

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1034 OF 2015

1. Vasant Anant Naik,
son of Anant Naik, major,
resident of House no.236,
Kesarkar Chawal, Comba,
Margao, Goa.
2. Simi @ Malcumbi Tari,
wife of Vasant Anant Naik,
resident of House 236,
Kesarkar Chawl, Comba,
Margao, Goa.

..... Petitioners

V e r s u s

1. The Chief Officer,
Margao Municipal Council,
Margao, Salcete, Goa.
2. The Goa Municipalities,
Appellate Tribunal,
having its seat at Panaji, Goa.
3. Dinar Damodar Alve,
major in age, Heera Bungalow,
Near Shri Vithal Mandir,
Comba, Margao, Goa.
4. Anuja Dinar Alve,
major in age, Heera Bungalow,
Near Shri Vithal Mandir,
Comba, Margao, Goa.
5. Darshan Damodar Alve,
major in age, Heera Bungalow,
Near Shri Vithal Mandir,
Comba, Margao, Goa.
6. Meena Darshan Alve,

major in age, Heera Bungalow,
Near Shri Vithal Mandir,
Comba, Margao, Goa.

7. Daliya Ajeet Vernekar,
major of age, Heera Bungalow,
Near Shri Vithal Mandir,
Comba, Margao, Goa.
8. Ajeet R. Vernekar,
major of age, Heera Bungalow,
Near Shri Vithal Mandir,
Comba, Margao, Goa. Respondents.

Shri Ryan Menezes with Ms. C. Ribeiro, Advocates for the
Petitioners.

Shri S. D. Padiyar with Ms. N. Rivankar, Advocates for the
Respondent no.1.

Shri P. Lotlikar, Advocate for Respondent nos. 3 to 8.

CORAM: C. V. BHADANG, J.
DATE: 22nd August, 2016.

ORAL ORDER:

By this petition, the petitioner is challenging the
judgment and order dated 7/4/2015 passed by the Goa
Municipalities Appellate Tribunal (Appellate Tribunal for short)
at Panaji, by which, the appeal filed by the petitioner
challenging the order directing demolition passed by the

respondent no.1, has been dismissed.

2. Indisputably, the petitioner is in possession of an existing house which is said to be tenanted. The Municipal Council had carried out inspection of the structure on 5/10/2009 and a document of transgression was drawn which showed that there was an illegal extension to the existing house. The transgression report mentioned the approximate area of the extended portion as 3.60 x 2.10 metres and of an average height of 2.50 metres. A show cause notice was issued to the petitioner by the respondent no.1, in pursuance of which the petitioner filed a reply dated 26/10/2010. It was the main contention that "bagel like structure" which is the subject matter of dispute came within the purview of the sanitary services, under section 35 of the Rent Control Act. It was also pointed out that Writ Petition no.504/2010 filed by the petitioner against Dinar Damodar Alve, the owner of the structure was pending before this Court.

3. By the time Respondent no.1 passed the order dated

28/7/2011, the writ petition was already dismissed. The Chief Officer took note of the same and after hearing the advocate for the petitioner directed the demolition of the illegal extension.

4. Before the Appellate Tribunal it was contended that section 184 of the Goa Municipalities Act, 1968 (The Act for short) would not be applicable to a construction which is complete. Secondly it was contended that the nature of the structure would not bring it within the definition of a 'building', under section 2(3) of the Goa Municipalities Act. The Appellate Tribunal after negating these contentions, has dismissed the appeal.

5. Shri Menezes, the learned counsel for the petitioner has produced several photographs of the disputed structure, which are taken on record and collectively marked "X" for identification. It is submitted that the nature of the structure is such that it would not be a 'building', within the meaning of section 2(3) of the Goa Municipalities Act. It is submitted that the Chief Officer only went on the aspect of

dismissal of the Writ Petition no.504/2010 and did not consider any other ground. In so far as the order of the Appellate Tribunal is concerned it is contented that the Appellate Tribunal was in error in finding that the disputed structure would come within the definition of a 'building'.

6. The learned counsel for the respondent no.1 points out that the definition of a "building" under section 2(5) of the Act is wide enough to take into its ambit the nature of the disputed structure. It is pointed out that the Appellate Tribunal has rightly come to the conclusion that it would be a 'building'.

7. The learned counsel for the other respondent nos. 3 to 8 has pointed out to the judgment of this Court in Writ Petition no.504/2010 in which the contention based on section 35 of the Act has been negatived.

8. I have considered the rival circumstances and the submissions made. 'Building', is defined in section 2(3) of the Act as under:

“building” includes a house, out-house, stable, shed, hut and other enclosure or structure, whether of masonry, bricks, wood, mud, metal or any other material, whatever, whether used as a human dwelling or otherwise, and also includes verandahs, fixed platforms, plinths, door steps, walls (including compound walls and fencing and the like;)

It can thus be seen that the definition is couched in a wide language and includes a shed, hut and other enclosure or structure, whether of masonry, bricks, wood, mud, metal or any other material, whatever, whether used as a human dwelling or otherwise. It also includes verandahs, fixed platforms, plinths, door steps, walls including compound walls and fencing and the like. The structure is partly having corrugated sheet and partly is covered with tarpaulin. After considering the definition, the Tribunal to my mind has rightly come to the conclusion that the structure would come within the ambit of a 'building' under section 2(3) of the Act. It appears that the main contention raised before the Chief

Officer was on the basis of pendency of Writ Petition no.504/2010 in which the ground based on the section 35 of the Rent Act was raised. A perusal of the judgment and order passed by this Court on 24/6/2011 in Writ Petition no.504/2010 (para 6) would clearly shows that the said contention is negated. It is true that the order of the Chief Officer mainly refers to the dismissal of the Writ petition. However, the petitioner had raised all the available contentions before the Appellate Tribunal, which the Appellate Tribunal has considered and negated. Once it is not disputed that there is no valid permission obtained in respect of the extended structure, to my mind no exception can be taken to the judgment and order passed by the Appellate Tribunal. The impugned judgment does not suffer from any infirmity so as to require interference. The writ petition is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

ap/-