

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 254 OF 2023

Mr. Sudesh Kurade
Son of Kamlakant Kurade,
45 years of age, Indian national,
Resident of Flat No.FS-1,
Sarthak Garden, Near Bhagwati Temple,
Dhavli, Queola, Ponda Goa.

...Petitioner

v/s.

1. STATE OF GOA,
Through its Chief Secretary,
Secretariat, Porvorim,
Goa.
2. THE SARPANCH/SECRETARY,
The Village Panchayat, Queola,
Ponda, Goa.
3. THE DEPUTY TOWN PLANNER,
Office of the Senior Town Planner,
Town and Country Planning Department,
2nd floor, Government office building,
Opposite Axis Bank, Ponda, Goa.
4. DIRECTORATE OF PANCHAYATS,
At Margao, Goa.
5. THE BLOCK DEVELOPMENT OFFICER
Ponda, Goa
6. MR. ANAND PRABHAKAR SAWANT,
Age 35 years, s/o. Prabhakar Sawant,
Married, service, Indian national,
r/o. of House No.5, Dhavali,
Ponda, Goa.

...Respondents

Mr Jagannath J. Mulgaonkar with Ms Deeksha Sharma, Advocate for the petitioner.

Mr D.J. Pangam, Advocate General with Mr Neehal S. Vernekar, Addl. Govt. Advocate for respondents No.1, 3, 4 & 5.

Mr Akshay Naik, Advocate for respondent No.2.

Ms Prema Matkar, Advocate for respondent No.6.

Sarpanch and Secretary of Village Panchayat Queola present in Court.

CORAM: M.S. SONAK &
BHARAT P. DESHPANDE, JJ.

RESERVED ON : 11th September, 2023.

PRONOUNCED 27th September, 2023.

ON :

JUDGMENT: (Per Bharat P. Deshpande, J)

1. Rule. Rule is made returnable forthwith.
2. The matter is taken up for final disposal with the consent of the parties.
3. Heard Mr Jagannath J. Mulgaonkar with Ms Deeksha Sharma, learned Counsel for the petitioner, Mr D.J. Pangam, learned Advocate General with Mr Neehal S. Vernekar, learned Addl. Govt. Advocate for respondents No.1, 3, 4 & 5, Mr Akshay Naik, learned Counsel for respondent No.2 and Ms Prema Matkar, learned Counsel for respondent No.6.

4. The petitioner is one of the member of a co-operative housing society namely Sarthak Garden Near Bhagwati Temple, Dhavli, Queola, Ponda Goa, preferred present petition challenging the inaction on the part of respondent No.2-the Panchayat and illegal construction carried out by respondent No.6 in the open space reserved for the members of the society, without obtaining any permissions from any authority.

5. In nutshell, it is the contention of the petitioner that there exists a property known as Govinda Devanche also known as Condemol or Gharbhat situated at Queola within the village Panchayat limits, in taluka Ponda of the North Goa District wherein half of the said property admeasuring 5400 were district property entrusted for development by constructing residential and commercial buildings by M/s. Ritesh Developers Pvt. Ltd. The said developer after obtaining permissions from the respective authorities completed the construction of buildings Nos.A, B, C1, C2, row houses bearing No.D1 and D2 and F1 and F2 by reserving open space in the said complex for play area for children and other recreational activities.

6. The petitioner and the other members of society noticed that somewhere in July 2021 respondent No.6 started preparation of construction in open space which is behind the building Nos.F1 and F2 by digging pits for laying foundation to erect columns. The petitioner claimed that the said open space is in exclusive possession of the residents of Sarthak Garden Co-operative Society and that such open space has to be kept open to the sky for

the purpose of use of the members of the society. No construction activity is permitted on such open space.

