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Superintendent
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Panaji-Goa

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Presented on:	06.01.2017
Registered on:	09.01.2017
Decided on:	20.04.2017
Duration:	Yrs Ms. Days
	- 3 '11

**IN THE COURT OF ADHOC DISTRICT JUDGE-2, (FTC)
NORTH GOA AT PANAJI.**

(Before Mrs. Vijaya Ambre, Adhoc District Judge-2, (FTC) Panaji).

Civil Revision Appln. No.3/2017

Goa University,
A body Corporate having its
Principal place at Taleigao Plateau,
Goa 403 206
Through its Registrar,
Shri Y. V. Reddy, age 51
Having its office at the University Campus,
Taleigao Plateau, Goa.

... Petitioner

V/s.



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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 of age,
Son of late Ibrahim Mohamed,
Residing at H. No.18/2001/1,
'Haroon' New Taleigao Bypass road,
P.O. Caranzalem, Goa, 403 002. Respondents

Ld. Senior Counsel Smt. A. Agni along with Advocate Mrs. Ashwini Agni present for the applicant at the time of arguments and none present at the time of Order.

Ld. Advocate Mr. Timble present for respondent no.2 at the time of arguments and Ld. Advocate Ms. Matondkar present at the time of Order.

Respondent no.1 and his advocate absent.

ORDER

(Delivered on this 20th day of the month of April of the year 2017).

The applicant filed this Revision Application aggrieved by the impugned order dated 08.12.2016 passed by the Ld. Additional Director of Panchayat-II, Panaji-Goa, thereby allowing the application for intervention filed by the respondent no.2 and added him as a party respondent to the Panchayat Petition filed by the applicant.

2. The grounds raised in the Revision Application are as under:-

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1. The impugned order is bad in law, misconceived in law and deserves to be dismissed in limine.

2. The impugned order suffers from complete non application of mind and the same ignores basic facts which scream in favour of dismissal of the Application for Intervention. The impugned order is devoid of proper reasoning.

3. The Ld. Director of Panchayat II, erred in failing to understand the simple proposition that the respondent no.2 had no place in the proceedings before it.

4. The Ld. Director of Panchayat II failed to understand that it was impermissible to array the respondent no.2 as a party respondent by allowing his Application for Intervention.

5. The Ld. Director of Panchayat II erred in holding that the Panchayat had resolved to construct a 10 mtrs wide road through property bearing survey no.126, 135 and 132 (belonging to the Petitioner University) and also property bearing survey no.131 (belonging to the respondent no.2).

6. The Ld. Director of Panchayat II erred in looking into a document sought to be produced by the respondent no.2 via application for production of documents.

7. The Ld. Director of Panchayat II erred in holding that the application for Intervention was allowed and the Intervener was to be added as respondent no.2.



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8. The Ld. Director of Panchayat II erred in holding that the principles of natural justice called for addition of the respondent no.2 to the Panchayat proceedings.

3. Notices were issued to the respondents. Respondents appeared through their advocate.

4. Heard arguments. Ld. Senior Counsel Smt. A. Agni along with Ld. Advocate Mrs. Ashwini Agni argued for the applicant. Ld. Advocate Mr. Timble argued for respondent no.2. Respondent no.1 and his advocate absent.

5. The facts in brief regarding this Revision Application is as under:-

The respondent no.1, Village Panchayat had passed a resolution dated 20.06.2014 thereby resolving to construct a 10 mtrs wide pucca road to the applicant's property bearing survey no.126, 135 and 132 without hearing the applicant. The said resolution was also in respect of survey no.131 belonging to respondent no.2 and survey no.129 belonging to Gopal Nachinolkar. The applicant stated that the applicant was aggrieved by this resolution and therefore, Panchayat proceedings were filed before the Ld. Director of Panchayat, North Goa, Panaji only against Village Panchayat as a respondent. The applicant felt that respondent no.2 is not necessary party, as applicant was only aggrieved by the said

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resolution and had approached the Court.

