

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 66 OF 2016**

Shri Anil Parmekar, son of
Vassanta Parmekar, 61 years of
age, Indian National, married,
resident of House No. 1702, Plot
No. 50, Journalist Colony, Alto
Porvorim, Penha de Franca,
Britona, Bardez, Goa. Petitioner

Versus

1. The Secretary, Village
Panchayat of Penha de Franca,
Penha de Franca, Bardez, Goa.
2. The Sarpanch, Village
Panchayat of Penha de Franca,
Penha de Franca, Bardez, Goa.
3. Shri Joseph Carneiro, 64
years of age, resident of
Plot No. 51, House No. 1675,
Journalist Colony, Alto
Betim, Porvorim, Bardez, Goa
403 521. Respondents

Mr. Vilas P. Thali, Advocate for the Petitioner.

Mr. Pravin Faldessai with Ms. Vidhati Shetye,
Advocates for Respondent No. 3.

None appears for Respondent Nos. 1 and 2.

CORAM:- C. V. BHADANG, J.

RESERVED ON:- 29th JUNE, 2016

PRONOUNCED ON:- 4th JULY, 2016

ORDER:

By this petition, the petitioner is challenging the judgment and order dated 30.11.2015 passed by the learned Adhoc District Judge at Mapusa in Civil Revision Application No. 67/2015, whereby order dated 16.07.2015 passed by the learned Additional Director of Panchayats, Panaji in Panchayat Appeal No. 33/2014, allowing intervention of respondent no. 3 in the said appeal, is allowed.

2. The brief facts are that the petitioner and the respondent no. 3 are neighbours. On the basis of a complaint lodged by respondent no. 3, the Village Panchayat Penha-de-Franca, had conducted an inspection of the house of the petitioner on 30.11.2013 and a panchanama was accordingly drawn, in which it was found that the petitioner had carried out extension of the existing house by constructing a kitchen admeasuring 8.40 metres x 3.45 metres x 2.80 metres in the set back area. The

said construction is effected in the north-western corner of the house of the petitioner. Undisputedly, the plot and the house of the respondent no. 3 is to the northern side of the plot of the petitioner. Acting on the said complaint and the inspection, the Village Panchayat Penha-de-Franca, issued a demolition notice to the petitioner under Section 66(7) of the Goa Panchayat Raj Act, 1994 (the Act, for short), asking the petitioner to remove the unauthorised construction of the kitchen. This was challenged by the petitioner before the learned Additional Director of Panchayats in Panchayat Appeal No. 33/2014. The respondent no. 3 filed an application seeking intervention in the said appeal on the ground that there is common compound wall between his house and the house of the petitioner. The respondent no. 3 claimed that it was on his complaint that action was taken, against the petitioner. The respondent no. 3 also claimed that the petitioner has exceeded the FAR and the present

FAR consumed is 94%, which is beyond the permissible limit of 80%. It was contended that the grounds in the appeal are based on the allegations made against the respondent no. 3 and it is necessary to allow respondent no. 3 to intervene in the appeal.

3. The application was opposed by the petitioner stating that the intervenor is not a necessary party and the appeal can be decided in his absence.

4. The learned Additional Director of Panchayats after noticing the decision of this Court in the case of **Mr. Alwyn D'Cunha Vs. Village Panchayat of St. Lawrence and Another, [2006(2) Goa L.R. 368]** and the order dated 23.04.2010 passed by this Court in Writ Petition No. 12/2010, in the case of **Mr. Bholu V. Naik Vs. Village Panchayat at Marcaim and Others**, found that the intervention is necessary and allowed the application. This was

challenged by the petitioner before the learned Adhoc District Judge, Mapusa, who found that no case for interference, was made out. Holding so, the Civil Revision Application was dismissed, bringing the petitioner to this Court.

5. I have heard Mr. Thali, the learned Counsel for the petitioner and Shri Faldessai, the learned Counsel for respondent no. 3.

6. The learned Counsel for the petitioner has filed a short synopsis of submissions alongwith cases relied on.

7. The learned Counsel for the petitioner has raised the following contentions:

(i) That, the Adhoc District Judge (FTC) is not a Court created under the Goa Civil Courts Act, 1965, but, it is created under the Fast Track Court Scheme of the Central Government. It is neither a

District Court, nor has the powers of the District Judge, to entertain the civil revision application.

