
(1999) 08 BOM CK 0074

In the Bombay High Court

Case No : Writ Petition No's. 123 and 156 of 1996

Shri David Renato Braganza

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 05-08-1999

Acts Referred:

Constitution of India, 1950 — Article 14 , 226

Citation : (2000) 2 BomCR 94 : (2000) 1 MhLj 716

Hon'ble Judges : R.M.S. Khandeparkar, J;R.K. Batta, J

Bench : Division Bench

Advocate : M.S. Usgaonkar and S.M. Usgaonkar and P.A. Kholkar, for the Appellant; C.A. Ferreira, G.A., S.G. Dessai, S.D. Padiyar and D.B. Ambekar and S.M. Lotlikar, for the Respondent

Judgement

R.M.S. KHANDEPARKAR, J.—Since common questions of law arise for determination in both the petitions, the same were heard together and are being disposed of by this common judgment.

2. The petitioners seek to challenge the grant of plot of land in favour of respondent Shri Rabindu Narayan Ray (hereinafter referred to as "respondent No. 5") on the ground that the said grant has been in contravention of the provisions of law. The respondent No. 5 was the then Member-Secretary of North Planning and Development Authority and now Chief Town Planner, Government of Goa. The interim stay of construction by the respondent No. 5 and the maintenance of status quo till the disposal of the petition was granted on 9-4-1996 in Writ Petition No. 123 of 1996.

3. It is the case of Shri David Renato Braganza, the petitioner in Writ Petition No. 123 of 1996 and hereinafter called "the petitioner", that the plot of land belonging to respondent No. 3 which was applied for by him in March, 1991 has been granted in favour of the respondent No. 5 in contravention of the provisions of the Code of Comunidades. It is his contention that the application of the respondent No. 5 for the grant of plot was filed with the respondent No. 3 much

after the filing of the application by the petitioner. Besides, the respondent No. 5 was not entitled to be allotted with any plot of the respondent No. 3 as his gross annual income always exceeded the maximum limit prescribed under the Code of Comunidades to enable a Government employee to get a plot of a Comunidade allotted in his favour. It is also the case of the petitioner that the respondent No. 5 using his influence, even changed the sub-division of the area and, consequently, changed the number of the plot in an attempt to defeat the right of the petitioner to get the plot which was applied for by the petitioner.

4. It is the case of Shri Prabhakar Saju Fadte, the petitioner in Writ Petition No. 156 of 1996, that he is the "Joneiro1 of Comunidade of Serula, the respondent No. 2 in the said petition, and the grant of plot in favour of the respondent No. 5 is in contravention of the provisions contained in Article 334-A of the Code of Comunidades.

5. On the other hand, it is the case of the respondent No. 5 that he is a landless Government employee and was duly entitled to apply for the allotment of plot by the respondent No. 3. It is his contention that his annual income did not exceed the required limit and, therefore, he was eligible for the allotment of the plot and there has been no manipulation of records in the matter of survey of the property and he has been validly and lawfully allotted the plot of land by the respondent No. 3. The case of the respondent No. 5 seems to be supported by the respondent No. 1 in view of the affidavit filed by the Under Secretary (Revenue) on behalf of Government of Goa in the matter. It is his contention that the petitioner was never entitled for the plot of land from the Comunidade as he already owns a building at Pilerne.

6. Upon hearing the learned Advocates for the parties and on a perusal of records, the points which arise in the present petitions are :---

(1) Whether the gross annual income of the respondent No. 5 was within the limits prescribed for being eligible to apply for a plot of land of a Comunidade ?

(2) Whether the grant of plot of land in favour of the respondent No. 5 by the respondent Comunidade, hereinafter called as "the respondent No. 3" has been done in accordance with the provisions of the Code of Comunidades ?

(3) Whether the application of the petitioner for grant of plot of land was duly considered and rejected by the respondents ?

7. Undisputedly, the respondent No. 5 is a Government employee since prior to 1991. A copy of the certificate issued by the Deputy Director of Accounts of Government of Goa dated 9th November, 1993 discloses that the gross monthly salary of the respondent No. 5 as on 1st January, 1992 was Rs. 6,430/-. The records placed before us in relation to the application filed by the respondent No. 5 with the respondent No. 3 also disclose that the petitioner had submitted the copy of the same certificate to the respondent No. 3. The information furnished to the Court by the learned Government Advocate on perusal of the salary

records of the respondent No. 5 discloses that the gross annual income of the respondent No. 5 on 20th August, 1991 was Rs. 77,160/- which is equivalent to twelve times the monthly salary disclosed in the certificate of Dy. Director submitted by the respondent No. 5 to the respondent No. 3. The respondent No. 5 has admitted in para 18 of the affidavit of his reply that at the time he had applied for the plot, his gross income was Rs. 77,160/- per annum. The records with the Comunidade placed before us also disclose an affidavit by the respondent No. 5 having been sworn before the Notary Public by him on 17th March, 1994 to the effect that his income from all sources was Rs. 77,160/-.

