

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 152/2016**

CEDRIC BOSCO SAVIO LOBO.
PANAJI, GOA. PETITIONER.

V e r s u s

THE SARPANCH/SECRETARY
VILLAGE PANCHAYAT OF
CALANGUTE AND OTHERS. RESPONDENTS.

The petitioner in person.

Shri P. A. Kamat, Advocate for the respondent No.1.

Shri Sarvesh Kalangutkar and Shri Ravish Chodankar, Advocates
for the respondent No.2.

Ms. Poorna Bhandari, Additional Govt. Advocate for the
respondents No.3.

None for the respondent No.4, though served.

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

Date : - 8 June 2016.

ORAL ORDER : (Per F.M. REIS, J.)

Heard the petitioner in person, Shri P. A. Kamat,
learned Counsel appearing for the respondent No.1, Shri Sarvesh
Kalangutkar, learned Counsel appearing for the respondent No.2

and Ms. Poorna Bhandari, learned Additional Govt. Advocate appearing for the respondents No.3. None for the respondent No.4, though served.

2. The above petition, *inter alia*, takes exception to the order passed by the North Goa Planning and Development Authority – respondent No.4 whereby the illegal development activity being carried out by the respondent No.2 came to be regularised. The petitioner, in person, has pointed out that he is a power of attorney-holder of the co-owners of the subject-property and that a suit has been filed before the learned Civil Judge, Sr. Division, at Mapusa in connection with the rights of such co-owners in respect of the subject-property. It is further submitted that such suit is still pending for decision before the concerned Court. The petitioner has also pointed out that as the respondent No.2 has carried out the construction in the subject property, without obtaining requisite permission from the Village Panchayat, a complaint was lodged by the petitioner to take necessary action with that regard. As no action was being taken, the petitioner approached the learned Deputy Collector to take necessary action in connection with the alleged illegal activity being carried out by the respondent No.2. The learned Deputy Collector, in fact, directed

demolition of such structure of the respondent No.2. The respondent No.2, thereafter, preferred an appeal before the Director of Panchayats, which came to be allowed by an order dated 29/02/2016. The petitioner in person has also pointed out that challenge to such order is pending before the learned District Judge, North Goa, Panaji. It is further submitted that the appeal has been allowed essentially on the ground that in the meanwhile, the North Goa Planning and Development Authority – respondent No.4 herein granted permission in terms of Section 44 of the Town and Country Planning Act, 1974 (“Act” for short). It is further submitted that there is no power for regularisation as, admittedly, the subject construction was illegal and, as such, the permission of the Planning Authority in terms of Section 44 of the said Act is without jurisdiction. The petitioner in person has further submitted that there is no power in the said Act to grant any post facto permission in terms of Section 44 of the said Act as the construction put up by the respondent No.2 is without obtaining necessary sanctions of the Authorities and, as such, the construction deserves to be demolished. It is further submitted that it has been held by this Court that only minor deviations can be regularised and, as such, according to him, there is no power either with the Local Panchayat or with the Planning Authorities to grant any regularisation

or any permission to the respondent No.2 and, as such, the decision of the Planning Authority in terms of Section 44 of the said Act itself to be quashed and set aside. The Petitioner further points out that moreover, no Conversion Sanad has been obtained by the respondent No.2 with regard to the subject-property. In support of his submissions, the petitioner in person has relied upon a decision of the learned Single Judge of this Court reported in **2000 (4) Bom CR 517**, in the case of ***Serrao Francis Socorro vs. Town and Country Planning Board*** and a Judgment of the Apex Court in Civil Appeal No.7934 of 2012 in the case of ***Esha Ekta Apartments Co-operative Housing Society Limited and others vs. Municipal Corporation of Mumbai and ors.***, dated 27/02/2013. It is further pointed out that as such, the subject regularisation be quashed and set aside and the construction put up by the respondent No.2 be ordered to be demolished.

3. On the other hand, Mr. Kalangutkar, learned Counsel appearing for the respondent No.2 has submitted that the respondent No.2 has carried out only repairs or reconstruction of the existing structure and in fact, when the show cause notice was received by the respondent No.2 from the local Village Panchayat, the respondent No.2 took steps for obtaining permission in terms of Section 44 of the

said Act. It is further pointed out that the Planning Authority has examined such application and granted the permission in terms of Section 44 of the said Act. The learned Counsel has also challenged the locus of the petitioner as, according to him, the petitioner has been filing successive proceedings in the Civil Court, as well as before various Authorities on untenable and frivolous grounds. It is further pointed out that the property where the subject construction is put up is a private property of the respondent No.2 which he has purchased and the petitioner has no ground at all to challenge the disputed structure.