7. On noticing such construction activity, the residents of Sarthak Garden lodged a complaint with the Village Panchayat/respondent No.2 vide their letter dated 23/07/2021 with a request to take immediate action. However, the Panchayat kept quiet on receipt of such a complaint. Thereafter, another letter was addressed to the Panchayat by the members of the society dated 09/08/2021 pointing out illegal construction carried out by respondent No.6 in the open space. Only on receipt of the second complaint dated 09/08/2021, respondent No.2, issued notice of inspection dated 10/08/2021 thereby fixing the inspection of 16/08/2021. However, the construction activity continued at a fast pace. The members of Sarthak Garden again intimated the Village Panchayat on 18/08/2021 about the activities going on and requested the Panchayat to issue a stop work order. The Show Cause Notice was issued to respondent No.6 by the Panchayat to which he sought time to file a reply. However, the work continued. Since no reply was filed by respondent No.6, respondent No.2-Panchayat issued a notice of demolition dated 23/09/2021. Respondent No.6 challenged such notice of demolition by filing an appeal before the Additional Director of Panchayat vide appeal No.100/2021 and sought stay of such notice. The Additional Director of Panchayat granted ex-parte stay of the said notice. Taking advantage of such stay granted by the Additional Director of Panchayat, respondent No.6 completed construction of house in the open space.

8. It is the contention of the petitioner that the entire construction carried out by respondent No.6 is a new construction without taking any permission from any authority and therefore the same needs to be demolished. It is also claimed that the Additional Director of Panchayat without having any material placed before him granted ex-parte stay and thereby facilitated respondent No.6 to complete the construction. Since the authorities who are supposed to take quick action failed in its duty, the petitioner preferred present petition.

9. When the matter was heard on 03/05/2023, the coordinate Bench of this Court passed the following order:

“1. Leave to amend to challenge the order dated 24/04/2023. The amendment to be carried out forthwith. Amended copies to be supplied to the Respondents.

2. Heard Mr Mulgaonkar for the Petitioner. Mr Vernekar, learned Addl. Govt. Advocate appears and waives service for Respondents No.1, 3, 4 and 5.

3. Issue notice to the remaining Respondents, returnable on 28th June 2023. The notice to indicate that this Petition will be disposed of finally at the stage of admission.

4. Further, we direct that no occupancy certificate shall be issued for the structure being put up by Respondent No.6 and the structure should also not be occupied by Respondent No.6 or others. This order is made based upon the statement that the construction put up by Respondent No.6 is not backed by any permission from the Panchayat or other Authorities. Mr

Mulgaonkar points out that the Panchayat did issue a demolition order, but the same was unconditionally stayed by the Directorate of Panchayats, as a result of which, Respondent No.6 proceeded with further construction. Mr Mulgaonkar points out that the construction proceeded despite the stop-work order from the Panchayat.

5. Mr Mulgaonkar states that the process fees and copies will be supplied immediately, so that service is effected upon other Respondents.

6. All concerned to act on an authenticated copy of this order.”

10. Since it was noticed from the material placed on record along with photographs that it was entirely new construction erected within a short span, we directed the Panchayat authorities not to issue occupancy certificate. It was also made clear that the matter would be taken up for final disposal at the stage of admission itself. Though respondent Nos.2 to 6 were duly served, they remained absent. When the matter was called on 06/09/2023, it was also noticed that the Panchayat failed to appear inspite of service and accordingly the following order was passed:

“The Panchayat, despite service, has not bothered to put in an appearance. Accordingly, we request BDO (respondent no.5) to inform the Sarpanch and the Secretary of this Panchayat to remain present in this Court on 11.09.2023. The Sarpanch and the Secretary to file an affidavit by Monday, explaining why no action was taken despite stop work orders.

2. The matter is now posted on Monday, i.e. on 11.09.2023 to enable respondent no.6 - Shri Anand Sawant, who is present in

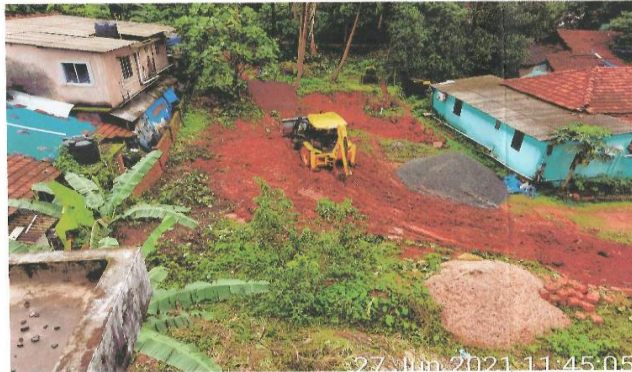
the Court, to file his affidavit cum undertaking as regards demolition of the structure.”

