

IN THE HIGH COURT OF BOMBAY AT GOA PANAJI

WRIT PETITION NO. 286 of 2015

Smt. Rajashree Gawandi,
61 years of age,
Widow of late Ramdas S. Gawandi,
R/o H. No. 619, Bandolwada,
Pernem – Goa.

..... Petitioners

V e r s u s

1. The Chief Officer,
Pernem Municipal Council,
Pernem- Goa.

2. Shivprasad U. Jyotishi,
Major of age,
Resident of Mauswada,
Pernem-Goa.

..... Respondents

Shri A. D. Bobe, Advocate for the Petitioner.

Shri S. D. Padiyar with Ms. Anjali Agrawal, Advocates for the
Respondent no.1.

Shri S. G. Desai, Senior Advocate with Advs. B. Mahatme and
K. Pednekar for Respondent no.2.

CORAM: C. V. BHADANG, J.
RESERVED ON : 28TH APRIL, 2016.
PRONOUNCED ON : 6 TH JUNE 2016.

ORDER:

By this petition, the petitioner is challenging the judgment and order dated 17/3/2015 passed by Goa Municipalities Appellate Tribunal (Tribunal, for short) in Municipal Appeal No.23/2014, by which the appeal challenging the final notice dated 01/02/2011 issued by the first respondent, for demolition of the alleged illegal construction has been confirmed.

2. The brief facts are that the petitioner is a mundkar residing in dwelling house bearing no. 619 admeasuring approximately 241 sq.metres situated in the property known as “Budkulanche Bhat” bearing survey no.22/12 of Village Pernem belonging to the second respondent. The petitioner was in receipt of a show cause notice dated 9/8/2012 issued by the first respondent asking the petitioner to show cause against the alleged illegal extension of the dwelling house which is done without licence. Subsequently, the first respondent issued a final notice on 1.2.2011 directing demolition of the alleged illegal construction. The final notice inter alia stipulates that in the personal hearing which was fixed on 28/9/2010, the petitioner had agreed to submit the plans for regularization of the structure and to demolish the staircase constructed. However, the petitioner failed therein. In a site inspection carried out by the Municipal Engineer on 1.2.2011, it was noticed that the petitioner had failed to demolish the staircase. By the said final

notice, the petitioner was directed to demolish the illegal construction within 15 days. This was challenged by the petitioner before the Tribunal. It was contended that the second respondent had given a No Objection Certificate (NOC) for repairs of the house in December 2009. It was contended that the house, which was made of mud walls, required urgent repairs and as there was no time to take permission, the petitioner after obtaining NOC from the second respondent carried out minor repairs of the house without extending the plinth area. It was also contended that the first respondent is acting at the behest of the second respondent. It was further contended that the inspection of the property was conducted behind the back of the petitioner and no notice of the same was served on her.

3. The Tribunal found it to be undisputed that there was construction effected. The Tribunal then considered whether it would amount to repairs as alleged by the petitioner or extension as claimed by the first respondent. The Tribunal noticed that the petitioner had admitted that the alleged repairs were without permission and was thus in violation of the Goa Municipalities Act, 1968, (Act, for short). The Tribunal further noticed that the provisions of Section 184 (12) of the Act, to find that it authorizes the Chief Officer at any time to inspect the building, without giving any notice thereof to the parties. In that view of the matter, the appeal came to be dismissed, which brings the petitioner to this Court.

4. I have heard the learned counsel for the petitioner and the learned counsel for the first respondent and as also the learned Senior Counsel for the second respondent.

5. The learned counsel for the petitioner states that the survey plan shows that the suit house was a square structure. The learned counsel has then referred to the sketch drawn at the behest of the first respondent in order to point out that it is also a square structure, thus excluding any possibility of any addition, alteration in the plinth area. It is submitted that the second respondent had given NOC on 30/12/2009 for repairs of the house under Rajiv Awas Yojana. He, therefore, submitted that the petitioner had only carried out repairs and not additions/reconstruction, so as to increase the plinth area.

6. On the contrary, the respondents have pointed out that the construction cannot be in the form of repairs but would amount to reconstruction. It is also pointed out that the NOC was given only with the object to enable the petitioner to get Government assistance under the Rajiv Awas Yojana. It is further pointed out that the NOC specifically mentions that it is given for being produced in the office of the first respondent and thus cannot authorize the petitioner to undertake the work (even assuming that of

repairs), without the permission of the Municipal Council. Reliance is placed on the provisions of the Bye-Law no. 2 (59) of the Municipal Council Building Bye-Laws and Regulations, 1987 (Bye-Laws, for short) in order to point out that the construction in the present case cannot be by way of repairs.

