

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 419 OF 2015**

Shri Balu B. Mane,
major of age,
occupation Business,
r/o Bebquegal, Curchorem Goa. Petitioner

V e r s u s

1. Curchorem Cacora Municipal Council
with office at Curchorem Goa
Through its Chief Officer.
2. State of Goa,
Through Chief Secretary
Secretariat, Panaji Goa. Respondents

Mrs. A. Agni, Senior Advocate with Ms. A. Kamat, Advocate for the petitioner.

Mr. Ashwin D. Bhobe, Advocate for the respondent no.1.

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

Date:- 16th June, 2016

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

Heard Mrs. A. Agni, learned Senior Counsel appearing for the petitioner and Mr. A. D. Bhobe, learned counsel appearing for the respondent no.1.

2. The above petition inter alia prays for a writ or direction to the respondent no.1 to allot and deliver possession of the shop premises in Curchorem Municipal Market constructed in an area of 6000 square metres near Kadamba Bus Stand and also to quash and set aside the resolution dated 09.04.2015 passed by the respondent no.1 Council thereby rejecting the application of the petitioner for rehabilitation.

3. Briefly, the facts of the case are that the petitioner was carrying out his business as a petty vendor in the territorial jurisdiction of the respondent no.1 Council with the permission of the respondent no.1 in a shop in the building and was not covered by the ambit of an order dated 04.06.1997 passed by this Court in Writ Petition No. 146/1997. The petitioner was carrying out his business in a rented premises with the permission of the respondent no.1 Council in Gama building belonging to one Agnelo Saude da Gama since the year 1985-86. According to the petitioner, he was carrying out the business of sale of utensils of steel, aluminium and brass in such shop under the name and style of 'Renuka Devi Metal Stores'. It is further contended that the petitioner received a notice on

23.12.1998 issued by the respondent no.1 and pursuant to the orders passed by this Court on 04.06.1997, the petitioner and other gada/kiosk vendors were directed to remove their gadas/kiosks within two days from the issue of the order. The show cause notice was duly replied by the petitioner and by order dated 24.12.1998 the petitioner was served with a notice of removal of the shop of the petitioner. Accordingly, the petitioner removed the shop from the said property of Agnelo Gama. It is further his case that the petitioner represented to the Council to rehabilitate him in a suitable place. It is further contended that this Court passed an order dated 30.12.1998 noting therein that the Government of Goa had expressed a desire for development of an organized and orderly market places in Goa and for that purpose the Government desired to sort out and develop a Scheme in consultation with the Municipalities. Accordingly, this Court by an order dated 15.01.1999 permitted the Government and the Municipalities to place the schemes before the Court. It is further contented that the Chief Officer of the concerned Municipality had pointed out that the scheme had been prepared to accommodate 209 persons in the plot of rehabilitation admeasuring an area of 6000 square metres. The petition was accordingly

disposed of by judgment dated 18.10.2000. Some similarly placed business vendors had also filed another Writ Petition which was disposed of on the basis of the minutes of the order in the year 1999. It is further pointed out that a Writ Petition No. 432 of 2003 was filed by the petitioner and other vendors which were disposed of by a common order dated 17.03.2004. During the course of the hearing of the said Writ Petition, a list of persons eligible for allotment of shops was produced before this Court and the name of the petitioner was reflected at serial no.41. The work of construction of the market complex commenced somewhere in the year 2006. The petitioner was informed that as he did not possess a trade licence, he was not eligible to be a part and parcel of the rehabilitation scheme vide notice dated 08.04.2008. The new complex was completed in the year 2010. The petitioner was informed that the Council in a special meeting held on 22.12.2009 had decided to allot a platform to the petitioner. The petitioner however informed the Council that he was entitled for a shop vide letter dated 21.01.2010. Ultimately, on 11.03.2015 a legal notice was addressed to the respondent no.1 Council requesting for the allotment of a shop. Consequently, as no action was being taken to such request, the petitioner filed the above

petition for the aforesaid reliefs. The main contention of the petitioner is that as the respondent no.1 Council had included the name of the petitioner in the list of persons eligible for allotment of a shop, they could not have issued a letter of allotment of a platform to the petitioner.

4. The respondent no.1 has filed a reply inter alia contending that the petitioner has an alternate remedy to challenge the decision of the respondent no.1 Council. It is further pointed out that vide letter dated 19.05.2008, the petitioner was notified that the petitioner cannot derive benefit of rehabilitation which decision has attained finality. It is further pointed out that as per the records of the respondent no.1, the gada of the petitioner was in a private property and consequently, the petitioner was not entitled for consideration for rehabilitation which was the view and decision taken by the respondent no.1 Council in its meeting held on 09.04.2015. Consequently, it is contended that the petitioner is not eligible to the benefit under the permanent rehabilitation scheme. It is also pointed out that the petitioner is also not entitled for the permanent rehabilitation scheme as his gada was in a private property. It is also

contended that the petitioner did not fulfill the requisite criteria of eligibility which is required to be fulfilled for the entitlement of the benefit of permanent rehabilitation scheme. It is further contended that the alleged apprehension of the petitioner is without any basis and in any event frivolous. The petitioner thereafter filed a rejoinder reiterating the facts stated in the petition. He has disputed that he has an alternate remedy or that he was not entitled to the benefit of the rehabilitation scheme. He has further pointed out that he is entitled to be similarly placed as the other persons who have been duly rehabilitated. He has also disputed that he was not meeting the eligible criteria to avail of the rehabilitation scheme. He has also stated that the respondent no.1 Council has made incorrect statements in para 13 that persons who are allotted shops were not paying sopo tax. He has also stated that the respondent no.1 Council cannot discriminate between the other vendors as against him. The petitioner has also filed an additional affidavit and produced some photographs to show his place of business where it was located and which came to be demolished.

