

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.810 of 2015

1. Shri Mithun M. Naik,
son of Manohar Naik,
aged 33 years, Indian
National, business,
resident of House No.479,
Dassolwada, Kundaim,
Ponda-Goa. .. Petitioner

V/s

1. Village Panchayat of
Kundaim, having its
Office at Kundaim,
Ponda-Goa.
2. Shri Keshavrao S. Naik,
son of Sathba Naik, aged
about 46 years, Indian
National, resident of
House No.407, Dassolwada,
Kundaim, Ponda-Goa. .. Respondents

Mr. D. J. Pangam, Advocate for the petitioner.

Mr. V. Pangam, Advocate for the respondent no.1.

Mr. J. J. Mulgaonkar, Advocate for the respondent no.2.

CORAM :- C. V. BHADANG, J.

Reserved on : 7th April, 2016.

Pronounced on : 6th June, 2016.

JUDGMENT :

Rule. Rule made returnable forthwith. Learned
Counsel for the first and second respondents waive

service. Heard finally with the consent of the parties.

2. By this petition, the petitioner is challenging the judgment and order dated 17/12/2014 passed by the learned District Judge, Panaji sitting at Ponda in Civil Revision Application No.18/2014, by which the judgment and order dated 25/03/2014 passed by the learned Additional Director of Panchayat in Panchayat Appeal No.170/2010, has been confirmed. The learned Additional Director of Panchayat had, in turn, confirmed the order dated 12/10/2010 passed by the Deputy Director of Panchayat, whereby the petitioner was directed to demolish his house on the ground that it is constructed without permission/ licence from the respondent no.1-Village Panchayat.

3. The brief facts are that the petitioner is the owner of house No.479 of village Kundaim, Ponda, Goa, which was said to be in dilapidated condition, requiring urgent repairs and replacement of mud wall/s. On 24/03/2009, the petitioner had applied for a repair licence to the first respondent - Village Panchayat

along with a plan and photographs of the said house. That application was forwarded to the Block Development Officer (BDO) along with an inspection report. On 30/03/2009, the BDO approved the said application asking the first respondent to take a decision in the matter. According to the petitioner, in the meanwhile, the mud wall collapsed and as such, he was required to erect a laterite stone wall and carry out repairs, which was intimated by him to the first respondent. The second respondent, in the meantime, filed a complaint to the first respondent of which copy was sent to the Deputy Director of Panchayat, setting out the alleged illegal construction undertaken by the petitioner. On 12/10/2010, the Deputy Director of Panchayat directed demolition of the house of the petitioner. However, in the interregnum, the first respondent granted a licence for repairs to the petitioner on 28/06/2010. The second respondent unsuccessfully challenged the same before the Director of Panchayat, wherein the appeal filed by the second respondent was dismissed on 18/07/2011.

4. The petitioner challenged the order of the Deputy Director before the learned Additional Director

of Panchayat, which appeal was dismissed on 25/03/2014. This was challenged by the petitioner in a Civil Revision Application before the learned District Judge, which was dismissed on 17/12/2014, which brings the petitioner to this Court.

5. I have heard the learned Counsel for the petitioner as also the learned Counsel appearing for the first as well as second respondent.

6. The learned Counsel for the petitioner submits that the house of the petitioner was an old ancestral structure, which was in dilapidated condition, which required urgent repairs including replacement of the mud walls. He points out that the petitioner had duly applied for a repair licence. However, pending grant of the same, the mud wall collapsed, necessitating the petitioner to reconstruct the same. The learned Counsel points out that in the meantime, the petitioner was also granted repair licence by the first respondent. He, therefore, submits that the learned Deputy Director of Panchayat was not justified in directing the demolition

of the structure. The learned Counsel submits that the authorities were acting at the behest of the second respondent as the second respondent was working in the office of the Deputy Director of Panchayat, North Goa. It is submitted that the learned District Judge ought to have seen that the construction is in the form of repairs and cannot amount to reconstruction as such. He, therefore, submits that the subsequent repair licence granted by the first respondent would validate the repairs already undertaken by way of urgent measure. The learned Counsel has pointed to the plan annexed to the application (Annexure A) to show the wall, which was required to be replaced with laterite masonry and plastering. The learned Counsel was at pains to point out that it is nobody's case that the petitioner, while effecting repairs, has exceeded the plinth area, thus ruling out any possibility of a reconstruction/addition. He has also pointed out the panchanama dated 20/05/2009 to submit that the same will rule out the possibility of any reconstruction. He, therefore, urged that the impugned orders may be quashed and set aside.

7. The learned Counsel for the first respondent

has submitted that a licence for repairs has already been granted and the petitioner cannot undertake reconstruction under the garb of repairs.

