

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.491 OF 2016

1. Domnic Almeida

2. Mrs. Synthia Almeida
D'Souza @ Mrs. Christillia
Almeida,

Both major of age, Indian
Nationals, r/o H.No.172, G(1)/2
Alto Duler, Mapusa, Goa ... Petitioners

Versus

1. State of Goa
through its Chief Secretary,
having office at Secretariat,
Porvorim, Goa.

2. Goa Coastal Zone Management
Authority through its
Chairman, having office at
3rd Floor, Dempo Towers,
Patto Plaza, Panaji, Goa.

3. Collector & District Magistrate
(North),
having office at Collectorate
Building, Panaji, Goa.

4. Dy. Collector & S.D.O. Of
Bardez,
Having office at Mapusa, Bardez,
Goa.

5. Village Panchayat of Anjuna
through its Secretary,
having office at Panchayat Ghar,
Anjuna, Bardez, Goa.

6. Shri Surendra S. Govekar,
aged 45 years, Indian National,
resident of House No.678/5,
Socratto Waddo, Anjuna,

Bardez-Goa.

.. Respondents

Mr. Nitin Sardessai, Senior Advocate with Mr. D. Shirodkar and Mr. K. Kerkar, Advocates for the petitioners.

Ms. P. Bhandari, Additional Government Advocate for the respondent nos.1, 2, 3 and 4.

Mr. A. D. Bhobe, Advocate for the respondent no.5.

Mr. D. J. Pangam, Advocate for the intervenor/ respondent no.6.

CORAM :- C. V. BHADANG, J.

Reserved on : 26th April, 2016.

Pronounced on : 4th May, 2016.

JUDGMENT :

Rule. Rule made returnable forthwith. The learned Counsel for the respective respondents waive service. Heard finally by consent of the parties.

2. By this petition, the petitioners are challenging the order dated 01/03/2016 passed by the second respondent- Goa Coastal Zone Management Authority (GCZMA), by which the second respondent in exercise of the powers under Section 5 of the Environmental Protection Act, 1986 (the Act, for short) read with rule 4 of the Environmental Protection Rules, 1986 (the Rules, for short) has directed demolition of 'Sea Valley Restaurant', which is a ground plus one structure along

with shops, retaining wall on nullah, situated in property bearing Survey No.212/11 of village Anjuna, Bardez, Goa and to restore the land to its original condition.

3. The said structure was originally constructed by Peter Almeida, the father-in-law of the second petitioner somewhere in the year 1977. He started a Bar and Restaurant therein somewhere in the year 1986 after realising tourism potential in the area. After the death of Peter Almeida, the petitioners are running the said business. In short, it is contended that the petitioners are conducting the said business in the existing structure since almost three decades, after obtaining necessary permissions/renewals from the concerned statutory authorities.

4. It is contended that one Mrs. Suhasini Govekar, who is the Ex-Sarpanch of Anjuna village and her husband Surendra Govekar are on cross terms with the petitioners. It is contended that Surendra Govekar lodged a frivolous complaint against the petitioners

with the second respondent, alleging construction of the Bar and Restaurant, in breach of the Coastal Zone Regulation Notification (CRZ Notification). Acting on the complaint, the second respondent issued a show cause notice-cum-stop work order dated 06/08/2015, to which the petitioners filed a preliminary reply on 21/08/2015 claiming that the said structure was an old existing structure, since prior to 1991 when the CRZ Notification came into force. It was contended that there was no site inspection held or sketch drawn identifying the structure, which is alleged to be illegal. The second petitioner produced a copy of NOC dated 15/07/1986 issued by Village Panchayat, Anjuna to repair the existing structure, in a portion of the said property. The second petitioner also produced a copy of Form No.I and XIV showing the name of father-in-law of the second petitioner, in the occupant's column along with Government of Goa.

5. The petitioners were, thereafter, served with a copy of notice of personal hearing dated 11/01/2016 intimating that the personal hearing was fixed on 18/01/2016 at 2.30 p.m. On behalf of the petitioners,

Advocate K. Kerkar appeared and sought time to file a detailed reply along with supporting documents, whereupon a short time of four days was granted to file reply, on or before 22/01/2006 and the counter reply, to be filed latest by 27/01/2016. It is contended that although an attempt was made to ascertain the date no fixed date was given and it was stated that no further hearing would be held and the second respondent would be passing appropriate orders. As noticed earlier, a "preliminary reply" was filed by the petitioners on 22/01/2016 claiming that the site inspection was allegedly conducted in the absence of the petitioners. It is contended that the property was totally admeasuring 4125 square metres while the land acquired by the Government was 3900 square metres only and existing structure in question was situated in a portion which was never acquired. An inspection held by Talathi was also pointed out, in which the Talathi had mentioned that the structure was an existing structure.

