

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 394 OF 2015

SMT. SMITA S. PEDNEKAR.

... Petitioner

Versus

MORMUGAO MUNICIPAL COUNCIL,
THROUGH ITS CHIEF OFFICER.

... Respondent

Shri Ashwin D. Bhobe, Advocate for the Petitioner.

Shri Sandesh D. Padiyar, Advocate for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 28th June, 2016

P.C.:

By this petition, the petitioner is challenging the judgment and order dated 28/04/2015 passed by the Municipalities Appellate Tribunal in Municipal Appeal No.129/2013.

2. By the impugned judgment, while dismissing the appeal filed by the petitioner, the Municipal Appellate Tribunal, has confirmed the Final Notice dated 4/03/2013 issued by the respondent directing demolition of the illegal construction done by the petitioner, as shown in the transgression report.

3. Indisputably, the alleged illegal construction is situated in government land and there is no permission/licence obtained from the Municipal Council.

4. The learned Counsel for the petitioner has pointed out, a letter dated 16/09/2013 wherein the Mormugao Planning and Development Authority has granted a 'No Objection Certificate' from planning point of view to regularise the encroachment on the land bearing chalta no.2(part) of PT sheet no.52 of Mormugao-Goa. The learned Counsel further points out to a letter dated 5/01/2010 issued by the Accounts/Taxation Officer of the respondent where, in pursuance of an application dated 10/07/2007, the respondent Council has recovered an amount of Rs.7,000/- towards the extended area and the transfer fee of Rs.1,000/- from the petitioner. He, therefore, submits that once the Planning Authority has issued No Objection and the Municipal Council has also recovered Rs.7,000/- and transfer fee, the impugned Final Notice cannot be sustained.

5. On the contrary, the learned Counsel for the respondent has pointed out to a letter dated 7/01/2010 under which it was intimated to the petitioner that the amount was towards transfer of the house for the purposes of tax and this was subject to the verification of documents such as registered Deed of Sale, Succession Deed, Heirship certificate, if necessary. The learned Counsel points out that the communication dated 7/01/2010 states that the Municipal Council has ultimately stipulated that the house in question will remain illegal for all purposes.

6. I have considered the circumstances and the submissions made

and I have gone through the impugned judgment passed by the Municipalities Appellate Tribunal and I do not find that any case for interference is made out. As noticed earlier, the construction is standing on the government land and is without permission. It is now well settled that mere recovery of tax, cannot have effect of regularising the same. The Municipalities Appellate Tribunal, has found, and to my mind rightly so, that what has been recovered is not a penalty for regularisation of the structure. In that view of the matter, the impugned judgment does not demonstrate exercise of jurisdiction with material irregularity so as to require interference. Consequently, the petition is dismissed, with no order as to costs.

7. The learned Counsel for the petitioner, on instructions, states that the petitioner is pursuing the matter for regularization with the State Government. It is made clear that this Court has not expressed any opinion, on merits of any such application, for regularization.

C. V. BHADANG, J.

NH