11. Affidavits are filed on behalf of respondent Nos.2 and 6. First of all it is clear from the record that the society - Sarthak Garden on noticing preparation of illegal construction in the open space, lodged its complaint dated 23/07/2021 with respondent No.2. Admittedly, no action was taken by respondent No.2 on receipt of such complaint which gives all details. Similarly, a copy was forwarded to Block Development Officer, Ponda, Director of Panchayat South Goa Margao, said authorities also failed to take any action.

12. The petitioner annexed photographs vide annexure G (colly). The said photographs bear a date and time when the same were clicked. This is only to show the fact that the place was an open space and that a total new construction activities started somewhere at the end of June 2021. The first complaint was lodged by residents of Sarthak Garden dated 23/07/2021. The petitioner placed on record photographs which show that the first photograph is on 27/06/2021, the second photograph is on 30/06/2021 and the third photograph is dated 17/07/2021. These three photographs clearly proved that the place was open and new construction activity commenced by digging pits and laying foundation for the pillars. The photographs further show construction material by the side of the said site. These photographs are necessary to be incorporated in the judgment to show the activities carried out by respondent No.6 and how the same progressed:

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Annexure 'G' colly



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13. The complaint lodged by a resident of Sarthak Garden dated 23/07/2021 disclosing that the pits were dug for foundation and footings

with intention of erecting the column in the open space reserved for the residents of the said society. Admittedly, respondent No.2/Panchayat failed to take action at that stage. No inspection was carried out on receipt of such a complaint dated 23/07/2021. No stop work order was issued thereby preventing respondent No.6 from continuing with illegal construction.

14. The second complaint by the resident of Sarthak Garden is dated 09/08/2021. By that time columns were erected and even a foundation was laid. The Village Panchayat issued a notice of inspection dated 10/08/2021 thereby fixing inspection of the site on 16/08/2021 at 4.00pm. This notice was served on respondent No.6. Though inspection was carried out by the Village Panchayat on 16/08/2021, no action was taken against such construction activities even though respondent No.6 failed to produce any document, licence, permission for erection of such new structure. Accordingly, the resident of Sarthak Garden addressed a letter dated 18/08/2021 to the Panchayat / respondent No.2 thereby bringing to their notice that the construction is going on with great pace. A request was made to stop such construction. Only thereafter a Village Panchayat vide its order cum notice under sub-section 3 of Section 66 of Goa Panchayat Raj Act dated 19/08/2021 and addressed to respondent No.6 directed him to stop illegal construction immediately and to show cause as to why said unlawful constructions are not to be demolished. In the Show Cause Notice a Panchayat prima facie observed that it is a new illegal construction of house with laterite stones, sand, cement, steel etc. in Survey No.7/3 of Queola

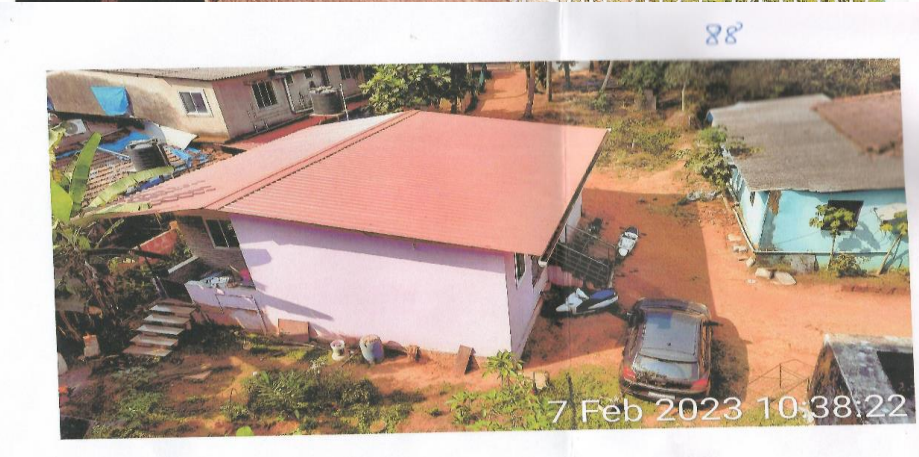
Village having length of 9.55 meters, breadth 9.04 meters and height of 2.80 meters.

