

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 662 OF 2015

The Village Panchayat of Betqui-Candola,
Through its Sarpanch,
Candola, Ponda, Goa.

... Petitioner

Versus

1. M/s Goan Paradise,
Through its POA
Mr. Mahesh Adwalpalkar,
Major, with office at
3rd Floor, Patto Center,
EDC Complex, Panaji, Goa.
2. The Deputy Director of Panchayats,
North Goa, Junta House,
Panaji, Goa.
3. The Additional Director of Panchayats-II,
North Goa, Junta House,
Panaji, Goa.
4. The State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa.

... Respondents

Shri Nigel Da Costa Frias, Advocate for the Petitioner.

Shri S.D. Lotlikar, Senior Advocate with Shri J. Simoes Advocate for
the Respondent No. 1.

None for Respondent Nos. 2, 3 and 4.

CORAM:- C. V. BHADANG, J.

RESERVED ON:- 1st SEPTEMBER, 2015.

PRONOUNCED ON:- 2nd/4th SEPTEMBER, 2015.

JUDGMENT:

Rule. Rule made returnable forthwith. Shri Simoes, learned Counsel waives service on behalf of respondent no. 1. None for respondent nos. 2, 3 and 4. Heard finally by consent.

2. By this petition, the Village Panchayat of Betqui-Candola is challenging the judgment and order dated 07.08.2015 passed by the respondent no. 3, thereby confirming the order dated 08.07.2015 passed by the respondent no. 2, directing the petitioner to grant permission/renewal of the construction license to the respondent no. 1.

3. The brief facts necessary for the disposal of the petition may be stated thus:

That, respondent no. 1 had applied for a license for construction of residential cum commercial complex and compound wall in Survey No. 112 (part) of village Candola, Ponda, Goa. That license, was issued by the petitioner on 10.02.2012. That license,

was signed by the Sarpanch of the petitioner-Village Panchayat. The said license was valid for a period of three years.

On 07.02.2015, the respondent no. 1 applied for renewal of the license and submitted a revised plan. According to the petitioner, the revised plan showed the Sewage Treatment Plant (STP) in the proposed complex. However, the respondent no. 1 had not produced the consent from the Goa State Pollution Control Board.

On 26.05.2015, the respondent no. 1 sought return of the proposal/file stating that, it would be re-submitted after obtaining the approval of Primary Health Centre. It appears that on 28.05.2015 the application/proposal for renewal/approval of the revised plan was re-submitted alongwith No Objection Certificate (NOC) from the Health Officer. On 15.06.2015, the petitioner passed a resolution seeking clarification from respondent no. 1 on certain aspects. The respondent no. 1 instead of replying the same, filed an appeal under Section 66(2) of the Goa Panchayat Raj Act, 1994 (the Act of 1994, for short) before the Deputy Director on 15.06.2015. On 07.07.2015, a joint site inspection was proposed. Ultimately, the Appellate Authority by order dated

08.07.2015 directed the petitioner to grant renewal of the construction license dated 10.02.2012 for residential cum commercial complex (revised plan) as per technical clearance dated 06.02.2015 issued by the Town and Country Planning Department, Ponda, Goa. The petitioner was directed to grant the renewal within six days from the date of the order. Incidentally, the order stipulates that the Secretary of the Village Panchayat shall execute the order in terms of Section 47-B of the Act of 1994. It is undisputed that in pursuance to the said order dated 08.07.2015, the petitioner had granted permission on 11.08.2015, which is signed by the Secretary of the Panchayat. Feeling aggrieved, by the order of the Deputy Director, the petitioner challenged the same before the Additional Director of Panchayat in an appeal under Section 66(7) of the Act of 1994. The learned Additional Director of Panchayat by judgment and order dated 07.08.2015 has dismissed the appeal and that is how, the petitioner is before this Court.

