

IN THE HIGH COURT OF BOMBAY AT GOA

(LD-VC-CW-76/2020)

Mr. Dilip Trimbak Alve and anr. ... Petitioners

Versus

Mr. M. Ashraf Nagarwala and ors. ... Respondents.

Shri Nitin Sardesai, Senior Advocate with Shri Gaurang Panandikar,
Advocate for the petitioners.

Shri Ashwin Bhoje, Advocate for the respondent no.1.

None for the respondent no.2.

Shri Sagar Dhargalkar, Addl. Govt. Advocate for the respondent no.3.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 13th July 2020

ORAL ORDER:

The petitioners, two brothers, are the owners of a building, and the first respondent is said to be the tenant. I have employed the expression “said to be” because the petitioners dispute the first respondent's status as being a tenant. At any rate, I need not visit that controversy as the eviction proceedings are pending before the jurisdictional Civil Court. I will refer to the issue of the lease only for the limited purpose of adjudicating this writ petition. So, at the outset, I must disclaim that the observations in this order, including the narration of facts, shall not affect the prospects of the parties in the eviction proceedings before the trial Court.

2. In April 2014, the petitioners complained to the Municipal Council (the 2nd respondent) that the first respondent had been illegally constructing or altering the structure of the building without adherence to the statutory mandate under Section 184 of the Goa Municipalities Act 1968 (“Municipality Act”). Thereafter, on 17th April 2014, the authority concerned inspected the property and submitted a report: a document of transgression. Based on that document, the Municipal Council issued a show cause notice-cum-Stop Work Order. It was under Section 184 of the Municipality Act.

3. After receiving the notice, the first respondent, it seems, filed his objection before the Chief Officer, who is the authorised authority under Section 184 of the Act. On 9.5.2014, when the hearing was taking place, again the petitioners complained to the Chief Officer: Despite the stop-work order, the first respondent had still been going ahead with the construction. Then the Chief Officer ordered a second spot inspection, which took place on the very same day.

4. The second inspection report placed on record, on 12th April 2014, the Chief Officer ordered, ostensibly under Section 184A of the Municipality Act, the sealing of the building. Besides, through the same order, the Chief Officer required the first respondent to show cause why the additional construction that had been made after the stop-construction order was passed should also not be demolished.

5. Aggrieved, the first respondent challenged the Chief Officer's order, dated 12.5.2014. For this challenge, he had invoked Section 303 of the Act. We need not refer to the first respondent's earlier unsuccessful attempt to challenge that order in an appeal. That effort failed on the question of alternative remedy.

6. Eventually, the Revisional Authority passed the impugned order, dated 30.6.2020, holding that the sealing order could not be sustained. Besides setting aside the order dated 12.5.2014, the Revisional Authority has also declared that what the first respondent undertook did not amount to any construction under Section 184 of the Act. Aggrieved the petitioners have filed this Writ Petition.

7. I have heard Shri Nitin Sardesai, the learned Senior Counsel, instructed by Shri G. Panandikar, advocate on record for the petitioner, and Shri Ashwin Bhole, the learned counsel for the first respondent, besides Shri Sagar Dhargalkar, the learned Addl. Govt. Advocate for the third respondent. Though the notice has been served on the second respondent, there does not seem to be any representation for them.

8. Learned Senior Counsel Shri Sardesai has insisted that the Revisional Authority has exercised a power that is unavailable to him and disposed of the entire lis, instead of confining the finding only to the order under Section 184A of the Municipality Act. To elaborate, the learned Senior Counsel has submitted that the Revisional Authority has

preempted the petitioners' statutory remedies by declaring that what the first respondent did would not amount to 'construction'. Instead, the Revisional Authority ought to have confined the revision, according to Shri Sardesai, only to the interim order of sealing. In this context, the learned Senior Counsel has also submitted that if the impugned order remains undisturbed, the petitioners would have no other remedy in the original proceedings that are deemed to be still pending before the Chief Officer.