8. There is no dispute that prior to 5th May, 1993, the limit prescribed for being eligible for the grant of plot of land of the Comunidade on lease without any auction being held was the annual income not exceeding Rs. 30,000/-. The said limit was enhanced to Rs. 80,000/- with effect from 3rd June, 1993 by virtue of Goa Legislative Diploma No. 2070 dated 15-4-1961 (Amendment) Act, 1992 and thereafter to Rs. 1,25,000/- from 18th February, 1996 by virtue of The Goa Legislative Diploma No. 2070 dated 15-4-1961 (Amendment) Act, 1995.

9. The record pertaining to gross salary drawn by the respondent No. 5 since 1991 till 1999 furnished by the Deputy Director of Accounts of Goa Government and not disputed by the respondent No. 5 is as under :---

Date	Gross amount per month	Gross annual income
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29-10-1991	Rs. 6,620/-	Rs. 79,440/-
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26-5-1993	Rs. 8,048/-	Rs. 96,576/-
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7-11-1995	Rs. 10,720/-	Rs. 1,28,640/-
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28-3-1996	Rs. 13,575/-	Rs. 1,62,900/-
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23-2-1999	Rs. 18,420/-	Rs. 2,21,040/-
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10. Section 334-A of the Code of Comunidades provides for grant of land on lease without auction for construction of houses and buildings thereon to the various institutions, Government departments and local bodies as also to the Government servants and employees of the Comunidade who are landless.

11. As already pointed above, the petitioner has filed his application for grant of plot of land on 16-3-1991. The application of respondent No. 5 requesting for allotment of plot of land with the respondent No. 3 bears date 20-8-1991. However, the said application was actually filed on 29-10-1991. Pursuant to the application filed by the respondent No. 5, a Gazette notice was published on 28-11-1991 inviting objections for grant of plot in favour of the respondent No. 5. Thereupon the petitioner filed the Writ Petition No. 300 of 1994 disputing the entitlement of the respondent No. 5 to claim allotment of the plot of land of the Comunidade. The said petition was disposed of by Order dated 12th December, 1994 directing the respondent State of Goa to consider the petitioner's application along with that of the respondent No. 5 and decide the respective

claims on merits. Pursuant to the said direction, it appears that a decision was taken by the respondent No. 3 to grant the plot in favour of the respondent No. 5. However, nothing was communicated or made known to the petitioner. The petitioner, therefore, applied for necessary copy of order passed pursuant to the direction by this Court in the said Writ Petition No. 300 of 1994. In reply thereto, the respondent No. 1 informed the petitioner that the Government had decided to grant the plot in question to the respondent No. 5 after going into the merits of both the applications and has rejected the application filed by the petitioner on the ground that he had not applied specifically for a sub-division plot as per Rule 13 of the Goa, Daman and Diu Legislative Diploma No. 2070 dated 15-4-1961 Rules 1965 and that the petitioner owns a flat bearing house No. 435/1(F-1) in "Silvia" building situated at Alto-Pilerne, Bardez, Goa. The same was communicated under letter dated 19-4-1996. It is the said decision communicated to the petitioner by the said letter dated 19-4-1996 that the petitioner seeks to challenge under this petition.

12. The records clearly disclose that the respondent No. 5 had submitted his application requesting for a plot on 29th October, 1991, though the application was dated 20th August, 1991. The records unequivocally disclose that the upper limit of income to be eligible for the grant of plot of Comunidade to the Government employee either on 29th October, 1991 or on 20th August, 1991 was Rs. 30,000/- per annum. Undisputedly, the annual income of the respondent No. 5 on 29th October, 1991 was Rs. 79,440/- which is much more than the prescribed upper limit. Being so, the respondent No. 5 was not eligible even to apply for the plot of the Comunidade on 29th October, 1991.

13. It was sought to be contended by Shri S.G. Dessai, Senior Advocate appearing for the respondent No. 5, that for the purpose of eligibility, the upper limit of the applicant to be considered is one which the applicant earns on the day of the grant of the plot and not one which he gets on the day the application for the plot is filed. Without going into the merits or demerits of this contention, if we consider the date of grant of the plot, it is evident from the record that the grant of the plot was made in favour of the respondent No. 5 on 14-11-1995. The records further disclose that on that day the prescribed upper limit of annual income for being eligible to apply for a plot of land of Comunidade was Rs. 80,000/-. Undisputedly, the annual income of respondent No. 5 in November 1995 was Rs. 1,28,640/-. Therefore, even without admitting but assuming the contention of the learned Advocate for the respondent No. 5 to be correct, the respondent No. 5 was earning beyond the prescribed limit even on the day of the grant of the plot of land. Therefore, irrespective of the fact whether the date of the application or the date of the grant of the plot being material for the consideration of the upper limit, in either of cases the respondent No. 5 was drawing income in excess of the upper limit prescribed for entitlement of grant of the plot of land of the Comunidade for a Government servant. Hence in no case, the respondent No. 5 could have been allotted the plot by the respondent No. 3. It is, therefore, to be held that neither the respondent No. 5 was eligible

for applying for the plot of the respondent No. 3 on account of his gross annual income being beyond the prescribed limit for being eligible to apply for the plot of land of Comunidade nor the grant of plot of land in favour of respondent No. 5 by the respondent No. 3 has been done in accordance with the provisions of the Code of Comunidades.

