

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.409 OF 2015**

Shri M. Ashraf Nagarwala,
Son of late Usman Nagarwala,
56 years of age,
Resident of H.No.2/C,
Indraprastha Building,
Jama Masjid Road,
Malbhat, Margao-Goa.

..... Petitioner

V/s

1 The Chief Officer,
Margao Municipal Council,
Margao-Goa.

2 Shri Dilip Trimbak Alve,
Son of late Trimbak Alve,
Major of age,
Resident of Near Popular
High School,
Comba, Margao-Goa.

3 Shri Narayan alias Ajit
Trimbak Alve,
Major of age,
Son of late Trimbak Alve,
Resident of Near Popular
High School,
Comba, Margao-Goa.

4 The Hon'ble Minister for
Urban Development
(Appellate Authority)
Government of Goa,
Secretariat, Porvorim.

..... Respondents

Shri Ashwin D. Bhobe, Advocate for the Petitioner.
Shri S.D. Padiyar, Advocate for Respondent No.1.

Shri Avdhut S. Arsekar, Advocate for Respondents No.2 & 3.
Ms. P. Bhandari, Additional Government Advocate for Respondent No.4.

CORAM : C.V. BHADANG, J.

DATE : 20th OCTOBER, 2015

JUDGMENT :

Rule. Rule made returnable forthwith. The respective Counsel appearing for the respondents waive service. Heard finally by consent of the parties.

2. By this petition, the petitioner is challenging the order dated 29/06/2014 passed in the Second Municipal Appeal No.MIN/UD/44/2014 by the appellate authority thereby granting exparte stay to the judgment and order dated 3/09/2014 passed by the Goa Municipalities Appellate Tribunal in Municipal Appeal No.67/2014.

3. The brief facts are that the appellant is a lessee of the respondents no.2 & 3 in respect of a shop in the new market at Margao and is carrying on business of sale of sarees, textiles, etc. therein. It appears that the appellant had approached the first respondent on 7/04/2014 seeking permission to carry out certain work in the shop premises which according to the appellant was confined to carrying out some anti termite treatment and repairs and furnishing and white wash. It appears that on

22/04/2014, the appellant was served with a stop work notice thereby asking the appellant to stop the illegal renovation. A notice was also issued asking the appellant to furnish certain documents in response to the letter dated 7/04/2014 seeking permission. According to the appellant he stopped the activities and at the relevant time only the painting of the walls and the ceiling and refitting of the fans and the tubelights and the shelves had remained. The appellant thereafter approached the Director of Municipal Administration under Section 293 of the Goa Municipalities Act, 1968 in which the Chief Officer of the first respondent was directed to hear the appellant and pass orders. In the meantime, the appellant had completed the furnishing work.

4. By an order dated 12/05/2014, the first respondent ordered sealing of the shop premises and on the same day the shop was sealed. This is the order which has given rise to the present petition.

5. The appellant challenged the order dated 12/05/2014, before the Goa Municipalities Appellate Tribunal in which the second and the third respondent intervened. The learned Municipal Appellate Tribunal by a judgment and order dated 3/09/2014 allowed the appeal thereby setting aside the order of sealing. The Chief Officer was directed to remove the sealing within 10 days.

6. The second and the third respondent challenged the said order before the Minister for Urban Development in a Second Appeal under Section 184-D of the Goa Municipalities Act, 1968 (for short, 'The Act of 1968'), in which the second and the third respondent sought exparte stay of the order of the Municipal Appellate Tribunal. The second appellate Authority on the same day granted an exparte stay as prayed. Feeling aggrieved this Writ Petition is filed.

7. It would be necessary to set out few more developments. In a batch of petitions being Writ Petition No.92/2007 and others, the constitutional validity of Section 184-D of the Act of 1968 was challenged before this Court. The Division Bench of this Court on 4/12/2014 declared Section 184-D of the Act of 1968 unconstitutional and accordingly it was struck down. Para 8 of the judgment may be reproduced thus:

“8. The orders impugned in all these petitions, passed by the government in exercise of powers under Section 184D of the Act, are quashed and set aside and the appeals arising out of the decision of the Appellate Tribunal under Section 184B of the Act and the proceedings arising out of the decision of the Appellate Tribunal under Section 184B of the Act shall be forwarded to the Appellate Authority which would be created by the State Government. The Appellate Authority, on its formation, shall deal with the appeals in accordance with law. The parties

to the petitions shall maintain *status quo* for a period until forwarding of the appeal proceedings to the Appellate Forum that would be created by the State Government for taking review of the decision of the Appellate Tribunal under Section 184B of the Act and for a further period of one month from the date of such transfer of the matters. It would be open for the Appellate forum that would come into existence, to consider the request of the parties for continuation or otherwise of the interim orders.”