8. The learned Counsel appearing for the second respondent supports the impugned order. It is submitted that the Courts below have rightly come to the conclusion that the petitioner has undertaken reconstruction under the garb of repairs. It is also submitted that even the repairs that were undertaken, were without a valid licence. He submits that the Village Panchayat was not justified in granting the licence for repairs when the Deputy Director had invoked powers under Section 66(5) of the Goa Panchayat Raj Act (the Act, for short). He, therefore, urged that the petition be dismissed.

9. I have given my anxious consideration to the rival circumstances and the submissions made and I express my inability to affirm the impugned orders, notwithstanding the fact that there are concurrent findings against the petitioner. Here are the reasons.

10. Admittedly, the petitioner is the owner of House No.479 situated in property Survey No.2/5 at village Kundaim, Goa. By an application dated 24/03/2009, the petitioner applied for permission for repairs of the said house. The application sets out that the house is about 90 years old and the plinth area is admeasuring 60 square metres. The application mentions that the mud walls are to be repaired with laterite stones with cement plaster as they are fully damaged and may fall at any time. The estimated cost of repairs was mentioned as Rs.40,000/-. Along with the application, the petitioner also enclosed a sketch of the existing house along with the details of the repairs, which is drawn by a draughtsman. A perusal of the said plan clearly shows that the existing mud walls in the north western corner (Z shaped) was to be demolished and reconstructed with laterite masonry and plastering. Indisputably, the Village Panchayat had resolved on 10/06/2010 (vide resolution No.4/1) to grant permission for repairs and accordingly, the permission was issued on 28/06/2010, which clearly mentions that the said, 'repair permission', was granted "as per the

application for permission for repairs dated 24/03/2009". A conjoint reading of the said application and the permission would make it explicit that the permission granted was for replacement of the mud wall (which was said to be fully damaged) with laterite stones and with cement plaster. It is further a matter of record that this permission was challenged by the second respondent before the Additional Director of Panchayat in Panchayat Appeal No.104/2010. That appeal was dismissed on 18/07/2011, albeit on the ground that under Section 178 of the Act, the Additional Director ceases to have jurisdiction once the resolution, which is challenged, is acted upon. The learned Additional Director has placed reliance on the Division Bench judgment of this Court in **Francisco Fernandes Vs. Jose Fernandes**, reported in 1995(1)GLT 302 while dismissing the appeal. Be that as it may, the fact remains that the permission granted by the Village Panchayat was unsuccessfully challenged by the second respondent and consequently, it can safely be said that the permission has attained finality, as the matter was not carried any further.

Prior to the grant of the permission,

petitioner had sent an application dated 11/06/2010, with a request to regularise the repaired portion of the ancestral house. Subsequent to this permission was granted. At this stage, a useful reference may be made to the decision of the Hon'ble Supreme Court in the case of ***Syed Muzaffr Ali Vs. Municipal Corporation of Delhi***, reported in 1995 Suppl. (4) SC 426, in which the Hon'ble Apex Court has *inter alia*, held that mere departure from authorised plan or putting up construction without sanction, does not *ipso facto* and without anything more necessarily and inevitably justify demolition of the structure. It has been held that there are cases and cases of such unauthorised constructions. Some are amenable to compounding and some may not be. There may be cases of grave and severe breaches of the licensing provisions or building regulations that may call for extreme step of demolition. It has been held that these are matters for the authorities to consider having regard to the nature of the transgressions.

Although the Deputy Director in his judgment dated 12/10/2010 has also stipulated that the permission for repairs stands rejected, it is clear that the said permission was not a subject matter of challenge before

the Deputy Director and in an independent challenge before the Additional Director, the appeal had failed. Thus, the only question was whether the construction actually undertaken by the petitioner was either without permission or in excess or variance of the permission granted. It is true that when the alleged repairs / construction is undertaken by the petitioner, there was no permission as such. This is tried to be explained by saying that after the permission was sought for, the mud wall collapsed on 09/04/2009 and hence, the petitioner was orally permitted to reconstruct the wall. There may be no difficulty in accepting that a public body such as the Village Panchayat or any of its officers cannot grant an oral permission. Hence, it is not necessary to go into the question whether such oral permission was indeed granted or not. However, what is relevant is that subsequently on 28/06/2010, such permission is granted and such post facto permission would enure to the benefit of the petitioner in claiming that the construction has been duly permitted by the competent authority, namely, the Village Panchayat. Thus, the only question is whether the construction undertaken by the petitioner would fall within the ambit of repairs or

would amount to reconstruction altogether. For this purpose, we have to look to the permission as granted and the nature of the construction undertaken. The Courts below have considered the fact that the BDO had conducted a second inspection of the house on 20/05/2009 and that report is placed on record. It would be necessary to reproduce the material part of the said report, in which the nature of the construction is described as under :