14. Neither the affidavit filed by the respondent No. 3 nor the records placed before us disclose that the respondent No. 3 had taken proper precaution to find out the exact upper limit of the annual income of the respondent No. 5 at the relevant time and to consider whether the annual income of the respondent No. 5 entitles him to claim the plot of land of the respondent No. 3. The records also do not disclose as to what steps and precautions the respondent No. 3 had taken to find out whether the respondent No. 5 owns any other plot in the State of Goa. Though the records disclose that a mere allegation on the part of the respondent No. 5 about the ownership of the petitioner of other premises in the vicinity of the area was accepted by the respondent No. 3 as a gospel truth, not even an iota of evidence was sought to be collected to find out whether the respondent No. 5 owns any other plot in the State of Goa. In the circumstances, therefore, the grant of plot in favour of the respondent No. 5 cannot be sustained and is liable to be quashed and set aside.

15. There appears to be considerable merit in the contention of the petitioner that the respondent No. 5 got the plot in question allotted to him by exerting his influence by virtue of the post occupied by him.

16. The records apparently disclose that the respondent No. 5 had not hesitated even to present incorrect picture regarding the gross annual income of the respondent No. 5 while filing his application for plot. This is evident from the contents of para 18 of the affidavit of the respondent No. 5 read with the records pertaining to the application of the respondent No. 5 with the respondent No. 4 made available for our perusal by the Government Advocate. In the copy of the affidavit filed along with the application by the respondent No. 5, it was disclosed that the annual income of the respondent No. 5 from all sources was not exceeding Rs. 30,000/- whereas in para 18 of the affidavit of the respondent No. 5 dated 8-4-1996 filed in the Court, it has been stated that when the respondent No. 5 had filed his application his gross income was Rs. 77,160/-.

17. It was sought to be contended by the respondent No. 5 that pursuant to the grant of the plot, the respondent No. 5 has invested an amount of Rs. 2,23,635/- in connection with the construction in the said plot. In fact, in the affidavit filed at the stage of issuance of interim relief on 8-4-1996 the respondent No. 5 had stated that he had spent a sum of Rs. 1,50,000/- towards the total expenditure by him. On 8-4-1996 the interim relief was granted directing maintenance of status quo in the plot in question. The respondent No. 5 has not explained as to how the expenditure of Rs. 1,50,000/- got inflated to Rs. 2,23,635/- on 10-6-1996 when the additional affidavit was filed by the respondent No. 5. In any case, if the concerned respondent has incurred expenditure in total disregard

to the provisions of law and without verifying as to whether he was lawfully entitled to the said plot or not, and that too, inspite of occupying a post of Chief Town Planner in the State of Goa, he cannot claim any prejudice having been caused to him for the setting aside the illegal grant of the said plot in his favour. A person occupying the post of Chief Town Planner is certainly expected to know the provisions of law in relation to immovable properties and their development. If the respondent No. 5 had himself undertaken to commence the development of the plot without ascertaining the legality about the grant of the plot in his favour, he himself is to be blamed for the consequences that may follow.

18. The records also disclose that the application of the petitioner for the grant of plot has been rejected for extraneous reasons and without following the proper procedure of law. There is no material on record to show that the petitioner owns any flat at "Silvia Building" at Alto Pilerne. It was necessary for the respondent No. 3 to ascertain by perusing documentary evidence in respect of the ownership of flat in the said "Silvia Building". In the absence of the said exercise, it was highly improper for the respondent No. 3 to reject the application of the petitioner for the grant of the plot. The decision in that regard, therefore, cannot be sustained and is liable to be quashed. The respondent No. 3 shall decide the application of the petitioner afresh in respect of the plot asked for by his application dated 5-1-1996 read with the application dated 16-3-1991.

19. The records also disclose that the sub-division of the property was undertaken after filing of the application for plot by the petitioner. Being so, naturally the application of the petitioner does not disclose specific survey number of the plot. It was abundantly clear to the respondents that the petitioner had applied for the plot what was sought to be granted to the respondent No. 5. This was further clear from the proceedings in Writ Petition No. 300 of 1999 between the parties. Being so, rejection of the application of the petitioner on the ground that he had not applied specifically for a sub-divided plot cannot be sustained.

20. In the result, therefore, the petitions succeed. The communication dated 19-4-1996 to the petitioner is hereby quashed. The grant of plot of land in question to the respondent No. 5 is also hereby quashed. The possession of the said plot shall automatically stand reverted to the respondent No. 3 with no rights whatsoever to the respondent No. 5 in relation to the said plot or any construction alleged to have been already done therein. Respondent No. 5 shall not be entitled to interfere in any manner in the said plot. The respondent No. 3 shall decide about the application filed by the petitioner for the grant of plot within a period of 8 weeks and report of the compliance in that regard be filed with the Additional Registrar of this Court thereafter within 2 weeks. The respondent No. 5 to pay costs of Rs. 2,500/- to each of the petitioners in both the petitions. Rule is made absolute in the above terms.

21. Petition succeeds.