

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 398 OF 2015

M/s. Himalaya Builders Pvt. Ltd.,
A Company registered under the Companies Act, 1956,
Through its Director,
Mr. Radhyasham R. Sodhani,
Son of Ganesh Narayan Sodhani,
78 years of age, Indian Inhabitant,
and having its registered office at 1076,
Dr. E. Moses Road,
Worli, Mumbai 400 018.

... Petitioners

V e r s u s

1. State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa.
2. North Goa Planning and Development Authority,
Archdiocese Bldg., First Floor,
Mala Link Road, Mala
Panaji, Goa.
3. Mr. Girdharilal M. Gangani,
Residing at Galaxy Building,
Opp. Hotel Nova Goa,
Near Mahalaxmi Temple,
Panaji, Goa.

... Respondents

Mr. I. Agha, Advocate for the Petitioners.

Mr. S. D. Lotlikar, Advocate General with Mr. A. Gomes Pereira, Addl.
Government Advocate for the Respondent no. 1.

Mr. S. D. Padiyar, Advocate for the Respondent no. 3.

Coram :- **F. M. REIS,**
NUTAN D. SARDESSAI, JJ.

Date: 8th September, 2016

ORAL JUDGMENT (Per F. M. Reis, J.)

Heard Mr. I Agha, learned Counsel appearing for the Petitioner, Mr. S. D. Lotlikar, learned Advocate General appearing for the Respondent no. 1 and Mr. Padiyar, learned Counsel appearing for the Respondent no. 3.

2. We have heard the above Petition at length. We have also perused the Judgment dated 14.10.2013 passed by the Division Bench of this Court in Writ Petition no. 548 of 2013 filed by the Respondent no. 3 herein whilst challenging the statutory permissions granted to the Petitioner and also the Order dated 01.07.2015 passed in Writ Petition no. 345 of 2015. Whilst disposing of the Writ Petition filed by the Respondent no. 3 by Judgment dated 14.10.2013, the Division Bench had rejected the said Petition, inter alia, also directing the Respondent no. 2 to take a decision on the applications filed by the Respondent no. 3 as well as by the Petitioner for renewal of the original licence. The records also reveal that a Civil Suit filed by the Petitioner is pending before the learned Civil Judge, Senior Division at Panaji, in respect of the property in question.

3. Mr. Agha, learned Counsel appearing for the Petitioner, has pointed out that pursuant to the original development permission dated 09.07.2010 in favour of the Petitioner, a building of three floors has already

been constructed.

4. Mr. Padiyar, learned Counsel appearing for the Respondent no. 3, however disputes that three floors were constructed by the Petitioners. But, however, it is undisputed that applications filed by the Petitioners for renewal in the year 2013 have lapsed in terms of the relevant provisions. The impugned Order challenged in the above Petition passed by the Respondent no. 2, inter alia, keeps the applications filed by the Petitioner as well as Respondent in abeyance until the Civil Suit filed by the Petitioner. Considering the view already taken by the Division Bench whilst disposing of the Writ Petition by Judgment dated 14.10.2013, it was not proper for the Respondent no. 2 to keep the applications in abeyance when the Respondent no. 2 was expected to take a decision in accordance with law irrespective of the pendency of the suit. All the aspects were duly considered by the Division Bench whilst issuing such direction.

5. In such circumstances, we find that as it is not disputed that the application filed by the Petitioner for renewal has lapsed, it would be appropriate to direct the Petitioners to file a fresh application for renewal of the subject development permission which the Respondent no. 2 would have to consider in accordance with law.

6. Both the learned Counsel also submit that the Civil Suit filed by

the Petitioners being Civil Suit no. 82 of 2009 be directed to be expedited. Mr. S. D. Padiyar, learned Counsel appearing for the Respondent no. 3 and Mr. I. Agha, learned Counsel appearing for the Petitioners, upon instructions, states that they will not seek any adjournment unless extremely necessary in the said suit. Needless to say, adjournment, if any, shall be considered by the learned Judge on its own merits in very exceptional circumstances.

7. Accepting the said statement of the learned Counsel appearing for both the parties, we also direct the learned Civil Judge, Senior Division at Panaji, to dispose of the Suit bearing no. 82 of 2009 as expeditiously as possible and, in any event, within six months from the date of receipt of this Order. The impugned Order dated 27.04.2015 passed by the Respondent no. 2 is quashed and set aside. The Respondent no. 2 is directed to take a fresh decision in the light of the observations made by this Court whilst disposing of the said Writ Petition no. 345 of 2015. All the contentions of both the parties are left open.

8. Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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