15. Since respondent No.6 failed to show cause, notice under Section 66(4) of Goa Panchayat Raj Act, 1994 was issued to respondent No.2 dated 23/09/2021 directing him to demolish the new illegal construction of house, within seven days.

16. Respondent No.6 challenged such demolition notice before the Additional Director of Panchayat by filing an Appeal No.100 of 2021 and sought ex-parte stay. A copy of the appeal memo is placed at Exh.F(Colly) in the petition.

17. A perusal of the appeal memo filed by respondent No.6 would show that a stand is taken by respondent No.6 that there was an old mud house existing at the said place which developed cracks and later on collapsed partly due to heavy rains. Therefore, respondent No.6 had to hurriedly repair the same. In sum and substance, it is the contention of respondent No.6 before the appellate authorities that there was an old house which partly collapsed and therefore, he had to repair it urgently.

18. The purpose of placing the photographs on record is to expose the false and frivolous defence raised by respondent No.6 before the appellate authorities and also before this Court claiming that the old mud house collapsed and therefore he had to repair it. These photographs clearly show that it is construction of a totally new house in an open space. The photographs clicked by the petitioner on 04/09/2021 and 07/02/2023 are placed below to show that it is a totally new construction without obtaining any permissions or licence. It cannot be construed as repairs of an old structure that too consisting of mud house.



19. The petitioner filed an application for intervention before the Additional Director of Panchayat in order to place relevant facts before the

concerned authorities. However, the Additional Director of Panchayat vide its order dated 24/04/2023 rejected such intervention application on the ground that the intervenor has no locus standi.

20. Be that as it may, the stand taken by respondent No.6 in the reply filed before this Court is not the same which he has taken before the First Appellate Authority i.e. the Additional Director of Panchayat. The reply affidavit of respondent No.6 only claimed that the construction is not illegal. However, he conveniently avoided to disclose about the permissions obtained by him, if any, from the competent authority. It is his case that he has applied for regularisation of said residential house, which he has already occupied even prior to the order passed by this Court dated 03/05/2023. This shows that the said house was constructed and even occupied by respondent No.6 prior to 03/05/2023. It again shows that the construction was going on in spite of a stop work order issued by the Panchayat dated 19/08/2021. This again shows that respondent No.6 clearly flouted directions cum orders of the Panchayat issued on 19/08/2021 and completed the construction, and even occupied the house as stated by him on oath.

21. The learned Counsel, Ms Matkar, appearing for respondent No.6, only pleaded that an appeal has been filed challenging the order of demolition issued by the Panchayat and, at the most, the appellate authorities be directed to dispose of such appeal expeditiously. She further pointed out that the application for regularisation of the said structure is also filed by respondent No.6 before the concerned authorities, which may be directed to be decided as expeditiously as possible. She claimed that respondent No.6 is

the right to file an appeal and challenge the order passed by the Panchayat for demolition. She then claimed that the purpose for which the petition is filed is already served when the demolition order is issued by the Panchayat. The right of respondent No.6 to file the appeal and challenge the demolition order need not be curtailed.

22. The learned Advocate General appearing for the State would submit that though the structure erected by respondent No.6 appears to be illegal, this Court should not direct the demolition and the matter be directed to be decided by the competent authorities as expeditiously as possible. He further submitted that the structure/house erected by respondent No.6 is a small structure and the same will not affect any right of the parties even if it is taken up for regularization. He further submitted that there is dispute with regard to the said land between respondent No.6 and other co-owners, including the society, and therefore, such dispute needs to be decided by the Civil Court.

