

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 93 OF 2016

Shri Bhiru Janu Pawane,
Son of Janu Pawane,
Major of age,
r/o. H. No. 150,
Surla, Sancordem,
Taluka Dharbandora, Goa.

... Petitioners

V e r s u s

1. State of Goa,
Through Chief Secretary,
Secretariat, Porvorim, Goa.

2. The Talathi of Sancordem Saza,
Sancordem, Taluka Dharbandora, Goa.

... Respondents

Mr. A. D. Bhobe, Advocate for the Petitioner.

Mr. Pravin Faldessai, Addl. Government Advocate for the Respondents.

Coram :- **F. M. REIS,**
NUTAN D. SARDESSAI, JJ.

Date : **14th July, 2016**

ORAL JUDGMENT (Per F. M. Reis, J.)

Heard Shri A. D. Bhobe, learned Counsel appearing for the
Petitioner and Mr. Pravin Faldessai, learned Addl. Government Advocate
appearing for the Respondents.

2. Rule. Heard forthwith with the consent of the learned Counsel.

Learned Counsel appearing for the Respondents, waive service.

3. Upon hearing the learned Counsel appearing for the respective parties, the short point for consideration without going into the merits of the rival contentions is whether the Order dated 29.09.2014 passed by the learned Mamlatdar stands vitiated for breach of the principles of natural justice while exercising powers under the Goa Land Prohibition on Construction Act, 1995.

4. Shri Bhobe, learned Counsel appearing for the Petitioner has pointed out that merely on the basis of the report of the Talathi without giving an opportunity to the Petitioner to rebut such report, the impugned Order was passed by the learned Mamlatdar to demolish the subject structure. Learned Counsel further pointed out that the Petitioners have material to substantiate his contention that such structure was in existence before the coming into force of the said Act. Learned Counsel further pointed out that as no prior hearing was given to the Petitioner, the impugned Order stands vitiated and deserves to be quashed and set aside.

5. Learned Addl. Government Advocate appearing for the Respondents pointed out that according to the Respondents, the subject structure was put up after the coming into force of the said Act. Learned Addl. Government Advocate further pointed out that it was incumbent upon

the Petitioner to produce all material if they so possessed before the concerned Mamlatdar to substantiate their contention. Learned Addl. Government Advocate further pointed out that the failure to do so would not by itself vitiate the impugned Order.

6. We have considered the submissions of the learned Counsel and we have also gone through the records. It is not disputed that no opportunity of a hearing was given to the Petitioner before the impugned Order was passed. No doubt, the Petitioner had not produced all the material before the learned Mamlatdar but, however, in the peculiar facts and circumstances of the case, we find it appropriate to give an opportunity to the Petitioner to produce all the materials before the learned Mamlatdar with regard to the subject structure. The learned Mamlatdar shall thereafter, upon hearing the Petitioner, take a fresh decision in accordance with law.

7. In view of the above, we pass the following :

ORDER

1. The impugned Order dated 29.09.2014 is quashed and set aside.

2. The learned Mamlatdar is accordingly directed to pass a fresh decision in the light of the observations made herein in accordance with law.

3. All contentions of the parties are left open.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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