

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 344 OF 2015

SHRI RAJENDRA SHIVANAND GAUNDALKAR
AND 2 ORS.,

... Petitioners

Versus

CUNCOLIM MUNICIPAL COUNCIL,
CUNCOLIM AND ANR.,

... Respondents

Mr. Sudin Manohar Usgaonkar, Senior Advocate with Advocate
Kissan Padgaonkar for the petitioners.

Mr. Kholkar Premanand Anand, Advocate for Respondent no. 1.

Mr. N. Sardessai, Senior Advocate with Mr. L. Raghunandan,
Advocate for Respondent no.2

Coram:- C. V. BHADANG, J.

Date:- 9th September, 2015

P.C.:

Heard Mr. Usgaonkar, the learned Senior Counsel for the petitioners, Mr. Kholkar, the learned counsel for respondent no.1 and Mr. Sardessai, the learned Senior counsel for respondent no.2.

2. The petitioner is challenging the judgment dated 8/7/2003 passed by the Goa Municipalities Appellate Tribunal, Panaji, in Municipal Appeal No.59/2001. By the said judgment the appeal filed by the appellants is dismissed thereby confirming the order passed by the first respondent directing demolition of the structure which is in the nature of tea stall in possession of the petitioner.

3. It is submitted on behalf of the petitioner that no proper

opportunity of hearing was granted in as much as the petitioner had not filed reply to show cause notice, as he sought a copy of the inspection report. It is also submitted that the inspection was carried out behind the back of the petitioner. It is contended that there is no breach of the permission dated 5/8/1999 granted by the Municipal Council for repairs in this case.

4. It is submitted by the learned counsel for respondent no.1 that the inspection report was shown and inspected by the petitioner. It is submitted that on his own saying the petitioner had replaced the walls by laterite stone walls which would travel beyond repairs, for which permission was granted.

5. It is submitted by Mr. Sardesai, the learned Senior Counsel for respondent no.2 that the application filed by the petitioner seeking permission for repairs itself mentions that the structure was having wooden walls. It is submitted that if that be so, replacement of the wooden walls by laterite stone walls would certainly amount to construction and not mere repairs.

6. On hearing the learned counsel for the parties it appears that the permission granted to the petitioner on 5/8/1999 is on the following conditions:

a) The applicant should not increase the plinth area 4.30 x 6.10 sq.mtrs.

b) No. R.C.C work shall be carried out.

c) No addition and alteration to the existing (principal) structure that attracts the provisions of clause 184 of the Goa Municipalities Act, 1968 shall be carried out.

7. It is not in dispute that there is no increase in the plinth area, neither any re-enforced cement concrete work (RCC) has been carried out. Thus the only question is whether the replacement of the existing walls, which according to the first respondent were wooden walls by laterite stones walls can amount to addition and alteration and would be beyond the scope of permission, as granted on 5/8/1999.

8. The learned counsel for the parties in view of the limited dispute submit that the matter can be sent back with a direction to the Municipal Authority to inspect the structure in the presence of the parties and thereafter decide the matter afresh after giving an opportunity of hearing to the petitioner, in a time bound manner.

9. In view of the submissions at the bar, the following order is passed:

a) The petition is allowed.

b) The impugned judgment dated 8/7/2013 passed by the

Municipal Appellate Tribunal in Municipal Appeal No.59/2001 and the demolition notice dated 5/11/2001 are hereby set aside.

c) The first respondent shall cause the structure to be inspected in the presence of the petitioner and the respondent no.2 or their representatives and shall thereafter decide the matter afresh after giving an opportunity of hearing to the petitioner. The petitioner as well as the respondent no.2 or their their representatives shall remain present on the date fixed.

d) The aforesaid exercise shall be completed within a period of two months from today.

10. The petition is disposed of in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

ap/-