Sr. No.	Particulars	
1)	Nature of construction	Plastering of old walls of existing residential house and construction of existing old walls of the house.
2)	Whether new construction/reconstruction or extension to existing house.	New
3)	Area occupied by structure.	50.64 square metres
4)	Material used.	Cement, sand and laterite stone
5)	Approximate estimated cost of construction.	Rs.10,000/-

11. It can, thus, be seen that on second inspection by the B.D.O., which is relied upon by the Courts below, the cost of construction was shown to be approximately Rs.10,000/-. It does not indicate that the plinth area was exceeded in as much as the plinth area is shown to be approximately 59 square metres which compares well with the application which mentions the plinth area as 60 square metres. That apart, it is nobody's case that the plinth area has been exceeded. If we were to consider the permission granted along with the application, it is difficult to come to a conclusion that the inspection dated 20/05/2009 by the BDO would indicate that the construction/ repairs were at variance with the permission granted. As noticed earlier, the material question would be whether the repairs / construction undertaken conforms to the permission granted on 28/06/2010 or not. In the present case, it is not necessary to consider whether it is repairs or reconstruction.

12. The Courts below appear to have been swayed by the fact that the report describes the construction as

'New about an year old.' Once, it is found that the construction is in accordance with the permission granted, merely because it is found to be an year old construction, would not make it a construction, which is at variance with the permission granted. What weighed with the Additional Director was that the petitioner, without waiting for the permission, had repaired the said house, which according to the learned Additional Director, would amount to illegal construction. The Additional Director was also of the opinion that the first respondent could not have granted the permission and has "made irregularities by issuing permission dated 28/06/2010 for repair of the house after carrying out the construction of the said house." As indicated earlier, the permission was not subject matter of challenge before the learned Additional Director in Panchayat Appeal No.170/2010, but was subject matter of challenge in an independent appeal no.104/2010, which was dismissed.

13. The learned District Judge, although has framed the question for determination at the outset as to whether the petitioner has carried out repairs,

construction or reconstruction, has failed to address to the aspect whether the construction as carried out, was in conformity or at variance with the permission for repairs granted on 28/06/2010. In para 13, the learned District Judge has held thus :

"13. Revision petition is primarily filed on a question of law. The question is 'whether the activity carried out by the petitioner is in violation of Section 66(1) of Panchayat Raj Act ?' The petitioner herein is indirectly trying to challenge the findings given by the Lower Court pertaining to the facts of the case. The petitioner has constructed illegal construction. The respondent no.1 has also issued order of demolition. Admittedly, according to the petitioner mud wall has been converted into stone wall having cement. Same would not fall within the purview of repairs. It is a reconstruction."

14. In the first place, the question whether the activity carried out by the petitioner is in violation of Section 66(1) of the Act, cannot be a question of law, but would be a question of fact. The learned District Judge has held that admittedly, according to

the petitioner, the mud wall has been converted into stone wall having cement and thus, in the opinion of the learned District Judge, the same would not fall within the purview of repairs as it would be reconstruction. Precisely, at this stage, the Court failed to consider the nature of the construction in *juxtaposition* with the permission granted, which was, in turn, as per the application dated 24/03/2009, in which the applicant had specifically sought permission for replacement of the mud walls by laterite stones with cement plaster. If that be so, the finding recorded in my humble opinion, would be clearly perverse and against the weight of the evidence/ material on record. I am conscious of the limitations on the powers of this Court while entertaining a petition under Article 227 of the Constitution of India. The relevant parameters are now well settled. In ***Shalini Shyam Shetty Vs. Rajendra Shankar Patil***, reported in 2010(8) SCC 329, the Hon'ble Apex Court has set out the principles on exercise of the High Court's jurisdiction under Article 227 of the Constitution of India in para 49 of the judgment and the main purpose and object behind the exercise of such a jurisdiction is to keep the Tribunals and Courts

subordinate to the High Court "within the bounds of their authority". As held in para 49(9), this Court can interfere in the exercise of its power of superintendence when there has been a patent perversity, resulting into manifest failure of justice. In my considered view, the Courts below failed to address material question whether the construction/ repairs undertaken were in conformity with the permission granted or was in excess or variance of the same. I am unable to hold that the construction undertaken was at variance with the permission granted on 28/06/2010. As a result, the petition has to succeed and the following order is passed.

(i) The petition is allowed.

(ii) The impugned orders dated 17/12/2014, 25/03/2014 and 12/10/2010 are hereby set aside.

(iii) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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