4. I have heard Shri Frias, the learned Counsel for the petitioner and Shri Lotlikar, the learned Senior Counsel for the

respondent no. 1. With the assistance of the learned Counsel for the parties, I have perused the record.

5. It is submitted by Shri Frias, the learned Counsel for the petitioner that in terms of the technical clearance, granted by the Town and Country Planning Department, the Village Panchayat has to ensure about requirement of the availability of Power and other infrastructure. It is submitted that the respondent no. 1 has not given any satisfactory reply about compliance of the said requirement. Thus, the petitioner could not have been directed by the learned Deputy Director to issue the license. The learned Counsel would submit that in an appeal under Section 66(2) of the Act of 1994, at the most, the petitioner could have been asked to consider the grant of license on its own merits.

6. It is next submitted that as per Section 47 of the Act of 1994 read with Rule 3 of the Goa, Daman and Diu Panchayats (Regulation of Buildings) Rules, 1971 (the Rules of 1971, for short), it is for the Panchayat to grant the license/renewal after scrutiny of the application and ensuring compliance with the

statutory requirements. Without these considerations, the Village Panchayat could not have been directed to issue the license.

7. It is submitted that as per Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 (the Act of 1974, for short), the respondent no. 1 ought to have produced, a NOC from the Goa State Pollution Control Board for setting up of Sewage Treatment Plant. The NOC issued by the Health Officer, under Clause (1), also stipulates that a NOC from the Goa State Pollution Control Board, for establishment of STP has to be obtained.

8. It is submitted that under Section 47 of the Act of 1994 read with Rule 3 of the Act of 1994, the Secretary can issue license only in pursuance of the Resolution passed by the Panchayat.

It is submitted that this was not a case where the Panchayat had rejected the application. It is submitted that the respondent no. 1 had approached the Deputy Director under Section 66(2) of the Act of 1994, without furnishing the clarification as required by the petitioner.

9. The learned Counsel for the petitioner has placed reliance on a Division Bench decision of this Court in the case of **Mr. Ashley Fernandes and 9 others Vs. The State of Goa and 10 others** (Writ Petition No. 843/2010), decided on 15.03.2011 (paras 7 to 10), which considers the earlier judgment in Writ Petition No. 372/2009 (**the Calangute United Social and Cultural Association through Anthony F. D'Souza Vs. State of Goa and 8 others**), in order to submit that before granting any such permission, the Authority namely, the Village Panchayat and the Town Planner shall hold a joint site inspection, which is not conducted in this case. He therefore submitted that the petition be allowed.

10. On the contrary, it is submitted by Shri Lotlikar, the learned Senior Counsel for the respondent no. 1 that the petition would not be maintainable. It is submitted that once the petitioner has already granted permission, the petitioner cannot be permitted to challenge the same. It is submitted that the petitioner cannot justifiably challenge its own act and permission. The petitioner failed to decide the application for permission/renewal within 30

days from the receipt of the application as required by Section 66(2) of the Act of 1994 and as such, the respondent no. 1 was required to approach the Deputy Director in appeal. It is submitted that Section 66(2) of the Act of 1994, nowhere indicates that in all cases, the Deputy Director has to send the matter back for consideration of the Village Panchayat. It is submitted that there is nothing in Section 66(2) of the Act of 1994 to show that the Deputy Director cannot grant such permission or direct the Village Panchayat to grant such permission.

11. It is submitted that although, under Section 47 of the Act of 1994, it is for the Secretary to issue the license for construction, "in pursuance of the resolution of the Panchayat", Section 47-B of the Act of 1994 overrides Section 47. In other words, it is submitted that under Section 47-B, the Secretary is bound to execute the order passed by any Authority in appeal and in such a case, Section 47 of the Act of 1994 would not come in the way. It is submitted that the Health Department has already granted a No Objection Certificate and the Town and Country Planning Department has also granted technical clearance. Thus,

the petitioner could not have withheld the permission.

