

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 714/2015

SHRI ANIL ARORA
major of age, Indian National,
r/o H. No.S/201, Sonarbhat,
Verem, Reis Magos,
Bardez, Goa. ..

Petitioner

V

1] Deputy Collector,
Mapusa.

2] GOA COASTAL ZONE
MANAGEMENT AUTHORITY,
3rd Floor, Dempo Towers,
Patto, Panaji, Goa 403/001. ...

Respondents

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Mr. Nitin Sardessai, Senior Advocate with Mr. L. Reghunandan,
Advocate for the petitioner.

Ms. Susan Linhares, Additional Government Advocate for the
respondents. ...

CORAM : F.M.REIS & K.L. WADANE, JJ.

Date : 23rd September, 2015.

ORAL JUDGMENT: (Per F.M. REIS, J.)

Heard Mr. Nitin Sardessai, learned Senior Advocate with
Mr. Raghunandan, learned Advocate, appearing for the
petitioner and Ms. Susan Linhares, Additional Government
Advocate appearing for the respondents.

2. Rule. Rule made returnable forthwith. Heard by consent
of the parties. The learned Additional Government Advocate
waives notice on behalf of the respondents.

3. Upon hearing the learned Senior Advocate appearing for the petitioner and learned Additional Government Advocate, it appears that the main grievance of the petitioner is that the impugned Stop Work Order dated 23.7.2015 issued by the learned Deputy Collector has no sanction in law. The learned Senior Advocate points out that pursuant to the notice, the petitioner sought for the relevant documents from the respondent no.1 to enable him to file a reply. The learned Senior Advocate further submits that as such material was not supplied, no opportunity was given to the petitioner to file an appropriate reply and the respondent no.1 proceeded to fix the matter for arguments. The learned Senior Advocate further submits that the respondent no.1 has no jurisdiction or powers in terms of GCZMA Regulation to issue such direction and as such the purported action by the respondent no.1 is without any legal sanction. The learned Senior counsel further points out that the activities carried out by the petitioner are in accordance with law and no illegality has been committed by the petitioner. The learned Senior Advocate, further points out that, in any event, the impugned order passed by the respondent no.1 dated 9.9.2015 foreclosing the right of the petitioner to file a reply is in breach of the principles of natural justice and it deserves to be quashed and set aside.

4. On the other hand, Ms. Susan Linhares, the learned Additional Government Advocate, has pointed out that the stop work order has been by the Member Secretary of GCZMA on 23rd of July, 2015 and the respondent no.1 has been called upon to submit a report with regard to the subject construction put up by the petitioner. The learned Additional Government Advocate further submits that this exercise carried out by the respondent no.1 is on the basis of a Circular issued by the respondent no.2 dated 1st November 2006 whereby the respondent no.1 has been empowered to hold a summary inquiry after hearing the petitioner in connection with such matters. The learned Additional Government Advocate further points out that ultimately the final decision would be taken by the respondent no.2 and as such the exercise carried out by the respondent no.1 is only in furtherance of the direction issued in the said Circular to submit a report to the respondent no.2. The learned Additional Government Advocate further points out that there were numerous opportunities given to the petitioner to file a reply and only when the petitioner was only delaying the filing of such reply, the respondent no.1 was forced to fix the matter for final arguments without a reply being filed by the petitioner. The learned Additional Government Advocate, however, points out that in case the petitioner desires to file a reply, he may be directed to file such reply within one week and the respondent no.1 shall

proceed to submit the report after giving a hearing to the petitioner.

5. We have considered the submissions of the learned Advocates appearing for the parties.

6. Without going into the merits of the rival contentions of the parties with regard to the subject construction, at this stage, the only aspect is to be examined is based on the contention of Mr. Sardesai, the learned Senior Advocate appearing for the petitioner is whether the impugned order dated 9th of September, 2015 stands vitiated for breach of the principles of natural justice. The record reveals that the petitioner had called upon the concerned authorities to submit the documents which form the foundation of issuing the disputed stop work order passed by the respondent no.1, but no such documents were furnished to the petitioner to enable the petitioner to submit the reply to the show cause notice.

7. Thus, in the peculiar facts and circumstances of the case, as it is not disputed that no such documents were, in fact, initially submitted to the petitioner and the documents were tendered only on 4th September, 2015, we find that another opportunity could be given to the petitioner to file an appropriate

reply to the said stop work order issued by the respondent no.1. After such reply is filed, the petitioner should be given an opportunity of being heard and thereafter the respondent no.1 shall proceed to submit the report in terms of said Circular. As already pointed out by the learned Additional Government Advocate, the respondent no.1 cannot pass any further directions but only submit the report to the respondent no.2 in terms of the said circular dated 1st of November, 2006 as ultimate decision, with regard to the subject matter, shall be considered by the respondent no.2 in accordance with law.

8. In view of the above, we pass the following order:-

(i) The impugned order dated 9.9.2015 is quashed and set aside.

(ii) The petitioner is at liberty to file a reply within two weeks from today. After such reply is filed, the respondent no.1 shall proceed to submit report in the light of the observations made here in above, in accordance with law.

(iii) All the contentions of the parties on merits are left open.

Rule is made absolute in the aforesaid terms. The petition stands disposed of accordingly.

K.L.WADANE, J

F.M. REIS, J

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