6. The applicant also disclosed that Civil Suit was pending before the Ld. District Judge, Panaji wherein respondent no.2 was party, claiming access through the land of the applicant and the said proceeding is pending for decision. According to the applicant, respondent no.2 has nothing to do with this Panchayat proceedings since only applicant is affected by the said resolution as proposed road is slated to be constructed in the University land only. The applicant further stated that respondent no.2 filed application for Intervention to add him as a party respondent and it was wrongly granted by the Ld. Director of Panchayat and the reasons given by the Ld. Director of Panchayat is not tenable. Therefore, the applicant preferred this Revision Application against the Order of the Ld. Director of Panchayat allowing Intervention Application of respondent no.2.

7. On considering the impugned Order, grounds raised in the memo of Civil Revision Application, the documents produced on record and the arguments of both parties, point for my determination and my finding thereon is as under:-

Point	Finding
1. Whether the present respondent no.2 is proper and necessary party to decide the dispute raised by the applicant against the Panchayat in the said Panchayat Petition and the	

None



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respondent no.2 is required to be heard before granting any relief to the applicant to suspend/quash and set aside the resolution dated 20.06.2014?

Affirmative.

REASONS

Point no.1

8. Present respondent no.2, Mr. Haroon Ebrahim had filed application for Intervention before the Ld. Director of Panchayat and it was taken on record and after hearing on merits, the impugned order was passed allowing the said Application for Intervention.

9. The Ld. Director of Panchayat ordered the intervener to add as a respondent no.2 in the said Panchayat Petition and applicant was directed to amend the cause title to his Petition and handover the copy to respondent no.2 along with enclosures and matter was fixed for reply of respondent no.2. the Ld. Additional Director of Panchayat in its impugned order held that the participation of the intervener (present respondent no.2) is necessary in the present proceeding as any decision upon said resolution shall adversely affect the rights of the intervener, as the said 10 mtrs wide proposed road to be constructed, passes through the property of the intervener. Ld. Additional Director of Panchayat held that the principles of natural justice adhered to on hearing the intervener in the said Petition.

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10. The Ld. Advocate for the applicant submitted that the findings given by the Ld. Additional Director of Panchayat that "any decision upon the resolution of Panchayat shall adversely affect the rights of the intervener i.e. present respondent no.2 as 10 mtrs wide proposed road passes through the property of the intervener", is incorrect as the alleged rights of the respondent no.2 would be adjudicated upon by the District Court and respondent no.2 could not in any reading of the situation have been entitled to seek any kind of relief in the said proceedings.



11. Ld. Advocate for the applicant also submitted that the rights of the respondent no.2 if any will be decided in the Civil Suit pending before the Ld. District Court, Panaji and respondent no.2 cannot be added as a party respondent since he is not affected by the said resolution as it is beneficiary to him. With regards to this submission, it is pertinent to note that the applicant in this Revision Application raised a ground at 'C' at para 5(c) that the main issue for decision before the Ld. Additional Director of Panchayat would be whether the Panchayat was justified in resolving to construct a public road in private property without hearing the owner and in absence of any sort of no objection for the owner. Based on this ground, the applicant desires to set aside the said resolution passed by the Panchayat. The resolution passed by the Panchayat placed on record clearly shows that the proposed road of 10 mtrs wide to be constructed on the same existing customary road passing along with the boundary wall of the applicant and will be passing through

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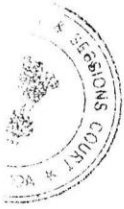
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the survey numbers 126, 135 and 132 belonging to the applicant, (Goa University), survey no.131 belonging to respondent no.2 and survey no.129 belonging to Mr. Gopal Nachinolkar. This resolution clearly shows that the proposed 10 mtrs wide road passes through the property of applicant as well as through the property of respondent no.2 and also through the property of one Mr. Gopal Nachinolkar, who is not party to this proceedings. This being the case, respondent no.2 is proper and necessary party to this proceedings so as to arrive at a decision whether the resolution taken by the Panchayat deserves to be quashed and set aside as prayed by the applicant. The issue to be decided by the Ld. Additional Director of Panchayat whether the resolution to be maintained or to be quashed and set aside cannot be adjudicated without hearing the applicant as well as respondent no.1 and 2. Therefore, I do not agree with the ground taken by the applicant that the Ld. Additional Director of Panchayat II erred in holding that the Panchayat had resolved to construct 10 mtrs wide road through property of the applicant and it only affects the applicant and respondent no.2 is not necessary party.



