
(1995) 03 BOM CK 0062

In the Bombay High Court

Case No : Civil Revision Application No. 2 of 1995

Comunidade of Curtorim

APPELLANT

Vs

Shri Francisco Rebello and Another

RESPONDENT

Date of Decision : 29-03-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (1996) 5 BomCR 30

Hon'ble Judges : E.S. Da Silva, J

Bench : Single Bench

Advocate : M.B. D'Costa, for the Appellant; N. Sardesai, for the Respondent No. 1 and S.D. Lotlikar, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

E.S. Da Silva, J.—The challenge in this revision is the judgment of the Additional District Judge, Margao, dated September 6, 1994 in Civil Miscellaneous Application No. 141 of 1990 in Miscellaneous Civil Appeal No. 81 of 1990 filed by the respondent against the petitioner whereby the learned Additional District Judge has upset the order of the learned Civil Judge, Junior Division, Margao, dated July 27, 1990 in Civil Miscellaneous Application No. 139 of 1990 attached to Regular Civil Suit No. 66/86/D.

2. The case of the petitioner is that they are the owners of a plot of land situated at S. Jose Areal which was earmarked for thrashing ground. Somewhere in the year 1982 the respondent has applied for a grant (aforamento) in respect of a part of that land for construction purpose. The petitioner rejected his application because under the Code the said land could not be granted for residential purposes since it was earmarked for the common use of the Comunidade for the purpose of a thrashing ground. In spite of that in the year 1986 the respondent started unauthorisedly a construction in the said plot without taking the permission of the petitioner, therefore immediately a suit was filed by the petitioner against the respondent for permanent and mandatory injunction

seeking to restrain him from interfering in the suit property and from doing any construction work therein. In the said suit a temporary and interim injunction was also applied and granted by the trial Court whereby the respondent was restrained from interfering with the suit property or from doing any construction therein during the pendency and disposal of the suit.

3. It appears that consequent upon an amendment inserted in the Code of Communitades in the year 1986 whereby the Administrator of Comunidade was empowered to demolish illegal constructions the said Administrator issued a notice to the respondent to show cause as to why the illegal construction should not be demolished. At this stage the respondent approached the Civil Court and in the suit filed by the petitioner sought for an injunction against the petitioner and the said Administrator praying for an order restraining the said petitioner and Administrator of Comunidade from demolishing the suit structure. By order dated July 27, 1990 the learned Civil Judge rejected the application of the respondent. The respondent then carried an appeal against this order before the learned Additional District Judge, who, by the impugned judgment, has reversed the order of the trial Court and granted the relief in favour of the respondent by restraining the petitioner, its agents, servants, including the Administrator of Comunidade from demolishing the suit structure.

4. Mr. D"Costa, learned Counsel for the petitioner, has contended that the order of the learned Additional District Judge is wrong and without jurisdiction being therefore likely to cause injustice to the petitioner. The learned Judge has acted under a clear misconception to the extent that he held that the Administrator of Comunidades was acting on behalf of the Comunidade itself. In this respect it was urged by learned Counsel that the learned Judge has overlooked the fact that the Administrators of Comunidades are appointed by the Governor and answerable only to the Governor while the individual Comunidades coming under his jurisdiction has no control whatsoever over the actions of the Administrator. It was further submitted that the learned Judge has also grossly ignored that no injunction could be granted to the Administrator who is not a party to the suit restraining him from discharging his duties under the statute.

5. Mr. Sardessai, learned Counsel for the respondent, has made a brave attempt to support the order of the learned Additional District Judge while raising the question of locus standi of the petitioner to challenge the impugned order. According to the learned Counsel the petitioner could not be said to be aggrieved by the order in question more so when the same although covering the petitioner also in fact was aimed at preventing the Administrator of Comunidades from demolishing the structure when the questions of the illegality of the construction was under dispute in a civil suit. In this regard it was urged by the learned Counsel that admittedly in the suit filed by the petitioner against the respondent no relief was granted to the petitioner so as to permit the Comunidade to demolish the structure under dispute and therefore the action of the petitioner in motivating the Administrator of Comunidades to get the structure demolished

consequent upon the notice issued would mean that they would get the relief denied to the Comunidade through the back door.

6. With respect I am unable to accede to the propositions advanced by the respondent's learned Counsel. Admittedly the Administrator of Comunidades was not a party in the suit and being so it is difficult to appreciate under what authority the learned Additional District Judge could have enjoined the Administrator of Comunidades from exercising his duties under the relevant Code. A bare perusal of the impugned judgment makes it clear that the learned Judge has acted under a wrong notice of law that the Administrator has acted on behalf of the Comunidade or can be held as its representative or its agent. As rightly pointed out by the petitioner's learned Counsel the Administrator of Comunidades is a totally independent entity appointed by the Governor to look after the overall administration of the Comunidades and give effect in its respect to the policies as framed by the Government while a Comunidade individually is an autonomous body which is run by its own Managing Committee and is therefore not subordinate to the Administrator on the question of its day to day management. Being so, it is impossible to establish any co-relation between the action sought to be taken by the Administrator of Comunidades and the rights which the Comunidade aimed at enforcing in the Civil Suit filed against the respondent to restrain him from interfering with the suit property and doing any construction therein.

7. On the other hand it is to be noted that in the application for temporary injunction moved by the respondent in the suit filed by the Comunidade against him the said respondent has mischievously represented the Administrator of Comunidades as the Administrator of the Comunidade of Curtorim. It appears that this was the reason why the learned Additional District Judge was misled by such a wrong averment made by the respondent. No doubt this dishonest attempt on the part of the respondent is to be severely deprecated more so when it is inconceivable that the respondent should ignore that the Administrator of Comunidades has no direct connection with the management of the Comunidade of Curtorim. On this count alone the equity relief sought for by the respondent should have been denied to him. The learned trial Judge has rightly understood the factual and the legal position of the case and in so many words has made it clear in his well conceived order dated July 27, 1990 that the respondent has in fact misrepresented facts and distorted the scope and nature of his earlier order dated May 16, 1986 confirming injunction prayed for by the petitioner to restrain him from interfering with the property or putting any construction therein. The learned trial Judge therefore held that in his considered view this was sufficient to disallow to the respondent the relief in equity. It is only to be regretted that inspite of this clear stand taken by the learned trial Court the learned Additional District Judge was not in a position to support such a good and legal order and went on the basis of totally unwarranted considerations unsettling the order of the trial Court and granting to the respondent a relief to which he was not entitled either on facts and/or in equity.

8. In this view of the matter the petition is bound to succeed and is hereby allowed. The impugned order of the learned Additional District Judge is quashed and set aside. Rule accordingly made absolute with costs.