

A ANTONETTO JOHN D' SOUZA @ JOHNNY D' SOUZA
v.
MRS. ALDILA BRAGANZA
(Civil Appeal No.4995 of 2014)

B JULY 02, 2014

**[SUDHANSU JYOTI MUKHOPADHAYA AND
R.K. AGRAWAL, JJ.]**

C *High Court - Writ jurisdiction - Dispute regarding
easementary rights - In view of grant of alternate access, High
Court by order dated 4.5.2009 allowed the claimant to withdraw
her case - Application of the claimant seeking withdrawal of
order dated 4.5.2009 alleging that there was
misrepresentation as regards grant of alternate access -
D Since there was disputed questions of fact, the High Court
disposed of the application, giving liberty to claimant to
approach the court of Mamlatdar - Application before
Mamlatdar was dismissed and revision against the order of
Mamlatdar also dismissed - Writ petition - High Court directed
E the Mamlatdar to re-open the case, if he had jurisdiction to
do so - On appeal, held: High Court, in exercise of its writ
jurisdiction was not right in remitting the matter to Mamlatdar
directing him to re-open the proceedings - Easementary
Rights.*

F **The respondent filed an application u/s. 4 of the
Mamlatdar's Court Act, before the Mamlatdar, alleging
blocking of her traditional easementary access,
obstructed by the appellant. The application was
dismissed in default. When the matter was taken in
G Revision, the Court directed the Mamlatdar to remove the
obstacles. Thereagainst, the appellant filed writ petition.**

The respondent had also filed a suit against the

appellant for mandatory injunction, the same having been dismissed, was taken in appeal to High Court. High Court by order dated 4.5.2009 observed that the Panchayat had granted a satisfactory alternate access to the respondent, and in view thereof, disposed of the writ petition and allowed withdrawal of the appeal.

The respondent filed an application before High Court seeking withdrawal of its order dated 4.5.2009 as there was misrepresentation as regards grant of suitable alternate access. On the direction of the High Court site inspection was conducted and the inspection report revealed that the alternate access did not have a minimum uniform width of 1.5 meters. The High Court by order dated 10.5.2012, disposed of the application without going into the disputed facts regarding the alternate access and gave liberty to the respondent to approach the Mamlatdar. Pursuant thereto, the respondent filed application before Mamlatdar and the same was dismissed. Revision petition against the same was also dismissed. Therefore, the respondent filed writ petition, wherein High Court passed the impugned order remanding the matter to Mamlatdar to decide whether he had jurisdiction/powers to re-open the proceedings in question and to pass appropriate orders. Hence the present appeal.

Allowing the appeal, the Court

HELD: The High Court considering the fact that disputed question of fact is involved in the case by order dated 10th May, 2012 observed that it was not for the High Court to re-consider the matter in the writ petition which has already been disposed of. Without going into the correctness of the contentions of the parties in respect of the alternative access, the respondent was given liberty to approach the Mamlatdar, with regard to her claim of access to her property, who was asked to decide

A the same after hearing the concerned parties in
accordance with law. No direction was issued by the
High Court to reopen the matter. The High Court has also
not directed the Mamlatdar, to consider the question as
B to whether he has jurisdiction/powers to reopen the
proceedings. Such being the position, it was not open
for the High Court in a subsequent writ petition to pass
any order enlarging the order and direction issued by the
High Court in the earlier Writ Petition. At best, the High
Court could have asked the Village Panchayat, to issue
C completion certificate, if the same had not been issued
pursuant to the direction of the High Court dated 4th May,
2009. It is only after issuance of the completion
certificate, the respondent could have decided whether
she is satisfied with such completion certificate or not.
D The respondent having accepted and given undertaking
to withdraw the application before the Mamlatdar Court
there was no question of remitting the matter to the
Mamlatdar. [Para s 10 and 11] [96-A-G]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No.
4995 of 2014.

From the Judgment and Order dated 18.11.2013 in WP
No. 622 of 2013 of the High Court of Bombay at Panaji.

F Ranjit Kumar, Binu Tamta for the Appellant.
Respondent-In-Person.

The Judgment of the Court was delivered by

G **SUDHANSU JYOTI MUKHOPADHAYA, J.** 1. This
appeal is directed against the judgement dated 18th
November, 2013 passed by the High Court of Bombay at Goa
in Writ Petition No.622 of 2013. By the impugned judgment,
the High Court quashed the order dated 28th March, 2013
passed by the Mamlatdar, Bardez and order dated 20th
H

September, 2013 passed by the Additional Collector-II, North Goad and remitted the matter to Mamlatdar, Bardez to decide whether he has jurisdiction/powers to re-open the proceedings in question and to pass appropriate orders.