Reliance is placed on the order dated 05.02.2016 passed by this Court in First Appeal No. 284/2008, in the case of **Goa Plast Pvt. Ltd. Vs. Chico D'Souza**. It is thus contended that the statutory remedy of a revision under Section 201-B is denied to the petitioner and the matter is required to be remanded back.

(ii) The Director of Panchayats has no power to allow a third person, as a party respondent or to allow intervention. The powers of the Director are set out under Section 239-A and Section 239-C(1) of the Act, which does not include the power to allow intervention.

Reliance is placed on the decision of the Delhi High Court in the case of **Hardayal Singh Mehta and Another Vs. M.C.D. and Others, AIR 1990 Delhi 170**. It is submitted that although, the judgment of

the Delhi High Court is not binding on this Court, it has persuasive value and this Court can choose not to follow the principles laid therein, only for reasons to be recorded, for such disagreement.

Reliance in this regard is placed on the decision of the Supreme Court in the case of **Pradip J. Mehta Vs. Commissioner of Income Tax, Ahmedabad, (2008) 14 SCC 283.**

(iii) That the decision in the case of **Mr. Alwyn D'Cunha** (supra), on which reliance is placed by the Courts below, does not lay down, any ratio as such, that the Director can allow intervention. It is submitted that no ratio can be spelt out from the said judgment, if we look to the decision of the Full Bench of this Court in the case of **Shikshan P. Mandal Vs. State of Maharashtra, 2009(6) Bom C.R. 1,** as the question of statutory powers of the tribunal was not a question specifically raised, contested, argued and decided, by this Court in the said case.

The learned Counsel has placed reliance on the decision of the Supreme Court in the case of *The Regional Manager Vs. Pawan Kumar Dubey*, (1976) 3 SCC 334; *Union of India and Others Vs. Dhanwanti Devi and Others*, (1996) 6 SCC 44; *Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another*, (2004) 8 SCC 579; *State of Orissa and Others Vs. Md. Illiyas*, (2006) 1 SCC 275; *Roy Joseph Creado and Others Vs. Tamissuddin Nazir Ahmed and Others*, 2008(1) Bom.C.R.(Cri) 402 and *Bank of India Vs. K. Mohandas and Others*, (2009) 5 SCC 313, in support of his submission that no ratio can be deduced as such, from the case of **Mr. Alwyn D'Cunha** (supra).

It is submitted that in any case, the decision in the case of **Mr. Alwyn D'Cunha** (supra) is *per incuriam*, to the extent it holds that intervention can be allowed by the authorities under the Act.

(iv) Reliance is then placed on the decision of the Supreme Court in the case of **All India Indian Overseas Bank SC and ST (AIIOBSCST) Employees Welfare Association and Others Vs. Union of India and Others, (1996) 6 SCC 606** and **Morgan Stanley Mutual Fund Vs. Kartick Das, (1994) 4 SCC 225**, in order to submit that under similar provisions as contained in Article 328 of the Constitution of India, which confers certain powers on the National Commission for Scheduled Caste and Scheduled Tribes (commission, for short). It has been held that the said Commission has no power of a Court of plenary jurisdiction. In the case of **Morgan Stanley Mutual Fund** (supra), it has been held that the Consumer Forum constituted under the Consumer Protection Act, 1986, has no power to grant any interim relief.

(v) It is submitted that the respondent no. 3 has neither shown any personal injury nor it is shown that the decision of the appeal would bind

him. Assuming that there is any legal injury or legal right of the complainant involved, the remedy would be to file a suit as held by this Court in the case of **Smt. Fatima Joao Vs. Village Panchayat of Mercas, 2000(2) Goa L.T. 341**. Reliance is placed on the decision in the case of **Shyam F. Shende Vs. Alka V. Ganvir and Another, 1998(2) Bom CR 530**; the order dated 08.01.2010 passed in Writ Petition No. 224/2005 by this Court in the case of **Shliston Furtado Vs. The Goa Coastal Zone Management Authority and Ramesh H. Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, (1992) 2 SCC 524**.

