

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.527 of 2014**

Mr. Alvito Gonsalves,
Major of age,
Resident of near Hotel
Goa International,
Tonca, Caranzalem, Goa .. Petitioner

Versus

1. The Deputy Commissioner
of the Corporation of the City
of Panaji, Panaji, Goa.
2. Mr. Manohar Vasant Poi,
Major of age,
Resident of 'Vaishnavi',
near Hotel Goa International,
Tonca, Caranzalem, Goa .. Respondents

Mr. J. Godinho, Advocate for the petitioner.

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

Mr. A. Kamat, Advocate for the respondent no.2.

CORAM :- S. B. Shukre, J.

Date : 4th January, 2016.

ORAL JUDGMENT :

Heard Shri Godinho, the learned Counsel for the petitioner, Shri Bhobe, the learned Counsel for the respondent no.1 and Shri Kamat, the learned Counsel for the respondent no.2.

2. Rule. Rule made returnable forthwith. Heard finally,

by consent.

3. It is the contention of the learned Counsel for the petitioner that the mundkarial house, which is 'L' shaped, has been in his possession, in the form it existed, when the father of the petitioner and his brother Francisco Gonsalves was registered as a mundkar of the house by the order of Joint Mamlatdar. He submits that in the transgression notice, however, it has been wrongly shown that this 'L' shaped house is an illegal extension made by the petitioner, without obtaining permission from the Corporation of City of Panaji. He submits that the plan annexed to the transgression document, wrongly depicts a square shaped portion as the existing house and 'L' shaped portion as the illegal extension of the house. He further submits that all his contentions, regarding the existing house, have not been considered at all. He also submits that if the petitioner has made any illegal extension, now that the petitioner having acquired ownership over the existing mundkarial house under the consent terms executed with the respondent no.2, original owner or the Bhatkar, the petitioner would file an application for regularisation of the extension alleged by the Corporation to be illegally made by him. He submits that the contentions of the petitioner should be appropriately considered by the authorities of the Corporation of

City of Panaji.

4. The learned Counsel for the respondent no.1 has strongly opposed the arguments made on behalf of the petitioner. He submits that the plan annexed to the transgression document correctly shows the illegal extension made to the existing house by the petitioner and if the petitioner now desires that the whole case be reconsidered, it is likely that the petitioner would fall in further trouble as there are admissions on record, given by the petitioner to the effect that the area of the existing house is much less than 100 square metres, as claimed by the petitioner. He submits that, at the most, the Corporation would consider the application for regularisation of the illegal extension made by the petitioner, strictly in accordance with law, if at all an application in that behalf, is filed by the petitioner, within a reasonable time. But, according to him, no case has been made out by the petitioner to show that the existing house of the petitioner is 'L' shaped and not square shaped, as shown in the map annexed to the transgression document.

5. After having gone through the impugned orders as well as the show cause notice and the transgression document along with map annexed to it and also the original plans of the house, I

am of the view that an opportunity needs to be given to the petitioner to establish his claim that the existing house in his possession is 'L' shaped, of which now he is the owner after execution of consent terms with the respondent no.2, a copy of which, has been placed on record and marked as document 'X' for identification. I am of the further view that an opportunity also needs to be given to the petitioner to canvass his claim that the existing house shown to be square shaped in the sketch map annexed to the transgression document, is wrong. From the impugned final notice as well as the order impugned herein, it does not appear that these contentions of the petitioner have been considered appropriately and, therefore, I find that the case deserves to be remanded to the respondent no.1, the Deputy Commissioner of Corporation of City of Panaji, Panaji, for fresh consideration.

6. Needless to mention that the petitioner would also be at liberty to file an application for regularisation of the extended structure, made by him and in case such an application is filed, the same shall be considered by the respondent no.1, in accordance with law.

7. In the circumstances, the Writ Petition is allowed. The

impugned order as well as final notice are hereby quashed and set aside. The matter is remanded back to the respondent no.1, for considering the issue of illegal extension, made to the existing house by the petitioner, afresh in accordance with law. All the contentions of the rival parties on merits of the case, are kept open. The regularisation application, if made within a period of one month, shall be decided in accordance with law.

8. Rule is made absolute in these terms.

S. B. Shukre, J.

SMA