12. Insofar as setting up of Sewage Treatment Plant is concerned, the learned Senior Counsel has relied upon the letter dated 14.08.2015 from the Pollution Control Board, in order to submit that one of the requirements/compliance for applying for permission from the Pollution Control Board for establishment of Sewage Treatment Plant, is the approval of the Village Panchayat/Municipality. It is submitted that the petitioner cannot therefore, justifiably insist for permission from the Pollution Control Board before hand. It is submitted that a joint inspection was in fact, proposed on 07.07.2015.

13. The learned Senior Counsel would submit that the impugned order passed by the Deputy Director would show that the Deputy Director has considered the relevant documents, including the NOC from the Primary Health Centre as also, the technical clearance from the Planning Authority, namely the Town and Country Planning Department and on consideration thereof and after hearing the parties, the petitioner was directed to grant

the permission. It is submitted that the Additional Director, after noticing this aspect has rightly refused to interfere with the order passed by the Deputy Director and as such, the order does not call for any interference.

14. I have considered the rival circumstances and the submissions made. At the outset, the submission that the petition would not be maintainable, at the instance of the Village Panchayat, as the Village Panchayat cannot seek to challenge its own permission, cannot be accepted. In this case, the permission is granted by the Village Panchayat, only in compliance of the directions issued by the Deputy Director, as confirmed in the appeal by the Additional Director. Thus, essentially it is a matter of challenge to these orders, rather than the permission granted.

The learned Counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Village Panchayat, Calangute Vs. Additional Director of Panchayat-II**, reported in **(2012) 7 SCC 550**, in order to submit that the Village Panchayat considering its role as a unit of legal self Government has the locus and has authority to challenge such

orders. In the case of **Village Panchayat, Calangute** (supra), the Village Panchayat has issued a Stop Work Notice as there was unauthorised construction in the Panchayat area blocking the access to the water well and a Chapel, and diversion of water drains. It was *inter alia* held that while executing powers under the Act, the Panchayat is not acting as a subordinate, but exercises power in public interest.

That apart, as noticed earlier, the challenge is essentially to the orders passed by the Deputy Director and the Appellate Authority and thus, the object to maintainability, cannot be sustained.

15. Coming to the merits, it needs to be stated, at the outset that from the record and arguments advanced at the Bar, it appears that there is a dispute *inter se* between the Sarpanch of the Village Panchayat and its Secretary. It is submitted that the Secretary had gone to the extent of expressing No Objection before the Appellate Authority on behalf of the petitioner. I have considered this aspect. It is neither possible nor necessary to go into this aspect, as it would be essentially, a matter of internal

administration of the Village Panchayat to which a third party has no concern. Looked from another angle, the legality and validity of the impugned orders cannot be tested on the basis of any dispute between the Sarpanch and the Secretary of the Village Panchayat. Thus, the legality of the impugned orders and the sustainability of the challenge has to be independently examined *dehors* any such dispute. That apart, the order passed by the Deputy Director does not indicate that it is based on any concession/no objection given by the Secretary. In such circumstances, I propose to examine the challenge to the impugned orders independent of the submissions based on such dispute.

16. It is undisputed that the Panchayat had granted a permission to the respondent no. 1, way back in February, 2012. Albeit, the application dated 07.02.2015 filed by the respondent no. 1 was for renewal alongwith a revised plan. However, the fact remains that such a permission was granted by the petitioner in the year 2012. It is further a matter of record that the Primary Health Centre has granted No Objection on 28.05.2015, *inter alia* on the condition that a Sewage Treatment Plant shall be installed,

after obtaining No Objection Certificate from the Pollution Control Board. It is further a matter of record that the Town and Country Planning Department, which is primarily entrusted with the duty of planning and development has granted technical clearance on 06.02.2015, which in fact was enclosed alongwith the application dated 07.02.2015 filed by the petitioner for renewal. It is further a matter of record that the petitioner had failed to decide the application and/or to communicate the grant of permission within a period of 30 days as required under Section 66(2) of the Act of 1994. It would be worthwhile to reproduce Section 66(2), which reads thus:

