

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW NO. 118 OF 2020

Mr. Pravin Khanolkar,
Son of Mr. Sudhakar Khanolkar,
Major in age, Indian National,
resident of H. No.728/E-F1,
First Floor, Sonum Township, Nessai,
Sao Jose De Areal,
Salcete, Goa.

..... Petitioner

V e r s u s

1. State of Goa,
Through Chief Secretary,
Government of Goa,
Porvorim, Goa.
2. Village Panchayat of
Sao Jose de Areal
Through its Secretary/Sarpanch,
Sao Jose De Areal,
Salcete, Goa.
3. Health Officer,
Primary Health Centre,
Curtorim, Goa.
4. Chief Town Planner,
Town and Country Planning Department,
EDC, Patto Plaza, 5th floor,
Kamat Towers, behind Bus Stand,
Panaji, Goa.

5. Senior Town Planner,
Office of the Town and Country Planning
Department, Government of Goa,
Margao, Goa.

6. Krishna Kashinath Naik,
Son of Kashinath Naik,
aged about 60 years,
resident of House No.728/E-G1,
Ground floor,
Sonum Township Nessai,
Sao Jose De Areal,
Salcete, Goa.

..... Respondents

Mr. Shivan Desai, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Ms. Ankita Kamat, Additional
Government Advocate for the Respondent nos. 1, 3, 4 and 5.

Mr. C. A. Coutinho, Advocate for the Respondent no. 6.

Coram :- M. S. SONAK &
M. S. JAWALKAR, JJ.

Date : 11th August, 2020

ORAL JUDGMENT (Per M. S. Sonak, J.)

1. Heard Mr. Desai, the learned Counsel for the petitioner, Mr. D.
Pangam, the learned Advocate General for the respondent nos.1, 3, 4 and 5

and Mr. Coutinho, the learned Counsel for the respondent no.6. The respondent no.2 is served but has not put any appearance today.

2. According to us, the presence of respondent no.2-Panchayat is really not necessary for the order which we propose to make disposing off this petition finally.

3. Accordingly, we issue Rule and make the Rule returnable finally at the request of and with the consent of the learned Counsel appearing for the contesting parties. Learned Counsel for the respondents, waive notice.

4. The challenge in this petition is mainly to the following two orders :

(a) The order of final notice dated 20.07.2020 issued by the Directorate of Health Services under the provisions of the Goa Public Health Act of 1985 and the Rules made thereunder.

(b) The judgment and order dated 08.07.2020 made by the District Judge-3, South Goa at Margao disposing off Civil Revision Application No. 30 of 2019 instituted by respondent

no.6, challenging the demolition order issued by the respondent no.2-Panchayat of Sao Jose de Areal, Salcete Goa.

5. In terms of order dated 20.07.2020, the petitioners have been directed to take necessary measures in relation to the overflowing of the septic tank at Karangate building and the emission of the foul smell on account of the same. The impugned order or final notice states that if no action is taken to abate the nuisance then, the health authorities will be constrained to take further action in the matter which would include disconnection of electricity and water supply without any further notice.

6. By the second impugned judgment and order, the learned District Judge has set aside the demolition order and further granted the respondent no.6 an opportunity to apply for regularisation of all the structures which the petitioner's allege is an illegal construction put up on the septic tank.

7. Insofar as the first impugned order dated 20.07.2020 is concerned, Mr. Desai, the learned Counsel for the petitioner, points out that without prejudice to the rights and contentions of the petitioners, the petitioners

have actually taken steps to abate the nuisance on account of the overflowing of the septic tank and the emission of the foul smell. He further submits that these steps are only temporary and to avoid the eminent disconnection of electricity and water supply to the residents of the building. He submits that this is a recurring issue and if any proper or final solution is to be found, then, the illegal construction put up by respondent no.6 on the septic tank is required to be demolished. He submits that on one hand, there is an order which permits the respondent no.6 to proceed for regularisation of the illegal structure and, on the other hand, the authorities under the Health Act, threaten disconnection in case no steps are taken to sort out the issue of the overflowing of the septic tank. He, therefore, submits that it is only appropriate that both the impugned orders are set aside and the Panchayat is directed to demolish the illegal construction put up by respondent no.6.

8. Now that the petitioners claim that the issue of nuisance on account of overflowing of the septic tank and the emission of the foul smell is abated, though temporarily, we are sure that the health authorities will once again

inspect the location and if the health authorities are satisfied with the nuisance has indeed been abated, though temporarily, the health authorities will not implement the threat for disconnection of electricity and water supply contained in the impugned order dated 20.07.2020. According to us, this will afford substantial, though, as contended by the learned Counsel for the petitioner, some temporary relief to the petitioners who are the residents of the Kharangate building.