2. The factual matrix of the case is as follows:

The respondent alleged the blocking of her traditional easementary access by the appellant by constructing compound walls. Initially, an application under Section 4 of the Mamlatdar's Court Act (hereinafter referred to as the "Act") was filed by the respondent before the Mamlatdar with regard to the said obstruction. The application came to be dismissed for default by order dated 7th January, 2008 and subsequently, the same was restored. The appellant filed a Revision Application before the Collector against the order of restoration. In the said Revision Application an ex parte order was passed by the Additional Collector-I, Panaji on 11th July, 2008 directing the Mamlatdar, Bardez to open the gate and remove the obstacles like the compound walls between Survey Nos.163/1 and 163/2 and Survey Nos.164/1 and 163/10, 163/1,163/2 and 163/4, to make openings enough for free movement of an ambulance to enable the respondent to take her father-in-law for medical treatment.

3. The appellant challenged the said order by filing Writ Petition No.422/2008 before the High Court and obtained an order of stay. The respondent and her father-in-law filed an appeal from Order No.59/2008, against the order dated 13th February, 2008 passed by the Civil Court at Mapusa, whereby the application for temporary and mandatory injunction filed by the respondent and her father-in-law in Civil Suit No.134/07/B was dismissed. The said writ petition and appeal from order came to be disposed of by an order dated 4th May, 2009 which is as under:

"Mr. Usgaonkar, learned Senior Counsel applies for withdrawal of the Appeal from Order No.59/2008 as the

A appellants have been granted a satisfactory alternate
access by the Panchayat at Calangute. The owner of the
property through which the access is now granted has
also given no objection to the grant of access to the
appellants as well as the other members. Consequently,
B the petitioner's relief for setting aside the orders of the
Mamlatdar dated 7.3.2008 and 11.7.2008 is required to
be granted. The appellants in Appeal from Order No.59/
2008 concedes that the lis in the Mamlatdar Court's no
longer remains. Mr. Usgaonkar on behalf of the
C appellants undertakes to withdraw the application in the
Mamlatdar's Court. However, the office of the Village
Panchayat, Calangute shall issue the completion
certificate requested by the appellants which could not be
issued due to the election. The completion certificate
shall be issued on or before 31.05.2009. The Writ Petition
D No.422/2008 is disposed of accordingly and Appeal from
Order No.59/2008 is allowed to be withdrawn."

4. The respondent, thereafter, filed Miscellaneous Civil
Application No.348/2011 in the said writ petition for recall of
E the order dated 4th May, 2009 passed in the writ petition, inter
alia, on the ground that there was a misrepresentation before
the Court that there was a suitable alternate access available
to the respondent. By order dated 14th March, 2012, the High
Court observed that according to the learned Senior Counsel
F for respondent No.1 (appellant herein) the access having width
of 1.5 metres is found at the site, but the said contention was
disputed by the respondent. The High Court to verify the
situation at loco, directed the Surveyor of the office of the
Mamlatdar, Bardez to carry out the site inspection and
ascertain whether the said access of 1.5 metres as depicted
G in the plan produced on record was available on the site. As
the said order was not complied with, by another order dated
18th April, 2012, passed in M.C.A. No.348/2011, the High
Court directed Mamlatdar, Bardez to inspect and verify the
H width of alternate access provided to the respondent by the

Village Panchayat of Calangute. The Surveyor attached to the office of the Mamlatdar conducted the inspection of the said alternate access on 24th April, 2012 and prepared a report along with plan and submitted the same before the High Court. The said plan revealed that the said alternate access does not have a minimum uniform width of 1.5 metres and at some places the width was not 1.5 metres and it varied at various other points.

5. Finally, by order dated 10th May, 2012, M.C.A. No.348/2011 came to be disposed of with the following observations:

"5. The Court had directed the learned Mamlatdar to depute a surveyor to ascertain as to whether such access is available at the site. The learned Mamlatdar has filed an affidavit dated 10/05/2012 along with the report and the sketch. On perusal of the sketch it appears that at some places the width is not 1.5 metres. Considering such disputed questions, it is not for this Court now to reconsider the matter in the Writ Petition which has already been disposed of. But however, in case the basis on which the petition has been disposed of is not found at loco as sought to be contended by the appellant/petitioner such grievance will have to be raised by the petitioner before the learned Mamlatdar in accordance with law.

6. Shri Nigel Da Costa Frias, the learned Counsel appearing for the applicant/petitioner, upon instructions of the applicant who is present in Court, points out that he will not press for the other contentions raised in the above application, but however, he should be given an opportunity to file an appropriate application before the learned Mamlatdar to get his grievances with regard to the alternative access adjudicated.

7. Without going into the correctness of the contentions of the Counsel in respect of the alternative access on the

A *basis of which the Writ Petition came to be disposed of*
by this Court, the petitioner is always at liberty if she is
so entitled to approach the learned Mamlatdar with regard
to her said claim of access to her property. In case any
such application is filed the learned Mamlatdar will have
B to decide the same after hearing the concerned parties
in accordance with law.”