7. I have considered the rival circumstances and the submissions made. It is not in dispute that the petitioner has not obtained any permission/licence from the first respondent, either for carrying out any construction/alteration or repairs. Bye-Law 2 (59) reads thus:

'repairs' means and includes:

- (a) patch repairs and plaster of or plastering and patch repairs of structural and non structural members;
- (b) re-roofing or renewal of roofs without changing the specification of the existing materials;
- (c) flooring and re-flooring without changing the specification of the existing materials.

Note:- repairs should not be violative of coverage, right of way, set backs, floor area ratio and height of building as prescribed under these bye-laws.

8. It can thus be seen that repairs would mean and include only patch repairs and plaster or plastering and patch repairs of structural and non

structural members, re-roofing or renewal of roof, without changing the specification of the existing materials and flooring and re-flooring without changing the specification of the existing materials. The Note appended to Bye Law 2 (59) provides that the repairs should not be violative of coverage, right of way, set backs, floor area ratio and height of building as prescribed under the bye-laws. Building Bye Law no.3 provides that in building operation/construction shall be in conformity with the Bye-Laws. A perusal of the sketch (at page 35 of the compilation) would show that there can be no manner of dispute that there is addition of three rooms along with a staircase. The staircase is a RCC structure. Thus, I do not find that the work undertaken by the petitioner can be said to be that of repairs. The petitioner also can not successfully place reliance on the NOC dated 30/12/2009, firstly because it was only for carrying out repairs and not reconstruction/alteration and secondly, the NOC mentions that it was issued at the request of the petitioner for being produced in the office of the first respondent. It is evident that any person desirous of carrying out any construction/repairs has to obtain a valid permission/licence from the competent authority and the NOC by the second respondent cannot cure any defect about absence of any such licence/permission. The petitioner has failed to show cause in pursuance of the show cause notice by filing any reply and has also failed to show that the construction made would either amount to repairs or would not require any permission/licence from the Municipal Council.

9. The learned counsel for the petitioner has submitted that the petitioner has applied for regularization of the structure. If that be so, it presupposes that the construction is unauthorized. The learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of **“Syed Muzaffar Ali and Others Vs. Municipal Corporation of Delhi”**, reported in (1995) Supp (4) SCC 426, in which the Hon'ble Apex Court has held thus in paras 4 and 5 of the judgment:

“4. However, it is to be pointed out that the mere departure from the authorized plan or putting up a construction without sanction does not ipso facto and without more necessarily and inevitably justify demolition of the structure. There are cases and cases of such unauthorized constructions. Some are amenable to compounding and some may not be. There may be cases of grave and serious breaches of the licensing provisions or building regulations that may call for the extreme step demolition.

5. These are matters for authorities to consider at the appropriate time having regard to nature of the transgressions. It is open to the petitioners to move the authorities for such relief as may be available to them at law. The petitioners may, if so advised, file a plan indicating the nature and extent of the unauthorized constructions carried out and seek

regularization, if such regularization is permissible. The dismissal of the petitions will not stand in the way of the authorities examining and granting such relief as the petitioners may be entitled to under law. The petitioners may move the authorities in this behalf within one week for such compounding or regularization and also for stay of demolition pending consideration of their prayer. During the period of one week from today, however, no demolition shall be made.”

It can thus be seen that the question is as to whether the construction is capable of being regularized depending upon the nature of construction and variation and whether they are of a grave and serious nature. Obviously, this will have to be considered and gone into by the competent authority while deciding the application for regularization. These considerations will not arise, while deciding a challenge to the impugned notice, more so, when there is no permission either for repairs or reconstruction.

10. It would not be necessary at this stage to express any opinion about the merits of the application for regularization. However, notwithstanding the rejection of this petition, it will be open for the first respondent to consider the application for regularization strictly on its own merits and in accordance with law.

11. The learned Senior Counsel for the second respondent has placed reliance on the decision of the Hon'ble Supreme Court in the case of **“Shalini Shyam Shetty & Anr. vs Rajendra Shankar Patil** reported in (2010) (8) SCC 329, in order to contend that the scope of interference under Article 226 and 227 of the Constitution of India is limited. In any case, I do not find that any case for interference is made out, in the impugned judgment and order. Consequently the writ petition is hereby dismissed, with no order as to costs.

C. V. BHADANG, J.

ap/-