It is contended that the respondent no. 3 has not made out a case that his personal right/legal right is affected by the construction. Neither the Director of Panchayats nor the District Court has recorded a finding as such. It is submitted that the only question involved in the appeal, is whether the construction by the

petitioner is legal or otherwise.

(vi) Lastly, it is submitted that the impugned order allowing intervention is without jurisdiction, requiring interference. It is submitted that where the impugned order is shown to be without jurisdiction, the petitioner may not demonstrate any prejudice, while challenging the order. It is submitted that on the contrary the respondent no. 3 has not shown any prejudice, if the intervention is not allowed.

8. Mr. Faldessai, the learned Counsel for the respondent no. 3 has submitted that this Court in the case of **Mr. Alwyn D'Cunha** (supra) has already held that where it is shown that the legal right of the complainant is affected, intervention can be allowed. He points out that this decision has been consistently followed by this Court in the subsequent decisions, including in the case of **Mr.**

Bholu V. Naik (supra) and the order dated 21.04.2016 passed by this Court in Writ Petition No. 62/2016 in the case of **Santosh Murari Gaonkar Vs. Village Panchayat of Sirigao and Another.** Reliance is also placed on the order dated 15.04.2009 passed by this Court in Writ Petition No. 744/2008, in the case of **Shri Laxman Candolkar Vs. the Village Panchayat of Candolim.** It is submitted that the petitioner having taken the recourse to the remedy of civil revision and having failed therein, cannot now turn around and question the jurisdiction of the Adhoc District Judge in entertaining the civil revision. It is submitted that the house of the respondent no. 3 is on the northern side of the house of the petitioner with a common compound wall and the construction of the kitchen is in the north-eastern corner and thus, the right of the respondent no. 3, would be affected. He therefore submits that the intervention has been rightly allowed.

9. I have considered the rival circumstances

and the submissions made. Insofar as the jurisdiction of the learned District Judge to entertain the revision application is concerned, the reliance placed on the decision in the case of **Goa Plast Pvt. Ltd.** (supra), to my mind, is misplaced. In that case, under an administrative order, some civil suits were transferred to the file of the Adhoc District Judge for trial and the question arose, whether the judgment passed by the learned Adhoc District Judge, would be appealable before the District Court. It was found that the civil suits were tried by the Adhoc District Judges in the capacity of Senior Civil Judges and therefore, the appeal would lie before the District Court. It is nowhere held that an Adhoc District Judge, even when he acts as such, is not a District Judge. To put it otherwise, what has been held is that while trying a suit of original nature, the Adhoc District Judge acts as a Senior Civil Judge and not a District Judge. The contention therefore, cannot be

accepted. That apart, the petitioner having opted to go before the Adhoc District Judge and having taken chance, cannot now turn around to challenge the jurisdiction of the learned Adhoc District Judge to entertain the civil revision, once the decision is against him. In either case the contention is stands refuted.

10. This takes me to the contention that the Director of Panchayats has no power to entertain an application seeking intervention or to allow the same. The contention is that under Section 66(7) of the Act, a remedy of appeal is provided only against the order or direction or notice issued under any of the provisions of Section 66 of the said Act. It is contended that such a remedy is available to a person, who is aggrieved by a notice of demolition. Sections 239-A and 239-C of the Act reads thus:

"239-A. Powers of officers - The

Officers appointed under this Act, viz, the Director, the Chief Executive Officer, the Deputy Director and the Block Development Officer, shall have the same powers in making inquiries under this Act and the rules framed thereunder and are vested in courts in respect of the following matter under the Code of Civil Procedure, 1908, in trying any petition or appeal, namely:-

- (a) proof of facts by affidavit;*
- (b) summoning and enforcing the attendance of any person and examining him on oath;*
- (c) compelling the production of documents;*
- (d) awarding costs.*

239-C. Procedure.— (1) Subject to the other specific provisions in this behalf, the procedure to be followed by the Officer in all inquiries, appeals and proceedings under this Act and the rules framed thereunder shall be such as may be prescribed.

(2) Every decision or order passed

under this Act shall be recorded in the form of an order which shall state the reasons thereof.

(3) All inquiries and proceedings before the Officers shall be deemed to be judicial proceedings within the meaning of section 193, 219 and 228 of the Indian Penal Code, 1860."