6. Thereafter, the respondent filed an application dated
29th June, 2012, before the Mamlatdar, Bardez to reopen the
proceedings. By the judgment and order dated 28th March,
C 2013, the Mamlatdar, Bardez dismissed the said application.
The Revision Application against the same was also dismissed
on 20th September, 2013. Against the aforesaid order, the
respondent filed a writ petition before the High Court. After
hearing the parties by the impugned judgment, the High Court
D while setting aside the order passed by the Mamlatdar and the
Revisional Authority passed the following order:

“25. In the result, the petition partly succeeds.

E (a) *The impugned orders dated 28/03/2013 passed by*
the Mamlatdar of Bardez and 20/09/2013 passed by the
Additional Collector- II, North Goa, are quashed and set
aside.

F (b) The matter is remanded to the respondent No.2 to
decide whether for reasons stated in the application and
in accordance with law, he has jurisdiction/powers to re-
open the said proceedings bearing No.MAM/BAR/MCA/
4/2007 and if he comes to the conclusion that he has such
powers, then to adjudicate on the grievance of the
G petitioner with regard to the alternate access.

(c) If the respondent No.2 finds that the said grievance of
the petitioner is true and on account of the same and for
other reasons, he can re-open the proceedings, then he

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shall proceed to dispose of the said case No.MAM/BAR / A
MCA/4/2007, in accordance with law, expeditiously.

(d) The contentions of the parties are kept open for being
made before the respondent No.2.

(e) Parties to appear before the respondent No.2 on 09/ B
12/2013 at 3.00 p.m.”

7. Learned counsel for the appellant contended that in
terms of the order dated 27th April, 2009 of the Panchayat
access has been provided through property bearing Survey C
No.162/9 for the benefit of respondent and other residents of
the locality after the NOC of the owner of the property was
taken, the only issue that was being considered by the High
Court was that of alternative access. The grievance of the
respondent that at some points the minimum access of 1.5 D
metres was not available was also assured to be made
available by the Panchayat by removing the trees. Therefore,
the direction of the High Court to reopen the entire issue was
uncalled for.

8. On the other hand, learned counsel for the respondent E
submitted that earlier the High Court was misrepresented in
view of the order passed by the Panchayat and the High Court
rightly remitted the matter to decide the issue.

9. The dispute between the appellant and the respondent F
reached finality when the High Court disposed of the Writ
Petition No.422/2008 by order dated 4th May, 2009, therein the
respondent conceded that the lis in the Mamlatdar Court's no
longer remains. Learned counsel on behalf of the respondent
undertook to withdraw the application in the Mamlatdar's Court. G
The office of the Village Panchayat, Calangute was ordered to
issue the completion certificate as requested by the respondent
which could not be issued due to the election. The High Court
directed to issue the completion certificate on or before 31st
May, 2009. The writ petition was disposed of accordingly and H

A Appeal from Order No.59/2008 was allowed to be withdrawn.

B 10. The High Court considering the fact that disputed
C question of fact is involved in the case by order dated 10th May,
2012 observed that it was not for the High Court to reconsider
D the matter in the writ petition which has already been disposed
E of. However, in case the basis on which the petition has been
F disposed of is not found at loco as sought by the respondent
G such grievance will have to be raised by the respondent before
H the Mamlatdar in accordance with law. Therefore, without going
I into the correctness of the contentions of the parties in respect
J of the alternative access, the respondent was given liberty to
K approach the Mamlatdar, with regard to her claim of access to
L her property, who was asked to decide the same after hearing
M the concerned parties in accordance with law.

N 11. No direction was issued by the High Court to reopen
O the matter. The High Court has also not directed the Mamlatdar,
P Bardez to consider the question as to whether he has
Q jurisdiction/powers to reopen the proceedings. Such being the
R position, it was not open for the High Court in a subsequent
S writ petition to pass any order enlarging the order and direction
T issued by the High Court in the earlier Writ Petition No.422/
U 2008. At best, the High Court could have asked the Village
V Panchayat, Calagute to issue completion certificate, if the same
W had not been issued pursuant to the direction of the High Court
X dated 4th May, 2009 in Writ Petition No.422/2008. It is only
Y after issuance of the completion certificate, the respondent
Z could have decided whether she is satisfied with such
AA completion certificate or not. The respondent having accepted
AB and given undertaking to withdraw the application before the
AC Mamlatdar Court there was no question of remitting the matter
AD to the Mamlatdar.

AE 12. For the reason aforesaid, we set aside the judgment
AF and order dated 18th November, 2013 with liberty to respondent
AG to move before the Court of competent jurisdiction, if
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completion certificate has not been issued by the Village Panchayat, Calagute in terms of the order passed in Writ Petition No.422/2008 or if the respondent did not satisfy with such completion certificate. A

13. The appeal is allowed with the aforesaid observations. B
No costs.

Kalpana K. Tripathy

Appeal allowed.