
(2011) 01 BOM CK 0074
In the Bombay High Court
Case No : Writ Petition No. 864 of 2009

Smt. Shobha R. Kalangutkar	Vs	APPELLANT
State of Goa and Giridhar Devsekar		RESPONDENT

Date of Decision : 17-01-2011

Acts Referred:

Citation : (2011) 01 BOM CK 0074

Hon'ble Judges : S.B. Deshmukh, J;F.M. Reis, J

Bench : Division Bench

Advocate : A.D. Bhobe, for the Appellant; Shaikh Vahidulla, Government Advocate for Respondents No. 1 to 3 and V. Menezes, for the Respondent

Judgement

S.B. Deshmukh, J.—Heard learned Counsel for the respective parties. An affidavit filed on behalf of Respondent No. 4 is accepted. Copies of it served to the Counsel appearing for the respective parties. Marked by letter "X" for identification. Taken on record. After hearing the learned Counsel for the parties and by their consent we are intending to issue Rule. Rule, made returnable forthwith. Counsel appearing for the Respondents waive service of rule. By their consent taken up for hearing forthwith.

2. The Petitioner claims to be an owner and possessor of a property situated at Santarxette, Aldona, Bardez, Goa surveyed under Survey No. 15/7 of Village Aldona. (hereinafter, referred to as "the writ property"). It is further contention of the Petitioner that there is a house bearing No. 683/A. According to the Petitioner, there also exists a well in the writ property i.e. survey No. 15/7 of Village Aldona. The 3 w.p. No. 864/2009 Petitioner's grievance is that the house of the Petitioner has not been provided with water tap connection from the local body concerned and she and her members of family are totally dependant on the water of the well available in the writ property. It is further contended by the Petitioner that the said well water is not potable. For several months, amongst the years, there is a seepage of water from the nearby river containing salt water. Such seepage of water is alleged to be in the well available in the writ

property. The Petitioner and her family members, out of compulsion, are using the said well water for domestic purpose, as also potable water.

3. According to Petitioner, somewhere in the month of December, 2008, the Petitioner moved an application for water tap connection, to the Office of Respondent No. 3. The application submitted by the present Petitioner, according to the Petitioner, was in accordance with the provisions of law, with all necessary annexures for getting the water tap connection. The Petitioner emphasizes on a rough plan/sketch allegedly annexed to the said application. According to the Petitioner, this rough plan/sketch depicts the existence of the water tap 4 w.p. No. 864/2009 line and the distance from the house of the present Petitioner. This pipe line, according to the Petitioner, lies along with the pipe line connecting the said property. Despite receipt of such application from the Petitioner, it is alleged that Respondent No. 3 did not examine the application, nor raised any query.

4. Counsel appearing for the Petitioner submitted that the Village Panchayat of Aldona has issued a certificate by which the Village Panchayat of Aldona has certified that construction for which water connection is sought by the Petitioner is a legal construction and the Village Panchayat of Aldona has no objection for release of water connection. It is submitted that despite such a certificate from the Village Panchayat, the application submitted by the Petitioner has not been considered by Respondent No. 3.

5. According to the Petitioner, the Assistant Engineer, subordinate official of Respondent No. 3, has informed the Petitioner that Respondent No. 3 has no objection to cut road (pathway) in order to release water connection to the house of the Petitioner. The Petitioner 5 w.p. No. 864/2009 has referred to a communication of the Assistant Engineer, calling upon the Petitioner to attend his office somewhere in the year 2008. According to the Petitioner, she has remained unsuccessful despite of the application in accordance with the provisions of law, from getting the water tap connection. Ultimately, she was compelled to issue a legal notice dated 16th March, 2009 to Respondent No. 3, calling upon him to perform his statutory duties by releasing the water connection.

