

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 826 OF 2012

SHRI VITHAL P. PARAB (DEC.)
THROUGH LR'S

... Petitioner

Versus

SHRI AMOL SAWANT AND 3 ORS.,

... Respondents

Mr. Gaurish Agni, Advocate for the petitioners.
Ms. Priyanka Kamat, Advocate for the respondent no.1.

Coram:- F. M. REIS, J.

Date:- 28th February, 2013

P.C.

Heard Shri G. Agni, learned counsel appearing for the petitioners and Ms. Priyanka Kamat, learned counsel appearing for the respondent no.1.

2. The above petition challenges the judgment dated 14.09.2012 passed by the learned District Judge, Mapusa, while deciding the revision preferred by the respondent no.1 challenging the judgment passed by the Additional Director of Panchayats, Panaji, refusing to exercise powers under Section 66(5) of the Panchayat Raj Act.

3. Shri Agni, learned counsel appearing for the petitioners has taken me through the resolution taken by the panchayat dated 15.06.2001 and pointed out that the panchayat has already taken a decision with regard to the complaint lodged by the respondent no.1, and as such the question of exercising powers under Section 66(5) of the Panchayat Raj Act would not arise. The learned counsel further pointed out that at the most if the respondents are aggrieved by such resolution they could have preferred an appeal under Section 178 of

the said Act. The learned counsel further pointed out that the panchayat had found that the complaint lodged by the respondent no.1 was vague and did not identify the disputed structure and as such the panchayat was justified to pass such resolution. The learned counsel has taken me through the impugned judgment passed by the learned District Judge and pointed out that the learned Judge has not at all considered the aspect as to whether the respondents had remedy to challenge the said impugned resolution by filing appeal under Section 178 of the Panchayat Raj Act. The learned counsel as such submits that the impugned judgment be quashed and set aside.

4. On the other hand, Ms. P. Kamat, learned counsel appearing for the respondent no.1 has supported the impugned judgment. The learned counsel has pointed out that the resolution has been passed by the Panchayat without any application of mind and whole exercise was to refuse to take action as contemplated in law. The learned counsel further pointed out that there was identification of the disputed structure and as such the resolution itself discloses in action on the part of the local Panchayat. The learned counsel further pointed out that the learned Judge has only remanded the matter to the Deputy Director of Panchayats and as such the question of interfering in the impugned judgment does not arise as there is no grave injustice occasioned to the petitioners. The learned counsel further pointed out that the question of exercising any jurisdiction in favour of the petitioners at this stage under Article 227 of the Constitution of India would not arise. The learned counsel as such submits that the petition be rejected.

5. I have considered the submissions of the learned counsel and I have also gone through the records. Shri Agni, learned counsel appearing for the petitioners is justified to contend that the learned

District Judge has not specifically considered the ambit of Section 178 of the Panchayat Raj Act to consider as to whether the remedy of the respondents was by filing an appeal in terms of the said provisions. Nevertheless, the learned Judge has gone into the merits of the dispute and found that the disputed resolution itself discloses in action on the part of the local panchayat which gives right to the respondents to bring to the notice of the Dy. Director of Panchayats of such in-action on the part of the local panchayat. Considering that the impugned judgment only remands the matter to the Dy. Director of Panchayats, I find that no case is made out by the petitioners for interference in the impugned judgment in exercise of jurisdiction under Article 227 of the Constitution of India. If such impugned judgment is allowed to stand, there is no failure of justice to the petitioners. Apart from that, by consent of the learned counsel appearing for the respondent no.1 even the contention of the petitioners that the respondents have a remedy to challenge the resolution under Section 178 of the Panchayat Raj Act is left open. The authority below shall not be influenced with any observations or findings in the impugned judgment or order herein.

6. Subject to the above, the petition stands rejected.

F. M. REIS, J.

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