

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 809 of 2014

AND

WRIT PETITION NO. 810 OF 2014

WRIT PETITION NO. 809 of 2014

Shri Naresh Ramani,
major in age, married
residing at Confrararias Building,
Rua Jose Falcao, Panaji, Goa ...Petitioner.

Versus

1. Village Panchayat of Curca,
Through the Sarpanch/ Secretary of
Village Panchayat of Curca,
Curca, Tiswadi, Goa
2. Confraria Do Ssmo Sacramento
E. N. Sra Do Rosario Da Igreja De
Curca alias Confraria of Church of Curca
alias Confraria of Satissimo of Curca,
represented by its Attorney, Mr. Vincent
Rosario, r/o of Curca, Goa. ...Respondents.

WRIT PETITION NO. 810 OF 2014

Shri Rajan Ramani,
major in age, married, r/o
F-3, Madhuban Complex,
Tambdi Mati, St. Inez,
P.O. Caranzalem,Goa.

.... Petitioner

V e r s u s

1. Village Panchayat of Curca,
Through the Sarpanch/Secretary of
Village Panchayat of Curca,
Curca, Tiswadi, Goa.
2. Confraria Do SSMO SACRAMENTO
E. N. SRA DO ROSARIO DA IGREJA
DE CURCA alias Confraria of Church
of Curca alias Confraria of Satissmo
of Curca, represented by its Attorney,
Mr. Vincent Rosario, r/o of
Curca,Goa.

.... Respondents

Mr. Ajit R. Kantak, Advocate for the Petitioner.

Mr. Marvin D'Souza, Advocate for Respondent no.1.

Mr. A.D. Bhobe, Advocate for Respondent no.2.

CORAM: N. M. JAMDAR, J.

DATE: 18 FEBRUARY, 2015.

ORAL JUDGMENT:

By order dated 26 December, 2014, the petitions were directed to be finally disposed of at the stage of admission.

2. Rule. Returnable forthwith. Learned counsel for the respondents waive service. Both the petitions raise common grounds, are argued together, and are taken for disposal together.

3. The petitioner are brothers. They made application to the respondent no.1-panchayat seeking construction licence for proposed residential bungalow and compound wall in the property situated at Curca, village of Tiswadi Taluka in Goa. The technical clearance was granted in favour of the petitioner to carry out the work. On 27 March, 2012, an application was made to the Respondent no.1-Panchayat. On 26 June, 2012 the respondent-panchayat informed the petitioners that in view of the objections raised by respondent no.2-church, a resolution has been passed by the panchayat to withhold the issuance of licence to the petitioners. The petitioners, thereafter, filed appeals under section 66 (2) of the Goa Panchayat Raj, Act 1994, to the Deputy Director of Panchayat, against the communication dated 26 June, 2012. The Deputy Director disposed off the appeals by the order dated 7 September, 2012, holding that the Panchayat had not properly satisfied itself whether all the documents submitted by the

petitioners were correct. The Deputy Director also held that a conversion sanad of the agricultural land to non-agricultural was necessary for the purpose of construction, and the applications were incomplete. The Deputy Director also held that the Respondent no.2-Church of Our Lady of Rosary, which was cited as a reason for withholding the permission, was not a historical monument.

4. The petitioners thereafter filed appeals to the Additional Director of Panchayats. The Additional Director of Panchayats held that there was nothing to show that the Respondent-Church was a protected monument. Additional Director also noted that now conversion sanads were produced on record by the petitioners, therefore there was no impediment in the way of granting permission to the petitioners. He accordingly allowed the appeals by the order dated 4 April, 2014, by directing the respondent-panchayat to issue the permissions.

5. Respondent Panchayat filed a Revision application to the District Judge, Panaji. The application made by respondent no.2-church for intervention was allowed by the District Judge. The District Judge held that that the Additional Director did not consider the effect of the resolution passed by respondent no.1-panchayat and therefore, it was necessary that the Additional Director re-considers the matter keeping in mind the provisions of section 178 of the Goa Panchayat Raj Act, 1994. The learned District Judge also referred to the decisions of this Court in Writ Petition No.480/1994 “*Shri*

Francisco Joaquim Fernandes and anr Vs. Shri Jose Minguel Fernandes and others” and Writ Petition No.8/1995 “***Shri Suraja V. Fernandes Vs. The Village Panchayat of Ambelim, by its Secretary and others***” and W.P. no.181of 2004 “***Shri Guno Vinayak Gaude Vs. State of Goa through the Chief Secretary and others***”. The learned Judge accordingly remanded the proceedings to the Additional Director to consider the provision of Section 178 of the Panchayat Raj Act.