11. It is contended that the powers conferred under clauses (a) to (d) of Section 239-A of the Act does not include the power to allow intervention. The learned Counsel has pointed out that the Government has not framed any Rules under Section 239-C(i) of the Act to confer specific power on the Director to allow intervention.

12. At this stage, it would be necessary to make a reference to the case of **Mr. Alwyn D'Cunha** (supra). In that case, the application filed by the petitioner/complainant was dismissed by the Additional Director of Panchayats, which was

challenged before this Court. On behalf of respondent no. 2, reliance was placed on the decision of this Court in the case of **Shyam F. Shende** (supra), in order to contend that the petitioner as a complainant has no locus to intervene, as the matter is essentially between the Village Panchayat and the person proceeded against. This Court *inter-alia* held thus:

"In order to justify this intervention, the petitioner has to show that his rights will be affected in some manner on account of decision that may be passed in the proceedings and if the petitioner is able to disclose the same, nothing would prevent the appellate authority to allow the petitioner to be joined as the party to the appellate proceedings. Section 239-A of the said Act cannot debar the authority from allowing the aggrieved person to put forth his say in the matter. The said statutory provision cannot be read totally ignoring the basic

principles of natural justice. An authority which is empowered to adjudicate rights of the parties cannot ignore the basic principles of natural justice albeit, when the statutory provision prescribes specific procedure, the same needs to be followed. No order can be allowed to be passed by any authority which can affect rights of the parties without giving such party an opportunity of being heard in the matter. Section 239-A speaks about powers of the appellate authority while dealing with appeals, but that does not mean that it will debar the authority from entertaining the application for intervention by a person who can be aggrieved by an order which may be passed in such appeal proceedings."

13. It can thus be seen that the question about the powers of the authority to allow intervention in the wake of Section 239-A has been specifically considered by this Court and it has been held that

Section 239-A cannot debar the complainant to put forth his say in the matter. Albeit, on specific facts of that case, it was found that there was no case for intervention made out. It is evident that where the rights of the complainant are likely to be affected or not, would be a question depending on the facts and circumstances of each case. We are presently on the availability of the powers of the Director to allow such intervention. In the case of **Mr. Bholu V. Naik** (supra), this Court after placing reliance on the decision in the case of **Mr. Alwyn D'Cunha** (supra) had allowed such intervention.

14. On behalf of the petitioner strong reliance is placed on the decision of the Delhi High Court in the case of **Hardayal Singh Mehta** (supra). The question therein was about addition of a party in an appeal against an order directing demolition. The Delhi High Court considered the question in the context of the provisions of Sections 343 and 347-C

of the Delhi Municipal Corporation Act and held that addition of anyone, except the Corporation and the officers thereof, is not permissible. This has been so held on the premise that the Tribunals, unlike the Civil Courts of plenary jurisdiction, are creatures of statutes and their jurisdiction and powers are circumscribed by the provisions of the Act, under which such Tribunals are constituted and the Rules framed under any such Act. What has essentially been held is that such Tribunals unlike the Court of plenary jurisdiction, cannot exercise inherent powers within the "four corners of the statutes". It has also been held that the provisions of Order I Rule 10 of CPC, are admittedly not applicable to the proceedings before the Tribunal. With deepest respect, I am unable to agree with the proposition as laid down therein. This is also on account of the fact that, there are binding precedents on the issue of this Court, which have been consistently followed. The Hon'ble Apex

Court in the case of **Pradip J. Mehta** (supra) has held that although, where the judgments of the other High Courts, are not binding, nonetheless they have persuasive value and judicial decorum, requires that, when such judgments are cited the High Court, should record reasons for its dissent.

15. It may be mentioned that while hearing the appeal under Section 66(7) of the Act, the Director acts as a quasi judicial authority. The judgment and order passed by the Director is subject to a revision before the District Court under Section 201-B of the Act. Section 239-C(3) of the Act states that all inquiries and proceedings before the officers shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of IPC. It is further evident from the fact that Section 239-C(2) provides that every decision or order passed under the Act shall be recorded in the form of an order, which shall state the reasons.

