

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 626 OF 2016

AND

WRIT PETITION NO. 627 OF 2016

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L & L Florida Gardens Cooperative
Housing Maintenance Society Ltd.,
through its Chairman Shri Appu Rajan,
having its office at L & L Florida Gardens,
Vanelim Village, Colva, Salcete, Goa. Petitioner

V e r s u s

- (1) Mr. Simon Fernandes,
resident of House No.111,
Grande Vanelim, Florida Garden,
Colva, Salcete, Goa.
- (2) The Goa State Pollution Control Board,
Through its Member Secretary,
having office at Dempo Towers, 1st floor,
EDC, Patto Plaza, Panaji, Goa.
- (3) Administrative Tribunal, Goa
Through its President,
having office at 3rd floor,
Vaidya Hospital, Panaji,
Goa-403 001. ... Respondents

Shri Zeller De Souza, Advocate for the Petitioner.

Shri Jasen Fernandes, Advocate for the Respondent no.1.

Shri J. Godinho, Advocate for the Respondent no.1.

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Shri J. Godinho, Advocate for the Respondent no.1.

CORAM: C. V. BHADANG, J.
DATE: 21ST September, 2016.

ORAL JUDGMENT:

Rule in both the petitions. The learned counsel for the respondents waives service. Heard finally by consent of the parties.

2. Both these petitions are between the same parties and involve a common question and as such, they are being disposed of by this common judgment.

3. On the basis of a complaint lodged by the petitioner, proceedings were initiated by the respondent no.2/ Goa State Pollution Control Board (Board for short) under section 31 (A) of the Air (Prevention and Control of Pollution) Act, 1981 and section 33 (A) of the Water (Prevention and Control of Pollution) Act, 1975. The Board had conducted an inspection of the carpentry unit operated by the respondent no.1 within the residential premises bearing no.111 at Vanelim Village Colva, Salcette-Goa. The inspection was conducted on 24/2/2015 in which the following observations were made:

- i) The unit is located within the residential

complex of 'L and L' Florida Gardens.

ii) The unit deals in making beds, chairs, tables etc.

iii) The unit was in operation at the time of inspection.

iv) Noise control measures were not adopted.

v) Carpentry works are carried out in the shed at the front side of the house. No enclosure has been provided on the sides.

vi) The saw dust is sold to the locals. The saw dust was seen stored at the front side of the unit is the open.

vii) The residential house does not have septic tank/soak pit provided for waste water generated from the residential house.

viii) Domestic water water and human faeces is discharged on open ground.

ix) Sample of well water was collected to ascertain the contamination of ground water. The report of analysis indicates that pH and microbial parameters are found exceeding the permissible limits.

4. The Board after hearing the parties passed a common order on 26/27th October 2015 directing the respondent no.1 to close/suspend the operation of the unit within a period of

15 days. The respondent no.1 has challenged the same in two separate appeals being Pollution Appeal No.15/2015/AIR and 16/15/Water, before the Administrative Tribunal.

5. It appears that the petitioner filed intervention applications in both the appeals on the ground that the rights of the residents of the petitioner/society are affected by the conduction of the unit by the respondent no.1 and they are likely to be affected by the outcome in the appeal. The Administrative Tribunal by separate orders dated 27/6/2016 has disallowed the intervention, which brings the petitioner to this court.

6. I have heard the learned counsel for the petitioner as well as the learned counsel appearing for the respondents.

7. On behalf of the petitioner reliance is placed on the decision of this Court in the case of **Shri Anil Parmekar Vs. The Secretary, Village Panchayat of Penha de Franca** (W. P. No.66 of 2016) decided on 4/7/2016, in order to submit that when a party is able to demonstrate that its

rights are likely to be affected by the outcome of the proceedings it is entitled to be impleaded as a party. The learned counsel for the petitioner has referred to the inspection report in order to point out that the respondent no.1 has installed one cutting machine, one planar machine and one turning machine and that the unit is located within the residential complex of the petitioner/society, namely Florida Gardens. The learned counsel for the petitioner has also referred to the sketch as annexed to the inspection report in order to demonstrate that the rights of the residents of the society are affected by the running of the carpentry unit by the respondent no.1.

