

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.92 OF 2015

SMT. GODI BIRO GOULI

... Petitioner

Versus

MARGAO MUNICIPAL COUNCIL

THROUGH ITS CHIEF OFFICER AND ANR. ... Respondents

Mr. S.S. Kakodkar, Advocate for the Petitioner.

Mr. S.D. Padiyar, Advocate for Respondent No.1.

Ms. Lea Diniz, Advocate for Respondent No.2.

Coram:- N. M. JAMDAR, J.

Date:- 26th February, 2015

ORAL ORDER

By this petition the petitioner challenges the order passed by the Municipal Appellate Tribunal, Panaji dated 14 October 2014 directing the petitioner to file certain documents.

2. When the petition came up for admission on 6 February 2015 following order came to be passed:

“P.C.:

By this petition, the petitioner challenges the order passed by the Municipal Appellate Tribunal, Panaji dated 14 October 2014 directing the petitioner to produce certain documents.

2. It is the case of the petitioner that on 5 April 2011 the proceedings initiated by the Margao Municipal Council in respect of the construction of the petitioner stood closed and thereafter a notice came to be issued to the petitioner on 6 December 2012 calling upon the petitioner to demolish the structure. A representation was made by the petitioner which according to the petitioner was not taken cognizance of. Thereafter, the petitioner filed a Municipal Appeal which is pending. In the Municipal Appeal there is an interim order protecting the petitioner.

3. It was put to the learned Counsel for the Municipal Council that if the Municipal Council is agreeable to give hearing to the petitioner, as it is the contention of the petitioner that no hearing was given, then the litigation need not be kept pending further and the interim order need not continue. The learned Counsel for the respondent seeks time to take instructions. Stand over to 20 February 2015.

4. The learned Counsel for the petitioner states that the proceedings in the appeal before the Tribunal be stayed. Considering that the petition is adjourned for the Counsel to take instructions and which may dispose of the appeal itself if the Counsel is

agreeable, if the petitioner makes an adjournment of the appeal, the Tribunal will consider the same favourably. The learned Counsel for the petitioner states that copy of the adjournment application will be served on the respondent no.2. Expedite authenticated copy of the order.”

3. Thereafter, Mr. S.D. Padiyar, the learned Counsel for the Municipal Corporation informed the Court that there is one more show cause notice issued to the petitioner whereupon following order came to be passed.

“P.C.:

The learned counsel appears on behalf of the private respondent and seeks time to file vakalatnama.

2. The learned counsel for the respondent no.1-municipal council states that there is one more show cause notice issued to the petitioner and a decision will be taken whether the last notice now issued will be taken to its logical end and not the earlier proceedings.

To enable the municipal council to take a decision, stand over to 26/2/2015.”

4. Mr. Padiyar submits that, on instructions, the notice dated 6 December 2012 which is subject matter of the appeal

pending before the Tribunal will not be acted upon as a fresh notice has been issued on 17 November 2014 in respect of construction. He submits that notice dated 17 November 2014 is identical to notice dated 6 December 2012 and, therefore, it is not necessary to go forward with the notice dated 6 December 2012.

5. Ms. Lea Diniz, the learned Counsel for respondent no.2 submits that there is variation between the notice dated 17 November 2014 and 6 December 2012. She submits that respondent no.2 will point out to the Chief Officer the variation by filing an appropriate complaint/representation.

6. Mr. Padiyar submits that the Chief Officer will hear the petitioner and respondent no.2 as regard the notice dated 17 November 2014 and the complaint/representation of the respondent no.2, which the respondent no.2 will file within a period of 3 weeks from today. All contentions of the parties are kept open. Mr. Kakodkar submitted that the Municipal Council cannot issue fresh notices having closed the proceedings earlier. This point is also kept open to be decided in the fresh proceedings.

7. In view of this statement made by Mr. Padiyar and the above directions consequent thereupon, the appeal from which the petition arises itself does not survive and also the present petition. The petition is disposed of in above terms. The parties will inform the appellate Tribunal of the order passed. The Council will consider the fact that the issue is pending

since some time and some periodical notices are issued to the petitioner, it will take a comprehensive decision on all aspects, within a period of 6 months from today.

N. M. JAMDAR, J.

NH/-