Thus, there cannot be any manner of doubt that while entertaining an appeal under Section 66(7) of the Act, the Director is exercising quasi judicial powers. Undoubtedly, these powers are circumscribed by the act and the rules framed thereunder. It is a common ground that the State Government has not come with any rules prescribing the procedure. The question in such circumstances is whether it would be open to the Director to allow the intervention of any party and if so, on what ground.

16. In the case of **Shri Laxman Candolkar** (supra), the judgment of the Delhi High Court in the case of **Hardayal Singh Mehta** (supra) was brought to the notice of this Court. However, it was held that the complainant, who has shown locus can be allowed to intervene, being a proper party. In the case of **Mr. Alwyn D'Cunha** (supra), this Court *inter-alia* held that Section 239-A of the Act cannot debar the authority from allowing the aggrieved person to put

forth his say in the matter. It has been held that the said provisions cannot be read totally ignoring the basic principles of natural justice and therefore the rights of the tribunal cannot ignore the basic principles of natural justice.

It can thus be seen that this Court in the case of **Mr. Alwyn D'Cunha** (supra) after noticing the provisions of Section 239-A of the Act has held that in the absence of any prohibition, the said Section cannot be pressed into service to say that the Director would have no authority to add such a party. What has been held is that the said statutory provision cannot be read to mean that the authority can ignore the basic principles of natural justice.

17. The learned Counsel for the petitioner has relied upon several decisions to demonstrate as to what is the ratio *decidendi* of a case. The law on this point is well settled. It would not be

necessary to make a detailed reference to all the cases cited. In the case of **Shikshan P. Mandal** (supra), the full Bench of this Court after taking survey of a series of decision, has held that, (i) a clear reference to facts and the controversy in issue, (ii) discussion on the statutory provisions, (iii) reasoning for coming to the conclusion and (iv) a clear statement of law and principles settled are the pre-requisites for deducting the ratio of any case. A perusal of the judgment in the case of **Mr. Alwyn D'Cunha** (supra) shows that the specific issue was about joining of the respondent as party respondent in the appeal. This Court after setting out the facts and discussing the provisions of the Act (Section 239-A) had come to the conclusion that the said provision cannot be read to mean that even the basic principles of natural justice can be ignored. It is therefore, difficult to accept that no ratio *decidendi* as such, can be culled out from the case of **Mr. Alwyn D'Cunha** (supra).

18. Nonetheless, as the matter has been argued at great length, I propose to briefly give some additional reasons in support of the conclusion. As noticed earlier, the proceedings before the Director are quasi judicial in nature and the compliance of principles of natural justice is the very essence of any such proceedings. This Court has noticed in the case of **Mr. Bholu V. Naik** (supra) that there are instances when the village panchayat does not act unless somebody complains about the illegal construction and there are also cases where there may be allegations of collusion. In the present case, the respondent-Village Panchayat has not appeared, which according to the learned Counsel for the respondent no. 3 speaks of collusion. It is not necessary to go into this aspect. Suffice it to mention that there may be instances where the Director would be benefited from the assistance of the complainant, provided his rights are affected by the decision in the appeal. In such circumstances,

it cannot be accepted that even the basic principles of natural justice, can be ignored.

19. At this stage, a useful reference may be made to the order dated 11.09.2012 passed in Writ Petition Nos. 302, 300/2010, 3, 409 and 435/2011 by the Division Bench of this Court in the case of **Major(retd.) Kehar Singh Vs. Mr. Velentino Xavier Pereira**. The question before the Division Bench was whether the authorities under the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (the Act of 1968, for short), have jurisdiction to allow the amendment of the applications/replies filed in the proceedings under the Act of 1968. A similar contention was raised before the Division Bench that the Act and the Rules framed thereunder do not confer power on the authorities under the Act, to allow amendment. The Division Bench of this Court ultimately held that such a power is implicit and inherent and the authorities can allow such

amendment. It is true that one of the reasons for reaching such a conclusion was that the appellate and the revisionary authority had such a power. The other reason was based on the principles of implied powers. The Division Bench of this Court has placed reliance on the decision of the Supreme Court in the case of **S.M. Banerji Vs. Sri Krishna Agarwal, AIR 1960 SC 368; Bidi, Bidi Leaves and Tobacco Merchants Association Vs. the State of Bombay, AIR 1962 SC 486** and **Income Tax Officer, Cannanore Vs. M.K. Mohammed Kunhi, AIR 1969 SC 430**. In the case of **S.M. Banerji** (supra), the Hon'ble Apex Court observed thus, in paragraph 12 of the judgment:-

