

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 259 OF 2016

M/S. MODELS REAL ESTATE
DEVELOPERS, THR ITS PARTNER MR.
PETER VAZ.

... Petitioner

Versus

THE DEPUTY COMMISSIONER,
CORPORATION OF THE CITY OF PANAJI
AND 22 ORS.,

... Respondents

Adv. Devidas J. Pangam for the Petitioner.

Adv. A. D. Bhobe for Respondent no.1.

Adv. J. A. Lobo for Original petitioners/respondents no.2,3, & 10.

Adv. A. D'Silva for Respondent no.23.

Adv. V. Kamat for Respondents no.4,5,6,7,8,9,15,16,21.

Coram:- S. B. SHUKRE, J.

Date:- 1st March, 2016

Oral Order:

Heard learned counsel for the petitioner, learned counsel for respondent no.1, learned counsel for the remaining respective respondents.

2. Perused the paper book of this writ petition with the assistance of the learned counsel for the respective parties, including the impugned order.

3. It is seen that the impugned order does not take into consideration the fact that the report submitted by the PWD Engineer

is based upon inspection of the disputed site taken in the absence of the affected parties, i.e. respondents no.2 to 23. Such a report, therefore, would have the tendency to deprive the affected parties of their valuable right to effectively present their case during the course of inquiry being conducted by respondent no.1. Such a report, therefore, ought not to have been taken on record and if taken on record ought not to have been considered for any purpose of the inquiry. Therefore, this report, which has been obtained in pursuance of the order passed on 17/11/2015 would have to be quashed and set aside and consequently if the order dated 28/1/2016 which has been impugned in this case would be required to be interfered with. At the same time, I find that for an objective inquiry in this case, a fresh report from the PWD Engineer would have to be directed to be produced on record. Accordingly, the PWD report dated 5/12/2015 and the impugned order dated 28/1/2016 are quashed and set aside. It is directed that a fresh report from the PWD Engineer be called, which report shall be submitted after inspecting the disputed site in the presence of all affected parties or at least giving reasonable notice of the inspection to these parties. It is further directed that this report as well as the other reports forming part of the inquiry and relied upon by the affected parties would be considered in accordance with law. The affected parties shall have the right to raise objections with regard to the validity of all or any of these reports and if such objections are taken, the same shall be considered in accordance with law. Besides all the contentions of the parties on factual as well as

legal issues are kept open and shall be decided on their own merits by respondent no.1.

4. The petitioner and the other affected respondents, i.e., respondents no.2 to 23 agree that the inspection be taken by the PWD Engineer on 3/3/2016 at 11a.m. and these parties undertake to remain present during such an inspection, if taken on that date at 11.a.m. Respondent no.1 shall intimate the PWD Engineer of the date and time of the inspection fixed by this Court as agreed to by all the parties. Additionally, the petitioner as well as the other respondents shall also make similar communication to the PWD Engineer.

5. Writ petition is disposed of in these terms.

S. B. SHUKRE, J.

ap/-