
(2008) 01 BOM CK 0164
In the Bombay High Court
Case No : Writ Petition No. 206 of 2007

Mr. Paulo J.A.B. Carvalho

APPELLANT

Vs

The State of Goa and others.

RESPONDENT

Date of Decision : 23-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 01 BOM CK 0164

Hon'ble Judges : N.A. Britto, J;D.B. Bhosale, J

Bench : Division Bench

Advocate : S.D. Lotlikar, with Mr. Ryan Menezes, for the Appellant; Winnie Coutinho, Government Advocate for Respondents No. 1, 3, 4 and 5 and Mr. Vivek Rodrigues, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. In this writ petition, filed under Article 226 of the Constitution of India, the petitioner has, inter alia, made the following prayer :

(a) That the Hon"ble Court may be leased to issue a writ of Prohibition, or any writ, order or direction in the nature of Prohibition restraining the Respondents diverting the plot earmarked and located in the property under Survey No. 96/6 of Penha da Franca, Bardez, Goa for any other use, and restraining the Respondents constructing a water tank in the said plot reserved for playground and directing that the said plot may only be used to develop a playground and/or children"s park

The petitioner is a resident of Village Reis Magos. Water tank proposed to be constructed is within the jurisdiction of the Village Penha da Franca. These two Villages and three other Villages form a locality known as "Alto do Porvorim, Bardez, Goa". All the 5 Villages have independent Panchayats and they are adjacent to each other. The petitioner"s house appears to be just across the road where the proposed water tank is being constructed.

2. Mr. Lotlikar, learned Senior Counsel for the petitioner submitted that the plot of land where the P.W.D. propose to construct the water tank is a playground. It was originally owned by one Ms. Bernadette Veigas and that she had allowed to use her land as a playground. Now, on the basis of her no objection, the P.W.D. propose to construct the water tank in dispute. He submitted that the government could not have diverted the plot which is reserved as an open space to be used as a playground for any other purpose. He submitted that the plot in question does not belong to the Government and, therefore, the Government could not have entered into a private property for a project like this and use the playground for any other purpose, without following the procedure in law. He submitted that merely because the water tank is being constructed for the benefit of the people in these Villages, does mean that the Government can proceed to construct it on the playground. In support of this contention, Mr. Lotlikar placed reliance upon a Judgment of this Court in *Down Mangor Valley and another vs. Mormugao Municipal Council and ors.*, (2002 (2) Goa L.T. 141) and a Judgment of the Supreme Court in *Pt. Chet Ram Vashist (Dead) by Lrs. Vs. Municipal Corporation of Delhi*, . Mr. Lotlikar also submitted that the owner Ms. Viegas has now withdrawn her NOC and has filed an affidavit in this Court stating so and in view thereof, the Government cannot be allowed to proceed with the construction of the proposed tank on the playground.

3. We have perused the petition and other material placed before us. So also the affidavit filed by the Government. It appears that initially the Government had proposed to construct the water tank right in the middle of the ground. However, by filing an affidavit in the instant writ petition, the Government stated that they have decided to shift the location of the proposed water tank towards the end of the ground. They have placed the plan on record, showing the exact location. The proposed tank will not occupy more than 500 sq. metres area of the ground. Moreover, it would cater the need of about 10,000 population in two Villages. None of the Village Panchayats has come forward, opposing construction of the water tank. The Government has placed on record the plan showing the allottees of sub-divisions in which the playground is situated. The allottees have also not come forward, opposing the said construction. It is stated on affidavit that these Villages have several playgrounds and gardens and the list thereof is also placed on record. One of such playgrounds is hardly about 50 metres away from the ground where the tank is proposed to be constructed.

4. The construction of the overhead tank, looking to the size of the playground, in our opinion, would not amount to change of user of the playground, as tried to be contended on behalf of the petitioner. It appears that a small portion of the playground will be utilised for the said construction. The submissions of Mr. Lotlikar that the Government cannot be allowed to divert the use of the plot as a playground for any other purpose deserves to be rejected. Even if the submission of Mr. Lotlikar that the original land owner has withdrawn the NOC is taken to be true and correct, it is pertinent to note that the owner of the land has not come forward challenging the use of a small portion of the land for construction of the

water tank. That apart, we need not enter into the question of ownership of the playground, since, it is not and it cannot be a subject-matter of the instant writ petition. In the circumstances, we are not inclined to entertain this writ petition. The Judgments relied upon by Shri Lotlikar, in view of the peculiar facts and circumstances of this case, are of no avail to the petitioner. Hence, the writ petition is dismissed.