12. The findings given by the Ld. Additional Director of Panchayat that "the said road passes through the property of applicant as well as through the property of respondent no.2, is supported by the resolution of the Panchayat placed on record. Therefore, I do not agree with the submission of Ld. Senior Counsel of the applicant that the Ld. Additional Director of Panchayat II

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erred in coming to the conclusion that respondent no.2 is not necessary party to the Panchayat proceedings. In my view, since the resolution passed by the Panchayat to construct road passing through property of applicant as well as through property of respondent no.2 and one Mr. Nachinolkar, the applicant as well as respondent no.2 are necessary and proper party to decide whether the said resolution deserves to be quashed and set aside or to be maintained. Merely, because the respondent no.2 has not disclosed the source of his knowledge about the proceedings initiated by the applicant before the Ld. Additional Director of Panchayat, that does not mean that the respondent no.2 is not entitled to get himself intervened in the said proceedings.

13. Ld. Senior Counsel for the applicant submitted that there is vast difference between intervener and the respondent. According to Ld. Senior Counsel for the applicant, intervener can only argue the matter but cannot file its reply and intervener cannot be added as a respondent because applicant is dominus liti and can choose its opponent. No doubt, applicant is dominus liti. However, the resolution passed by the Panchayat which is the subject matter of Panchayat Petition before the Ld. Additional Director of Panchayat, shows that the property of respondent no.2 is also being used to construct 10 mtrs wide road and, therefore, respondent no.2 whether he is beneficiary or affected party, has to be heard in the matter.

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14. Ld. Additional Director of Panchayat has rightly held that principles of natural justice demands that the respondent no.2 should be heard and made party to the Panchayat Petition. The applicant cannot obtain any order of setting aside the resolution of Panchayat at the back of respondent no.2 or without giving any opportunity to hear respondent no.2. The applicant in this Revision Application submitted that Panchayat was not justified in resolving to construct a public road in private property without hearing owner and in absence of any sort of no objection for the owner. If this is the case then the owners of the land through which the said public road passes are required to be heard and admittedly respondent no.2 being owner of survey no.131 through which the said proposed public road passes is also required to be heard in the matter.

15. Since averments are made as against respondent no.2 by the applicant in the Panchayat Petition that the resolution is passed at the behest and at the dictates of respondent no.2, and the declaration is given by respondent no.2 for utilizing of his land and the proposed road would be beneficial to respondent no.2 as a developer. Therefore, respondent no.2 has a right to be made as party respondent to the said Panchayat Petition, in order to meet this averments made by the applicant. The principles of natural justice demands that the party should be given opportunity to rebut any allegation made against him. Therefore, I do not agree with the submission of the Ld. Advocate for the applicant that the Ld. Additional Director of Panchayat II failed to understand that it was

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impermissible to arrange respondent no.2 as party respondent by allowing his application for intervention. I do not agree with submission of Ld. Senior Counsel for the applicant that the interveners cannot be allowed to file reply and cannot be added as party respondent and he cannot be intervened as he is not affected by the said resolution but he is benefited by the said resolution.



16. Even if submission of the Ld. Senior Counsel by the respondent no.2 is considered that party, respondent no.2 is benefited by the said resolution of Panchayat, then also respondent no.2 has to be heard in the matter as a party respondent, therefore, the order passed by the Ld. Additional Director of Panchayat is correctly passed and I do not find any infirmity or illegality committed by the Ld. Additional Director of Panchayat. The respondent no.2 is required to be heard in the matter because if the respondent no.2 is beneficiary to the said resolution and if resolution is quashed and set aside without hearing him it will cause prejudice to respondent no.2, and if respondent no.2 is affected by the said resolution then any decision given on the said resolution by the Ld. Additional Director of Panchayat without hearing respondent no.2 will cause prejudice to respondent no.2. On the contrary, no prejudice will be caused to the applicant if respondent no.2 is heard in the matter and allowed to file reply in the Petition.