8. It is undisputed that instead of twice seeking time for constitution of an alternate forum/appellate authority, till date such an authority is not constituted by the Government.

9. The petitioner in an earlier Writ Petition No.612 of 2014 had sought for an expedited hearing of the appeal pending before the State Government in which by an order dated 30/09/2014, it was directed that the appeal shall be decided within a period of 6 weeks. However, it needs to be mentioned that on account of the subsequent judgment declaring Section 184-D of the Act of 1968 as unconstitutional it was not possible for the appellate authority to decide the same, as it no longer derives any authority or power to hear the appeal.

10. It is in these circumstances that the petitioner has approached this Court challenging the order of grant of ad interim stay.

11. I have heard Shri A.D. Bhobe, the learned Counsel for the petitioner, Shri S.D. Padiyar, the learned Counsel for respondent No.1, Shri Avdhut S. Arsekar, the learned Counsel for respondents No.2 & 3 and Ms. P. Bhandari, the learned Additional Government Advocate for Respondent No.4.

12. It is submitted by Shri A.D. Bhobe, the learned Counsel for the petitioner that an ad interim order of stay granted by an authority which after the decision of this Court in Writ Petition No.92/2007 and others on 4/12/2014, has ceased to exercise any such jurisdiction is operating since 12/05/2014. It is submitted that an order of sealing the premises is a drastic order. He submitted that the petitioner is in a predicament where, on one hand he cannot contest the second appeal for want of constitution of an appellate forum/authority and on the other hand the ad interim exparte order is operating to his prejudice. He submitted that on account of a dispute between the second and the third respondent i.e. the landlord and the petitioners, the first respondent acting at the behest of the landlord had sealed the premises. It is submitted that the Municipal Appellate Tribunal by a well reasoned order had set aside the same. It is submitted that the Second Appellate Authority by a one line order has granted exparte ad interim stay to the said judgment and order passed by

the Municipal Appellate Tribunal. The learned Counsel, therefore, submitted that the petition be allowed.

13. Shri S.D. Padiyar, the learned Counsel appearing for the first respondent fairly submitted that after the decision of this Court declaring Section 184-D of the Act of 1968 as unconstitutional the impugned order would cease to have any effect and the first respondent would abide by such orders as may be passed by this Court.

14. The learned Counsel for the second and the third respondent submitted that the petitioner carried out certain repairs and renovations without requisite sanction and, as such, after following due procedure the first respondent had directed the sealing of the premises. The learned Counsel submitted that the respondents also cannot be prejudiced on account of the provisions of Section 184-D of the Act of 1968 being declared unconstitutional and the fact that there is no alternate forum/authority constituted by the State Government. The learned Counsel vehemently submitted that in such a situation, the respondents would consider taking appropriate legal steps challenging the judgment and order passed by the Municipal Appellate Tribunal and for that the learned Counsel seeks two weeks time.

This was opposed on behalf of the petitioner saying that the

provisions were declared unconstitutional as far back as on 4/12/2014 and since then the respondents have not taken any steps to challenge the judgment of the Municipal Appellate Tribunal.

15. The learned Counsel for the second and the third respondent counter this by saying that the respondents were bonafide expecting the State Government to constitute the authority/forum to hear the appeal and since that is not done till today, the respondent be granted time. It is submitted that if the impugned order is set aside the same would cause serious prejudice to these respondents.

16. The learned Additional Government Advocate had nothing much to say, except that the proposal to constitute the authority to hear the appeal is under consideration.

17. I have given my anxious consideration to the rival circumstances and the submissions made. The facts are short and simple. The ad interim stay granted by the second appellate authority which is subject matter of challenge in this petition is passed in an appeal under Section 184-D of the Act of 1968 which has been struck down by this Court. It is trite that whenever a statutory provision is declared ultra vires and unconstitutional the legal consequence is that such a statutory provision

never existed on the statute book. In view of the judgment of this Court declaring Section 184-D of the Act of 1968 as unconstitutional the very proceedings of the Second Appeal would be rendered without any authority and, consequently, the order of *ex parte* stay granted therein would be nonest for want of the statutory authority and the powers to pass any such order. Thus the challenge which is based on the judgment of this Court in the batch of Writ Petitions being Writ Petition No.92/2001 and others goes to the very root of the matter.

18. In such circumstances, in my considered view, it is not possible to accede to the request on behalf of the second and the third respondent for grant of time to challenge the order passed by the Municipal Appellate Tribunal as the same would amount to continuing an order which is nonest. For all the reasons stated above, the petition has to succeed.

Hence, the following order:

- (i) The petition is allowed in terms of prayer clause (a).
- (ii) The respondent no.1 is directed to open the seal within a period of one week.
- (iii) Rule is made absolute in the aforesaid terms with no order as to costs.

C.V. BHADANG, J.

NH/-