2025:BHC-GOA:259

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 695 OF 2024

Mr Ancy Dias, son of Frankie Dias, age 52 years, married, Resident of A/4, Vinayak Plaza, Vidhyanagar, Near Golden Furniture, Aquem-Margao, Goa. ... **Petitioner.**

Versus

1. The Ponda Municipal Council, Through its Chief Officer, Ponda, Goa.
2. Mr Jose Afonso Fernandes, major of age, resident of H.No.175/30-2A, Menino House, Shantinagar, Ponda, Goa.
3. Mr Manuel Rodrigues, major of age, resident of H.No.141, Moraillem, Curchorem, Goa.
4. Mr Sunil Rathod, major of age, resident of A-4, Vinayak Plaza, Vidhyanagar, Near Golden Furniture, Ponda, Goa. **... Respondents**.

Mr. Sudesh Usgaonkar, Senior Advocate with ***Ms Cidalia Lobo,*** **Advocate** for the Petitioner.

Mr Pranav Vaze, Advocate for Respondent No.1.

Mr S. D. Padiyar, Senior Advocate with ***Mr Prayash P. Shirodkar, Advocate*** for Respondent No.2

Mr Abhay Nachinolkar, Advocate for Respondent No.3.

CORAM : VALMIKI MENEZES, J.

DATED : 18th FEBRUARY, 2025

ORAL JUDGMENT:

Heard learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith; at the request of and with the consent of learned counsel for the parties the matter is finally heard and disposed of.

3. This Petition takes exception to an order passed by the Chief Officer, Ponda Municipal Council (Respondent No.1) by which objections raised by the Respondent No.2 to transfer of a house tax in relation to Shop No.4 in the name of the Petitioner has been upheld and the Petitioner, along with Respondent No.4 have been restrained from acting on the house tax receipts or using the house tax record for obtaining a Trade Licence. By the impugned order, the Chief Officer has directed all the parties to the proceedings to approach the "Competent Authority" having jurisdiction over subject matter of the application, to decide the ownership issue.

4. From the record, it appears that the Respondent No.4 had applied for a trade licence, to carry out trade in a shop bearing No.4

situated in a building standing on land under Survey No.175 of Village Ponda. The application for a trade licence which was dated 06.03.2024 was based upon an Agreement for Leave and Licence executed by the Petitioner in his favour with respect to the said shop No.4.

5. Respondent No.3 (Manuel) initially objected to the issuance of a trade licence to Respondent No.4 claiming that the suit shop actually belonged to his ancestors. Thereafter, Respondent No.2 (Jose) filed objections before the Chief Officer on 01.07.2024, claiming that he was the owner of the property under Survey No.175 of Village Ponda and the suit shop No.4 through his mother, late Maria Albertina Rodrigues Fernandes whose name is found recorded in the survey records in the Occupants' column. Respondent No.2 relied upon a Deed of Sale executed by the original owner of the property under Survey No.175 (one Gaunekar) in favour of the said Maria Albertina Rodrigues Fernandes who purchased this property after the death of her husband. Maria Albertina Rodrigues Fernandes was, therefore, the exclusive owner of the property.

6. Respondent No.2 further relied upon the Deed of Partition dated 10.04.1987 which effects partition of the estate of the husband (Menino) of Maria Albertina Rodrigues Fernandes, who was

predeceased; the Petitioner submits that since Menino was predeceased and the property under Survey No.175 was purchased after his death, the ownership of this property exclusively vests in Maria and could not have been subject matter of the Partition Deed dated 10.04.1987 executed to partition the estate of Menino.