6. It is contended that though Advocate for the petitioners visited the office of the second respondent to enquire about the next date of hearing, it was not

communicated. On 04/03/2016, the petitioners were served with a copy of the impugned order dated 01/03/2016, which according to the petitioners, is in gross violation of principles of natural justice. In the said order, the second respondent has also directed disconnection of the power and water supply. It is contended that during the hearing on 18/01/2016, the documents relied upon by the sixth respondent (original complainant) including Google Images of the year, 2003 and survey plan were not supplied to the petitioners.

7. The contention raised in this petition is that the impugned order apart from being passed in breach of principles of natural justice, is also arbitrary as the same is passed without considering certain vital contentions raised and documents produced by the petitioners along with the reply. The impugned order records certain aspects, which are incorrect and the same violates fundamental rights of the petitioners under Article 14, 19(1)(g) and Article 21 of the Constitution of India.

8. The sixth respondent, who is the original complainant had sought impleadment, which was allowed.

9. I have heard the learned Senior Counsel for the petitioners, learned Additional Government Advocate for first to fourth respondent as well as the learned Counsel appearing for the fifth respondent. I have also heard the learned Counsel appearing for the sixth respondent. Sixth respondent has produced a compilation of documents, which were produced before the second respondent.

10. It is submitted by the learned Senior Counsel for the petitioners that the petitioners had only filed a preliminary reply on 22/01/2016, *inter alia* pointing out that the documents were not served on the petitioners. It is submitted that thus, opportunity of hearing granted on 18/01/2016 cannot be said to be sufficient. The learned Senior Counsel also pointed out certain observations as set out in paragraph 14 of the petition, which according to the petitioners, are incorrect and "complete distortion" of fact. It is

submitted that no hearing on merits took place on 18/01/2016. The petitioners had only requested for grant of time as complete documents were not furnished and that the petitioners required time to file a detailed reply.

11. The learned Additional Government Advocate has supported the impugned order. It is submitted that sufficient opportunity is given to the petitioners by issuing show cause notice and the petitioners have also filed a reply to the same, which has been considered.

12. The learned Counsel appearing for the sixth respondent submitted that sufficient opportunity was granted to the petitioners and no case for interference is made out. He pointed out para 11 of the minutes of the GCZMA held on 11.2.2016 to submit that sufficient opportunity was granted to the petitioners. It is submitted that the only reliance placed on behalf of the petitioners is on the NOC dated 15/07/1986. The learned Counsel has pointed out that the said NOC is shown to be signed by one A. G. Ramos as Sarpanch of the Village

Panchayat. He points out that there is no mention about NOC in the reply dated 29/06/2010 (Annexure I) to the M.C.A. No.346/2016. He has also pointed out the notification dated 17/06/1986 to show that at the relevant time, one Vathu Vassu Govekar was the Chairman while Dnyaneshwar D. Morajkar was the Vice Chairman of Village Panchayat Anjuna Kaisua. It is thus, submitted that the NOC is fabricated. The learned Counsel has pointed out that in the Survey Plan of the year 2006 (Annexure G to the impleadment application) the structure is shown as a new structure. He, therefore, submitted that no case for interference is made out.

13. I have given my anxious consideration to the rival circumstances and the submissions made.

14. The material ground raised on behalf of the petitioners is that the impugned order is passed in breach of principles of natural justice as no sufficient opportunity of hearing was granted. The contention is that the second respondent has considered the material and documents, which were not supplied to the petitioners and thus, the impugned order, which is based

on consideration of such documents, stands vitiated.

