

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 612 OF 2016

CAPT. MADHUKAR A. SHELDEKAR.	... Petitioner
Versus	
MR. PRASHANT R. FALARI AND ANR.	... Respondents

Mr. J. Abreu Lobo, Advocate for the petitioner.
Mr. Joaquim Godinho, Advocate for the respondent no.1.
Mr. P. A. Kamat, Advocate for the respondent no.2.

Coram:- C. V. BHADANG, J.

Date:- 20th August, 2016

P.C.

Heard the learned Counsel for the petitioner, the learned Counsel for the respondent no.1 and the learned Counsel for the respondent no.2.

2. The challenge in this petition is to the judgment and order dated 22/01/2016 passed by the learned District Judge in Civil Revision Application No.46/2014. By the said judgment, Civil Revision Application filed by the petitioner under Section 201B of the Goa Panchayat Raj Act, 1994 (the Act, for short), has been dismissed, thereby confirming the order dated 10/06/2014 passed by the learned Additional Director of Panchayat in Panchayat Petition No.20/2008.

3. The brief facts are that the petitioner lodged a complaint with the Village Panchayat, complaining about illegal construction of

compound wall and house by the respondent no.1. As the Village Panchayat failed to take action, the petitioner had moved the Deputy Director under Section 66(5) of the Act, seeking assumption of powers. It appears that in the meanwhile, the Village Panchayat regularised the construction vide its resolution dated 25/11/2002. The petitioner had filed W.P.No.7/2003 before this Court, challenging the alleged illegal construction of the compound wall. That petition was disposed of on 24/03/2003 in the following terms :

"The permission to regularize the construction has already been granted. In the circumstances, this Petition does not survive and is disposed of as such. Liberty to the Petitioner to challenge the Orders regularizing the construction."

4. In pursuance of this liberty, the petitioner approached the Additional Director of Panchayat under Section 178 of the Act in the year 2008 for suspension/ cancellation of the resolution dated 25/11/2002. The Additional Director having rejected the said application, the petitioner went in Revision before the District Court, which confirmed the said order.

5. It is submitted by the learned Counsel for the petitioner that when the matter under Section 66(5) of the Act was pending before the Deputy Director, the Village Panchayat could not have regularised the construction. It is further submitted that the Courts

below were in error in finding that the issue was res judicata.

6. I have considered the rival circumstances and the submissions made and I do not find that any case for interference is made out.

7. The learned District Judge has found that the petitioner was complaining about the illegal construction since the year 1996 and there were several complaints lodged to different Authorities. There was earlier a petition filed by the petitioner in the year 1999, which was withdrawn, with liberty to file a fresh petition. The subsequent petition filed in the year 2003 was disposed of granting liberty, as in the meanwhile, the Village Panchayat had granted construction permission. The learned District Judge has further found that the resolution passed by the Village Panchayat, granting construction permission, was on the basis of the No Objection Certificate (NOC) issued by the Town and Country Planning Department and Technical Officer of PWD way back in November, 2002. The learned District Judge further found that the petitioner has failed to show as to under which legal provision construction permission was illegal.

8. The submission that the Village Panchayat could not have granted construction permission because the Deputy Director had assumed powers under Section 66(5) of the Act, cannot be accepted. I would hasten to add that in the facts and circumstances of the present case, it is not necessary to express any conclusive opinion on

this issue, in as much as the Village Panchayat, after considering the NOC by the Expert Body, namely Town and Country Planning Department and PWD, has granted construction permission. It would be further significant to note that the petitioner had taken recourse to Section 178 of the Act after a period of about six years after the disposal of W.P.No.7/2003. The learned Counsel for the petitioner has tried to explain this delay on the ground that Panchayat Appeal No.23/1999 filed by the petitioner, which was pending before the Director of Panchayat, was withdrawn by the petitioner on 14/02/2008 and thereafter the application under Section 178 of the Act was made. It may be mentioned that Panchayat Appeal No.23/1999 was in respect of the alleged illegal construction and that could not have precluded the petitioner from taking recourse to Section 178 of the Act immediately after disposal of W.P.No.7/2003.

9. In either case, apart from this delay and laches, the Authority under the Panchayat Raj Act and the District Court have concurrently found that no case for exercise of the powers under Section 178 of the Act is made out. The orders do not suffer from any infirmity, so as to require interference. The petition is without any merit and is, accordingly, dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA