

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO 340 OF 2016.

Mr. Mahableshwar Halanker,
major, Businessman,
R/o Mamta Apartment,
Mundvel, Vasco-da-Gama.Petitioner.

Versus

1. State of Goa,
Through Chief Secretary,
With Office at Secretariat
Porvorim Goa.
2. Town and Country Planning
Department Dempo Tower
2nd Floor, Patto Panaji-Goa.
3. The Member Secretary,
Mormugao, Planning and
Development Authority
2nd Floor Commerce Centre
Vasco da Gama Goa.Respondents.

Ms. A. Agni, Senior Advocate with Ms. A. Kamat, Advocate for
the petitioner.

Shri P. Faldessai, Additional Government Advocate for the
respondent nos.1 and 2.

Shri J. P. Mulgaonkar, Advocate for the respondent no.3.

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

Date:5th October, 2016.

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

Heard Ms. A. Agni, learned Senior Counsel for the

petitioner, Shri J. P. Mulgaonkar, learned Advocate for the respondent no.3 and Shri P. Faldessai, learned Addl. Govt. Advocate for the respondent nos.1 and 2.

2. Rule.

3. Heard forthwith with the consent of the learned Counsel appearing for the respective parties. The learned Counsel appearing for the respective respondents waive notice.

4. The challenge in the above petition is to an order passed by the Town and Country Planning Board dated 14.7.2015 whereby the appeal preferred by the petitioner was partly allowed and the matter was remanded to the respondent no.3 to examine the application filed by the petitioner for revision of the plan afresh in terms of the Planning and Development Authority (Development Plan) Regulations, 1989 (hereinafter referred to as "Regulations, 1989" for short). The petitioner has also challenged the order passed by the respondent no.3 dated 15.10.2015 whereby the

respondent no.3 in terms of the said directions came to the conclusion that the petitioner was not entitled for the revision of the subject plan. Ms. Agni, learned Senior Counsel has assailed the impugned order essentially on the ground that way back in the year 2001 a revised plan as well as the change of user of the subject premises was in fact permitted by the respondent no.3 as reflected in the minutes book produced on record. It is further pointed out that though originally the permission was in respect of the building erected by the petitioner in the subject property in terms of the Regulations, 1989 nevertheless, the application for revision of the plan was submitted after the coming into force of the Goa Land Development and Building Constructions Regulations, 2010 (hereinafter referred to as "Regulations, 2010") and as such, the directions of the Board to examine the revision application in terms of the Development Regulations, 1989 are totally untenable. The learned Senior Counsel further pointed out that the petitioner had an occupation certification as well as a completion certificate in respect of the subject construction and according to the learned Senior Counsel the impugned order passed by the respondent no.3 is not justified. It is further submitted that

the respondent no.3 has erroneously come to the conclusion that the petitioner has exceeded the FAR and coverage when on the contrary the records reveal that the respondent no.3 itself had submitted a report inter alia disclosing that FAR is 189 sq. mts approximately. The learned Senior Counsel further pointed out that the respondent no.3 had failed to justify their contention that the petitioner has exceeded the FAR as well as the coverage area in respect of the subject development. The learned Senior Counsel further pointed out that the impugned order passed by the respondent no.3 was without giving a hearing to the petitioner and is devoid of any reason to come to the conclusion that the petitioner had exceeded the FAR as well the coverage area. The learned Senior Counsel has thereafter taken us through the relevant provisions of Regulations 2010 and submitted that the petitioner is entitled for revision in terms thereof. The learned Senior Counsel further points out that the respondent no. 3 had erroneously passed the impugned order rejecting the application for revision.

5. On the other hand Mr. Mulgaonkar, learned Counsel appearing for the respondent no.3 has pointed out that even

otherwise Regulations of 2010 are applicable to the petitioner, as according to him, the petitioner is not entitled to avail of relaxation as claimed by the petitioner. The learned counsel further submits that though the application filed by the petitioner for revision was after the coming into force of Regulations, 2010 nevertheless, at the instance of the petition, the respondent no.3 had to follow the directions of the Board to examine the revision in terms of Regulation 1989. The learned counsel further submitted that it cannot be disputed that as the revision application was filed after the coming into force of the Regulation 2010 such an application had to be examined in terms of such Regulations. As far as the contention of the petitioner that the completion certificate was issued in respect of the subject construction as well as the occupation certificate it is pointed out that it is not correct as according to him, only part completion and part occupation was granted to the subject construction. The learned Counsel further points out that considering the direction to the Board to examine the application filed by the petitioner for revision of the plan in terms of the Regulations 1989, the respondent no.3 had no other option but to follow such Regulations and to come to the conclusion as reflected in the impugned order.

He further submitted that the petition accordingly be rejected.

6. Mr. Phaldessai learned Addl, Govt Advocate had pointed out that it was at the instance of the petitioner that the directions were given to examine the revision application in terms of Regulations 1989.

7. We have considered the submission of the learned Counsel and we have also gone through the records.

8. It is undisputed based on the rival contention that the application for revision of the plan was submitted after the coming into force of the Regulations 2010 and that in such circumstances, the revision of the plan sought by the petitioner had to be examined in terms thereof. In such circumstances, the very foundation on which the impugned order was passed by the respondent no.3 dated 15.10.2015 would not survive and consequently stands vitiated.

9. With regard to the claim of the petitioner that they have not exceeded the FAR as well as the coverage, it is for the concerned respondent to examine such aspect after giving

a hearing to the petitioner. As rightly contended by Mrs. A. Agni, learned Senior Counsel there are different version on record to show that at different time the FAR consumption is recorded in different manner. In such circumstances it is for the concerned respondent to arrive at a definite area of the FAR consumed as well as the coverage in terms of Regulations 2010 after hearing the petitioner in accordance with law.

10. In such circumstances, we are not inclined to interfere with the impugned order of remand but only to the extent to modify that the revision application filed by the petitioner would have to be considered in terms of the Regulations 2010 and not Regulations, 1989.

11. In view of the above, the impugned order passed by the respondent no.3 dated 15.10.2015 is modified to the extent referred to above by directing the respondent no.3 to examine the revision application in terms of Regulations 2010. Consequently the impugned order passed by the respondent no.3 dated 15.10.2015 stands quashed and set aside. The respondent no.3 shall accordingly proceed to decide afresh the revision application filed by the petitioner in the light of the

observations made herein in above in accordance with law. All the contentions of the parties on merits are left open.

12. Rule is made absolute in the above terms.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

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