"12. As this stage we must guard against one possible misapprehension. Courts and Tribunals are constituted to do justice between the parties within the confines of statutory limitations, and undue emphasis on technicalities or enlarging their scope would on cramp their powers, diminish their effectiveness and defeat the very purpose for which

they are constituted. We must make it clear that within the limits prescribed by the decisions of this Court the discretionary jurisdiction of the Tribunals to amend the pleadings is as extensive as that of a civil Court. The same well-settled principles laid down in the matter of amendment to the pleadings in a suit should also regulate the exercise of the power of amendment by a Tribunal. This aspect has not been ignored by those Court in the aforesaid decision, and the Court observed, at p. 394 (of SCR):(at p. 456 of AIR):

It is no doubt true that pleadings should not be too strictly construed, and that regard should be had to the substance of the matter and not the form."

20. In the case of **Bidi, Bidi Leaves and Tobacco Merchants Association** (supra), it has been held

thus:

"23. *"One of the first principles of law with regard to the effect of an enabling act", observes Craies, "is that if a Legislature enables something to be done, it gives power at the same time by necessary implication to do everything which is indispensable for the purpose of carrying out the purposes in view [Craies on Statute Law, p. 239]". The principle on which the doctrine is based is contained in the legal maxim 'Quando lex aliquid concedit concedere videtur et illud sine quo res ipsa esse non potest'. This maxim has been thus translated by Broom thus :*

"whoever grants a thing is deemed also to grant that without which the grant itself would be of no effect".

Dealing with this doctrine Pollock, C.B., observed in Michael v. Fenton and James Fraser v. John Stephen Hempton (1858) 117 R.R. 32, 11 Moo. P.C. 347. "It becomes therefore all important

to consider the true import of this maxim, and the extent to which it has been applied. After the fullest research which I have been able to bestow, I take the matter to stand thus :

"Whenever anything is authorised, and especially if, as matter of duty, required to be done by law, and it is found impossible to do that thing unless something else not authorised in express terms be else done, then that something will be supplied by necessary intendment."

This doctrine can be invoked in cases "where an Act confers a jurisdiction it also confers by implication the power of doing all such acts, or employing such means as are essentially necessary to its execution [Maxwell on Interpretation of Statutes, 10th ed., p. 361]."

In other words, the doctrine of implied powers can be legitimately invoked when it is found that a duty

has been imposed or a power conferred on an authority by a statute and it is further found that the duty cannot be discharged or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exist. In such a case, in the absence of an implied power the statute itself would become impossible of compliance. The impossibility in question must be of a general nature as that the performance of duty or the exercise of power is rendered impossible in all cases. It really means that the statutory provision would become a dead-letter and cannot be enforced unless a subsidiary power is implied. This position in regard to the scope and effect of doctrine of implied powers is not seriously in dispute before us. The parties are at issue, however, on the question as to whether the doctrine of implied powers can help to validate the impugned clauses in the notification".

21. It can thus be seen that wherever the legislature enables an authority or forum, the power to decide as a quasi judicial body, it gives power at the same time by necessary implication to do everything for carrying out the purpose. I would hasten to add that the considerations in the present cases are confined only to the availability of the power for addition of a party. In my considered view, the power to act in a quasi judicial manner, which naturally presupposes adherence to the principles of natural justice would impliedly include a power to allow intervention of an affected/interested party. There is no scope for the apprehension that if, such power is conceded to the authority under the Act, it would open a flood gate of such applications, because it is for the concerned authority to decide in the facts and circumstances of each case.

22. It is evident that existence of a power and its exercise are two different aspects. With respect, I find that the consideration on the aspect of implied powers and adherence to the principles of natural justice being an integral part of the determination by any quasi judicial authority are not considered in the case of **Hardayal Singh Mehta** (supra), with which I respectfully disagree.