23. The petitioner has placed on record an approved plan of the society, which shows that there is an open space kept behind buildings F1 and F2. In the said open space, the illegal construction has been carried out by respondent No.6. Though there is a dispute as to who is the owner of the said open space, the question remains to be answered as to whether respondent No.6 claiming to be alleged owner of the open space could be permitted to carry out the construction of a house in his own plot as alleged, without obtaining a single permission from the competent authorities. It is well settled that even an owner of a plot of land is not permitted to carry out

construction activity in the said plot without the approval of the plans, issuance of the licence and other permissions from the respective authorities.

24. The contention of respondent No.6 that there was an old structure of mud wall which partly collapsed and required urgent repairs is a totally false defence or story put forth, and such a statement cannot be accepted at all. The Village Panchayat, while inspecting the plot, found that it is a totally new construction activity undertaken by respondent No.6. Not a single permission is placed on record by respondent No.6 or even by respondent No.2 in connection with such structure. Thus, the contention of respondent No.6 that he is entitled to regularisation of such structure is also out of question. The application for regularisation filed by respondent No.6, if any, cannot be considered for the reasons disclosed above and needs to be rejected outright.

25. The Goa Regularization of Unauthorised Construction Act, 2016 is not applicable in this matter as the definition in Section 2 (h) of “unauthorised construction” means any construction which has been carried out before the 28/02/2014 in the State of Goa without obtaining sanad, permission/licence, no objection certificate or any other documents from the Competent Authority under the relevant Acts. Admittedly, present construction started somewhere in June 2021, and therefore, the provisions of the Act of 2016 will not be helpful to respondent No.6.

26. At present, the land where construction is carried out by respondent No.6 is shown as open space in the approved. As per The Goa, Daman and Diu Town and Country Planning Act, 1974, open space reserved as part of development project once as open space has always to be an open space to be used for the purpose for which it is kept. Any encroachment upon such open space clearly affects the members of the society.

27. In the case of **Down Mangor Valley, Goa and another v/s. Mormugao Municipal Council, Goa and others** [2002(2) Mh.L.J. 590], this Court has observed that once an open space, it always has to be an open space to be used for the purpose for which it is kept. It has now been judicially recognised that the need to keep set back areas/open spaces is a recognition by the State for maintaining the environment and ecology of the area and to ensure for the people of the area a place for recreation, or leisure, whilst at the same time serving as green lungs for the area. The objective, therefore, is to provide a better environment for the residents, and hence, such an objective cannot be defeated on the specious plea that encroachers on the land are residing, thereby constructing the structure. There is no provision in the Municipalities Act, nor under the Town and Country Planning Act, which provides for any regularisation of such encroachment on open spaces.

28. In **Raman Madhok and others v/s. State of Goa and others** (2022 SCC Online 3060 Bom), the co-ordinate Bench of this Court considered similar aspects of the open space and observed that no encroachment or even development permission could be given to the developer to alter such open

spaces which are found mentioned in the development plan. SLP filed against this decision was dismissed by the Apex Court.

29. In **Miguel Francisco Gonsalves v/s. State of Goa** (Writ Petition No.2182 of 2022 (F), this Court, while considering similar illegal construction activity without obtaining any permission from the concerned authorities, directed the Panchayat to demolish the structure and recover the costs from the owner of the said structure. In that matter also appeal was filed challenging the demolition order together with an application for regularization.

30. In the case of **Raphael Domnic Philip Patricio v/s. State of Goa** (Writ Petition No.243 of 2023), decided by this Court on 31/07/2023 considered same aspect of illegal construction without obtaining any permission. This Court inspite of issuance of demolition order from the Panchayat and filing of appeal challenging it, directed the Panchayat to demolish the structure within four weeks and to recover the entire costs from the owner of such structure.

