

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 580 OF 2016

Shri Alexander Domnic Fernandes,
r/o Bhat, Quepem,
through his Power of Attorney,
Shri Pramod L. S. Kunkolienkar,
aged 45 years,
Son of late Pedro Miguel Fernandes,
H. No. 154, Deulmol,
Sirvoi, Quepem, Goa.

... Petitioners

V e r s u s

1. State of Goa,
Through its Chief Secretary,
having office at Secretariat,
Porvorim, Bardez-Goa.
2. The Town and Country Planning Department
Through the Chief Town Planner,
Government of Goa,
Patto, Panaji, Goa.
3. The Dy. Town Planner,
The Town and Country Planning Department,
Government of Goa,
Taluika Office Quepem/Sanguem/Dharbadora,
Quepem Goa 403 705.

... Respondents

Mr. Abhay Nachinolcar, Advocate for the Petitioner,

Mr. S. D. Lotlikar, Advocate General with Mr. Pravin Faldessai, Addl. Government
Advocate for the Respondents.

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

Date : **30th June, 2016**

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

Heard Shri Abhay Nachinolkar, learned Counsel appearing for the

Petitioner and Shri S. D. Lotlikar, learned Advocate General appearing for the Respondents.

2.. Rule. Heard forthwith with the consent of the learned Counsel. Learned Addl. Government Advocate, waives service on behalf of the Respondents.

3. Upon hearing the learned Counsel appearing for the Petitioner and the learned Advocate General appearing for the Respondents, the short grievance raised by the Petitioner is the tenability of the revocation of the permission by the impugned Order dated 03.03.2016 granted to the Petitioner was way back in the year 2010.

4. Mr. Nachinolkar, learned Counsel appearing for the Petitioner, has pointed out that based on the development permission granted by the Respondent no. 3, the development has been substantially completed. The learned Counsel further pointed out that there was a discrepancy in the Survey Plan on account of an error committed by the Survey Authorities and, as such, the Petitioner took steps to rectify such errors. Learned Counsel further pointed out that thereafter based on the errors in the Survey Plan, the Respondent no. 3 carried out joint inspection and issued directions in respect of the development which was in progress. Learned Counsel further pointed out that subsequently the Petitioners filed an application for a revision of the plan on 10.02.2015. Learned Counsel further submits that without considering the application for revision, the Respondent no. 3 without giving a hearing to the Petitioner, revoked the development permission granted by the

Respondent no. 2.. Learned Counsel further pointed out that such Order is in gross violation of principles of natural justice and, as such, on this ground alone, the impugned Order deserves to be quashed and set aside.

5. On the other hand, Shri S. D. Lotlikar, learned Advocate General, appearing for the Respondents, has pointed out that despite of giving an undertaking in respect of the subject developments, the Petitioner failed to comply with such undertaking and, consequently, the Respondent no. 3 was justified to pass the impugned Order. Learned Advocate General further pointed out that it is an admitted position that there is an error in the Survey Records and, consequently, the development carried out by the Petitioner, cannot be considered to be in accordance with law. The learned Advocate General further pointed out that as such the Petitioner is bound to submit a revised plan which the authority shall examine on its own merits in accordance with law.

6. We have considered the submissions of the learned Counsel and we have also gone through the records. The short point for consideration is whether the Respondent no. 3 was justified to pass the impugned Order dated 03.03.2016 without giving a hearing to the Petitioner. Though it is contended by the learned Advocate General that the directions to comply with the undertaking by the Petitioner would itself suffice the requirements of law of a personal hearing, nevertheless, we find that in the facts of the present case as the Petitioner had already carried out substantial development pursuant to the development carried out way back in the year 2012 and even an application for revision of the plans was also submitted to the concerned authorities, we find that the Petitioner should have

been given a hearing before the impugned revocation Order came to be passed against the Petitioner.

7. Shri Nachinolkar, learned Counsel appearing for the Petitioner, pointed out that in the meanwhile, the Survey Records have already been rectified and that the Petitioner shall submit a revised plan in accordance with law.

8. In such circumstances, we find that the impugned Order revoking the development permission cannot be sustained and deserves to be quashed and set aside. The Respondents shall take a fresh decision with regard to the revocation along with the application for revision of plan submitted by the Petitioner after hearing the Petitioner in accordance with law.

9. Liberty to the Petitioner to file an additional plan disclosing the proposed revision based on the rectified Survey Records.

10. With the above observations, Rule stands disposed of accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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