

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 87 OF 2015

SMT. ALZIRA DUNN.
R/O H. NO..17,
SANTA CRUZ,
PONDA - GOA.

.....

PETITIONER

V/S

CHIEF OFFICER,
PONDA MUNICIPAL COUNCIL
AND ANR.,

..... RESPONDENTS

Mr. A.D. Bhobe, Advocate for the Petitioner.

Mr. Gaurish Agni, Advocate for the Respondents.

CORAM: M. S. SANKLECHA, J.
DATE: 22ND APRIL, 2015.

ORAL ORDER:

This petition challenges the order dated 16/12/2014 passed by the Goa Municipalities Appellate Tribunal (Tribunal). By the impugned order dated 16/12/2014, the order dated 24/10/2013 passed by the Chief Officer, Ponda Municipal Council directing demolition of illegal structures of the petitioner was upheld.

2. It is not disputed by the petitioner that the structures

were illegal as the same were erected without obtaining an appropriate permission/licence from the Ponda Municipal Council as stated in the reply to the show cause notice issued by the Chief Officer, Ponda Municipal Council. However, in her reply to the show cause notice issued by the Ponda Municipal Council after having admitted that the construction is illegal had sought regularization of the illegal construction. By the order dated 24/10/2013, the Chief Officer has directed demolition of the illegal construction and inter alia observed that the petitioner's application for regularization of illegal construction is not possible, as the said illegal construction was on an encroached property and not on the petitioners' property. Negating the petitioner's contention that the illegal construction was on her own property without proper examination.

3. In appeal, the Tribunal by the impugned order dated 16/12/2014 upheld the order of the Chief Officer, Ponda Municipal Council ordering demolition. This on the basis of the admission of the petitioner in her reply to the show cause notice that the structures were without appropriate permission. However, the impugned order does observe that the issue whether or not the illegal construction was on encroached property or in the property of the petitioner is not

an issue within the scope of inquiry by the Chief Officer, Ponda Municipal Council while deciding the issue of demolition.

4. The petitioner being aggrieved by the impugned order dated 16/12/2014 has filed this petition. It is her contention that once the impugned order found that the order dated 24/10/2013 of the Chief Officer, Ponda Municipal Council had applied an in-correct test viz. the illegal construction was on petitioner's property or encroached property to deny the petitioner the benefit of regularization of the illegal structures then in fairness the Tribunal ought to have remanded the issue to the Chief Officer, Ponda Municipal Council for fresh determination. It is also contended by the petitioner that the illegal construction is factually on the petitioner's property and not on encroached property.

5. Mr. G. Agni, learned counsel appearing for the Chief Officer, Ponda Municipal Council submits that there is no need to interfere with the impugned order. This particularly is in view of admission that the construction was illegal. It is open for the petitioner to make an application for regularization to the appropriate authority i.e. the Town and Country Planning Department of the State of Goa. It is

submitted that in the absence of the petitioner's obtaining an order of regularization, the impugned order calls for no interference.

6. On a specific query Mr. Agni, learned counsel for the Ponda Municipal Council states that it is not the function of Ponda Municipal Council to regularize illegal construction and the same is entertained and allowed after the issue of Goa Land Development and Building Construction Regulations, 2010, only by the Town and Country Planning Department. At the highest, the Municipal Council on receipt of a complete application could forward the same to Town and Country Planning Department. Therefore, the observations made in the order dated 24/10/2013 by the Chief Officer, Ponda Municipal Council that regularization cannot be allowed as the illegal construction is on the encroached property are casual observations and not pertaining to the dispute which arose before the Chief Officer. Moreover, it can have no bearing upon the grant of permission for regularization by the Town and Country Planning Department, State of Goa.

7. It is an undisputed position as found in reply of the petitioner to the show cause notice that the construction was without obtaining

appropriate permission and therefore illegal. However the petitioner had sought regularization of the same in her reply to the show cause notice. The order in original dated 24/10/2103 does not deal with the application for regularization apparently on the ground that the same could not be considered as the construction was on an encroached property. It is the petitioner's contention that the illegal construction has been done on her own property and not on encroached property.

8. In the present facts, the impugned order dated 16/12/2014 calls for no interference as it is an admitted position that the construction was illegal. However, the grievance of the petitioner that she has been denied an opportunity to regularize the illegal construction does require consideration.

9. It is curious to note that even though the Chief Officer was not the appropriate authority to grant regularization of an illegal construction, yet he rejected the same. In fact the Chief Officer ought to have directed the petitioner to make an application to the appropriate authority. Thus the petitioner's application for regularization of the illegal construction has not at all been considered. Therefore an opportunity needs to be given to the

petitioner to have her application for regularization being considered.

10. In view of the above, in case the petitioner makes an application for regularization of the illegal construction to the Town and Country Planning department, State of Goa within a week from today, with intimation of the same to the Chief Officer of the Council demolition of illegal construction will be kept in abeyance.

11. In the above view, the impugned order dated 16/12/2014 ordering demolition of the illegal structures will be kept in abeyance for a period of six weeks from today. However, in case no permission/regularisation is obtained within the above stipulated time of six weeks from today, the Ponda Municipal Council will be at liberty to execute the impugned order dated 16/12/2014. In view of the limited period of stay, the authority will consider the petitioner's application as expeditiously as possible. In case the petitioner does not file an application within 8 days with intimation to the Council the protection granted by this order will come to an end on the 9th day from today.

12. Petition dismissed subject to the above directions.

M. S. SANKLECHA, J.

Ap/-