31. The SLPs filed against both these judgments before the Supreme Court were rejected. The observations of the Supreme Court while rejecting SLPs are also relevant. In SLP No.22482/2022 filed by Borges Gonsalves challenging the judgment of this Court in Writ Petition No. 2181 of 2022 (F), it was observed thus:

“At the initial stage on hearing learned counsel for the petitioner, we had expressed our view that this petition deserved to be

dismissed with costs as the petitioner, ex-facie, has shown reckless dis-regard for law in coming up with construction which is the subject of dispute in this proceeding. After such opinion was expressed, learned counsel for the petitioner wanted to withdraw the present petition.

Accordingly, the present petition is dismissed as withdrawn.”

32. Similarly, the decision passed by this Court in the case of **Raphael Domnic Philip Patricio** in Writ Petition No. 243 of 2023, was challenged by respondent No.4 in SLP No. 17390 of 2023, Manorama Salgaonkar v/s. State of Goa and ors. Vide order dated 09/08/2023 the Apex Court dismissed the petition by following order:

“Heard the learned counsel appearing for the petitioner.

The order assailed in this petition, in substance, permits the authorities and the Village Panchayat Nerul in Goa to demolish a structure which was found to have been built by the petitioner without any authorization or permission as per law. A stop work order was issued on 15.03.2023, but it appears that the petitioner continued with the construction thereafter also. In the impugned order, the High Court has examined every aspect of the matter and directed respondent Nos.1 to 3 to demolish the illegal construction carried out by the petitioner in Survey No.87/1 of Village Nerul of Bardez Taluka within a period of four weeks from the date of the order passed on 31.07.2023.

We do not find any reason to interfere with the impugned order as the structure appears to have been constructed without compliance with the regulatory mechanism.

The petitioner, however, seeks some time to vacate the subject premises. As we have not interfered with the order of the High

Court and the said order is being sustained, the petitioner is at liberty to approach the High Court only for seeking time to vacate the subject premises.

With these observations, the present petition is dismissed.”

33. The respondent No.6 who was present along with his Advocate, admitted the photographs attached to the petition and claimed that he constructed the house shown therein and he is occupying it. He also admitted that he obtained no permission to carry out the construction of a completely new house from any authority. Initially, he claimed that there was an old house which partly collapsed, and thereafter he carried out repairs only. However, later on, he clearly admitted that the so-called old house, as claimed by him, was not shown even in the survey records. Even otherwise, the record clearly goes to show that a totally new construction activity was undertaken by respondent no.6, which is brazen and without following the due process of law. It further shows that respondent No.6 has no respect for the laws. In spite of issuing a notice for inspection and later on for the purpose of stopping the construction activity, respondent No.6 proceeded ahead and completed the construction and then started occupying it without even asking for an occupation certificate. This clearly goes to show that respondent No.6 has scant respect for the laws in connection with construction and is now trying to claim the regularisation of such a totally illegal structure. There is no question of regularisation of constructions brazenly put up in a designated open space and without bothering to obtain permissions from any authorities, rather in the teeth of notices and stop work notices from the authorities.

34. In **Royal Paradise Hotel (P) Ltd. v. State of Haryana** (2006) 7 SCC 597, the Hon'ble Supreme Court rejected the plea for regularisation of construction made in violation of the provisions of the planning and municipal legislation by observing that no authority administering municipal laws and other laws like the Act involved in the matter, can encourage such violations. Even otherwise, compounding is not to be done when violations are deliberate, designed, reckless, or motivated. Marginal or insignificant accidental violations unconsciously made after trying to comply with all the law requirements can alone qualify for regularisation, which is not the Rule but a rare exception.

35. In the case of **Shanti Sports Club v/s. Union of India** [(2009) 15 SCC 705], the Hon'ble Apex Court has, after considering its several earlier decisions on the subject, taken cognizance of a building constructed in complete violation of municipal and other laws and emphasized that no compromise should be made with the town planning scheme and no relief should be given to the violators of such scheme on the ground that he has spent the substantial amount on the construction of the building. The Apex Court further stated that it is unfortunate that despite repeated decisions of the Apex Court and other High Courts, illegal construction continues to mushroom, and thereafter, pleas are made for regularization on the grounds of compassion and hardship. The Apex Court then observed that it is high time that the executive and political apparatus of the State take a serious view of the menace of illegal and unauthorized Constructions.

