

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 246 OF 2016**

Smt. Sharfunissa Kazi,
w/o Mr. Kazi Raziuddin Ali,
major in age, married, housewife,
r/o Flat No.5, 1st Floor,
Sameera Plaza, Upper Bazaar,
Ponda Goa.
Represented by Constituted Attorney,
Parvez Actar Kazi. Petitioner

V e r s u s

1. Shri Megharam K. Bhati,
major in age, businessman,
r/o Kaziwada,
Ponda Goa.
2. Shri Kazi Mohammad Patchamia,
alias Patchamia Kazi,
major in age,
r/o Kaziwada,
Ponda Goa.
3. The Chief Officer,
Ponda Municipal Council,
Ponda Goa. Respondents

Mr. J. Abreu Lobo, Advocate for the petitioner.

Mr. U. R. Timble, Advocate for the respondent no.1.

Mr. Gaurish Agni, Advocate for the respondent no.2.

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

Date:- 20th September, 2016

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

Heard Mr. J. A. Lobo, learned counsel appearing for the petitioner, Mr. U. R. Timble, learned counsel appearing for the respondent no.1 and Mr. G. Agni, learned counsel appearing for the respondent no.2.

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

3. The learned counsel appearing for the respective respondents waive service.

4. The challenge in the above petition is to the disposal of the complaint lodged by the petitioner alleging that an illegal extension has been carried out by the respondent no.1 to the leased premises.

5. Mr. Lobo, learned counsel appearing for the petitioner has pointed out that the respondent no.3 has disposed of such complaint without following the directions issued by this Court in the judgment

dated 28.07.2003 passed in Writ Petition No.430 of 2002. It is further pointed out that though the extent of examining any complaint of any illegal extension contrary to the Statutory Regulations are clearly specified and the respondent no.3 refused to examine the complaint on the ground that there is a dispute between the petitioner and the respondent no.1 in respect of the subject premises and that there is collusion between the petitioner and the respondent no.2 in filing such complaint. It is further pointed out that the respondent no.3 has not even held a site inspection and as such, consideration by the respondent no.3 while passing the impugned order dated 26.05.2015 stands vitiated. The learned counsel as such points out that the respondent no.3 should be directed to examine the complaint afresh by following the directions issued by this Court.

6. On the other hand, Mr. Timble, learned counsel appearing for the respondent no.1 has submitted that the subject structure is in existence prior to the lease agreement and that since the year 1999 the respondent no.1 has a licence to carry out business activities therein. It is further pointed out that there were two cross complaints lodged by the petitioner and the respondent no.2 raising contrary allegations

which forced the respondent no.3 to take a decision in rejecting the complaint as the civil dispute is pending between the parties. It is further pointed out that the complaint itself has no substance and as such there is no reason for interference in the impugned order.

7. Mr. G. Agni, learned counsel appearing for the respondent no.2 however points out that the respondent no.3 has disposed of the complaint after holding a site inspection as according to him there was a dispute with regard to the existence or otherwise of the subject structure. It is further submitted that there is no material produced by the petitioner to substantiate the extent of the alleged extension and as such according to him, it would be very difficult for the respondent no.3 to take a decision on the complaint lodged by the petitioner. It is further submitted that as there was no material produced by the petitioner to substantiate the allegations, the respondent no.3 was justified to pass the impugned order.

8. We have examined the rival contentions and we have also gone through the records. Without going into the merits of the allegations made by the petitioner, one aspect which undisputably

reveals from the impugned order is that the respondent no.3 has disposed of the complaint lodged by the petitioner only on the ground that there is a dispute between the petitioner and the respondent no.1 in respect of the subject structure. Such dispute, if any, is a matter which would have to be agitated by the parties in an appropriate forum. The respondent no.3 would have to only consider whether there was any extension as alleged by the petitioner which require permission under the Statutory Regulations. Having failed to examine this crucial aspect would itself vitiate the order passed by the respondent no.3 on the complaint lodged by the petitioner. The respondent no.3 also would have to examine the directions issued by this Court in the judgment dated 28.07.2003 passed in Writ Petition No. 430 of 2002 whilst taking a decision on such complaint. In such circumstances, without going into the merits of the rival contention raised by the petitioner and the respondent no.1 with regard to the subject structure, we find it appropriate to quash and set aside the impugned order dated 26.05.2015 passed by the respondent no.3 and direct the respondent no.3 to examine the complaint lodged by the petitioner on its own merits in accordance with law. As such, we pass the following :

ORDER

- (i) The impugned order dated 26.05.2015 is quashed and set aside.
- (ii) The respondent no.3 is directed to take a fresh decision on the complaint dated 18.12.2013 filed by the petitioner on its own merits in the light of the observations made herein above and in accordance with law after issuing fresh notice to the concerned parties.
- (iii) Rule is made absolute in the above terms.
- (iv) The petition stands disposed of accordingly.

NUTAN D. SARDESSAI, J.**F. M. REIS, J.****at***