

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 367/2016

Shri Shantadurga Kumbharjuvenkarim,
 Marcela, Goa, through its Attorney
 Mr. Jaywant Ladu Parab, major
 of age, residing at Surche Bhat,
 Kumbharjuven, Goa.

Petitioner

Versus

1. Shree. Devki Krishna Ravalnath Saunsthan,
 Pandawada, Marcel, Goa.
2. Town and Country Planning Department,
 with office at 2nd Floor,
 Govt. Office Bldg.,
 Opp. Axis Bank,
 Ponda-Goa.
3. Village Panchayat of Tivrem-Orgao,
 Through its Sarpanch, with office at
 Panchayt Buildign, Marcel, Goa.

Respondents

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Shri J.E.Coelho Pereira, Senior Advocate with Shri Vinod
 Korgaonkar, Advocate for the petitioner.
 Shri V.R. Tamba, Advocate for the respondent no.1.
 Shri Deep Shirodkar, AGA for the respondent no.2.
 Shri Devidas Pangam, Advocate for the respondent no.3.

CORAM : F.M.REIS & NUTAN D.SARDESSAI, JJ
DECIDED ON : 21/09/2016.

ORAL JUDGMENT (PER F.M. REIS, J):

1] Heard Shri J.E.Coelho Pereira, learned Senior Counsel
 for the petitioner, Shri V.R. Tamba, learned Counsel for the
 respondent no.1, Shri Deep Shirodkar, learned AGA for the

respondent no.2 and Shri Devidas Pangam, learned Counsel for the respondent no.3.

2] Rule. Heard forthwith with the consent of the learned counsel. The learned counsel appearing for the respective parties waive notice.

3] We have heard the learned counsel appearing for the respective parties who have vehemently argued their respective stands disputing the correctness or otherwise of the technical approval granted to the respondent no.1 by order dated 5.2.2013. Shri Coelho Pereira, learned Senior Counsel has also disputed the correctness of the revocation of the technical approval granted to the petitioner dated 13.8.2014, but however, upon instructions Shri Coelho Pereira, learned Senior Counsel does not press such challenge at this stage. In such circumstances, the only aspect required for consideration is whether the petitioner is justified to raise a challenge to the technical approval granted to the respondent no.1 by the said order dated 13.8.2014. Shri Coelho Pereira, learned Senior Counsel appearing for the petitioner has also pointed out that the subject property whether the structure in question has been permitted, is surveyed under No. 57/10 of Orgao village which according to the petitioner, belongs to the petitioner. It is further

submitted that there was an NOC which was granted to the respondent no.1 way back in the year 1987 to carry out development in the said property. It is further pointed out that based on such NOC, the subject technical approval was granted by the respondent no.2. The learned Senior Counsel has also pointed out that thereafter the NOC was revoked by the petitioner. It is further pointed out that the petitioner raised objections to the technical approval granted by the respondent no.2 on 8.8.2012, which were thereafter examined by the respondent no.2 and vide letter dated 16th of June, 2014, the Village Panchayat-respondent no.4 were called upon to examine the objections raised by the petitioner. The learned Senior Counsel further submits that no decision has been taken with that regard but however, as there was apprehension that the respondent no.1 may proceed to put up a construction in the subject property, the petitioner filed the above petition inter alia seeking to quash and set aside the technical approval granted by the respondent no.2. The learned Senior Counsel, further points out that as the NOC has been revoked, the subject technical approval would not survive and consequently deserves to be quashed and set aside.

4] On the other hand, Shri Tamba, learned counsel appearing for the respondent no.1, has pointed out that the petition itself is barred by laches, as according to him, though

the technical approval was granted way back in the year 2013, the petition was filed in 2016. It is further pointed out that the petitioner has filed a Civil Suit before the learned Civil Judge Senior Division, Ponda wherein an application for temporary injunction was filed which came to be rejected though an appeal is pending before the lower Appellate Court. It is further pointed out that according to the respondent no.1 they are the owners of the subject property surveyed under no.57/10 and that the respondent no.1 are not relying upon the subject NOC of the year 1986 for the purpose of the technical approval in question. It is further submitted that as such, the question of granting any relief to the petitioner would not at all arise. Shri Shirwadkar, learned AGA appearing for the respondent no.2 has taken us through the application filed by the respondent no.1 to point out that the subject NOC was referred to and relied upon by the respondent no.1 while seeking such technical approval. Shri Pangam, learned counsel appearing for the respondent no.3 has also taken us through the application filed by the respondent no.1 which inter alia suggests that the NOC was, in fact, referred to by the respondent no.1 while seeking such permission.

5] We have considered the submissions of the learned counsel and we have also gone through the record. The dispute of title raised by the respondent no.1 is a matter which has to be

adjudicated in a Civil Court and as such, the question of considering the correctness or otherwise of the rival contentions with that regard in respect of the property surveyed under no.57/10 are left open to be considered in the appropriate forum. The only aspect as such to be examined is whether the petitioner is entitled to raise an objection to the technical approval granted in favour of the respondent no.1. Considering the contention of Shri Shirwadkar, learned AGA for the respondent no.2 and Shri Pangam, learned counsel for the respondent no.3, it cannot be disputed prima facie that the subject NOC was considered by the statutory authorities while taking a decision on the subject technical approval granted to the respondent no.1 in the said property surveyed under no.57/10. Taking note of the contention of Shri Tamba, learned counsel appearing for the respondent no.1 that the respondent no.1 is not relying upon the subject NOC in support of the technical approval sought by the respondent no.1 in respect of the subject property surveyed under no.57/10 we find it appropriate that the statutory authority would have reconsidered the decision to grant the technical approval in the light of the said contention of learned counsel appearing for the respondent no.1. On perusal of the letter addressed by the respondent no.2 to the Village Panchayat dated 16.6.2014, the Local Panchayat was called upon to consider the objections raised by the petitioner. It is admitted

position that no decision with that regard has been taken by the Local Panchayat based on the said letter issued by the respondent no.2.

6] In such circumstances, without going into the merits of the rival contentions and in the light of the observations made herein above, we find it appropriate to dispose of the above petition by directing the respondent no.2 to examine the grant of technical approval to the respondent no.1 in the light of the directions issued by the respondent no.2 to examine the objections raised by the petitioner in the letter dated 16.6.2014 addressed to the respondent no.3 herein. Needless to say that the objections shall be considered in the light of the contention of Shri Tamba, learned counsel appearing for the respondent no.1 that the respondent no.1 is not relying upon the subject NOC to get such technical approval, in view of the stand of the petitioner herein that the NOC is revoked. In such circumstances, the technical approval dated 8.8.2012 is subject to the decision to be taken by the respondents no.2 and 3 based on the directions issued in the present petition. Such decision is directed to be taken within three months from toay.

7] Rule is made absolute in the aforesaid terms.

NUTAN D. SARDESSAI, J

F.M. REIS, J

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