“66. Regulation of the erection of buildings.—

(2) If a Panchayat does not, within thirty days from the date of receipt of application, determine whether such permission should be given or not and communicate its decision to the applicant, the applicant may file an appeal within thirty days from the date of expiry of aforesaid period, to the Deputy Director who shall dispose of the same within thirty days from the date of filings of such appeal. If the Deputy Director fails to dispose of the appeal

within thirty days, such permission shall be deemed to have been given and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or bye-laws made under this Act."

It can thus be seen that there is a peculiar deeming provision incorporated under Section 66(2) of the Act of 1994, in as much as the Panchayat has to communicate its decision to the applicant, within thirty days failing which the applicant can file an appeal before the Deputy Director. If the Deputy Director fails to decide the appeal within 30 days, the permission shall be deemed to have been given and the applicant may proceed with the work. There is an important rider namely, even where there is such a deemed permission, the applicant may proceed to execute the work, but not so as to contravene any of the provisions or any rules or bye laws made under the said Act of 1994. It can thus be seen that the grant of permission, either express or deemed, always comes with an obligation to abide by provisions of the Act, bye laws or the rules, as may be applicable.

17. In the present case, as the petitioner had failed to communicate either acceptance or rejection of the application, the respondent no. 1 filed an appeal in which the learned Deputy Director asked the petitioner to grant such permission within a period of six days. A perusal of the order passed by the Deputy Director would show that the said Authority has considered the documents including the No Objection Certificate granted by the Town and Country Planning Department. It would further indicate that it was found that the application was kept pending in all probability on the objection raised by the Gram Sabha, to the effect that the development may pollute the under ground water resources.

18. Coming back to the grounds of challenge, it cannot be accepted that in any appeal under Section 66(2) of the Act of 1994, the Deputy Director, as a rule can only ask the Village Panchayat to consider the application on its own merits. In other words, if there is sufficient material to decide such application, nothing would prevent the Deputy Director asking the Village Panchayat to grant such permission. As noticed earlier, the Deputy

Director has considered the documents and in particular, the technical clearance granted by the Town and Country Planning Department, while passing the impugned order.

19. Coming to the submission based on Section 47 of the Act of 1994 that the Secretary can grant such license, only in pursuance of the resolution of the Panchayat, it would be worthwhile to produce the provisions of Sections 47 and 47-B of the Act of 1994, which read as under:

"47. Executive powers and functions of the Secretary.— *Notwithstanding anything contained in this Act and the rules framed thereunder, the Secretary shall also exercise the powers on the following matters, namely:*

- (i) to issue the licences for construction, repairs, modification, alteration, so also occupancy certificate in pursuance of the resolution of the Panchayat;*
- (ii) to initiate action for stopping and or demolishing an unauthorized structure/ /building constructed without the permission of the Panchayat after resolution is passed to that effect;*
- (iii) to execute the resolution passed by the*

Panchayat body.

47-B. Execution of order by the Secretary.

— Notwithstanding anything contained in section 47, the Secretary shall execute the order passed by any Authority in any appeal or petition made before such Authority under the provisions of this Act or Rules framed thereunder, if the Panchayat fails to execute the same within the time limit as specified in such order and in case no time limit has been specified, within one month of passing of such order.”

It is clear that when the Secretary is executing the order passed by any Authority in appeal, the provisions of Section 47 cannot come in its way. The non absence clause in Section 47-B would make it clear that the same overrides Section 47 thereof. The submission in this regard, thus, cannot be accepted.

