

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 13/2016**

Mukund Joshi,
son of late Rama Shrinivas Joshi,
aged 68 years, Indian National,
resident of House No.1267 (B),
Kannaikwado, Morjim,
Pernem, Goa 403512.

..... **Petitioner.**

V/s.

1) State of Goa,
through its Chief Secretary,
having Office at Secretariat,
Porvorim, Goa.

2) Goa Coastal Zone Management
Authority, through its
Member Secretary,
having Office at Dempo Towers,
2nd Floor, EDC Complex,
Patto, Panaji, Goa.

3) The Collector & District Magistrate,
(North), having Office at Collectorate
of North Goa, Panaji, Goa.

4) Sanjay Joshi,
R/o. House No.1268,
Kannaikwada, Morjim, Pernem, Goa.

..... **Respondents.**

Mr. Devidas J. Pangam, Advocate for the petitioner.

Mr. P. Dangui, Additional Govt. Advocate for the respondents No.1 and 2.

Mr. Deepak Gaonkar, Advocate for the respondent No. 4.

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

Date : - 21 JANUARY 2016.

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

Heard Mr. D. Pangam, learned Counsel appearing for the petitioner, Mr. P. Dangui, learned Additional Govt. Advocate appearing for the respondents No.1 and 2 and Mr. D. Gaonkar, learned Counsel appearing for the respondent No.4.

2. Rule. Learned Counsel appearing for the respondents waive service. Heard forthwith, with the consent of the learned Counsel.

3. The above petition takes exception to an order dated 9th December, 2015 passed by the respondent No.2. Mr. Pangam, learned Counsel appearing for the petitioner points out that based on a complaint lodged by the respondent No.4, the respondent No.2 proposed to take action against the petitioner in respect of the subject construction put up by the petitioner in the property surveyed under Nos.116/40 and 116/41 of Village Morjim. Mr. Pangam further points out that though a reply came to be filed by the petitioner to the show cause notice, but, however, the matter was posted on 23/11/2015 for

hearing. The learned Counsel further points out that on the said date, the petitioner nor his Advocate was in a position to appear before the respondent No.2 and a request for accommodation was made by a Junior Advocate appearing on behalf of the petitioner which was refused by the respondent No.2. The learned Counsel further points out that the respondent No.2 proceeded to decide the show cause notice and ultimately, by the impugned order directed demolition of the subject-structure belonging to the petitioner. The learned Counsel further submits that the impugned order has been passed in gross breach of the principles of natural justice, as the petitioner was not given adequate opportunity of personal hearing by the respondent No.2. The learned Counsel further submits that a grave injustice would occasion to the petitioner in case the impugned order passed by the respondent No.2 is not set aside.

4. On the other hand, learned Additional Government Advocate appearing for the respondents No.1 and 2, upon instructions, submits that the respondent No.2 is prepared to give a hearing to the petitioner and decide the show cause notice dated 01/12/2014, after hearing all the concerned parties, afresh, in accordance with law.

5. Learned Counsel appearing for the respondent No.4,

however, opposes any relief being granted by this Court in favour of the petitioner in the above petition. The learned Counsel submits that the petitioner has an alternate remedy to challenge the impugned order under the provisions of the National Green Tribunal Act, and as such, the question of exercising jurisdiction under Articles 226 and 227 of the Constitution of India would not at all be justified. The learned Counsel further submits that all the contentions, sought to be raised by the petitioner, can be raised before the Appellate Forum and, as such, the question of exercising jurisdiction in the present petition cannot at all be justified. The learned Counsel further submits that the petitioner has been given adequate opportunity by the respondent No.2 and, as such, the contention of the petitioner that the impugned order was passed in breach of the principles of natural justice cannot be accepted. The learned Counsel has, thereafter, taken us through the record to point out that the petitioner had already filed his reply, as well as related documents in support of his stand and, as such, the question of giving a fresh hearing to the petitioner is not at all required. The learned Counsel, as such, submits that the petition be accordingly rejected.

6. We have considered the submissions of the learned Counsel and with their assistance, we have also gone through the

record. The fact that this Court cannot interfere in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India when an efficacious alternate remedy, is available is well settled and, in fact, this Court by an Order dated 1st July, 2015, passed in W.P. No. 400/2015, in the case of *Anil Hoble vs. Kashinath Shetye and ors.*, has taken a view that when an alternate remedy is available, the High Court will not exercise jurisdiction under Articles 226 and 227 of the Constitution of India unless in specific situations. However, in this case, the impugned order has been challenged on the ground of a breach of the principles of natural justice committed by the Authority whilst passing such order. In the present case, Mr. Pangam, learned Counsel appearing for the petitioner, apart from raising the contentions on merits, has restricted his grievance in the above petition only to the fact that the impugned order was passed in breach of the principles of natural justice.

7. As stated herein above, the learned Additional Government Advocate appearing for the respondents No.1 and 2, upon instructions, has made a statement that the respondent No.2 is prepared to give a hearing to the petitioner and decide the show cause notice dated 1/12/2014, after hearing all the concerned parties afresh, in accordance with law.

8. Mr. D. Gaonkar, learned Counsel appearing for the respondent No.4, however, points out that adequate opportunity was given to the petitioner to produce material in support of his defence and, as such, there is no breach of the principles of natural justice committed by the respondent No.2 whilst passing the impugned order. But, however, the fact remains that when the matter was posted for personal hearing on 23/11/2015, the petitioner through a junior Advocate sought an adjournment which was refused by the respondent No.2. Considering the ground on which the adjournment was sought and the records do not reveal that the petitioner was delaying the disposal of such proceedings, we find that the respondent No.2 could have given an opportunity to the petitioner to advance his submissions in support of his defence in his reply to the show cause notice. It is now well settled that the “hearing” would also include, giving an opportunity to the parties to advance oral submissions and, in the present case, considering that the petitioner did not waive his right to advance his oral submissions before the respondent No.2, we find that on this ground alone the impugned order passed by the respondent No.2 deserves to be quashed and set aside. But, however, considering the contention of the respondent No.4, we find that the respondent No.4 has to be compensated by costs, by the petitioner, for not

appearing on the relevant date. The costs are quantified at Rs.5,000/- to be paid by the petitioner to the respondent No.4. Validity or otherwise of the rival contentions on merits of the subject show cause notice, are left open to be examined by the Competent Authority, on its own merits, in accordance with law.

9. For the aforesaid reasons, we pass the following Order :

(I) The impugned Order dated 9th December, 2015 passed by the respondent No.2, is quashed and set aside.

(II) The Respondent No.2 shall proceed to decide the show cause notice dated 1st December, 2014 afresh, after hearing the petitioner, respondent No.4 and all other concerned parties, in accordance with law, as expeditiously as possible and preferably within three months from today, subject to payment of costs of Rs.5,000/- to the respondent No.4, as condition precedent.

(III) Rule is made absolute in the above terms.

K.L. WADANE, J.

F.M. REIS, J.

ssm.