17. The applicant has every right to put up his case before the Ld. Additional Director of Panchayat, so also respondent no.2

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has right to put up his case and rebut the allegation made against him by the applicant. Therefore, I do not agree with the submission made by the applicant in its Revision Application that the respondent no.2 cannot address the Court with respect to his own case and he is not entitled to any relief by virtue of his intervention. The Panchayat Petition filed by the applicant is to quash and set aside the resolution passed by the Panchayat and the property of applicant as well as respondent no.2 is the subject matter of said resolution. Therefore, the principles of natural justice demands that respondent no.2 should be heard in the matter to adjudicate the issue properly.



18. Ld. Senior Counsel for the applicant submitted that easementary right claimed by respondent no.2 is an independent right and will be decided separately in the Civil Suit pending before the Ld. District Court and the same cannot be agitated before the Ld. Additional Director of Panchayat. The right of easementary cannot be raised before the Ld. Additional Director of Panchayat in the Panchayat Petition filed by the applicant. However, respondent no.2 can always support or object the said resolution since his property is involved in said resolution and the road is proposed to be passing through his property and applicant challenges the said resolution and prays for relief of quashing and setting aside the said resolution. Therefore, respondent no.2 should be heard in the matter in the interest of natural justice. I do agree with the submission of Ld. Advocate for respondent no.2 that the resolution

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challenged by the present applicant speaks about the property of respondent no.2 and respondent no.2 has right to address or put forth his case before the Ld. Additional Director of Panchayat. The respondent no.2 can support the resolution or object the resolution as the case may be, since his property is also involved in the construction of the proposed road. Therefore, the submission of the applicant that "the respondent no.2 cannot be arrayed as a party respondent", deserves to be rejected. I do not agree with the ground taken by the applicant that impugned order is bad in law, misconceived and deserves to be dismissed in limine. The ground taken by the applicant that the impugned order suffers from complete non application of mind also cannot be accepted.

19. The present respondent no.2 is not seeking any relief in the said Panchayat Petition and therefore, submission of the applicant in his Revision Application that the respondent no.2 is not entitled to any relief by virtue of his intervention is misplaced. Without hearing respondent no.2, the Ld. Additional Director of Panchayat will not be in a position to hold that the proposed road would only affect the property of the applicant and not the property of respondent no.2. To arrive at such conclusion, the Ld. Additional Director of Panchayat has to first hear respondent no.2 in the matter, since property of respondent no.2 is also involved in the said resolution of Panchayat which is under challenge. Therefore, respondent no.2 is also entitled to place his documents being owner of the said land on record and also the facts relating to his case in

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the form of reply. In the Panchayat Petition there is no space to raise any counter claim in the reply, claiming for any independent relief. The respondent no.2 at the most can either support resolution or oppose said resolution as the case may be.



20. The submission of applicant that principles of natural justice cannot be applied in the present case as it would flout the settled principles of law of intervention is not acceptable. Therefore, the grounds taken by the applicant in his petition is not at all maintainable. The impugned order passed by the Ld. Additional Director of Panchayat cannot be set aside on this grounds. The plan annexed to the resolution also shows passing of the proposed road through property of respondent no.2. Therefore, my answer to this point is in the affirmative.

21. In view of the above discussion, I pass the following:-

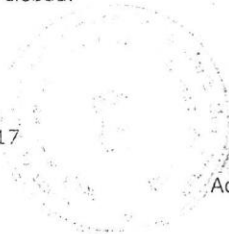
ORDER

Civil Revision Application is dismissed with cost.

Pronounced in the Open Court.

Proceedings closed.

Panaji,
Dated:- 20.04.2017



Vijaya Ambre
20/4/2017

(Smt. Vijaya Ambre)
Adhoc District Judge-2 (FTC)
North Goa, Panaji.

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APPLICATION No 672
CERTIFIED COPY for further proceeding

Date on which copy applied for 7/16/17
Date on which application completed 7/16/17
Date given for taking delivery 9/16/17
Date on which copy was ready 8/16/17
Date on which copy was delivered 9/16/17
Copying and competing fees etc Rs 9817.50+48)
are paid in Mazir Section of this Court 003680 dt. 7/16/17
under Receipt No. 003698 dt. 9/16/17

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