9. Accordingly, we direct the health authorities, who have issued the impugned order dated 20.07.2020, to inspect the site and if they are satisfied that the directions of abatement of the nuisance have been suitably complied with, then, to suspend the implementation of the impugned order dated 20.07.2020. If the health authorities find that some further steps are required to be taken by the petitioner or the residents of the building, then, the health authorities are at liberty to issue further directions to the petitioner/residents of the building and we are sure that the petitioner/residents of the building will comply with the same within a reasonable period. Ultimately, it is necessary to note that the directions

issued by the health authorities are for the benefit of all the residents of the building as also all the residents of the neighbouring area. Therefore, irrespective of the dispute that the petitioners have with respondent no.6 and the construction put up by the respondent no.6, we are sure that the petitioners and the residents of the building will take necessary steps to ensure that there is abatement of the nuisance. At the same time, we make it expressly clear that even the respondent no.6 should co-operate with the abatement of the nuisance. In relation to the first impugned order dated 20.07.2020, therefore, we dispose off the petition with directions as aforesaid to both the petitioner/residents of the building as well as the health authorities.

10. Insofar as the second impugned order is concerned, Mr. Coutinho, the learned Counsel for the respondent no.6, pointed out that the respondent no.6 has already made an application for regularisation of the structure in question before the Town Planner at Margao, who, he submits, is the competent authority. Now that such an application is made, we feel that the interests of justice would be met if such application is disposed off

by the competent authority i.e. the concerned Town Planner as expeditiously as possible and, in any case, within a period of six weeks from today. In peculiar facts of the present case, before disposing off such application, the competent authority must hear not only the respondent no.6 but also the petitioner/the other residents of the building, if they choose to be heard. This is because it is on the basis of the complaints of the residents of the building that the demolition orders came to be issued by the Panchayat, in the first place. The competent authority may also consider inspection of the site in question in order to better appreciate the position of the structure. We, however, make it clear that this entire exercise should be completed within six weeks from today and the decision on the issue of regularisation or otherwise should be communicated to the parties also within this period of six weeks. We also make it clear that we have not gone into the issue as to whether such structure can be regularised or not and all contentions of all parties in this regard are kept expressly open for the decision of the competent authority on the issue of regularisation, which it will have to take and communicate such decision within six weeks from today.

11. The learned Advocate General has pointed out that the second impugned order has also set aside the demolition order issued by the Panchayat and, therefore, even if the application for regularisation is ultimately rejected, demolition of the structure in question may not be possible. According to us, the learned District Judge was not at all justified in setting aside the demolition order itself. The leave to apply for regularisation granted to respondent no.6, impliedly acknowledges that the structure in question is illegal and, therefore, needs to be regularised. Even otherwise, no valid reasons are set out in the impugned judgment and order for setting aside demolition order.

12. In these circumstances, the learned District Judge was not at all right in setting aside the demolition order issued by the Village Panchayat. Accordingly, the second impugned order is interfered with to the extent it sets aside the demolition order issued by the Village Panchayat. The demolition order is accordingly restored and revived.

13. Now that the application for regularisation made by respondent no.6 is to be considered and disposed off by the competent authority within six weeks from today, the demolition order which is now restored and revived may not be implemented until the competent authority takes a decision on the issue of regularisation. If the competent authority decides to regularise the structure in question, obviously, there will be no question of enforcing or implementing the demolition order. However, if the competent authority declines to regularise the structure in question, then the demolition order will have to be implemented and enforced by the Panchayat or other concerned authorities within a reasonable period. This is if the respondent no.6, on his own does not demolish the same.

14. Accordingly, we direct that in case the application for regularisation made by respondent no.6 is rejected by the competent authority then, the respondent no.6 will have to demolish the structure in question within a period of four weeks from the date of receipt of the communication from the competent authority. This shall, no doubt, be without prejudice to the rights of the respondent no.6 to challenge the communication of the

competent authority in accordance with law and before the appropriate forum.

15. In this matter, we are quite conscious that the petitioners may have had alternate remedies. However, such alternate remedies in relation to the two impugned orders, may have been before two different fora. It is in these peculiar circumstances, that we have entertained the present petition, rather relegating the petitioners to avail of the alternate remedies.

16. The Rule in this petition is disposed off in the aforesaid terms. There shall be no order as to costs.

17. All concerned to act on the basis of an authenticated copy of this order.

M. S. JAWALKAR

M. S. SONAK, J.

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