5. The learned Senior Counsel appearing for the petitioner

has vehemently argued that once it was admitted that the petitioner was entitled for a shop in a report which was produced before this Court, the respondent no.1 Council is not entitled to resile from such stand in the present petition. It is further pointed out that the subject gada of the petitioner has been demolished in view of the order passed by this Court and consequently, the petitioner is entitled for rehabilitation. The learned Senior Counsel has taken us through the photographs on record to point out that the subject gada was removed and not in existence in view of its removal by the respondent no.1. The learned Senior Counsel has extensively taken us through the material on record as well as the averments in the petition to point out that the petitioner is entitled for a shop in the market complex.

6. On the other hand, Mr. A. D. Bhobe, learned counsel appearing for the respondent no.1 has pointed out that admittedly, the gada of the petitioner was in a private property and the rehabilitation scheme is only to the persons who were occupying the land belonging to the Municipality or open space. The learned counsel further pointed out that the shop allegedly existing in Gama building

is found at the site and not demolished on the basis of the directions issued by this Court. The learned counsel further pointed out that the petitioner was using some land which was in his occupation and he was informed in the year 2008 that he was not entitled for a shop and as such, filing the present petition in the year 2015 is grossly belated and deserves to be dismissed on the ground of laches. It is further pointed out that the disputed questions of fact arise in the present petition and consequently, the question of examining the petition under Article 226 of the Constitution of India would not at all be justified. The learned counsel as such points out that the petition be rejected.

7. On considering the rival contentions, the admitted position is that in the year 2008 the petitioner was informed that he was not entitled for the benefit of the rehabilitation scheme to occupy a shop. The fact that the petitioner was carrying out some business in the private property also is not disputed. There was a controversy whether the shop of the petitioner where he was carrying out his business is existing at the site or not. Mr. Bhobe, learned counsel appearing for the respondent no.1 upon instructions states that in fact

such premises are still in existence. On perusal of the orders passed by this Court while issuing directions to examine the rehabilitation scheme, there is nothing to suggest that even persons having a kiosk in the private property were entitled for the rehabilitation scheme floated by the respondent no.1. In such circumstances, the eligibility of the petitioner for such shop itself is in doubt. Though it is contended that similarly placed persons have been rehabilitated which are seriously disputed by the respondent no.1, we find that there are disputed questions of fact in the present petition which cannot be resolved in a petition under Article 226 of the Constitution of India. The question as to whether there is any promissory estoppel or that the respondent no.1 is estopped in denying the shop to the petitioner are questions of fact which are otherwise disputed by the respondent no.1 and as such can be decided only after evidence is duly recorded. In the present petition under Article 226 of the Constitution of India, the question of considering this disputed aspect would not at all be justified. Apart from that, the petitioner has not pointed out from the rehabilitation scheme that such scheme is also for the benefit of the persons having gadas in a private property. Normally, a rehabilitation scheme is to the benefit of the persons who

are displaced from land belonging to the Municipality or a public street or a public place. In the present case, the petitioner does not dispute that he was a tenant of Gama family. In such circumstances, prima facie, the question of applying the rehabilitation scheme to the petitioner would not arise.

8. As pointed out herein above, the petitioner has been offered a platform in 2010 and the present petition is filed in the year 2015. Ineligibility of the petitioner to the scheme was disclosed to the petitioner in 2008. In such circumstances, we find that there are no cogent and plausible explanation by the petitioner to approach this Court so belatedly. In the meanwhile, it cannot be disputed that the process of rehabilitation has continued and as such on this ground also, we find that the petition is barred by laches and deserves to be rejected.

9. As pointed out herein above, the main thrust of the claim of the petitioner is based on the list produced during the course of the proceedings before this Court to the effect that the persons mentioned therein would be allotted a shop which according to the respondent

was tentative and subject to finalization by the Council. The rehabilitation scheme itself was not in placed at that stage. In such circumstances, when the petitioner is stated to be not eligible for such rehabilitation scheme and there is nothing produced by the petitioner to the contrary, we find that the question of exercising our extra ordinary jurisdiction under Article 226 of the Constitution of India so belatedly would not at all be justified. The petitioner has failed to establish that there was any arbitrariness or bias on the part of the respondent no.1 Council to exercise an extra ordinary and discretionary relief from this Court under Article 226 of the Constitution of India. Considering that there are disputed questions of fact, we find that the petitioner, if so advised may avail of getting his right adjudicated in a proper forum. But however, in such circumstances, the exercise of jurisdiction under Article 226 of the Constitution of India would not at all be justified. Subject to the above, the petition stands rejected.

NUTAN D. SARDESSAI, J

F. M. REIS, J

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