's order warrants no interference because it is clearly held therein that the appellant has neither made out any *prima facie* case nor the balance of convenience favouring the appellant.

8. The suit property, in this case, is affected by the CRZ notification. Accordingly, if any activities are to be undertaken on the suit property, including, in particular, activities like putting up huts and shacks, etc. permissions from statutory Authorities would be necessary.

**9.** By the above order dated 21.12.2023, this Court, upon considering the arguments advanced by the learned Counsel for the parties, had recorded a statement of the first respondent that no temporary huts/shacks would be erected in the suit property unless permissions from all the Authorities are obtained. Based upon this statement, the status quo granted earlier was modified by clarifying that once such permissions are obtained, the first respondent or his licencees, without prejudice to the rights and contentions of the appellant, would be permitted to act in terms of the permissions so obtained, *inter alia*, from the GCZMA and the concerned Panchayat. It was also clarified that in case the appellant challenges such permissions and obtains interim orders from the appellate authorities, the status quo order will have to be continued and abide by the decisions of such authorities where the challenge is raised.

**10.** In my judgment, the above arrangement would serve the interest of justice and, at the same time, would not unduly prejudice any of the parties.

**11.** Accordingly, this appeal is disposed of by directing that the above arrangement, as contained in the above-quoted order dated 21.12.2023, will operate until the final disposal of Special Civil Suit No.50/2019 pending in the Court of the Civil Judge Senior Division at Mapusa.

**12.** If there is any change in the circumstances, the parties are granted liberty to apply to the Trial Court for variation of this arrangement. If

such an application is made, the Trial Court is to dispose of the same in accordance with law without being influenced by the circumstance that this Court has ordered this arrangement. All contentions of all parties are accordingly left open in this regard.

**13.** The appeal is disposed of in the above terms.

**14.** The Civil Application No.77/2022 will not survive the disposal of this appeal. Accordingly, the same is also disposed of.

**M. S. SONAK, J.**

NITI K  
HALDANKAR

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