

(2015) 03 BOM CK 0156
In the Bombay High Court
Case No : Writ Petition No. 462 of 2014

Kanchan Kumar Arun Thool	Vs	APPELLANT
State of Goa and Others		RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Citation : (2015) 6 ALLMR 733

Hon'ble Judges : K.L. Wadane, J.;F.M. Reis, J.

Bench : Division Bench

Advocate : Maria Caroline Collasso and Vijeta Poulekar, for the Appellant; S. Linhares, Additional Government Advocate, Advocates for the Respondent

Judgement

F.M. Reis, J.—Heard Ms. M. Collasso, learned Advocate appearing for the petitioner, Ms. S. Linhares, Additional Government Advocate appearing for the respondents no. 1, 2, 4 and 5 and Mr. V. Rodrigues, learned Advocate appearing for the respondent no. 3.

2. Rule. Heard forthwith with the consent of learned counsel.

3. Learned counsel for the respondents waives service.

4. The above petition inter alia seeks for a relief to direct the respondents no. 5 and 6 to restore the path way and construct the retaining wall of the nallah bearing survey no. 137/43 in the village Saligao, Bardez, Taluka.

5. On the last date when the matter was taken up for admission and hearing, upon hearing the learned counsel appearing for the respective parties, we called upon the Water Resource Department to inspect the site and examine the grievance raised by the petitioner. Accordingly a report was submitted by the Executive Engineer WDI at Panaji dated 27.2.2015 inter alia disclosing the factual aspect at the site in connection with the difficulties faced by the petitioner and other residents. It is inter alia pointed out that on account of erosion of soil there are difficulties faced for an of the petitioner and other residents to the main

road as the path way is 1 to 1.5 metres of width which is uneven. The report inter alia suggest at page 2 thus:-

"Observations on the nallah site:-

The nallah 1 which is originating from the hills flows through a box culvert of 1.5 X 1.2 mts. As per the village site plan average width of the nallah is 2.5 mts X 1.50 mts, however at site it is observed that the nallah banks are constructed for almost all the length on either banks of 70.00 mts. The width of the nallah varies from 1.3 mtrs to 3.8 mtrs at different locations (location plan enclosed as exhibit 3). Due to this reduction in the flow area, has resulted in erosion of the banks and local floods.

a) As regards to protection of nallah:-The nallah are protected by the protection walls at various places, and several places it is dilapidated condition. The protection wall is demolished/damaged for a length of 35.00 mtrs. The area available between the demolished wall and the compound wall i.e about 1.00 mts to 1.50 mts having uneven surface is being used by the residents as foot path to access their houses(Photographs as Exh. 4) It is observed that the flow area of the nallah is not maintained while construction of the nallah banks/protection walls. Which has resulted in reduction of flow area of the nallah, causing erosion and flooding. It is possible to protect the nallah banks, provided the nallah is properly demarcated as per survey plan.

b) Providing of access to the residential houses:-since there is reclamation of the nallah, a proper layout of the nallah can be worked out for providing proper water way to discharge the flood water only upon demarcation which has to be done by the Survey Department.

Providing access to the residents will be for the Survey Department to demarcate the access and the same will have to be approved by the concerned authorities. This department has no authority to provide access to residents."

6. On going through the said report, we find that immediate measures have to be taken by the State Government to ensure a free and unobstructive reasonable path way as access to the houses of the petitioner and other residents which are admittedly located along the nallah. The report also suggest that on account of bifurcation of such nallah, the houses of the petitioner and others residents are located in the middle portion of the bifurcated nallah. It is also not in dispute that the petitioner and other residents have no other access to go to her house apart from the space left between the existing houses and the existing position of the nallah. The uniform width of such path way to the houses would be preferably 2 metres from the internal road which leads to Porvorim to Calangute. The road and the position of the houses are identified in the plan attached to the said report which is marked "X" for identification at Exh. 3.

7. The learned counsel for the respondent were asked as to which authority would carry out such measures for the benefit of the petitioner and other

residents. Being a well-fare State it is the obligation of the State Government to provide to the petitioner and other residents with appropriate measures, to ensure that there is no further erosion at the site during the ensuing monsoon season which may create a disastrous situation. It is well settled that right to life is a right to live with dignity, safety and clean environment. In such circumstances, there is a clear obligation on the part of the State to ensure fulfillment of such right. Socio economic justice to people and citizens is the very spirit of the preamble of our Constitution. In the present case the petitioner as well as other residents in the locality having their residential accommodation across the nallah will be affected in case immediate measures are not taken as otherwise it would affect their well-fare, convenience, health safety etc which are intended to achieve socio economic justice for the people. In such circumstances, it is boundant duty of the State to protect right of the citizens such as the petitioner herein and other residents in discharge of its obligation for the well-fare of the State and in such situation the Court can balance the situation. In such circumstances, considering the report referred to herein above, we find that some land erosion has already taken place and, as such, there is an urgent need to take remedial measures to prevent any further erosion of the land along the nallah as well as to provide a path way for the benefit of the petitioner and other residents. This exercise has to be complied with before the ensuing monsoon season.

8. Taking note of the observation in the report, we find that it would be appropriate, to direct the respondent no. 1 to construct a path way through any instrumentality of the State to ensure that there is uniform width of 2 metres approximately available at the site to enable the petitioner and other residents of the locality to have a free and convenient access to the main road as shown in the plan marked "X" for identification.

9. In such circumstances, we pass the following:

ORDER

- i. The respondent no. 1 is directed to take effective measures at the site as are necessary to ensure that the petitioner and other residents have an access of uniform width of 2 mts approximately to the main road.
- ii. The construction of said path way as well as retaining well shall be carried out as expeditiously as possible and before ensuing monsoon season and thereafter filed a compliance report in this Court accordingly.
- iii. Rule is made absolute in the above terms.
- iv. Place the matter on order board on 5.5.2015.