

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 519 OF 2016**

Village Panchayat of Velsao-Pale,
Issorcim, Through its Secretary,
Velsao, Pale, Goa. Petitioner

Versus

Mr. Vishal Singh, Major, R/o H.
No. 773, Opp. Ramcon Residency,
Alto-Torda, Porvorim, Bardez, Goa. Respondent

Mr. Nigel Da Costa Frias, Advocate for the
Petitioner.

Mr. S. Dessai, Senior Advocate with Ms. Ketki
Pednekar, Advocate for the Respondent.

CORAM:- C.V. BHADANG, J.

DATE:- 21st SEPTEMBER, 2016.

ORAL ORDER:

By this petition, petitioner-Village Panchayat takes exception to the judgment and order dated 31.03.2016, passed by the learned District Judge, Margao in Civil Revision Application No. 1/2016. By the impugned judgment, the learned District Judge, while dismissing the revision application, has confirmed the order dated 02.12.2015 passed by the learned Additional Director of Panchayats at Margao. The learned Additional Director of Panchayats has directed the

petitioner to renew the construction license granted to the respondent on payment of fees.

2. The respondent intends to make construction of a residential house in land bearing survey no. 25/3, which is said to be admeasuring 2,900 square metres. It is said that an area admeasuring 720 square metres, out of the said land, falls in the settlement zone. The Town and Country Planning Department had granted a technical clearance, way back on 08.04.2010 on the basis of which the petitioner had granted a construction license to the respondent on 09.11.2011. It appears that subsequently the petitioner found that a part of the land is sloppy land and involves hill cutting. According to the petitioner, the construction was also affected by a traditional access leading to a Hindu crematorium. In that view of the matter, the respondent was required to make certain compliances and not to start the work. Admittedly, the respondent did not challenge the

same. It appears that as the validity of the license expired, the respondent approached the Town and Country Planning Department for renewal of the technical clearance on 30.10.2014. The Town and Country Planning Department has granted renewal of technical clearance on 18.12.2014. The respondent thereafter approached the Village Panchayat, on the same date and applied for the renewal of the license. The petitioner-Village Panchayat rejected the application for renewal on 20.01.2015, which was challenged by the respondent before the Additional Director of Panchayats. The learned Additional Director allowed the appeal and directed the petitioner to renew the license, which order has been confirmed by the learned District Judge in revision application under Section 201-B of the Goa Panchayat Raj Act, 1994. Feeling aggrieved, the petitioner is before this Court.

3. I have heard Mr. Costa, the learned Counsel for the petitioner and Mr. Dessai, the

learned Senior Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the relevant records and the impugned orders passed.

4. On behalf of the petitioner, it is contended that the construction license granted on 09.11.2011 was valid for a period of three years. It is submitted that under the terms of the said license, renewal of the said license has to be applied for within the validity period. It is contended that the application for renewal having been filed on 18.12.2014 was beyond the validity period.

Secondly, it is contended that the respondent had failed to comply with the earlier requisition in the matter of construction being affected by an access to a Hindu crematorium and about the necessity of the hill cutting. It is submitted that without these compliances, the Additional Director could not have asked the petitioner to renew the license. These are the

two grounds on which the impugned order is challenged.

5. On the contrary, it is submitted by the learned Senior Counsel for the respondent that entire action of the petitioner is tainted with malafides of the Sarpanch, who is having land adjacent to the land of the respondent.

6. The learned Senior Counsel for the respondent has pointed out Section 134 of the Town and Country Planning Act in order to submit that the technical clearance granted by the Town and Country Planning Department is binding on the Village Panchayat. It is submitted that the Town and Country Planning Department being the technical authority is expected to look into the relevant aspects and grant technical clearance and once, the technical clearance is granted, it is not for the Village Panchayat to look into this aspect again. Insofar as the the application for renewal being filed after the period of validity

of the license, is concerned, it is contended that the respondent was first required to approach the Town and Country Planning Department to obtain the renewal of the technical clearance. It is submitted that the respondent had approached the Town and Country Planning Department on 01.10.2014, which is within the validity period of the license. It is submitted that the view taken by the learned District Judge in this regard is a plausible view, which does not require interference. The learned Senior Counsel has pointed out that the land surveyed under no. 25/3, is admeasuring 2900 square metres, out of which, an area of 720 square metres falls in the settlement zone. It is submitted that the petitioner is not intending to make any construction, beyond the area falling in the settlement zone.

7. I have considered the rival circumstances and the submissions made. Although, the learned Senior Counsel has tried to demonstrate that the

action is tainted with malafides, in the absence of the Sarpanch being a party in the petition, it would neither be necessary nor appropriate to go into this aspect. Thus, the challenge to the impugned order is being examined only on the merits of the matter.

8. The learned District Judge in para 10 of the impugned judgment has noticed that the respondent had applied for technical clearance prior to expiry of the validity period of the construction license and as such, has found that the learned Additional Director has rightly held that the ground about the respondent not having applied within the validity period of the license, cannot be accepted. It is not in dispute that under the amended provisions, a person desirous of obtaining a construction license has to first approach the Town and Country Planning Department and obtain a technical clearance and then to move the Village Panchayat. The learned Counsel for the petitioner did not point out any material

difference between an application for renewal of a license and an application for grant of a new license. In the facts of the present case, I am not inclined to take a different view, than the one taken by the learned District Judge.

9. It would be significant to note that the Town and Country Planning Department is an expert technical body, which is supposed to look after all the relevant aspects before granting technical clearance. The learned Counsel for the petitioner in all fairness, has accepted that there is no clear demarcation of the areas which are to be looked into by the Town and Country Planning Department and the compliances which are to be looked into by the Village Panchayat. This Court in Writ Petition No. 372/2009 in the case of **The Calangute United Social and Cultural Association through Anthony F. D'Souza Vs. State of Goa and 8 Others** has *inter-alia* held that the primary responsibility in the matter of compliance with the provisions of the Town and Country

Planning Act would be on the Town and Country Planning Department. It would be significant to note that when the initial license was granted on 09.11.2011, no such objection regarding, hill cutting or about the property being affected by a customary access to a Hindu Crematorium, was raised. For all these reasons I am not inclined to interfere with the concurrent findings recorded by the learned Additional Director and the learned District Judge in directing the petitioner-Village Panchayat to renew the license. Needless to mention that the Village Panchayat shall grant such renewal on usual conditions, as may be applicable.

With this, the petition is dismissed with no order as to costs.

C.V. BHADANG, J.

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