



Presented on 30.09.2019
Registered on 30.09.2019
Decided on: 16.10.2023
Duration: Years/Months/Days
04 00 16

**IN THE COURT OF DISTRICT JUDGE-3, NORTH
GOA AT PANAJI.**

(Before Smt. Vijayalaxmi R. Shivolkar, District Judge-3,
North Goa, at Panaji)

CNR no. GANGO10020442019
Civil Review Application no. 22/2019

Goa University,
A body Corporate having its
Principal place at Taleigao Plateau,

Goa 403 206,
Through its Registrar,
Y. V. Reddy, 52 years,
Having its Office at the
University Campus,
Taleigao Plateau, Goa.

.. Petitioner

Versus

1. The Village Panchayat St. Cruz,
Through its Secretary/Sarpanch,
With Office at Panchayat Ghor,
Nr. St. Cruz market,
St. Cruz, Goa.

2. Mr. Haroon Ebrahim,
Major in age,
Son of Ibrahim Mohammed,
Residing at H. No. 18/2001/1,
'Haroon' New Taleigao Bypass Road,
P.O. Caranzalem, Goa,
403 002.

.. Respondents

Ld. Senior Counsel Ms. A. Agni along with Ld. Advocate Ms. R. Bhatikar present for the Petitioner at the time of arguments and Ld. Advocate Ms. R. Bhatikar present at the time of passing order.

Respondent no. 1 proceeds ex-parte.

Ld. Advocate Shri U. R. Timble present for the Respondent no. 2 at time of arguments and Ld. Advocate Ms. Dipali Naik present at the time of passing order.

ORDER

(Delivered on this the 16th day, of the month of October, of the year, 2023)

This Order shall dispose of Civil Review petition filed under section 114 of the Civil Procedure Code Order 47 of CPC for review of Judgment and Order dated 20.04.2017 passed in Revision No.3/2017 by the Ad-hoc District Judge-2, Panaji, dismissing the said revision application and upholding Order dated 08.12.2016 passed by the Additional Director of Panchayat II in Panchayat Proceedings No. ADP/II/P.P.26/14 and to recall order dated 20.04.2017 filed by the Petitioner. The parties shall be herein after referred to as "Petitioner and the Respondents" respectively as referred to in the Civil Revision Application No. 3/2017 by my Ld. Ad-hoc District Judge-2 (FTC), Panaji, for the sake of convenience.

2. It is the case of the Petitioner that the Village Panchayat St. Cruz passed a totally illegal and arbitrary resolution dated 20.06.2014, thereby resolving to construct a 10 mtrs. wide pucca road through the petitioners property bearing survey nos. 126, 135 and 132 without bothering to bear the petitioner. Aggrieved by this resolution the

petitioner filed Panchayat proceeding no. DP/II/P.P.26/14 before the Director of Panchayat, North Goa at Panaji. The petitioner states that they are the Master of the proceedings filed by them and they correctly arrayed only the Village Panchayat St. Cruz as a party respondent to the same. The petitioner disclosed before the Additional Director of Panchayats-II, Panaji that there is a civil suit pending between the petitioner and the respondent no.2 before the District Judge-I Panaji, wherein the respondent no.2 is claiming easementary access through land of the petitioner. The said proceedings would be decided in its own course by the District Judge I Panaji and the same would have nothing at all to do with the proceedings of the Additional Director of Panchayat-II. The respondent could not have opportunity to carve out a space for himself in the proceedings the Additional Director of Panchayat-II on the basis of the pendency of the suit.

3. The petitioner states that the Panchayat resolution primarily affects only the university property and the 10

mtrs. Wide road in question is proposed to be constructed in university land bearing survey no.126, 135 and 132 and the same ends in survey no. 132. The petitioner states that the plan annexed by the respondent no.1 Panchayat to the resolution dated 20.06.2014, clearly shows that proposed road is stated to pass through the university land bearing survey no. 126, 135 and 132 and the same ends in survey no. 132. The main issue for decision before the Hon'ble Director of Panchayat-II would be, whether the Panchayat was justified in resolving to construct a public road in private property, without hearing the owner and in the absence of any sort of no objection for the owner.