7. The Petitioner claims that Maria Albertina Rodrigues Fernandes constructed a building on the property under Survey No.175 and on 02.08.1986. By an Agreement of Sale she transferred shop No.4 constructed in this building to one Constancio Rodrigues after receiving the entire consideration; the Petitioner claims that this transfer was through one Beaver Constructions Company in which Maria Albertina Rodrigues Fernandes (mother of Respondent No.2) was a Managing Partner; pursuant to this transfer, the Petitioner claims that an application was made under Section 125 of the Municipalities Act seeking a transfer of the house tax with respect to the shop No.4 from Maria Albertina Rodrigues Fernandes 's name to Constancio, with the no objection of Maria on the transfer of the house tax in the year 1986 in Constancio's name. The Petitioner further contended that thereafter, the Petitioner has instituted an Agreement for Sale with Constancio on 08.04.2006 pursuant to which the shop was transferred to the Petitioner. Thereafter the Petitioner filed further application under Section 125 in the year 2011 and had the house tax

of shop No.4 transferred from the name of Constancio to the name of the present Petitioner, with the no objection of the widow of late Constancio being endorsed on the application. The house tax for shop No.4 according to the Petitioner, stands in the name of the Petitioner since 2011 until 2025 when the impugned order was passed.

8. With these facts before the Chief Officer, the Chief Officer proceeded to exercise jurisdiction vested in him under Section 125 of the Municipalities Act, by passing the impugned order. The question before me is whether the provisions of Section 125 vest with the Chief Officer under those provisions to issue an order in the nature of an injunction as has been issued or to enter into the arena of, even prima facie, deciding in whom vests the title of the two shops. It would be apposite to consider the provisions of Section 125 of the Goa Municipalities Act which read as under:-

> *"125. Parties to transfer of property to give notice of transfer.— (1) Whenever the title of any person primarily liable for the payment of a tax on buildings or lands or both to or over such land or building or both is transferred, the person whose title is so transferred and the person to whom the same is transferred shall, within three months after execution of the instrument of transfer or after its registration if it be registered, or after the transfer is effected if no instrument be executed, give notice of such transfer in writing to the Chief Officer.*
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> *(2) In the event of the death of any person primarily liable as aforesaid, the person to whom the title of the deceased shall be transferred as heir or otherwise shall give notice of such transfer*

to the Chief Officer within one year from the death of the deceased.

(3) If the person liable to give the notice referred to in sub-section (1) or sub-section (2) fails to give such notice, he shall, on conviction, be punished with fine which may extend to fifty rupees."

9. From the plain reading of the procedure as provided, the provision does not vest the Chief Officer with the power to decide any issue of title, which may be thrown up in view of objections by the rival parties. When such an issue arises, it is evident that the Chief Officer does not have the jurisdiction to decide, even prima facie, the question of title or even to order a suspension of an earlier order transferring the house tax in the subsequent purchaser's name. In the present case, the Chief Officer has, in categorical terms held, on the basis of the allegations made by Respondent No.2 Jose who claims title the suit shop, that the suit shop did not vest with Ancy, the Petitioner. In fact, the challenge to the transfer of the house tax to the name of the Petitioner way back in the year 2011 has been challenged by Respondent No.3 alleging that the Agreement for Sale between the subsequent purchaser, i.e. from Maria Albertina Rodrigues Fernandes (mother of Jose) to Constancio Rodrigues was a fraudulent document. The moment there is an allegation raising challenge to a document based upon fraud, it would be only the Civil Court that would have jurisdiction to decide the legality of such document.

10. For all the aforesaid reasons, the impugned order cannot be sustained. The impugned order literally grants the Respondent No.2 an order of injunction pending decision by a Civil Court on title, and restrains the Petitioner and the Respondent No.4 from utilising the house tax or from the legal effects of the house tax that stand in the name of the Petitioner. This is not permissible and is not in accordance with the powers vested with the Chief Officer under Section 125 of the Goa Municipalities Act. Accordingly, the impugned order is quashed and set aside.

11. Needless to state, it is open for any of the parties who claim title to the suit property to agitate such claim before a Civil Court and press for such reliefs as are legally permissible before the Civil Court. Accordingly, Writ Petition is allowed. The impugned order is quashed and set aside.

12. Rule is made absolute in the above terms.

VALMIKI MENEZES, J.