

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 650 OF 2015

MR. ALEIXO ARNOLFO PEREIRA. ... Petitioner
Versus
THE GOA COASTAL ZONE MANAGEMENT
AUTHORITY (GCZMA), THROUGH MEMBER
SECRETARY AND 5 ORS., ... Respondents

Petitioner in person.

Coram:- MOHIT S. SHAH, C.J. &
C. V. BHADANG, J.

Date:- 21st August, 2015

P.C.:

In this petition under Article 226 of the Constitution filed in the year 2015, the petitioner has challenged the construction of a two storeyed building, with built up area of 400 sq. metres, including 200 sq. metres on the ground floor, on the land bearing Survey No.37/1 of Utorda Village, by the respondent No.2 on the ground that the permissions for the said construction were granted in violation of the Coastal Zone Regulations. The petitioner has prayed for directions to the respondent No.1/the Goa Coastal Zone Management Authority. The petitioner has also challenged the decision of the respondent No.1/Authority taken in its 115th Meeting held on 4th May, 2015 and its previous decision at the 59th Meeting held on 23/25th May, 2011

2. Respondent No.2 constructed the building, in question, after obtaining permission of the Senior Town Planner, Government of Goa on 17/12/1999 and the permission of the Village Panchayat of Majorda-Utorda-Calata dated 22/2/2000. It appears that a complaint against the said construction was made and the site inspection was made by the Deputy Collector on 24/07/2008. The site inspection report revealed that the construction was at a distance of approximately 300 metres from the High Tide Line and the construction was done 8 to 10 years back. The respondent No.1 had issued a show cause notice to the respondent No.2, calling upon him to show cause as to why action should not be taken for construction, in question, as it was done without permissions of the respondent No.1. Respondent No.2 submitted his reply and after considering the same, respondent No.1 Authority took the decision at the meeting held on 23rd/25th May, 2011 at item No.59.7.9 :

"Upon discussion of the case with the GCZMA and after going through the records and the Summary Inquiry Report from the Office of the Deputy Collector, it is decided to drop the Show Cause Notice."

3. Neither the permissions granted in the year 1999-2000, nor the construction put up in the year 2000-2001 after obtaining the said permissions, nor the aforesaid decision dated 23rd/25th May, 2011 was ever challenged by the petitioner. In fact, the said decision dated

23rd/25th May, 2011 was taken by respondent No.1 Authority after another person had lodged a complaint against the above construction.

4. It appears that respondent No.1 Authority decided to display on its website all its previous decisions and the petitioner contends that on reading the decision of respondent No.1 Authority on its website recently in the year 2014, the petitioner lodged the complaint before respondent No.1 Authority, challenging the above construction.

5. At its 115th Meeting held on 4th May, 2015, respondent No.1 Authority considered the entire facts of the case and after taking into consideration the inspection report of November, 2001 by the then Member Secretary of respondent No.1 Authority and also the inspection report dated 17th November, 2008 and the previous decision at the 59th Meeting held on 23rd/25th May, 2011, took the following decision :

" Decision : The Authority after detailed discussion and due deliberation noted that the complainant has not placed any new sufficient material on records before the Authority for reconsideration/review of its decision taken in 59th meeting held on 23/05/2011 and 25/05/2011 and also observed that there is considerable lapse of time i.e. around 3 years since the date of earlier

decision and hit by law of limitation. The Authority upon considering the above findings decided to drop the Show Cause Notice GCZMA/S/31/Majorda/659 dated 04/07/2014 issued to Mr. Ligorio Pereira and close the proceedings."

6. Thus, it is clear that the present challenge mounted by the petitioner in this petition filed in the year 2015 cannot be considered as one filed within a reasonable time merely because respondent No.1 Authority has refused to reconsider its previous decision taken on 23rd/25th May, 2011.

7. The petitioner appearing in person submits that he came to know about the said decision dated 23rd/25th May, 2011 of respondent No.1 Authority only when its minutes were displayed on its website in the year 2014. That cannot explain the gross delay in filing the present petition, challenging the construction made in the year 2000-2001. It is pertinent to note that what is completed prohibited is the construction within 200 metres from the HTL and not construction within 200 metres and 500 metres from the HTL. The only restriction is that such construction within 200 metres and 500 metres of HTL i.e. in CRZ can be undertaken after obtaining prior permission of respondent No.1 Authority.

8. In the facts and circumstances of the case, when the

construction in question is at a distance of 300 metres from the HTL, the construction was permissible and respondent No.1 Authority had, after considering the relevant facts, taken a decision as far back as in May, 2011 to withdraw the show cause notice.

9. In view of the above, the petitioner cannot be said to have given any satisfactory explanation for the delay in challenging the impugned construction. The petitioner sought to contend that the permission granted by the Senior Town Planner in the year 1999 was in violation of the order of this Court referred to in the Judgment dated 13th October, 2006 in Writ Petition No.99/1999. That Judgment refers to the order dated 17th December, 1998, when the Government Advocate appearing for the respondent-State of Goa and the Chief Town Planner, Town and Country Planning Department, had stated that no approvals or licences for constructions within the area lying between 200 to 500 metres from HTL and in CRZ III Zone, in the State of Goa would be granted. However, it was specifically clarified by the said Authorities that the statement was made in view of the fact that the clarification and further instructions were awaited from the National Coastal Zone Management Authority. When we are not inclined to entertain the petition on the ground of delay, laches and acquiescence on the part of the petitioner, it is not necessary to consider the above challenge, more particularly when respondent No.1 Authority herein itself had considered it appropriate to discharge the show cause notice in May, 2011 and

when admittedly the construction between 200 to 500 metres from the HTL was permissible with the permission of the respondent No.1 Authority.

10. For the reasons aforesaid, we are not inclined to entertain this writ petition. The petition stands dismissed.

C. V. BHADANG, J.

MOHIT S. SHAH, C.J.

ssm.