

SQP

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5467 OF 2013**

Ramesh Lakhman Bamanian & Anr.	...Petitioners
Versus	
The Union of India & Ors.	...Respondents

Mr. S. R. Nargolkar for the Petitioners

Mr. D. A. Dubey for the Respondent No.1

Mr. Shrishailya S. Deshmukh for the Respondent Nos. 2 and 3

**CORAM : A. S. OKA &
REVATI MOHITE DERE, JJ.
THURSDAY, 2ND JULY, 2015**

P.C. :

1. Rule. Learned Counsel appearing for the first respondent waives service. Learned Counsel appearing for second and third respondents waives service.
2. By consent, petition is forthwith taken up for final disposal.
3. On 15th March, 2005, show cause notice was issued by the third respondent to the first petitioner alleging that he has been using the land in question in contravention Section 32 of the Goa, Daman and Diu Land

Revenue Code, 1968 and therefore, the land is liable for action under Section 33 of the said Code. Petitioner replied to the said notices. On 5th May, 2005, an order was made by the third respondent-Collector under Section 33 of the said Code directing the petitioner to restore the land to its original use by demolishing the construction made by him. The said order refers to the report dated 7th January, 2005 by the Junior Town Planner. The petitioners preferred an appeal under Section 188 of the said Code before the Administrative Tribunal. By second impugned order dated 24th April, 2013, the said appeal has been dismissed.

4. Apart from grievances on merits, the grievance of the learned Counsel appearing for the petitioner is two-fold. His submission is that in paragraph 9 of the Judgment of the Administrative Tribunal, the learned Chairman has relied upon the report of the Mamlatdar dated 27th April, 2005. The submission is that a copy of the said report was not furnished to the petitioners. His second contention is that copy of the report submitted by the Junior Town Planner, DIU, which was considered in his impugned order dated 5th May, 2005 was not supplied to the first petitioner.

5. On 1st April, 2015, we had granted time to learned Counsel appearing on behalf of second and third respondents to take instructions on the aspect of supply of a copy of the report dated 27th April, 2005 to the petitioners. Today, learned Counsel appearing for the second and third respondents, on instructions, states that there is no material on record to show that the report of the Mamlatdar dated 27th April, 2005 was supplied to the first petitioner.

6. Thus, order made against first petitioner under Section 33 of the said Code has been confirmed on consideration of the said report, a copy of which was not supplied to the first petitioner. Therefore, this is a case of breach of principle of natural justice. In the circumstances, the matter will have to be remitted to the third respondent.

7. Accordingly, we dispose of the petition by passing the following order :

ORDER

- (i) The impugned orders dated 5th May, 2005 and 24th April, 2013 are hereby quashed and set-aside.

(ii) We direct the petitioners to appear before the third respondent on 21st August, 2015 at 11:00 a.m.

(iii) The Office of the third respondent shall supply true copies of the report of the Junior Town Planner, DIU and the report of the Mamlatdar dated 27th April, 2005 to the petitioners. It will be open for the petitioners to file supplementary reply dealing with the said reports within a period of two weeks from 21st August, 2015. Thereafter, the third respondent shall proceed to pass an order in accordance with law on show-cause notice dated 15th March, 2005 after giving an opportunity of being heard to the petitioners.

(iv) All contentions on merits of the show-cause notice dated 15th March, 2005 are kept open.

(v) Rule is made partly absolute on the above terms.

(vi) All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)

(A. S. OKA, J.)