

IN THE HIGH COURT OF BOMBAY AT GOA.**WRIT PETITION NO. 280/2008**

Shri Santosh Vithal Korgaokar,
r/o Ward no.2, Canca,
Bardez, Goa.

Petitioner

Versus

1] Shri Asdraleno De Mello,
Major, President of Canca Comunidade,
r/o F 3, Raya Apartments,
Agond, Mapusa, Goa 403 507.

2] The Mamlatdar,
Bardez Taluka, Mapusa,
Bardez, Goa.

Respondents.

...

Mr. J.P. Mulgaonkar, Advocate for the petitioners.
Mr. Rohit Bras De Sa, Advocate for the respondent no.1.
Mr. Pravin N. Faldesai, AGA for the respondent no.2.

CORAM : F.M.REIS & K.L.WADANE, JJ
DATED : 01/02/2016.

Oral Judgment (Per F.M. Reis, J):

1] Heard Mr. J.P. Mulgaonkar, the learned counsel appearing for the petitioner, Mr. Rohit Bras De Sa, the learned counsel appearing for the respondent no.1 and Mr. Faldesai, the learned Additional Government Advocate appearing for the respondent no.2.

2] The above petition takes exception to an order dated 29th April, 2008 passed by the learned Mamlatdar in Case No. MAM/BAR/ILLE-CANCA/86/2008, whereby an extension is allegedly carried out by the petitioner to the existing structure. Mr. Mulgaonkar, the learned counsel appearing for the petitioner, has submitted that the petitioner has raised two challenges in the above petition, firstly that the impugned order has been passed without clearly specifying the alleged encroachment nor taking into consideration that the provisions of Goa Land (Prohibition on Construction) Act 1995 (hereinafter referred to as "the Act of 1995") has not been applicable to the facts of the present case, as admittedly the initial permission of the respondent no.1 was obtained by the petitioner. The learned counsel further submits that the petitioner has not violated the permission and, as such, as the petitioner did not get an adequate opportunity of being heard, the impugned order deserves to be quashed and set aside. The learned counsel further submits that the impugned order has left it to the discretion of the Circle Officer to identify the alleged encroachment without clearly demarcating the existing area of the house or the structure on the property. The learned counsel further points out that the provisions of the said Act of 1995 would not be applicable to the cases where the initial entry was with the permission of the respondent no.1. The learned counsel further submits that the petitioner has also challenged the

constitutional validity of the Act of 1995 but however, the petitioner do not desire to press the said challenge, at this stage.

3] On the other hand, Mr. Faldesai, the learned Government Advocate appearing for the respondent no.2, has pointed out that the provisions of the Act of 1995 would be applicable to the cases where the initial entry of such person is without the consent of the concerned authority. The learned Government Advocate further points out that as such the orders in the present case are justified.

4] Mr. Rohit Bras De Sa, the learned counsel appearing for the respondent no.1, submits that as the petitioner has violated the permission granted to him by putting up the structure, the respondent no.1 is entitled to get such demolition carried out in terms of the Act of 1995. The learned counsel further points out that as such no interference is called for in the impugned order.

5] We have given our thoughtful consideration to the rival contentions and we have also gone through the record.

6] The impugned order clearly holds that the initial entry of the petitioner in the subject property was with the consent of

the respondent no.1. This fact has not been disputed by the respondent no.1, but the only contention is that the petitioner in breach of such permission is carrying out an extension to such structure. The extension is seriously disputed by the petitioner. But, however, considering that the initial entry of the petitioner was with the permission of the respondent no.1 and in case there is any violation of such permission, the respondent no.1 would have to take necessary action in terms of the Code of Communitade or other provisions of law after establishing the extent of such encroachment. The Code of Communitade specify a procedure when an encroachment is detected. The provisions of the said Act of 1995 are in cases in which no permission at all has not been granted by the concerned Communitade at the time of the initial entry in the property. Considering that in the present case there was a permission from the respondent no.1 at the time when the initial structure was put up by the petitioner, we find that the impugned order passed by the respondent no.2 cannot be sustained and deserves to be quashed and set aside.

7] In view of the above, we pass the following order:-

Order

- (i) The impugned order dated 29/04/2008 is quashed and set aside.
- (ii) Needless to say that the respondent no.1, if so advised,

may take necessary action against the petitioner on account of the alleged encroachment, in accordance with law.

(iii) All contentions on the validity of the said Act of 1995 are left open.

(iv) Rule is made absolute accordingly.

(v) The petition is disposed of accordingly.

K.L.WADANE, J

F.M. REIS, J

mukund