4. Shri P.A. Kamat, learned Counsel appearing for the respondent No.1-Panchayat has submitted that the subject development falls within the planning area and, as such, according to him, in terms of Section 52(2)(a) of the said Act, there is power to permit the holder of the land for retention of such construction, provided permission is obtained in terms of Section 44 of the said Act. It is further submitted that accordingly, based on such permission, the local Panchayat-respondent No.1 has granted the construction licence under the Goa Panchayat Raj Act to the respondent No.2. The learned Counsel further submits that in case the petitioner is aggrieved by the said order, he has

an alternate remedy to challenge the same under the Goa Panchayat Raj Act and, as such, the question of interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India would not arise at all. The learned Counsel as such, points out that the petition be rejected.

5. We have considered the rival contentions and we have also gone through the record. The admitted position is that the petitioner has a Civil Suit pending before the learned Civil Judge, Sr. Division at Mapusa in connection with the subject property wherein the petitioner, as a power of attorney-holder, has initiated proceedings on the premise that his principals are the co-owners of the subject property. It is also undisputed that the complaint lodged by the petitioner as a power of attorney-holder of such co-owners did not meet any success as the learned Director of Panchayats has set aside the order of demolition issued by the Deputy Director. It is also not disputed that the petitioner's challenge to such orders is pending before the learned District Judge under the Goa Panchayat Raj Act. During the course of the hearing of the above petition when the petitioner was asked whether the construction put up by the respondent No.2 meets all other statutory requirements with regard to maintenance of set

backs, FAR, etc., the petitioner has fairly accepted that there is no infraction with that regard in respect of the subject construction put up by the respondent No.2. In such circumstances, when admittedly the proceedings are pending before a competent Civil Court in respect of substantive rights claimed by the petitioner as power of attorney-holder of the principals and as the challenge to the subject construction licence is pending before the learned District Judge, we find that there is no ground at all to exercise our extraordinary jurisdiction under Article 226 of the Constitution of India at the instance of such a petitioner. On this ground alone the petition deserves to be rejected.

6. With regard to the contention of the petitioner in person that there is no power for regularisation in terms of the provisions of the Town and Country Planning Act, 1974, as rightly pointed out by Mr. P.A. Kamat, learned Counsel appearing for the respondent No.1 Panchayat, Section 52(2)(a) of the said Act clearly provides that the occupier of the land can be permitted to retain such construction provided he meets the requirement of Section 44 of the said Act. As admitted by the petitioner himself, the permission under Section 44 of the said Act has already been issued by the Town Planning Authority and in case the petitioner is aggrieved with the construction

licence/regularisation permission issued by the respondent No.1-Village Panchayat, the petitioner has an alternate remedy, if so advised, to challenge such permissions before the Competent Authority in terms of the Act.

7. Apart from that it has been pointed out by the learned Counsel appearing for the respondent No.2 that the respondent No.2 has only repaired or reconstructed the existing structure. The petitioner in person has seriously disputed this aspect and pointed out that the construction itself is illegal. These disputed questions of facts cannot be examined by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution.

8. With regard to the contention of the petitioner that no Conversion Sanad has been obtained by the respondent No.2, the learned Counsel appearing for the said respondent submits that in case it is so required, the respondent No.2 shall take necessary steps to obtain the Conversion Sanad. Accepting the said statement of the learned Counsel appearing for the respondent No.2, the grievance of the petitioner on that count would no longer survive.

9. Taking note of the view that we have already taken, the Judgment of the learned Single Judge of this Court in the case of *Serrao Francis Socorro vs. Town and Country Planning Board (supra)* and the Judgment of the Apex Court in the case of *Esha Ekta Apartments Co-operative Housing Society Limited and others vs. Municipal Corporation of Mumbai and ors.* (supra), relied upon by the petitioner in person are not applicable to the facts of the present case.

10. In view of the above, the petition stands rejected.

NUTAN D. SARDESSAI, J.
ssm.

F.M. REIS, J.