

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 221 OF 2016

Mr. Bosco D'Souza,
49 years of age,
son of Mr. Honorato D'Souza,
resident of H.No.75C, Xell,
Bastora, Bardez Goa.

.... Petitioner

V e r s u s

1. State of Goa,
Through its Chief Secretary,
having office at Secretariat,
Alto Porvorim, Bardez Goa.
2. The Assistant Engineer (Elect.),
S/D-III(R),
Electricity Department,
Old Office Building,
Mapusa, Bardez Goa.
3. The Junior Engineer,
Electricity Department,
Aldona, Bardez Goa.
4. The Health Officer,
Primary Health Centre,
Aldona, Bardez Goa.
5. Mrs. Florinda Dorothy D'Souza,
Resident of House No.75/C,
Xell, Bastora, Bardez Goa.

.... Respondents

Mr. Ashwin D. Bhobe, Advocate for the petitioner.

Mr. V. Rodrigues, Government Advocate for the respondent nos. 1 to 4.

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

Date :- 1st March, 2016

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

Heard Mr. A. D. Bhobe, learned counsel appearing for the petitioner and Mr. V. Rodrigues, learned Government Advocate appearing for the respondent nos. 1 to 4.

2. At the outset, at the request of Mr. Bhobe, learned counsel appearing for the petitioner, the respondent no.5 stands deleted at the risk of the petitioner. Amendment to be carried out forthwith.

3. Rule. Heard forthwith with the consent of the learned counsel.

4. Mr. V. Rodrigues, learned Government Advocate waives service on behalf of the respondent nos. 1 to 4.

5. The above petition inter-alia takes exception to the non implementation of the order dated 18.01.2016 whereby the electric connection released to the petitioner in terms of Section 94A of the Public Health Act was not complied with.

6. We have heard the learned counsel appearing for the respective parties and during the course of the hearing Mr. V. Rodrigues, learned Government Advocate appearing for the

respondent nos. 1 to 4 has pointed out that though the said order was passed by the Health Officer, nevertheless, the order was thereafter directed to be kept in abeyance in view of the second proviso to Section 94A(1) of the Public Health Act. The subsequent order dated 15.02.2016 produced by the learned Government Advocate is taken on record and marked 'X' for identification. The learned Government Advocate further pointed out that according to the Health Officer when he visited the subject premises on 12.02.2016, he found that the pig fed toilet was used in the vicinity and according to him the said proviso stipulate that the Health Officer has to be satisfied with the sanitary aspect before releasing such essential services. Mr. Bhobe, learned counsel appearing for the petitioner however, disputes the said contention and submits that in any event, the sanitary aspect would not come in the way of the release of electric supply which has nothing to do with such aspect.

7. On perusal of Section 94A(1) of the Public Health Act, we find that the said provisions deal with different essential services including electricity and water supplies. The proviso relied upon by the learned Government Advocate appearing for the respondent nos. 1 to 4 would have to be read in the context of the specific essential services provided therein. The sanitary aspect would have to be examined when the essential services is for release of water supply whereas the safety aspect would be examined in the context of

release of the electricity supply to the concerned premises. In the present case, it is not disputed that the essential services sought by the petitioner are for the release of electricity supply and as such, the question of examining the sanitary aspect by the Health Officer is not at all justified. As such, we find that the order dated 15.02.2016 passed by the Health Officer keeping the order dated 18.01.2016 in abeyance to examine the sanitary aspect cannot be sustained and deserves to be quashed and set aside.

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

O R D E R

- (i) The order dated 15.02.2016 marked 'X' for identification stands quashed and set aside. Consequently, the respondents shall proceed to implement the impugned order dated 18.01.2016 within a period of 10 days in accordance with law.
- (ii) The Rule is made absolute in the above terms.
- (iii) The petition stands disposed of accordingly.

K. L. WADANE, J

F. M. REIS, J

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