

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 842/2015**

Dinesh Laximan Harmalkar,
aged 43 years, married,
occupation business, son of
Laximan Harmalkar, resident of
near Sateri Garage, Patto,
Chicalim, Colvale, Bardez, North Goa.

..... Petitioner.

V/s.

1) State of Goa,
through the Chief Secretary,
with his office at the Secretariat,
Porvorim, Bardez, North Goa.

2) Town & Country Planning Department,
through the Chief Town Planner,
Panaji, North Goa.

3) Deputy Town Planner,
Town & Country Planning Department,
302, Government Building Complex,
Mapusa, Bardez, North Goa.

4) The Sarpanch/Secretary,
Village Panchayat of Colvale,
Bardez, North Goa.

..... Respondents.

Mr. Prasheen Lotlikar, Advocate for the petitioner.

Mr. Amogh Prabhudessai, Additional Government Advocate for the
respondents No.1 to 3.

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

Date : - 30 October 2015.

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

Heard Mr. P. Lotlikar, learned Counsel appearing for the petitioner and Mr. A. Prabhudessai, learned Additional Govt. Advocate appearing for the respondents No.1 to 3.

2. Rule. Heard forthwith, with the consent of the learned Counsel. Learned Additional Government Advocate appearing for the respondents No.1 to 3 waives service.

3. We have heard Mr. P. Lotlikar, learned Counsel appearing for the petitioner and Mr. A. Prabhudessai, learned Additional Govt. Advocate appearing for the respondents No.1 to 3. Upon hearing the learned Counsel appearing for the respective parties, it appears that the main grievance of Mr. Lotlikar, learned Counsel appearing for the petitioner is that the decision impugned in the above writ petition dated 22nd September, 2015 came to be passed without giving adequate reasons, nor examining the material placed on record to substantiate the contention of the petitioner. Mr. Lotlikar has pointed out that though an application for regularisation of the farmhouse was preferred before the respondent No.2, such an application was disposed of only on the ground that the name of a

tenant is shown in the survey records of the subject property. But, however, according to the learned Counsel this is not even an issue which can weigh in the Authority to reject the application filed by the petitioner, as the petitioner himself in his affidavit has clearly disclosed that the petitioner was a tenant and, as such, was intending to put up a farmhouse. The learned Counsel further points out that as the material on record has not been examined by the respondent No.2 before taking the impugned decision, it would be appropriate to direct the respondent No.2 to take a fresh decision on the application filed by the petitioner.

4. On the other hand, Mr. Amogh Prabhudessai, learned Additional Govt. Advocate appearing for the respondents No.1 to 3 has pointed out that the construction under consideration is an illegal construction, as no permission has been obtained, nor can such a construction be considered to be a farmhouse in terms of what is provided in the Agricultural Tenancy Act. The learned Counsel further points out that the claim of the petitioner is totally misplaced and the alleged construction, in any way, cannot be a farmhouse, as contended by the petitioner. The learned Counsel, as such, submits that the disputed construction cannot be regularised and, as such, the question

of interference with the impugned decision would not arise. The learned Counsel, however, upon instructions of Mr. Vinod Kumar, Town Planner, Mapusa who is present in the Court, makes a statement that the respondent No.2 shall take a fresh decision, after hearing the petitioner, in accordance with law.

5. Without going into the merits of the rival contentions, taking note of the submission of the learned Additional Govt. Advocate that the respondent No.2 shall take a fresh decision, we find it appropriate to quash and set aside the impugned decision dated 22nd September, 2015 and direct the respondent No.2 to take a fresh decision, within two months from today, on the application of the petitioner dated 5th August, 2015 afresh, after examining all the material produced by the petitioner, in accordance with law. In case any clarification is required, the respondent No.2 is at liberty to give a hearing to the petitioner with that regard. Until such final decision is taken by the respondent No.2, the parties shall maintain the status quo of the disputed structure, upon an express condition that no commercial activity or third party right would be created in respect of the disputed premises.

6. Subject to the above, Rule stands disposed of. C.C.
expedited.

K.L. WADANE, J.

F.M. REIS, J.

ssm.