

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**Writ Petition NO. 236 OF 2010.**

Goa Foundation through its  
Secretary, Dr. Claude Alvares .....Petitioner.

Versus

Village Panchayat of Colva through  
its Sarpanch, Colva Goa and ors. ....Respondents

Ms. Norma Alvares Advocate for the petitioner.

Mr. Pavithran A. V., Advocate for respondent no.1.

Mr. S. Vahidulla, Government Advocate for respondent no. 2.

Mr. G. Teles, Advocate for respondent no.3.

**Coram:- A. S. OKA &  
F. M. REIS, JJ.**

**Date:-10<sup>th</sup> August, 2010.**

P.C.

We have heard learned Counsel appearing for the Petitioner. We have heard learned Counsel appearing for the first Respondent . We have heard learned counsel appearing for the third respondent and learned Government Advocate for the second respondent. The basic grievance in this petition is as regards non compliance of the Judgment and order dated 2<sup>nd</sup> March, 2000 passed

by this Court in earlier Writ Petitions. The said Judgment and order dated 2<sup>nd</sup> March, 2000 has been passed in Writ petition no. 76/1995 and Writ Petition no. 237/1999. Writ Petition no. 237/1999 was filed by the predecessor of the third respondent. The operative part of the Judgment and order dated 2<sup>nd</sup> March, 2000 reads thus:-

For the aforesaid reasons, the Writ Petition no. 76/95 is allowed and the compound wall, well and the building falling in survey no.51/1, 51/2 and 54/4 are ordered to be demolished. Respondent no. 3 shall therefore take necessary action in that regard. Rule is accordingly made absolute in the aforesaid Writ Petition. The interim order dated 24.7.95 is hereby vacated. In the facts and circumstances, the costs shall be borne by respondent no. 4 in Writ Petition no.76/95.

2. The prayer in this Writ Petition is for issuing a direction to the first respondent to forthwith demolish the construction namely, building, compound wall and well falling in survey no. 51/1, 51/2 and 54/4 which were directed to be demolished vide order dated 2<sup>nd</sup> March, 2000.

3. The contention of the first respondent village panchayat is that the new structure constructed in 1994 which was the subject

matter of Writ Petition no. 76/1995 has been demolished. The third respondent has filed a reply dealing with the averments made in the petition. In the reply a reference has been made to special leave petition filed by the predecessor of the third respondent for challenging the Judgment dated 2<sup>nd</sup> March, 2000. The stand taken in the reply is that there is no structure standing in survey no. 54/4 which was directed to demolished in the aforesaid writ petition no. 76/1995. In the additional affidavit it is contended that the structure which is standing on as on today in the property bearing survey no. 54/4-A is not the structure which was directed to be demolished by Judgment and Order dated 2<sup>nd</sup> March, 2000. In paragraphs 3 and 4 of said additional affidavit third respondent has stated thus:-

Paragraph 3:- I say that the present structure in survey no. 54/4-A was existing prior to 1975 and in the year 1975 construction licence was applied for the purpose of carrying out extension to the existing house, compound wall and well.

Paragraph 4:- I say that total area of the property bearing survey no. 54/4 is approximately 11, 818 sq.mts belonging to several persons and has several structures constructed on it and the plot of the respondent no. 3 bearing survey no. 54/4-A amasures 1, 385sq.mts.

4. Considering the controversy raised in the petition we had called for the papers of disposed of Writ Petition no. 237/1999 and Writ Petition no. 76/1995. In the said Writ petition no. 76/1995, the prayer made was for commanding village panchayat to act in pursuance to the notices dated 24<sup>th</sup> February, 1994 and 16<sup>th</sup> February, 1995 to demolish the compound wall and the building illegally constructed by the respondent no. 4. As stated earlier, the respondent no. 4 therein is the predecessor of the third respondent in the present petition.

