

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS. 128 AND 129 OF 2016

WRIT PETITION NO. 128 OF 2016

Shri Naresh Ramani,
major in age, married
residing at Confrarias Building,
Rua Jose Falcao, Panaji, Goa.

..... Petitioner

V e r s u s

1. Village Panchayat of Curca
Through the Sarpanch/Secretary of
Village panchayat at Curca,
Curca, Tiswafi, Goa.
2. Confraria Do SSMO Sacramento
EN. Sra Do Rosario Da Igreja De
Curca alias confraria of Church of Curca
alias Confraria of Satissimo of Curca,
represented by its Attorney, Mr. Vincent
rosario, r/o of Curca, Goa.

..... Respondents

A N D

WRIT PETITION NO. 129 OF 2016

Shri Rajan Ramani,
major in age, married, r/o
F-3, Madhuban Complex, Tambdi,
Mati, St. Inez, P. O. Caranzalem, Goa.

..... Petitioner

V e r s u s

1. Village Panchayat of Curca
Through the Sarpanch/Secretary of
Village panchayat at Curca,
Curca, Tiswafi, Goa.
2. Confraria Do SSMO Sacramento
EN. Sra Do Rosario Da Igreja De
Curca alias confraria of Church of Curca
alias Confraria of Satissimo of Curca,
represented by its Attorney, Mr. Vincent

Rosario, r/o of Curca, Goa.

..... Respondents

Mr. A. R. Kantak and Ms. Rajas Kantak, Advocates for the Petitioners.

Mr. Marwyn D' Souza and Mr. Matlock D' Souza, Advocates for the Respondent no. 1.

Mr. A. D. Bhobe and Ms. S. Bhobe, Advocates for the Respondent no. 2.

Coram :- F. M. REIS, J

Date : 22nd November, 2016

ORAL JUDGMENT

Heard Shri A. R. Kantak, learned Counsel appearing for the Petitioners, Mr. Marwyn D' Souza, learned Counsel appearing for the Respondent no. 1 and Mr. A. D. Bhobe, learned Counsel appearing for the Respondent no. 2.

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

3. Both the Petitions are taken up together as it was accepted by all the learned counsel that the issues involved in both the Petitions are similar and they challenge similar Orders passed by the learned District Judge whilst disposing of the Reference preferred by the Respondents herein.

4. The Petitions takes exception to the manner in which the revisions preferred by the Respondents came to be disposed of by the learned District Judge whereby in view of a show cause notice issued by the Town and Country Planning

Authority during the pendency of the revision, the learned Judge allowed the revision preferred by the Respondents without considering the matter on merits nor the correctness of otherwise of the Orders impugned in such proceedings.

5. Mr. A. R. Kantak, learned Counsel appearing for the Petitioners, has pointed out that both the Petitioners are brothers and in each of their respective properties, each of the Petitioners desire to put up a residential bungalow in two different portions of such two properties. The learned Counsel further pointed out that the Petitioners filed an application for permission to carry out the development before the local Panchayat and the Respondent no. 1 forwarded them to the Town and Country Planning Authority for Technical Approval. After examining all the aspects, somewhere in March 2012, the Technical Approvals were granted by the Planning Authority. It is further pointed out that despite of such Technical Approvals, the Respondent no. 1 on irrelevant considerations essentially on account of a complaint lodged by the Respondent no. 2 on an alleged contention that a ten metre wide road is not found at the site, the permission was withheld. It is further pointed out that ultimately, the proceedings cannot be challenged before the Additional Director of Panchayat who allowed the Appeal and directed the Respondent no. 1 to grant the relevant permission to the Petitioners based on the Technical Approval issued by the Planning Authorities. The said Orders passed by the Addl. Director came to be challenged by the Respondents before the Revisional Court. The learned Addl. District Judge by the impugned Order dated 23.12.2015, disposed of the Revision Petitions setting aside the Orders passed by the Addl. Director. The learned Counsel further pointed out that on perusal of the show cause notice though such notice is being defended by the Petitioners, in any event,

this aspect is irrelevant for the purpose of deciding the matter in controversy before the Revisional Court. Learned Counsel further submits that the Revisional Court has to test the legality and propriety of the Orders impugned before it and cannot be swayed by irrelevant considerations of a show cause notice issued thereafter to set aside an Order under challenge. Learned Counsel further pointed out that in case the Technical Approval is revoked for any reason, the consequences will automatically follow, but, this by itself, does not suggest that the Revisional Court can take cognizance of a show cause notice which has not even attained finality to set aside an Order passed by the Addl. Director. Learned Counsel has thereafter taken me through the impugned Order to point out that the objections raised by Respondent no. 1 in refusing to grant the permission are totally baseless and being influenced by complaints lodged against the development being carried out by the Petitioners. Learned Counsel further pointed out that all the permissions which have been granted by the statutory authorities are very much in place and, as such, according to him, there is no reason for the Respondent no. 1 to withhold the permission for development to the Petitioners. Learned Counsel further pointed out that the act by the Respondent no. 1 is contrary to law and cannot be sustained and, as such, the Respondent no. 1 should be directed to grant permission in terms of the Order passed by the Addl. Director of Panchayat. Learned Counsel as such submits that the impugned Order passed by the Revisional Court be set aside and the Respondent no. 1 be directed to grant permission to the Petitioners based on the Technical Approvals. It is further pointed out that in the meanwhile, the Planning Authorities has also renewed the Technical Approvals which, according to him, itself suggests that there is no infirmity in the Technical Approvals granted to the Petitioners.

