

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.2550 OF 2023 F

ADWALPALKAR CONSTRUCTION AND ...Petitioners
RESORTS PVT. LTD. THR. THE
DIRECTOR MR. MAHESH
ADWALPALKAR AND ANR.

VS

THE MAMLATDAR OF TISWADI ...Respondent

Mr Shivan Desai with Mr. Aniroodh Sardessai, Advocates for the
Petitioners.

Mr Devidas J. Pangam, Advocate General with Mr S.P.
Munj, Additional Government Advocate for Respondent Nos.1, 2, 3, 4,
5 and 7.

Mr. S. Karpe with Mr. A. Sawant, Advocats for Respondent No.8

Mr. Preetam Talaulikar, Advocate for Respondent No.9

Mr. G. Agni with Mr. K. Kavlekar, Advocates for Respondent No.10

**CORAM: PRAKASH D. NAIK &
BHARAT P. DESHPANDE, JJ.**

DATE: 10th NOVEMBER, 2023

ORAL ORDER:

1. The petitioner has challenged the order of Attachment of
Immovable Property dated 30/10/2023 issued by the Mamlatdar of
Tiswadi.

2. The order reads as follows:

“Order of Attachment of Immovable Property

“Whereas, M/S Ashvem Spa and Resort Pvt. Ltd. (defaulter), having addresses at (1) H. No. S-183/2, Sonar Bhat, Reis Magos, Verem, Bardez, Goa; (2) 102, General Bernard Guedes Road, Opp. Forest Department Office, Panaji, Goa, on account of recovery of dues in terms of Order dated 09/11/2021 passed by the Goa Real Estate Regulatory Authority (GOA RERA) under Section 40(1) of the Real Estate (Regulation and Development) Act, 2016 read with Rule 3 of the Goa Real Estate of Interest, penalty, (Regulation and Development) (Recovery of interest, penalty, compensation, fine payable) Rules, 2017 to be recovered as arrears of land revenue under the provision of the Goa Land Revenue Code, 1968 due by him as per details given below:-

An amount of Rs. 24,60,000/ to be paid by 16/04/2022 (one month since date of receipt of Order by the Advocate for the defaulter) failing which the defaulter to pay interest @8% on this amount w.e.f. 01/11/2021 till entire amount is paid/recovered. Further, the defaulter to pay monthly interest of Rs.60,000/- per month commencing from November 2021 payable in the month of December between 1st and 10th of every month till premises is completed and delivered to the Complainant. In default of payment of such monthly interest, the M/S Ashvem Spa and Resort Pvt. Ltd to pay to the Complainant an interest at the rate of 8% per annum.

Despite being served a Demand Notice in Form I, the defaulter has failed to pay the dues. Further, the defaulter despite being accorded opportunity has failed to pay the dues.

In accordance with the details provided by the Goa RERA, this Authority therefore issues this Form 4 (order of Attachment of Immovable Property) against the property of the defaulter, situated in Survey No. 292/1 of Taleigao Village, Tiswadi Taluka.

It is ordered that the M/S Ashvem Spa and Resort Pvt. Ltd. (defaulter) be and is hereby prohibited and restrained, until further orders of this office, from transferring or charging the property specified in the Schedule hereto by sale, gift or otherwise and all person be and are hereby in like manner prohibited from receiving the same by purchase, gift or otherwise:-

SCHEDULE

<i>Sr. No.</i>	<i>Details</i>
<i>1.</i>	<i>Immovable property, Adwarpalkar Stellar, Near Taleigao Church, Sy. No. 292/1, Village Taleigao, Tiswadi Taluka, Panaji.</i>

Issued under my hand and seal of this office this 30th day of October, 2023.

Office of the Mamlatdar of Tiswadi Taluka, Panaji.”

3. The learned Counsel for the petitioners submits that the petitioner and respondent No.10 entered into Joint Development Agreement dated 22/02/2018 wherein the petitioner was assigned task of construction of the building vide order dated 09/11/2021, the Goa RERA was directed to pay the respondent No.9 a sum of Rs.24,60,000/- towards interest on the principal sum of Rs.90,000/- and Rs.60,000/- per month till delivery of premises. Respondent No.10 failed to comply the said order. The petitioners was not afforded any hearing. The petitioner cannot be subjected to consequences of non-compliance of order dated 09/11/2021. The petitioners are not defaulters. The Petitioners are developers. The order attaches entire property and prohibits transfer of same. The units

allotted to the petitioner in terms of the Development Agreement cannot be subject matter of attachment.

4. The contention of respondents is that there is no infirmity in the order of attachment.

5. On instructions, learned Advocate for petitioners submits that the petitioners would deposit an amount of Rs.25,20,000/- before the Mamlatdar, Tiswadi under protest. Mamlatdar be directed to hear the petitioners, respondents and complainant and decide whether the petitioners' share of property can be attached. The amount will be deposited on or before Wednesday i.e. 15/11/2023.

6. In view of the submissions advanced by the learned Counsel for the petitioners, this petition can be disposed of with directions to the Mamlatdar, Tiswadi to decide the attachment order of the building of the petitioners within a period of two weeks from the date of deposit. The petitioner is permitted to deposit the amount as stated above on or before 15/11/2023 before Mamlatdar.

7. All parties shall appear before the Mamlatdar, Tiswadi on 16/11/2023 at 3.30P.M. All the contentions of all the parties are kept open. The amount deposited by the petitioners shall not be disbursed till the disposal of the case. The Mamlatdar shall hear all the parties and decide the grievance of petitioner within two weeks.

8. In the meantime, the amount deposited by the petitioners shall be invested in the nationalized Bank.

9. Petition is disposed of.

BHARAT P. DESHPANDE, J.

PRAKASH D. NAIK, J.