

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 449 OF 2016

SMT. RUKMINI PEDNEKAR.

... Petitioner

Versus

MORMUGAO MUNICIPAL COUNCIL, THR.
ITS CHIEF OFFICER.

... Respondent

Shri Rohit Bras De Sa, Advocate for the Petitioner.
Shri P. Arolkar, Advocate for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 27th October, 2016

ORAL ORDER :

The challenge in this petition is to the judgment and order dated 24/04/2012 passed by the Municipalities Appellate Tribunal in Municipal Appeal No.78/2008 by which the appeal filed by the petitioner under Section 184(13) of the Goa Municipalities Act, 1968 (Act, for short) has been dismissed confirming the final notice dated 10/12/2008 issued by the respondent.

2. By the said notice, the petitioner has been directed to demolish the illegal construction as described in the document of transgression within fifteen days, failing which the demolition was to be carried out by the respondent at the costs of the petitioner. The petitioner challenged the said final notice before the Municipal Appellate Tribunal and the only contention raised was that the petitioner was not heard before issuance of the final notice. The Appellate Tribunal

has found that a show cause notice dated 13/05/2008 was issued to the petitioner and the Tribunal has further noticed that the petitioner claimed that she was not aware of the requirement of the licence, as she is illiterate. The Appellate Tribunal has further found that the respondent is claiming that the construction is effected on Government lands and there are certain complaints. The Administrative Tribunal has further noticed that there was no licence produced by the petitioner and in that view of the matter the Tribunal dismissed the appeal.

3. I have heard Shri De Sa, the learned Counsel for the petitioner and the learned Counsel appearing for the respondent.

4. It is submitted on behalf of the petitioner that the petitioner ought to have been afforded an opportunity of hearing before issuance of the final notice. It is submitted that the entire action of the respondent is vitiated on account of the failure to afford an opportunity of hearing. The learned Counsel, however, does not dispute that there is no licence obtained by the petitioner for effecting construction. It is submitted that the petitioner being an illiterate lady was not aware of any such requirement and the breach is not deliberate. It is the alternate submission that the petitioner is intending to file an application for regularisation which the competent authority may consider in accordance with law.

5. On the contrary, it is submitted by the learned Counsel for the respondent that the petitioner even failed to file a reply to the show cause notice. It is submitted that thus the petitioner now cannot be heard to say that she was not afforded any opportunity of hearing. It is submitted that admittedly the petitioner has not obtained any licence for the construction which is illegal. He, therefore, submits that no case for interference is made out.

6. I have carefully considered the rival circumstances and the submissions made. Admittedly, the petitioner is not having any licence for the construction which she has effected. The respondent had indeed issued a show cause notice on 13/05/2008 which was served on the petitioner. The petitioner failed to file a reply to the same. The observance of the principles of natural justice do not necessarily include an opportunity of personal hearing. The question depends upon facts and circumstances of each case. In the present case, it is not even claimed that a personal hearing was sought for. Thus, the respondents having issued a show cause notice to which the petitioner has failed to file a reply, now the petitioner cannot be heard to say that there is a breach of the principles of natural justice. No other contention is raised.

7. In that view of the matter, I do not find that any case for interference is made out. The petition is accordingly dismissed. Needless to mention that the petitioner would be at liberty to file an

application for regularisation, if so advised, and if any such application is filed the competent authority shall consider the same on its own merits and in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of any such application, if filed. In the circumstances there shall be no order as to costs.

C. V. BHADANG, J.

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