6. On the other hand, Mr. D' Souza, learned Counsel appearing for the Respondent no. 1, has pointed out that there were breaches committed by the Petitioners which dis-entitles the Petitioners from getting the permission from the local Panchayat under the Panchayat Raj Act. Learned Counsel initially pointed out that the subject development was in the conservation zone and, as such, there could be no development permission granted unless the permission from the conservatory authorities is obtained by the Petitioners. It was also pointed out that whilst issuing notice dated 15.09.2015, the Respondent no. 1 was directed to keep the development permission in abeyance. Learned Counsel further pointed out that the subject property itself is hilly and, as such, according to him, the authorities have failed to consider that no such development can take place in a hilly area. It is further pointed out that permission has been granted based on the Regional Plan 2021 which is erroneous in terms of law. Learned Counsel further submits that the access road shown in the development permission granted by the Town and Country Planning Authority is not found at the site and, as such, according to him, the question of granting permission to the Petitioners would not at all be justified. It is further submitted by the learned Counsel appearing for the Respondent no. 1 that there is an ancient Church of the Respondent no. 2 very close to the subject proposed development and a crematorium and cemetery very close to such land and, as such, no such development can be permitted by the Planning Authority. Learned Counsel as such pointed out that the learned Judge was justified to keep the Technical Approvals in abeyance based on the said show cause notice issued by the Planning Authority.

7. Mr. A. D. Bhole, learned Counsel appearing for the Respondent no. 2, has also filed a revision before the learned District Judge which also came to be disposed of on the basis of the impugned Order and in fact all the contentions raised by the Respondent no. 2 have not at all been examined by the learned Judge whilst passing the impugned Order. Learned Counsel further submits that it is the contention of the Respondent no. 2 that the proposed residential house would affect the Church building located in the vicinity of the subject proposed development. Learned Counsel further submits that the Church is located at a higher level whereas the development is at a lower level and, as such, according to him, there is an apprehension that the Church structure itself may be affected. Learned Counsel as such pointed out that the Petition be rejected.

8. I have duly considered the submissions of the learned Counsel and I have also gone through the records. As far as the contention that the subject proposed development is located in the Conservation Zone, learned Counsel appearing for the Respondent no. 1, after perusing the provisions of the The Goa (Regulation of Land Development and Building Construction) Act, 2008 and The Goa Land Development & Building Construction Regulations Act, 2010, has fairly accepted that the subject premises of the Church-Respondent no. 2 herein, is found in Schedule 'C' at clause 6.2B. It is also accepted that as such there is no restriction imposed under the said provisions for any buffer zone to be maintained as, admittedly, such Church building does not come within either Schedule 1 or Schedule 2 of clause 6.2B.

9. As far as the remaining contentions raised by the Respondent no. 1, I

find that though Mr. Kantak has submitted that all such contentions are misplaced and have no basis in law, nevertheless, this Court while exercising jurisdiction under Article 227 of the Constitution of India, would not be justified to examine the rival contentions on merits on such aspects. But, however, it is to be emphasised that when the propriety or legality of an Order is under challenge, the Revisional Court has to consider the correctness or otherwise of such Order. The effect of any subsequent events which may have a bearing in the ultimate development, is a matter which would flow from a final decision which may be taken by the authorities based on the show cause notice. It is not open to the Revisional Court in such circumstances to keep a development in abeyance merely because a show cause notice has been issued. The effect or the outcome of such show cause notice will naturally flow as such Order would be subject to the Technical Approvals already granted by the Town and Country Planning Authorities. In such circumstances, not examining all the contentions raised either by the Petitioners or the Respondents in their Revision Petition has in fact vitiated the impugned Orders passed as the Revisional Court as the Court has failed to exercise jurisdiction vested in law whilst deciding such revision application. As the Revisional Court has failed to exercise jurisdiction in terms of law, this Court is bound to interfere under Article 227 of the Constitution of India to bring the authorities below within the bounds of its jurisdiction.

10. In such circumstances, I find that the learned Judge was not justified to set aside the Orders of the Addl. Director merely because a show cause notice was issued. As pointed out herein above, the effect of the show cause notice will naturally affect the Technical Approvals which have already been granted. But, the

Revisional Authorities cannot pre-judge the matter and keep the development in abeyance unless such Order itself suggested that the Technical Approvals were kept in abeyance. Learned Counsel appearing for the Respondent no. 1 who initially had pointed out that the show cause notice issued to the Respondent no. 1 would affect the Technical Approvals, was unable to point out anything to that effect in the show cause notice. As such, I find that the impugned Orders passed by the Revisional Court deserves to be quashed and set aside and the learned District Judge be directed to decide all the Revisions preferred by the Respondents afresh in the light of the observations made herein above and after hearing the Petitioners in accordance with law.

11. Mr. Kantak, learned Counsel appearing for the Petitioners, has pointed out that in the meanwhile the Petitioners have obtained the renewal of the Technical Approvals as well as a stability certificate of the subject construction from the concerned authority. Liberty to the Petitioners to produce such permissions before the Revisional Court.

12. In view of the above, I pass the following :

ORDER

(i) All the impugned Orders dated 23.12.2015 passed in the Civil Revision Applications are quashed and set aside.

Corrections
Carried out as
Per Order dated
30.01.17 passed
In MCA 80 of
2017

(ii) The Civil Revision Application nos. 50 of 2015, 54 of 2015, 51 of 2015, 56 of 2015, 58 of 2015 and 57 of 2015 are restored to the file of

the learned District Judge to be decided afresh after hearing the parties in accordance with law preferably within three months from the date of receipt of this Order.

(iii) The parties are directed to appear before the learned District Judge on 16.01.2017 at 10.00 a.m.

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

F .M. REIS, J.

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