36. In *Friends Colony Development Committee v. State of Orissa* [(2004) 8 SCC 733], the Hon'ble Apex Court observed that though municipal laws permit deviations from sanctioned constructions being regularized by compounding, that is by exception. However, unfortunately, with the lapse of time and frequent exercise of the discretionary power conferred by such exceptions, the exception has become the Rule. Only such deviations deserve to be condoned as bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Therefore, compounding of deviations ought to be kept at a bare minimum.

37. Section 66(1) of the Panchayat Raj Act clearly bars a person from erecting any building, altering or adding to any existing building, or reconstructing any building without the written permission of the Panchayat. The proviso added by the amendment of 2021 applies to only a single dwelling unit which was constructed or in existence before the commencement of the Panchayat Raj Act. The scope of this proviso is limited to the extent of replacing tiles roofing with R.C.C. slab roofing subject to the production of a stability certificate by the registered structural engineer. For that purpose, the owner of the building must apply for the replacement of roof tiling with RCC slab together with a certificate of the Structural Engineer.

38. In the present matter, though oral arguments were advanced about the existence of the old mud house, no permission was sought from the Village Panchayat either to repair old mud walls or to repair the roof. No structural stability certificate from the concerned Engineer was either produced before the Panchayat or before this Court. In reply affidavit filed by respondent No.6, except denying the contentions raised in the petition, there are no specific averments of obtaining any such permission from the competent authorities.

39. We repeatedly enquired from the learned Counsel, Ms Prema Matkar, appearing for respondent No.6, to produce any permission obtained from respondent No.2 either to repair the old structure or to carry out any construction. However, no such permissions were produced. She candidly accepted that respondent No.6 did not obtain any permission before constructing the said house. She only claimed that the appeal filed against the demolition order be directed to be expedited. We have already noticed the plea taken in the appeal memo, which is contrary to the present stand and that it is only an attempt on the part of respondent No.6 to delay the demolition process so that he could continue to occupy the premises which he constructed without obtaining any permission and more so without any respect for the Laws. If such a person is permitted to challenge the demolition notice without showing any material remotely to consider his case for the grounds raised in the memo of appeal and even before this Court, it would be a travesty of justice as such a person would drag the matter for years together and occupy the premises in the meantime.

40. Even the Panchayat admitted that no permissions were applied or given. Since the construction was coming up in the space designated as open space by the planning and panchayat authorities, there was no question of granting permissions even if respondent no.6 had bothered to apply for the same. Therefore, respondent no. 6 chose the easy way out of constructing without any permission from any authorities, perhaps confident the panchayat would ignore the brazen illegalities and the proceedings could be unduly delayed before the appellate authorities like the Director of panchayats.

41. We are constrained to note that many petitions have been filed in this Court with regard to illegal constructions, and most of the parties routinely urged that either houses or structures collapse while undertaking minor repairs or without carrying out repairs with the permission of the Panchayat. In fact, under the guise of repairs, entirely new structures and that too without approved plans and permissions, are found to be erected and thereafter, whenever challenged and rejected, ask for regularisation. Thus, the modus operandi is to secure permission for minor repairs only from Panchayat, bypassing other authorities and based on such permissions of minor repairs, but in defiance of all its conditions, demolish the old structure and replace it with entirely new construction and that too with an extended/larger area than the old one. The idea behind it is to pass all the new structures as the old repaired ones. In this case, respondent no.6 did not bother to secure permissions from any authorities, knowing fully well that such permissions could not have been granted in a designated open space.

42. The case of respondent No.6 in the present matter is worst in the sense that he neither obtained any permission for repairs of the so-called old structure nor asked for permission to construct a new structure. In brazen defiance of provisions of the Panchayat Raj Act and other laws, respondent No.6 constructed a completely new house without obtaining any permission. Any indulgence, as proposed by Ms Matkar, will only encourage this trend of defying all construction and planning laws simply because the panchayats or other local authorities ignore or do not promptly act in such matters. An impression is fast gaining ground that illegal constructions must be completed and occupied at the earliest. If any action is initiated, then the same must be contested based upon ex-facie false and frivolous defences. After such defences fail, pleas are made for regularisation. All this is routinely done in spite of several decisions of the Hon'ble Supreme Court and this court on the subject.

