

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 389 OF 2015**

Shri Laldhar Gayaprasad Sharma,
58 years of age, s/o Gayaprasad
Sharma, r/o H. No. 175/10, Ward
No. 3, Behind Parag Housing
Society, Phase II, Building, Petitioner
Shantinagar, Ponda, Goa.

Versus

The Chief Officer, Ponda Municipal
Council, Ponda, Goa. Respondent

Mr. Ashwin D. Bhobe, Advocate for the Petitioner.

Mr. Gaurish Agni, Advocate for the Respondent.

CORAM:- S.B. SHUKRE, J.

DATE:- 24th FEBRUARY, 2016.

ORAL JUDGMENT:

Learned Counsel appearing for the respondent states that affidavit in reply is already filed on record and the respondent does not intend to file further reply. However, he seeks leave of the Court to file copy of the documents which are forming part of the annexures to affidavit in reply.

2. Leave is granted. These documents are taken on record. Copies of these documents have been furnished to learned Counsel for the petitioner.

3. Heard. Rule. Rule made returnable forthwith. Heard finally by consent.

4. Although the documents placed on record by learned Counsel for the respondent do indicate that the previous show cause notice issued to the Society also included the fact of making of illegal construction of 7-8 rooms in the basement and the same being within the knowledge of the petitioner, the fact remains that the show cause notice dated 01.11.2011 did not call upon the petitioner to show cause as to how 7-8 rooms existed in the basement of the building and the illegal construction was not being removed. This show cause notice only calls upon the petitioner to show cause as to why the soak pit and septic tank should not be removed. The final notice dated 20.07.2012 does not show that the soak pit and septic tank should be removed and it only serves as a warning to the petitioner for removal of 7-8 rooms illegally constructed by the petitioner. Thus, there is a final notice on one subject matter

and show cause notice in relation to another matter in this case. The result is that the petitioner has been denied an opportunity of being heard in the matter. Both such notices therefore must go.

5. In the result, the Writ Petition is allowed. The show cause notice dated 01.11.2011 as well as the final notice dated 20.07.2012 are hereby quashed and set aside. The judgment and order dated 31.10.2014 rendered in Municipal Appeal No. 45/2012 is also quashed and set aside. Liberty is granted to the respondent to proceed against the petitioner afresh in accordance with law, if it is satisfied that such an action is necessary. All contentions on merits are kept open. Dismissal of this petition shall have no bearing on the fresh proceedings, if any.

6. Rule is made absolute in these terms. No costs.

S. B. SHUKRE, J.

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