

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 275 OF 2014

SHRI ULHAS DHARGALKAR, ... Petitioner
Versus
MAPUSA MUNICIPAL COUNCIL THROUGH
ITS CHIEF OFFICER AND ANR., ... Respondents

Shri Valmiki Menezes, Advocate for the Petitioner.
Shri Sandesh D. Padiyar, Advocate for Respondent No.1.

Coram:- N. M. JAMDAR, J.

Date:- 2nd February, 2015

ORAL ORDER:

By this petition, the petitioner challenges the action taken by the respondent no.1, Mapusa Municipal Council pursuant to a show cause notice dated 29 May 2009 directing the petitioner to demolish certain structure/extension.

2. A show cause notice came to be issued to the petitioner on 30 September 2009. The notice was issued under Section 184(8) of the Goa Municipalities Act requiring the petitioner to demolish the construction specified therein and maintain the original area of 30.45 metres. The petitioner filed an appeal before the Municipalities appellate Tribunal under Section 184(13) of the Act. The appeal was dismissed by order dated 24 April 2012. Thereafter, the petitioner filed a second Municipal Appeal before the Minister for Urban Development which also came to be dismissed on 3 March 2014.

3. Shri V. Menezes, the learned Counsel for the petitioner submitted that there was no warrant for the respondent no.1, Council to direct in addition to the demolition of extended area to maintain original area of 30.45 square metres. Shri Menezes submitted that property in question is a dwelling house which admeasures 103 square metres and without any justification it is sought to be reduced to 30.45 square metres. He submitted that the petitioner was never put to notice that his original area is 30.45 square metres.

4. Shri S.D. Padiyar, the learned Counsel for the respondent no.1 relying upon the inspection report submitted that the present proceedings pursuant to final notice are only in respect of the transgression report mentioned in the notice. Shri Padiyar submitted that petitioner was called upon only to demolish the area of transgression specified in the final notice. He submitted that the direction to restore the property back to 30.45 metres is an error and if there is any other illegality in respect of structure, the Municipality will take out a separate proceeding as per law, without prejudice to the contention of the Council as regard to the exact extent of the area.

5. Since the Municipal Council has called upon the petitioner to remove the area of transgression as per the notice, the notice will have to be read as restricted only to the description of transgression. It cannot be that under the guise of this notice some other property is

sought to be demolished. If the contention of the petitioner is correct that the structure is admeasuring 103 square metres then the proceedings will amount to calling upon the petitioner to demolish this area as well and bring it down to 30.45 square meres, that too without giving any reason for the same or giving petitioner adequate opportunity. Therefore, the direction in the final notice to the petitioner to maintain the original area of 30.45 square metres cannot be enforced and that issue is left upon to be decided on its merits. As regard the direction to the petitioner to remove the transgression, both, the appellate authority and revisional authority have considered the matter on merits. It is not possible for this Court to enter into findings of fact. Both the authorities below are authorities under the Act with a knowledge of the planning requirement. It is not possible to substitute their opinion in the Writ Petition. The finding is accordingly maintained.

6. Shri Menezes submitted that the petitioner has made an application for regularization of the construction specified in the final notice under transgression, without prejudice to his rights failing this petition. He submits that the authorities may not decide the application for regularization if the petition is dismissed.

7. This apprehension is unwarranted. The proceedings for regularization are to be considered independent of the fact that the petition is dismissed on merits. The concerned authority will no

doubt decide the application of the petitioner for regularization on its own merits. In view of these clarifications, no further orders are required to be passed in this petition.

8. The authorities considering the regularization application will consider the issue expeditiously, preferably within 6 months from today, till then the Municipal authority will not take any action against the petitioner of demolition.

9. Petition disposed of in above terms.

N. M. JAMDAR, J.

NH