20. In the case of **Mr. Ashley Fernandes** (supra), the challenge was to the construction license issued by the Panchayat in favour of respondent nos. 8 to 10, mainly on the ground that the traditional access was not shown in the revised plan and it was also

contended that the Sewage Treatment Plant should be provided before issuance of the technical clearance certificate. The Division Bench referred to its earlier decision in Writ Petition No. 372/2009 **(the Calangute United Social and Cultural Association through Anthony F. D'Souza Vs. State of Goa and 8 others)**, in which, in paras 5 and 6 it is held thus:

"5. Considering the facts and circumstances of the case, we direct the Chief Secretary, Government of Goa to issue appropriate instructions to the Chief Town Planner to the effect that before granting permission to the Housing Project/Developers/Constructors or Builders, a thorough site inspection shall be conducted. The Chief Town Planner/Town Planner shall, after getting personally satisfied with the site inspection report and other completion of formalities to proceed to grant permission accordingly. The site inspection memorandum should be drawn and shall be part of the record of the Town Planning office. Henceforth, the office of the Chief Town Planner/Town Planners should not shift the burden on the concerned Village Panchayat in respect of the matter relating to the site and location over which the building is to be

erected. The primary duty of the State and its Officer shall be discharged effectively and strictly in complete adherence to the provisions of law in the State. We direct that the State should hold the Chief Town Planner responsible if any violation of this order is noticed.

6. We hereby direct that till the said road is constructed 6 metres wide, no further construction will be permitted. Neither occupancy certificate shall be issued in respect of the constructed area. This order does not prohibit either of the parties to provide alternate road connecting to the site in accordance with law. Registry of this Court is directed to forward a copy of this order to the Chief Secretary. Compliance report on this order shall be placed on record by the State."

It can thus be seen that the Chief Town Planner and the Town Planners were held to be primarily responsible for ensuring complete adherence to the law in the State. It was also directed that the State should hold the Chief Town Planner responsible, if any violation is noticed.

21. In the case of **Mr. Ashley Fernandes** (supra), the Division Bench held that the completion certificate has to be issued only after the project is complete, in accordance with the terms and conditions of the license and approvals of the appropriate Authority. It was held that adherence must be ensured not only by Panchayat, but also by builders and developers. In that case, it was found that construction was already started and was complete up to stilt and three upper floors and the Authority concerned were directed to inspect the site and ensure compliance of all terms and conditions and not to wait until the entire construction is completed.

22. In the present case, the technical clearance shows that it is granted after the approval from the Government. Thus, primarily it is for the Town and Country Planning Department to ensure the adherence with the terms and conditions and all the rules and regulations in the matter of construction and development of the site.

23. The learned Counsel for the petitioner has pointed out two conditions in the technical clearance namely, Clauses 11 and 17 as under, for which the compliance is to be ensured by the Village Panchayat:

"11. The ownership of the property, tenancy as on 02/11/1990 and thereafter and the traditional access, if any, passing through the property shall be verified by the Village Panchayat Office before issue of construction license.

17. Village Panchayat should ensure about required availability of power and water supply and other infrastructure before issuing construction license."

It will always be open to the petitioner-Village Panchayat to ensure compliance with these requirements and to take appropriate action, if there is failure on any such count. The question is, once the Town and Country Planning Department has granted the technical clearance, whether the impugned order passed by the Deputy Director would require interference on any such ground. In my considered view, the answer has to be in the negative.

24. Coming to the issue of Sewage Treatment Plant, the respondent no. 1 has already applied to the Pollution Control Board for appropriate permission. One of the requirements for such permission is approval of the Village Panchayat. If that be so, the Village Panchayat cannot insist for such approval of Pollution Control Board before grant of such permission. It is made clear that the Town and Country Planning Department or any other competent Authority would be entitled to take appropriate action, if the Sewage Treatment Plant is not installed as per the requirements, after obtaining approval from the Pollution Control Board.

25. In the aforesaid circumstances, I do not find that any case for interference with the impugned order is made out. In the result, the petition is dismissed. Rule is discharged, with no order as to costs.

C. V. BHADANG, J.

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