6. Learned Counsel for the Petitioner states that Respondent No. 4 is her neighbour. Said Respondent No. 4 had filed a civil suit against the family members of the present Petitioner regarding some property dispute. According to the Counsel for the Petitioner, the said civil suit was partly decreed by the trial Court. An appeal was filed and the appellate Court reversed the judgment and order passed by the trial Court. The Petitioner herein challenged the said judgment and Decree of the first Appellant Court before this Court. It was numbered as Second Appeal No. 95/05. Learned Counsel for the Petitioner submitted that the said appeal has been admitted by this Court and further stayed the judgment and Decree passed by the first appellate 6 w.p. No. 864/2009 Court, on 17.6.2005 pending adjudication. According to the Petitioner, Contempt Petition No. 14/2006 was filed. The grievance made in the contempt petition was regarding breach of an interim order passed on 1.9.2005 by this

Court in Civil Application No. 214/05 in Second Appeal No. 95/05. A reference is also made to an order dated 12th July, 2007 passed by this Court in the Contempt Petition No. 14/06, dismissing the contempt petition. According to the Petitioner, Respondent No. 4 is in enemical terms with the Petitioner and causes harassment to the present Petitioner. Respondent No. 4 has illegally addressed a communication to Respondent No. 3 objecting to the laying of the pipe line for the water connection sought by the present Petitioner.

7. On behalf of Respondent No. 4 Mr. Menezes, learned Counsel points out page 114 (Exhibit E). Exhibit E is a certified document admitted by the Counsel Mr. Bhobe appearing for the Petitioner. This document is placed on record by learned Counsel Mr. Menezes. Learned Govt. Advocate also admits that this document is a certified copy. This document is crucial for showing the position of the 7 w.p. No. 864/2009 house and the controversy amongst the parties. From this sketch/map there is consensus amongst the Counsel present before the Court that to the southern side is the writ property i.e. survey No. 15/7, allegedly owned and possessed by the Petitioner and survey No. 15/20 allegedly owned and possessed by Respondent No. 4. The village road is also shown in this map/sketch. Land survey No. 15/20 is allegedly owned and possessed by Respondent No. 4 and is abutting the said village road. Land survey No. 15/18 is also abutting the said village road. The said land survey under No. 15/18 is on the souther side of writ land i.e. survey No. 15/7 allegedly owned and possessed by the Petitioner.

8. With the assistance of the Counsel appearing before the Court, we have seen the location of the writ land owned and possessed by the Petitioner i.e. survey No. 15/7. The claim of the Petitioner is that the house is situated in the writ land, towards northern side location of land allegedly owned and possessed by Respondent No. 4. Learned Counsel Mr. Bhobe, on instructions, makes a statement that the water pipe line which the Petitioner is seeking shall be from the land survey No. 15/18. There is a civil dispute pending amongst the present 8 w.p. No. 864/2009 Petitioner and Respondent No. 4, which we have referred to in the foregoing paragraphs. The said civil dispute is ultimately pending before this Court i.e. Second Appeal No. 95/05 and noticed by us in the foregoing paragraphs. In this writ petition, we are not entering into the civil dispute amongst the parties, more specifically the Petitioner and Respondent No. 4. We are only accepting the statement made by learned Advocate Mr. Bhobe appearing for the Petitioner that such water pipe line shall be not from the land survey No. 15/20 of Village Aldona, allegedly owned and possessed by Respondent No. 4. The said statement is accepted. Taken on record. Laying of such pipe line shall be in accordance with the provisions of law.

9. In this view, in our opinion, this writ petition can be disposed of and rule can be made absolute in the above terms. We make it clear that we have not entered into the merits of the civil dispute amongst the Petitioner and Respondent No. 4. This order to be considered and read on the basis of the statement made by the

learned Counsel for the Petitioner Mr. Bhobe on instructions, and confining the laying of water pipe line through survey No. 15/18.

10. The writ petition is partly allowed. Rule made absolute in the above terms and disposed of. There shall be no order as to costs.