15. It is now well settled that the principles of natural justice are basic to the exercise of any such powers and jurisdiction by a Statutory Authority, particularly when the action involves serious civil consequences. The question whether principles of natural justice have been violated or not and whether sufficient opportunity of being heard is granted, would depend upon fact and circumstances of each case. In this case, undoubtedly, a show cause notice was issued which was received by the petitioners on 13/01/2016 and the date of appearance was 18/01/2016, on which date, time was sought and the matter was fixed on 22/01/2016, on which date, the petitioners filed a reply, *inter alia*, stating that he has not been furnished with a copy of Survey Plan along with other documents relied upon by the complainant and the entire set of documents was not supplied and the matter be fixed for further reply and consequent personal hearing. The Minutes of the meeting dated 11/02/2016 (125th GCZMA Meeting) show that the matter was fixed for filing counter reply of the complainant latest by 27/01/2016. It further records

that the Authority had decided that in case of non-receipt of any reply from the legal heirs of Peter Almeida within the stipulated time, the Authority shall proceed for final decision in the matter. It appears that the complainant filed a rejoinder dated 01/02/2016 along with certain documents. It is apparent that after this, no opportunity is granted to the petitioners nor copies of the rejoinder or the documents annexed thereto were supplied to them. A perusal of the impugned order shows that in all 30 documents, as annexed to the counter reply of the sixth respondent, have been considered by the second respondent, while passing the impugned order, which includes a comparison of Google Images of the year 2003 and 2015, Survey Plan, Award in Land Acquisition Proceedings, a letter dated 06/11/1981 along with opinion report dated 31/10/1981 of Mr. Damodar Naik, the record in Inventory Proceedings bearing No.83/2003/A and order dated 04/03/2004 therein, the documents and the sketch of the permissions obtained from Electricity Department, Mapusa, some proceedings of meeting of Village Panchayat of Anjuna Kaisua and others. In my considered view, if the impugned order is based on consideration of certain documents, which were

produced subsequent to the filing of the reply by the petitioners and without supplying the said documents to the petitioners, the impugned order will have to be set aside for failure to afford proper opportunity of being heard to the petitioners. There cannot be any manner of doubt that if the construction is illegal and in violation of CRZ Notification, the same has to go. However, the question is whether the construction was an existing construction prior to 1991 or is subsequent thereto? The GCZMA will have to take a decision on this aspect after supplying documents to the petitioners on which reliance is sought to be placed and after affording proper opportunity. It is true that if it is shown that on the basis of admitted and/or undisputed facts, no other conclusion can be reached or arrived at and where the affording of opportunity would be an exercise in futility, the impugned order cannot be set aside merely on the ground of breach of principles of natural justice. Here again, the question would depend upon fact and circumstances of each case and the nature and effect of the documents and/or admitted/undisputed facts. For instance, in the present case, certain proceedings of the Land Acquisition have been considered

by the Authority. In para 13 of the impugned order, the second respondent has recorded that the total area of Survey No.212/11 of Anjuna is 4125 square metres out of which the Department of Tourism has acquired an area of 3900 square metres and the balance area of 225 square metres has remained un-acquired and as such, the name of Department of Tourism and one Mr. Peter Almeida has been recorded in the occupant's column of Form No.I and XIV of village Anjuna. It further records that in order to find out whether the alleged illegal construction is carried out in the GTDC/Government Property, the office has decided to get the area demarcated from the office of ISLR, Mapusa and accordingly, an application for demarcation is filed before the Deputy Collector of Bardez. This is just to demonstrate that this case may not fall within the exception to the rule as stated above, as it cannot be said that there are admitted / undisputed facts which lead to only one conclusion, and consequently, giving an opportunity of hearing would be a futile exercise.

16. In that view of the matter, I find that the matter will have to be remanded to the GCZMA for

deciding the same afresh, in accordance with law. Hence, the following order is passed :

- (i) The petition is allowed.
- (ii) The impugned order dated 01/03/2016 is hereby set aside.
- (iii) The matter is remanded to respondent no.2, GCZMA for deciding it afresh.
- (iv) The GCZMA shall supply the copies of the documents on which reliance is sought to be placed. The documents shall be supplied to the petitioners within a period of two weeks from the receipt of this order. The parties shall complete the pleadings (by filing reply/rejoinder, if any) within two weeks thereafter.
- (v) The second respondent shall decide the matter within a period of four weeks thereafter, on hearing the parties in accordance with law.
- (vi) Rival contentions of the parties on merits are left open.
- (vii) Rule stands disposed of in the above terms, with no order as to costs.

C. V. BHADANG, J.

SMA