8. On the contrary, the learned counsel for the contesting respondent no.1 has supported the impugned order. It is submitted that the only question before the Administrative Tribunal is whether the order passed by the Board is legal and proper. It is submitted that the Administrative Tribunal has rightly found that the presence of the petitioner "at this stage is not demanded considering the facts and circumstances and the law applicable". It is

submitted that the impugned order does not suffer from any infirmity so as to require interference.

9. I have carefully considered the rival circumstances and the submissions made. The Administrative Tribunal has referred to the decision of the Hon'ble Supreme Court in the case of **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others** (1992) 2 SCC 524 and **Ravi Yeshwant Bhoir Vs. District Collector, Raigad & Others** (2012) (2) ALL M.R. 962 (S.C.) and the decision of this Court in **Ms. Samira R. Gauns Vs. Shri Chandrakant S. Paryekar** (2009) (2) Goa L.R. 494. The Tribunal has observed that it is necessary for the petitioner/society to have a direct and legal interest in the action in the matter and to show that the outcome of the appeal would lead to a result which will affect the society legally by curtailing its legal rights. The Administrative Tribunal has then went on to observe that the petitioner is a maintenance society having no ownership rights towards the property and thus the presence of the petitioner cannot be considered as necessary for the purpose of enabling the

Tribunal to effectively and completely adjudicate and decide all the questions involved in the appeal. It is lastly been found that the petitioner has not shown as to how its absence would prevent the tribunal from arriving at proper conclusion. In that view of the matter the Tribunal has found that it is neither a necessary party nor a proper party.

10. In the case of **Ramesh Hirachand Kundanmal (supra)**, it has been held that a necessary party is the one which is bound by the result of the action and in absence of which the Court cannot effectively decide the issue in question. It has been held that a line has been drawn on wider consideration of the rule between a direct legal interest and commercial interest.

11. In the case of **Ravi Yashwant Bhoir, (supra)** it has been held that the complainant has to establish that he has been deprived of his legal right and he has sustained injury to any legally protected interest in order to succeed in getting himself arrayed as a party. It has been held that a fanciful or sentimental grievance may not be sufficient to

confer a locus standi to sue upon the individual and there must be injuria or a legal grievance which can be appreciated. A person having a remote interest cannot be permitted to become a party.

12. In the case of **Samira Gauns, (supra)** the question was whether any citizen would be regarded as interested person and may in public law seek intervention, if any construction is contrary to development control regulation or any law in that regard.

13. Coming back to the present case, it cannot be disputed that the society which is representing its members/residents, would be affected by the outcome of the appeal, as it essentially involves the question whether the respondent no.1 can be allowed to run the carpentry unit within the precincts of the petitioner/society. This Court in a matter of illegal construction as far back as in the year 2006 in the case of **Mr. Alwyn D' Cunha Vs. Village Panchayat of St. Lawrence and Another (2006) (2) Goa L. R. 368** has held that a person can justifiably be added as a party if

it can be shown that its rights are affected by the outcome of the proceedings in the appeal. This has been consistently followed by this Court. Recently in the case of **Amil Parmekar** after considering various decisions holding the field, this Court has held that if a party can demonstrate that its legal right is affected by the outcome of the proceedings, it can justifiably claim to be arrayed as a party in the appeal. It can thus be seen that although the petitioner may not be a necessary party in the appeal, it can certainly be said to be a proper party whose presence will assist the tribunal from effectively adjudicating the dispute before it and at the same time safeguarding their interest. The addition of the petitioner would not cause any prejudice to the respondents. In my considered view, the petitioners are entitled to be arrayed as parties in the appeal. Hence the following order is passed:

ORDER:

- (i) The petitions are allowed. The impugned orders dated 27/6/2016 are hereby set aside.
- (ii) The applications for intervention filed by the petitioner are allowed.

- (iii) The parties to appear before the Administrative Tribunal on 5/10/2016 at 10.30a.m..
- (iv) It is made clear that this Court has not expressed any opinion on the rival contentions of the parties on merits.
- (v) Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/