6. The first question is whether section 178 of the Act is applicable to the facts of the present case. This provision is regarding rescission of the resolution passed by the Panchayat. It has been argued on behalf of the respondent-panchayat that the letter dated 26 February 2012 merely informs the petitioners of the resolution passed stating that their applications are withheld. It is submitted that there is neither rejection nor grant of the applications, and therefore, the only remedy is to seek rescission of the resolutions under section 178 of the Act. It is the contention of the learned counsel for the petitioner that Section 178 has no application to the facts of the present case.

7. The communication dated 26 February 2012 mentions that an objection is received from respondent no.2-church and considering that objection, the respondent no.1 has resolved to withhold the application. Once an application is made for building permission it has to be either granted or rejected. The procedure of withholding the decision in

perpetuality, is unknown to the Panchayat Act. If no decision is communicated within stipulated period, then the provision of deemed permission comes into play, albeit with conditions. If the permission is rejected then there is a mechanism for redressal of grievance against such rejection. The response of the Panchayat to the applicants will have to be considered on the touchstone of section 66 of the Act, since it will be a decision on the application, there is no question of rescission but the challenge to it will be as per section 66 of the Act.

8. The present communication will have to be read in its true purport. The communication dated 26 June 2012 cites a reason. It states that because of the complaint of respondent no.2 that the permissions are withheld. As far as the petitioners are concerned this is a clear rejection. Once this is held to be rejection of the application, then in the methodology provided under section 66 of the Goa Panchayat Raj Act would follow. The petitioners have correctly followed the methodology. The finding of the District Court that section 178 of the Act will have to be invoked is erroneous as it is without considering that the decision dated 26 June 2012 is a rejection of the application. Therefore, the submission made by the learned counsel for the petitioner that section 178 of the Act will have no applicability in the facts of the case, will have to be upheld.

9. Further question, however, is whether the order passed by the District Court remanding the matter back to the Additional Director of Panchayats, needs to be interfered with.

As per the direction of the District Court, the appeal will have to now be decided by the Additional Director of Panchayats.

10. As regards the conversion sanads which are placed on record by the petitioners before the Additional Director, the respondent no.1-panchayat has made a grievance that they were never given an opportunity to consider the implication thereof. The Deputy Director has noted that when the matter was before him the conversion sanad was not part of the record. When it was produced before the Additional Director, the Additional Director straightaway directed the respondent-panchayat to grant permissions upon the same. Ultimately the respondent no.1-panchayat is the authority to grant licence. If it has made a grievance that it had no opportunity to examine conversion sanad, the said grievance cannot be brushed away.

11. Secondly, the learned counsel for respondent no.2-church submitted that the structure is part of the protected monuments as specified in the Goa Land Development and Building Construction Regulation, 2010. He submitted that the proposed constructions would fall within the No-Development zone. The learned counsel for the petitioner submitted that though the concerned church is listed as a building of historical and aesthetic importance, there is no provision in the Regulation that a No Development zone be kept around it. The structure however has been listed as of aesthetic importance and whether the proposed constructions will in any way affect the aesthetics, would also be one of the

contention that may possibly arise for consideration. This is not to say that these points are against the petitioners, but they only indicate areas of debate which will have to be considered by the Additional Director. However, though I am not inclined to interfere with the order of remand by the District Judge to the Additional Director of Panchayats, the scope of remand needs to be modified.

12. Since Section 178 is not applicable, the remand to the Additional Director will not be on that basis. The Additional Director will consider the merits of the communication dated 26 June 2012 treating it as an order of rejection. The Additional Director will consider the stand of respondent no.1-Village Panchayat and the objections raised by respondent no.2-church and thereafter take a decision on merits. The argument of the petitioner that the communication dated 26 June 2012 was beyond the stipulated period and consequence thereof, are left open to be decided on merits. All contentions of the parties on merits are kept open.

13. Considering the fact that respondent no.2 had originally made a complaint and its complaint is the basis of the order dated 26 June 2012, no fault can be found with the order passed by the District Judge permitting intervention of the respondent no.2. Hence, the order passed by the District Judge allowing intervention of the respondent no.2 in the proceedings is confirmed, and the challenge to that order is negatived.

14. Accordingly the writ petition is disposed of as under:

a) The order passed by the District Judge remanding the matter to the Additional Director of Panchayats is retained. However, the Additional Director will consider the matter in the light of what is stated above, without reference to the provisions of section 178 of the Goa Panchayat Act, within 3 months.

(b) The parties shall appear before the Additional Director of Panchayats on 2nd March 2015 at 3.00p.m and the time bound direction of three months will commence from 2nd March, 2015.

(c) All parties to act on authenticated copy of this order.

N. M. JAMDAR, J.

Ap/-