
(2009) 04 BOM CK 0126

In the Bombay High Court

Case No : Writ Petition No. 79 of 2009

Mrs. Seema Dilip Naik, Represented by her Duly Constituted
Attorney, Mr. Dilip Naik

APPELLANT

Vs

State of Goa and Goa Coastal Zone Management Authority

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Citation : (2009) 04 BOM CK 0126

Hon'ble Judges : R.S. Dalvi, J

Bench : Single Bench

Advocate : S.D. Lotlikar and Mr. P.S. Lotlikar, for the Appellant; Sapna Mordekar, Additional Government Advocate, for the Respondent

Judgement

Smt. R.S. Dalvi, J.—This writ petition relates to a structure on a plot of survey no.157/1/C, which is a subdivided plot of survey no.157/1. The petitioner claims to be the owner of the plot under sale deed dated 28.04.2008. The petitioner claims that without any notice being issued to the petitioner and without hearing the petitioner, the structure on his plot which has been in existence from 1991 is sought to be demolished by the Goa Coastal Zone Management Authority and such act is without authority of law. For the structure on the suit land, a stop work order is stated to have been passed on 22.09.2008. A show cause notice was thereafter issued on 27.02.2008 to the previous owners being the vendors of the petitioner who were the then owners. that was at the time when the petitioner was not the owner of the plot. The structure which came up on the suit plot (the suit structure) was sought to be demolished.

2. A writ petition no.466 of 2008 came to be filed by one John Baptist Sequeira who had complained against the illegal construction put up by one Suhail Osman Shaikh. During the writ petition, it was mentioned to the Court by the CRZ Authority that they shall give notice upon said Suhail Osman Shaikh who was stated to be the owner of the suit structure. It appears that notice could not be served upon him despite several attempts. The notice was ultimately served by

affixation on the suit structure on 29.09.2008. The Suhail Osman Shaikh appeared before the authority and showed cause. His wife who claimed to be the owner also sent legal notice dated 15.10.2008 to the authority making her representation. It is stressed by the additional Government Advocate for the respondents that in the cause shown and the notice issued by the previous owners, the factum of the sale deed in favour of the petitioner was not even mentioned. Hence the authority had no knowledge that the property was sold. No documents in respect of the suit structure showing its existence prior to 1991 were produced. The order/report came to be passed by the CRZ Authority on 31.12.2008 after due hearing and after giving an opportunity to the concerned parties. Writ petition No.466 of 2008 came to be disposed of on 19.01.2009, in terms of that order.

3. The respondents require the structure, now claimed by the petitioner to be demolished since it was not shown that it was in existence prior to 1991. The petitioner contends that the structure is prior to 1991 and that she has not been given hearing. It is her contention that the order dated 31.12.2008 relates to survey no.157/1 and her structure is on survey no.157/1/C. She has relied upon a deed of sale dated 13.11.2006 of one Prashila Mayekar and Tushidas Mayekar who sold the suit property to the predecessors-in-title of the petitioner being vendor who sold it to the petitioner. The respondents' Advocate has drawn my attention to the fact that the suit structure has not been shown in that deed of sale. The Deed of sale shows the property having been owned earlier by one Jose D'souza who by a deed of sale dated 06.03.1996 had sold the property to Mayekars who had partitioned the property thereafter. The Deed of sale shows a plot admeasuring 250 sq. mtrs. as the property sold with all ways, paths, passages, easements, privilege, old structures in ruins and appurtenances of survey no.157/1/C. The western boundary of the property is survey no.157/1 showing that it is a part of survey no.157/1. The sale deed makes it very clear that as of 2006, the suit property did not have the suit structure but had only "old structures in ruins". The property purchased by Anjum Sohail Shaikh who was the wife of Sohail Usman Shaikh was sold to the petitioner under the deed of sale dated 28.04.2008. The recitals of the said sale deed for the first time show the structure being House No.973/D on the suit land. The recitals to the deed of sale as well as the schedule-I thereto makes a reference to survey no.157/1 as well as to the earliest owner Jose D'souza. It is only in this deed of sale that the recital shows that Jose D'souza has sold a portion of the suit property (under survey no.157/1) alongwith House No.973/D to Prashila Mayekar under the deed of sale dated 06.03.1996. The deed of sale dated 06.03.1996 makes no reference to the said house. It only makes a reference to the "old structures in ruins". Consequently, it stands to reason that though the predecessors-in-title of the petitioner were heard by the CRZ authorities and sent a legal notice to make a representation, no documents of any structure were produced by them. Even the petitioner has not produced any document showing property taxes paid, assessment levied, etc. in respect of the structure claimed

to have been in existence in 1991.

4. The only document produced by the petitioner are the plans issued by the Directorate of Survey and Land Records, Mapusa, Goa, the earliest of which is issued on 07.08.2000 showing a structure. It was for the predecessors-in-title of the petitioner, who were then found to be the owners in possession of the suit structure, to have satisfied the CRZ authorities that the structure shown in the said plan was not "old structures in ruins" but the suit structure.

5. It is also the case of the petitioner that the suit property stands in the name of Anjum Sohail Shaikh whereas the earlier Writ petition no.466/2008 was filed in respect of what was stated to be the alleged construction put up by Sohail Osman who was her husband. Hence the petitioner contends that her husband was heard and the previous owner was not heard. The sale deed in favour of the petitioner has been executed by both the husband and the wife.

6. The respondents seriously oppose any further right to be given to the petitioner when the hearings complete in respect of the suit structure. The essential aspect to consider is that the hearing into be given in respect of structure to the parties claiming right, title, interest therein. Once hearings given in respect of the structure to the parties concerned, transactions executed by the parties which were not brought to the notice of the Authorities who give hearing cannot be considered. The transfers of immovable properties do not matter as they do not relate to aspect concerning the authorisation or existence of the structures required to be seen and considered by the Government Authorities. The Authorities cannot be made to give notice and hear parties again and again upon transactions inter se. The petitioner may have her remedy against her predecessors-in-title for any prejudice caused to her by their acts or omissions of the petitioner, though an owner did not or could not be represented before the Authorities and her predecessors-in-title did not inform the Authorities of the title of the petitioner.

7. Mr. Lotlikar on behalf of the petitioner has relied upon the decision in Aslam Mohd. Merchant Vs. Competent Authority and Others, , which is in respect of forfeiture of property under N.D.P.S. Act, 1985. In that case a show cause notice was found to be illegally issued. It was held that the same would vitiate all the subsequent proceedings. In that case the independent income of the person who was a close relative of the detenu was to be seen. That was not shown. The proceedings were seen not to have been initiated validly. Non-application of mind was seen to be evident. Hence it was held further proceedings upon such show cause notice would be vitiated. Mr. Lotlikar tried to draw a parallel in this case since the order dated 31.12.2008 relates to survey no.157/1 and not survey no.157/1/C. Survey no.157/1/C is contained in that survey no.157/1. The only suit structure is on that sub divided plot. The notice of the order mentioning the larger survey number which includes survey no.157/1/C is therefore, not a notice which is illegally issued or which would vitiate further proceedings. Mr. Lolita's contention that the petitioner be granted a further hearing in respect of the

structure for which hearing is complete is not in accordance with law relating to the rules of natural justice. The impugned order dated 31.12.2008 relating to the illegal construction of the house on survey no.157/1 is not perverse. The petition has no merits and is dismissed. Interim order passed in this petition shall continue for four weeks.