4. It is further the case of the petitioner that the respondent no.1 appeared before the Hon'ble Director of Panchayat II and attended the court hearing and alongside the respondent no.1, appeared the respondent no.2, who filed an application for intervention dated 03.07.2015. The application for intervention contained a prayer to be added as party respondent to the proceedings, the petitioner

states that it is not understood as to how the respondent no.2 learnt about the proceedings before the Hon'ble Director of Panchayat-II but his very presence established that there was nexus between the respondent no.1 and 2. That the Hon'ble Director of Panchayat-II was pleased to dismiss the application for intervention vide Order dated 14.10.2015. The respondent no. 2 challenged the said order by filing Panchayat Revision No. 86/15 before the Hon'ble District Court (FTC-1) at Velho Bldg Panaji Goa who was pleased to set aside the said order and directed the Hon'ble Director of Panchayat-II for passing a reasoned order in the matter. The Hon'ble Director of Panchayat-II thereafter pursuant to the directions of Hon'ble District Court (FTC-1) at Velho Bldg. Panaji Goa reheard the matter on the point of intervention and was pleased to pass the order dated 8/12/16, thereby allowing the application for intervention filed by the respondent no.2 herein and adding him as a party respondent to the panchayat proceeding no. ADP/II/P.P.26/14. The petitioner challenged the order

dated 8.12.16 by filing Panchayat Revision 3/17 before this Hon'ble Court. This Hon'ble Court was pleased to pass orders dated 20.04.2017 thereby dismissing the said Panchayat Revision 3/17. The petitioner challenges the impugned order dated 20.04.2017. The impugned order demonstrates error patent on the face of the record having ignored basis facts and overlooks important documents which call to recall of the order dated 08.12.2016.

5. Ld. Senior counsel Ms. Agni submitted that the order dated 20.04.2017 suffers from mistake/error apparent on fact of record in so much as it permits addition of the respondent no.2 as a party respondent in the panchayat proceedings though the applicant had filed the application for intervention holding in para 11 of the order that the respondent no.2 was a necessary and proper party to the panchayat proceedings. The Hon'ble court overlooked that the application filed by the respondent no. 2 was for intervention The Hon'ble court ignored the settled position in law that there is a valley of difference between an

intervener and a party respondent. An intervener could be permitted to address the court in support of either of the parties involved but he would not be entitled to any relief by virtue of his intervention. And erred in holding that the application for intervention was allowed and the intervener was to be added as respondent no.2.

6. The review application has been objected by respondent no.2, same being frivolous and untenable for the reasons that the original proceedings are under Panchayat Raj Act, and therefore the present petition filed under Section 114 of Civil Procedure Code are neither attracted nor applicable and there is no provision for 'Review' under the Panchayat Raj Act and same be dismissed with cost.

7. Heard arguments advanced by Ld. Senior Counsel Ms. A. Agni and also considered written synopsis of

argument filed by petitioner on record. On behalf of respondent no.2 heard Ld. Advocate Shri U. R. Timble.

8. I have perused the records and proceedings, the order and the subject matter of the present review application and after considering the same, the point that arises for my determination is :-

“Whether the appellants prove that the Civil Review application is maintainable in law and in facts?”

REASONS

Point no. 1

9. It is the contention of ld. Senior Counsel Ms. A. Agni That this Hon'ble Court while dismissing the revision petition committed error which is patent on face of record by similarly overlooking the aspects as aforesaid as set out in ground no.'C'. The intervener can argue either in favour of the one or the other party and cannot have his own independent case before the Court. In the instant case, the

respondent no.2 had come out with the case that he has got easementary rights to the property of the university and he is already in the civil court urging such a right of easement against the university. That a finding is recorded by the Hon'ble court that panchayat has resolved to construct 10 mtrs. wide road through the property of the respondent no.2 whereas the resolution which is impugned in the panchayat proceedings does not carve out any road through survey no. 131 but it is a road which leads to survey no. 131 and the road only affects property of the petitioner and not the respondent no.2. That the Hon'ble court also bypassed points raised by the petitioner one of which was under the garb of intervention the respondent no.1 seeks addition as a party to the panchayat proceedings.

10. It is further the contention of ld. Senior Counsel Ms. A. Agni that reference was made to 1999 vol.33 SSC 141 before the Hon'ble court to which no reference what so ever has been made in the judgment and order passed by the

Hon'ble court. The said judgment if perused would show that intervener has only right to support one party or the other party to the proceedings he cannot adjudicate his independent right in the proceedings. This being the law the judgment of this Hon'ble Court is required to be reviewed. The respondent no.2 would not be adversely affected at all even if the resolution is quashed, whatever rights the respondent no.2 claims that is right of easement as against the property of the university land he is free to claim prove before the civil court and the result of this particular proceedings would not affect him at all. Therefore he has no direct interest to be joined to these proceedings.