5. Perusal of the material averments made in the Writ Petition no. 76/1995 shows that the petitioner therein was claiming to be the owner of a part of the land bearing survey no. 54/4 and claimed to have purchased the said part vide sale deed dated 21<sup>st</sup> February 1994. There is a plan annexed to the said Writ Petition as Exhibit "A". It is stated in the petition that plot "A" shown on the said plan and access shown thereon have been purchased by fourth respondent therein by sale deed dated 6<sup>th</sup> August, 1993. The allegation made in the said petition is that the fourth respondent therein started construction of a building in the month of October/November, 1994

on the said property. It is stated that construction was carried out after excavating sand dunes. At page 23 of the said Writ Petition, photographs of the offending construction of the building made by the fourth respondent have been annexed. It will be necessary to see the reliefs claimed by the predecessor of the respondent no. 3 herein in her Writ Petition no. 237/1999. The relief claimed in the said Writ Petition was for protecting the construction. It is not in dispute that the judgment and order dated 2<sup>nd</sup> March, 2000 passed by the Division Bench of this Court has attained finality. In the judgment of this Court, a reference has been made to the report of the sub committee of the GSCCE which recorded that 9 rooms have been constructed by the predecessor of the third respondent herein. The operative part of the judgment and order is crystal clear which we have already quoted. This Court directed demolition of compound wall, well and building in survey no. 51/1, 51/2 and 54/4.

6. Now the stand taken by the third respondent in the affidavit and the additional affidavit is that his plot bearing survey no. 54/4-A admeasures 1385sq.mts. The stand categorically taken by the first respondent is that judgment and order dated 2<sup>nd</sup> March, 2000 of this Court has been complied with. However, except for letters

allegedly written by the fourth respondent and petitioner in Writ Petition no.76/1995, no other authentic document such as panchanama recorded by the first respondent panchayat or photographs have been placed on record to prove that the building was demolished.

7. As the aforesaid judgment and order has attained finality, this Court will ensure the compliance of the said order. Apart from the clear description of the structure to be demolished in paragraph 17 of the judgment, the averments made in the Writ Petition no. 76/1995 show that the construction of the illegal building was carried out on a plot marked as plot "A" on the plan annexed as exhibit "A" thereto. Moreover, on the page 23 of the said petition, photographs of the offending structure have been annexed. The second respondent, the Goa Coastal Zone Management Authority will have to identify the plot "A" shown on the plan at exhibit "A" annexed to the Writ Petition no.76/1995 and the building constructed thereon. The said Authority will also consider the photographs of the structure on page 23 of the said Writ Petition. It is not the case of the first respondent that subsequent to the decision of this Court, any permission has been granted to erect any structure on property subject matter of the earlier Writ Petitions. After the plot 'A' and the structure thereon is identified,

the first respondent will have to undertake and complete the exercise of demolition of structure/building found on said plot "A" within a period of two months. The first respondent, if necessary, will have to requisition of services of demolition squad. A xerox copy of the Writ Petition no. 76/1995 alongwith the annexures thereto duly authenticated by the appropriate officer of registry of this Court shall be supplied to the second respondent within a period of two weeks. Time of two months provided in the order will operate from the date on which demarcation is made by the first respondent.

8. Hence we disposed of petition by passing following Order:-

- (i) The second respondent shall identify and demarcate the plot "A" shown on plan at exhibit "A" in Writ Petition no. 76/1995.
- (ii) After aforesaid plot 'A' is identified and demarcated by the second respondent, the first respondent shall demolish the structure/building standing on the said plot "A" within a period of two months from the date on which the demarcation is made. It will be open for the first respondent to requisition of services of demolition squad from the office of Deputy Collector. The Office of the Deputy Collector will expeditiously provide the squad on requisition made by the first respondent.

- (iii) A copy of writ petition no.76/1995 alongwith annexures thereto duly authenticated by the appropriate officer of the Registry shall be supplied to the second respondent.
- (iv) The exercise of identifying and demarcating the plot “A” shall be carried out by the second respondent within a period of six weeks from the date on which a copy of writ petition no.76/1995 is supplied.
- (v) At the time of carrying out the demolition, the concerned officer of the second respondent shall remain present.
- (vi) The compliance report shall be filed with this Court by the first and second respondent on or before 31.12.2010. A copy of the report shall be supplied to the Advocate for the petitioner.

A. S. OKA, J.

F. M. REIS, J.

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