23. A brief reference to the judgments in the case of **AIIOBSCST Employees Welfare Association** (supra) and **Morgan Stanley Mutual Fund** (supra) would be necessary, at this stage. In the case of **AIIOBSCST Employees Welfare Association** (supra), the question was whether the National Commission for Schedule Castes and Schedule Tribes constituted under Article 338 of the Constitution of India can grant injunction. In that case, the Commission by an interim order had directed the respondent-Bank to stop the promotion process pending investigation by

the complaint received by it. The Hon'ble Apex Court held that the powers exercisable by the Commission are only for the purpose of investigating the matters under Article 338(5)(a) or inquiry into complaints under Article 335(5)(b) and do not extend to granting injunctions, permanent or temporary.

24. In the case of **Morgan Stanley Mutual Fund** (supra), the question was whether the authorities under the Consumer Protection Act, 1986 (the Act of 1986, for short) had any power to grant interim relief under Section 14 of the Act of 1986. It has been held that under Section 14 of the Act of 1986, the authority under the said Act can only grant a final relief and the same is confined to four clauses as mentioned under Section 14 of the Act of 1986 and that no interim relief could be granted. It can thus be seen that the reliance placed on the aforesaid judgments by the petitioner is misplaced, as they arose in different factual and legal

context.

25. This takes me to the submissions based on the decision of this Court in the case of **Smt. Fatima Joao** (supra). In that case, the question was whether a person can bring a suit for violation of municipal plans or rules or bye-laws by his neighbour, resulting in invasion of his right, to light, air, privacy or causing pollution or causing material injury. The Division Bench of this Court *inter-alia* held that the Goa Panchayat Raj Act has no provision, excluding jurisdiction of the Civil Court and therefore, such a suit would be maintainable. It is difficult to envisage as to how the judgment would advance the case of the petitioner herein. The fact that such a aggrieved person has a remedy of filing suit cannot impinge on the jurisdiction of the Director to allow intervention, if it is otherwise found necessary in order to enable such authority to effectually and

completely decide the controversy before him. There cannot be any doubt that the Director and the other authorities have independent jurisdiction to decide upon the notice of demolition or alteration, as the case may be and if, the Director or the other authorities comes to the conclusion that such an intervention would advance the cause of justice and facilitate the effectual disposal of the matter, the availability of the remedy of filing a civil suit to the aggrieved person, in my considered view cannot come in the way of the Director or any such authority, in allowing such intervention.

26. Reliance placed on the decision in the case of **Shliston Furtado** (case) is also equally misplaced. In that case, one Shliston Furtado had filed a writ against the Goa Coastal Zone Management Authority, for quashing of order of demolition of certain structures. One Agostinho Godinho had moved intervention application in the writ petition as he

was claiming to be the owner of the said property (on which the said structure was said to be standing). This Court after considering the provisions of Order 1, Rule 10 of CPC and the decision of the Supreme Court in the case of **Ramesh H. Kundanmal** (supra) found that the joinder of the petitioner was not necessary. This was on the basis of a distinction being drawn as to the dispute of the ownership of the under lying land and the structure standing thereon, which was said to be illegal. In short, it was found that in order to decide whether the construction is required to be demolished or not, the addition of the intervenor, who was claiming ownership to the underlying land was not necessary.

27. Insofar as the question of prejudice is concerned, the Court is required to balance the rival consideration and then decide whether the intervention needs to be allowed. In the present

case by allowing the intervention, the intervenor would be entitled to be heard, which can only assist the Director in effectually deciding the controversy in the appeal and on the other hand, the intervenor is claiming that the decision in the appeal is likely to affect the personal right as to air, light etc. Obviously, in such a case, the consideration on the basis of prejudice would tilt in favour of the intervenor.

28. This takes me to the question whether on facts, intervention could have been allowed in this case. Although the learned Counsel for the petitioner states that there is no finding about the the right of the intervenor being affected, a perusal of paragraph 11 of the impugned judgment of the learned District Judge shows that it has been held thus:

"Therefore in my opinion the intervenor is a necessary party being the person who has lodged the

complaint and being affected by the same as well as bringing the said illegal construction to the notice of the Panchayat".

Thus, the said submission cannot be accepted.

29. In the result, I find that the petition is without any merit and is hereby dismissed.

C. V. BHADANG, J.

EV