11. Ld. Senior Counsel Ms. A. Agni further contended that there is misreading of record on the part of the trial court which error Hon'ble Court has also perpetrated and therefore there is case made out for review. It is further submitted that this Hon'ble Court held by reiterating what

was the view of the additional Director of Panchayat that if it is the case of the appellant that no road could be constructed in the property of the university without hearing the university than owner of land through which public road passes are required to be heard. In the first place road does not pass through 131 in any case and if they are aggrieved by the resolution of the panchayat it is an independent right which arises in favour of those parties and they cannot squeeze in the proceedings filed by the university which is with regard to their land. The independent right of a party involved in the matter cannot be pressed under the garb of intervention. The respondent has no place in the proceedings and in as much as the order passed by the Hon'ble court suffers from patent error demonstrated in the review petition hereinabove the same is required to be called.

12. Ld. Advocate for the Petitioner relied on the citation in the case of **Saraswati Industrial Syndicate Ltd., vs.**

Commissioner of Income Tax, Haryana, Rohtak reported in (1999) 3 Supreme Court Cases 141, wherein it is held that:

“Learned Counsel for the interveners submits that he is entitled to the same order as we have just passed. We cannot pass such an order in an intervention application. The only purpose of granting an intervention application is to entitle the intervener to address arguments in support of one or the other side. Having heard the arguments, we have decided in the assessee’s favour. The interveners may take advantage of that order.”

13. In the case of **Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay and others reported in 1992(3) Bom.C.R.110,** wherein it is held that:

“It was argued that the court cannot direct addition of parties against the wishes of the plaintiff who cannot be compelled to proceed against a person against whom he does not claim any relief. Plaintiff is no doubt domintus litis and is not bound to sue

every possible adverse claimant in the same suit. He may choose to implead only those persons as defendant against whom he wishes to proceed though under Order 1, Rule 3 to avoid multiplicity of suit and needless expenses all persons against whom the right to relief is alleged to exist may be joined as defendants. However, the Court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. Rule 10 specifically provides that it is open to the Court to add at any stage of the suit a necessary party or a person whose presence before the Court may be necessary in order to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

It was further held that: Sub rule (2) of Rule 10 gives a wide discretion to the court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1, Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively.

A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question in view of all the facts and circumstances of a particular case”.

14. In the case of **Director of Settlements A.P and others vs. M. R. Apparao and another reported in (2002) 4 Supreme Court Cases 638**, wherein it is held that:

“So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the court to interpret a legislation, the statements of the court on matters other than law like facts may have no binding force as the facts of two cases may not be similar, but what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as

a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has “declared law” it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A Judgment of the court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An “obiter dictum” as distinguished from a ratio decidendi is an observation by the court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight.”

15. Per contra Ld. Advocate Shri U. R. Timble appearing for respondent no.2 contended that the provisions of Civil Procedure code are not applicable to any proceeding under the Panchayat Raj Act and therefore the review petition filed under section 114 of CPC is not tenable. That filing of

review under section 114 of CPC does not arise as firstly the earlier revision was filed under the provisions of Panchayat Raj Act. In the Panchayat Raj Act, there is no provision of review of an order made there under. It is a settled law that no review can lie of an order made under special act unless the act itself provides a specific term of such a review.

16. In support of the contention above, Ld. Advocate for respondent no.2 placed reliance in the case of **Naresh Kumar and ors vs. Government of NCT of Delhi** reported in Civil Appeal No. 6638 of 2010 para 12 wherein it is held that:

“It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi judicial orders. In the absence of any provision in the Act granting an express of power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires, illegal and without jurisdiction.”

17. In the case of **Harbhajan Singh vs. Karam Singh and ors. reported in 1966 AIR 641, 1966 SCR (1) 817** wherein the apex court while referring to the principle laid down by the Hon'ble Madras High Court in **Anantharaju Shetty vs. Appu Hegada** held:

“It is settled law that a case is not, open to appeal unless the statute gives such a right. The power to review must also be given by the statute. Prima facie a party who has obtained a decision is entitled to keep it unassailed, unless the Legislature had indicated the mode by which it can be set aside. A review is practically the hearing of an appeal by the same officer who (1) 118911 Q.B. 450.”

18. Be that as it may, on merits it is the contention of Ld. advocate Shri Timble for respondent no.2 that there is no error apparent on face of record in the impugned order under challenge and that the applicant under the garb of seeking review is seeking rehearing of the same matter on the same ground that were canvassed.

19. The perusal of the impugned order does not find any such material error apparent on face of record which needs to be reviewed in the present review petition. Moreover, the applicant herein has not overcome the preliminary objection raised by respondent no.2 as regards the maintainability of the review petition as contended by Ld. Advocate Shri U. R. Timble. In the circumstances, I am constrained to pass the following:

ORDER

The Civil Review Application filed by the Petitioner stands dismissed.

Parties to bear their own cost.

Pronounced in the Open Court.

Proceedings closed.

(Vijayalaxmi R. Shivolkar)
District Judge-3, Panaji.

Panaji

Dated:-16.10.2023

Sr*