43. In the case of **Commissioner v/s. Tahir Isani** (2021 S.C.C. OnLine Bom 122) had set aside the order permitting regularisation of a patently unlawful construction. The said decision was challenged before the Hon'ble Supreme Court of India by instituting Special Leave to Appeal (C) No.4135 of 2021. The Apex Court dismissed the said SLP by observing thus:-

" Heard learned counsel for the Petitioner.

The violation of municipal regulations on construction must be met with an iron fist. That deviation from the regularisation by compounding is only an exception. Only deviations that are bonafide or when the benefit of demolition would be less

compared to the disadvantage suffered, can the exception be applied. We do not find any ground to interfere. The demolition was ordered in the year 2001. Till this day, the same is being prolonged. Hence, we decline to interfere with the judgment and order of the High Court. The Special Leave Petition stands dismissed."

44. In the case of **Gurudas Vattu Chati Aldonkar v/s. State of Goa and others** (WP No.284 of 2022) decided on 29/09/2022, this Court again, after considering various decisions on the question of illegal construction, regularisation observed that since construction put up by respondent No.3 therein was found totally illegal, directed to demolish the same and the costs of such demolition be recovered from the said respondent. The court also held that there was no power vested in Panchayats to regularise such brazenly illegal constructions.

45. In the present matter, since no document is placed on record by respondent No.6 or even by respondent No.2 to show any permission granted for carrying out such construction, it is clear that the said construction is totally illegal, brazen and without following the due process of law. Therefore, even an appeal filed against the demolition order passed by the Panchayat is again an abuse of process of law as respondent No.6 failed to produce any permission or licence before this Court and even before the Additional Director of Panchayat. The only intention of respondent No.6 is to delay the demolition by filing an appeal and other proceedings. A person who has scant respect for the procedure and law and who carried out the brazen illegal construction cannot be protected by seeking or filing an

application for regularisation. We hereby quash and set aside the ex-parte stay granted by the Additional Director of Panchayat. In any case, this ex parte stay cannot protect a construction carried out in an open space.

46. Based on the above principles as well as the precedents discussed in detail, we direct respondent No.2 i.e. the Panchayat to demolish the illegal construction carried out by respondent No.6 in Survey No.7/3(part) of Village Queola, Ponda Taluka within a period of two months from today and recover the entire demolition costs from respondent No.6.

47. We direct respondent No.6 to deposit an amount of Rs.50,000/- with the Director of Panchayats within a week from today as tentative charges for demolition. After the demolition, respondent No.2 is free to raise demand from respondent No.6 towards the actual demolition costs. In case such an amount is not paid, respondent No.2 is free to recover the same from respondent No.6 in accordance with the law. However, we clarify that the Panchayat must not delay compliance because of any refusal or delay by respondent No. 6 in depositing this amount.

48. Respondent Nos.4 and 5, i.e. the Directorate of Panchayats and the Block Development Officer, shall depute the concerned Officer and the Secretary, who must ensure the demolition activity as early as possible and within a specified period. The demolition squads constituted by the government must also render necessary assistance in the matter.

49. The concerned authorities shall also summon the police authorities if needed at the time of carrying out demolition. The Block Development Officer or the Deputy Collector shall provide the demolition squad for the purpose of carrying out such exercise and that too without any requisition from the Village Panchayat. The date for demolition must be fixed by the Secretary of Panchayat and intimation of such date be given to the concerned authorities in advance. The Secretary of the Village Panchayat shall file a compliance report within a period of 8 days from the date fixed for carrying out demolition.

50. The rule is made absolute in the above terms. The parties shall bear their own costs. All concerned shall act on the authenticated copy of this judgment.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.

MEENA
VISHAL
BHOIR

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