

WRIT PETITION NO. 177 OF 2003.

- VERSUS

- Mr. M.S. Sonak, Advocate for the Petitioners.

Mr. M.B.D'Costa with Mr. J. Abreu Lobo Advocates for

the Respondents No.4, 5 and 6.

Mr. Y.V. Nadkarni, Advocate for the Respondent No.7.

**CORAM: S.J. VAZIFDAR &
P.V. HARDAS, JJ.**

DATE: 23RD APRIL, 2003.

ORAL ORDER: (PER VAZIFDAR, J.)

Mr. Sonak appearing on behalf of the petitioners seeks leave to delete Respondent No.7. Leave to delete Respondent No.7 is granted. He further states that he withdraws all allegations and submissions in the Writ Petition qua Respondent No.7.

2. The petition seeks a writ of mandamus directing Respondents no.1 to 3 to demolish the alleged illegal constructions carried out by Respondent Nos.4 to 6 and to prevent them from carrying on the allegedly illegal activities of loading and unloading crates in the said property.

3. The learned counsel appearing on behalf of the Respondent No.3 states that Respondent No.3 intends to initiate action against Respondent Nos.4 to 6 for demolition of alleged illegal constructions. The grievances of the Petitioner in this regard therefore at present stand redressed.

4. Respondent No.2 has filed an affidavit dated 23rd April, 2003 in which it is stated that the Department will shortly initiate eviction proceedings against Respondent Nos.4 to 6 before the Deputy Collector under the provisions of the Goa, Daman and Diu Land Revenue Code 1968 and Goa Public Premises (Eviction of Unauthorised Occupants) Act, 1988 and the Rules therein. It is contended that Respondent Nos.4 to 6 are encroachers on Government property belonging to the Directorate of Health Services and are further carrying out commercial activities which causes nuisance. In view of this affidavit, in fact, nothing survives in the Petition in this regard.

5. The case of Respondent Nos.4 to 6 is that they were the tenants of the Hospicio do Sagrado Coracao de Maria, Margao, in respect of the said property admeasuring about 32,000 sq. metres. By virtue of the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 they have become owners of the said property with effect from 20th April, 1976. It is further contended that in view of the same the fact that the property of the Hospicio do Sagrado Coracao de Maria, Margao which included the said property, having vested in the State of Goa by virtue of the Notification dated 24th December, 1976 would make no difference to the rights of

Respondent Nos.4 to 6 as owners thereof. There is thus a dispute between the Government of Goa and Respondent Nos.4 to 6 as to the ownership of the suit property.

6. Respondent no.2 has denied that Respondent Nos.4 to 6 were tenants of the said property and therefore the owners thereof as contended as aforesaid. These are issues which need not be considered by us in this Writ Petition. They will be decided by the appropriate authorities as and when the occasion arises.

7. Mr. D'Costa undertakes on behalf of his client (Respondent No.4 is present in Court) on taking instructions, that the trucks which are used for loading and unloading of the crates will not be parked on the internal road which is delineated in dotted lines in the plan at Exhibit 'B' to the petition. He further undertakes that the crates will not be stored within three metres on the said tarred road on either side. Mr. D'Costa further undertakes that the trucks shall visit the said property not more than three times in a week. The Undertakings are accepted. For the present this arrangement contained in the said Undertakings appears to us to be sufficient to protect the Petitioner's interests.

It is clarified that we do not, by virtue of accepting the Undertakings, grant any licence or right of any nature whatsoever to the Respondent Nos.4 to 6 to continue the said activity. This Order is without prejudice to the rights and contentions of all the parties including in any proceedings adopted or to be adopted by them.

8. The petitioner is at liberty to agitate the grievances raised in the petition regarding Respondent Nos.4 to 6 carrying on the said activity without obtaining the approval from the concerned authorities before such authorities. The applications thus made will be decided on their own merits uninfluenced by this Order.

9. The Writ Petition is accordingly disposed of.

S. J. VAZIFDAR, J.

P. V. HARDAS, J.

sl.