9. In response, Shri Bhobe, with equal vehemence, has submitted that the petitioners are abusing the process of law. According to him, since 2014 the building has been shut, and the first respondent is out of business. At any rate, Shri Bhobe has also contended that the revisional authority has confined the order only to the dispute that arose under Section 184A of the Municipality Act. In the alternative, he has also submitted that the order passed by the Chief Officer itself reads as if it were final disposal of the entire dispute before that authority. So, looked from either perspective, the order needs no interference. Of course, Shri Bhobe has also tried to impress the Court on the merits; I reckon, though, it is premature for me to consider the merits, at this stage.

10. As Section 184 reveals, if a dispute arises about whether a tenant has indulged in illegal construction, that may lead to adjudication by the Primary Authority. Subject to remedial appeal and revision, that

adjudication may result in either the demolition of the construction or in the exoneration of the person that faced the allegation of unauthorised construction. Here that stage has not reached yet.

11. Here, the dispute has given rise to two proceedings: one under Section 184 and the other under Section 184A of the Municipality Act. The first respondent responded to the show cause notice under Section 184. When the hearing was taking place, because of the alleged violation of the stop-work order, the Chief Officer ordered second spot inspection and invoked Section 184A. To be explicit, there are, thus, two distinct stages in the proceedings. Under Section 184 of the Municipality Act, there is one show-cause notice and one interim order against the first respondent to stop work. Under Section 184A, there is a second show-cause notice and another interim order—sealing the building.

12. Indeed, Section 184 of the Municipality Act empowers the Chief Officer to require any person to stop construction and to alter or demolish any construction already made. Of course, stop-construction is an interim measure and alteration or demolition the final step. Similarly, Section 184A empowers the same authority to direct the sealing of the building where the construction allegedly being carried out. And that provision reads:

“184A. Power to seal unauthorized constructions.— (1) It shall be lawful for the Chief Officer, at any time, before or after making the order of demolition or of the stoppage of the construction under section 184, to make an order

directing the sealing of the premises in which such construction is being carried on or has been completed for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such constructions.”

13. As is the case with the stop-construction order, the sealing order, too, is an interim measure. It aims to preserve the property, pending adjudication. In this case, as found by the Special Officer, the first respondent did not pay heed to the stop construction order. On the second site inspection, the Special Officer noted that the first respondent did not adhere to the directive of stop construction and then passed the order of sealing. Had it been final disposal as contended by Shri Bhubhe, a simple sealing of the building in perpetuity would not have been in statutory compliance of Section 184 of the Act.

14. So I am constrained to conclude that the order challenged before the Revisional Authority was not the final one. Then, the findings ought to have been prima facie and confined to the sealing order. In other words, the adjudication under Section 184 of the Municipality Act has still been pending before the Special Officer. Only against the interim direction sealing the building did the first respondent approach the Revisional Authority. But the adjudication proceeded as if it were a comprehensive revision against the entire proceedings—both under Sections 184 and 184A of the Municipality Act.

15. As this Court is exercising only supervisory powers under Article 227 of the Constitution of India, I intend to usurp the adjudicatory powers of neither the Primary Authority nor the Revisional Authority. Instead, it serves the interest of justice and adversely affects neither party if this Court sets aside the impugned order and remand the matter to the Revisional Authority requiring it to confine adjudication only to the legality of the sealing order, leaving the rest of the controversy under section 184 of the Act for adjudication by the Special Officer. I do so.

16. I, therefore, set aside the impugned order and remand the matter to the Revisional Authority. I may be stressing the obvious by noting that the Revisional Authority will confine the adjudication only to the legality, sustainability, and the desirability of the sealing order pending the adjudication under Section 184 of the Act before the Special Officer—that is, without concluding on whether the first respondent has violated Section 184 of the Act and indulged in construction. Granted, any observation on the nature of construction will remain prima facie observations. As the matter has been pending for the last six years at whatever stage, it is advisable that the third respondent will expedite the hearing and conclude it, preferably, in six weeks.

To obviate further fresh notices to the parties, I hold that the parties will appear before the Revisional Authority at 3 p.m., on 22nd July

2020, to enable the learned Authority to proceed with the matter. For any administrative reasons if the Revisional Authority could not take up the matter on that day, he may provide to the parties a fresh date thereafter.

DAMA SESHADRI NAIDU, J.

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