

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 692 OF 2016

SHRI. ALEX BERNARDO GOES.

... Petitioner

Versus

STATE OF GOA, THR. THE CHIEF
SECRETARY AND 6 ORS.

... Respondents

Mr. Gaurish N. Agni, Advocate for the petitioner.

Mr. P. Dangui, Additional Govt. Advocate for the respondents No.1,
3, 4 and 7.

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

Date:- 8th August, 2016

P.C.:

Heard Mr. G. Agni, learned Counsel appearing for the petitioner and Mr. P. Dangui, learned Additional Govt. Advocate appearing for the respondents No.1, 3, 4 and 7.

2. The above petition takes exception to the inaction on the part of the respondents No.2, 3, 4 and 7 in respect of an alleged illegal construction being carried out by the respondents No.5 and 6 in the property bearing Survey No.467/4 of Village Marcaim, Ponda Taluka.

3. Mr. G. Agni, learned Counsel appearing for the petitioner submits that a complaint has been lodged by the petitioner before the Block Development Officer (BDO)-respondent No.3 in April, 2016

bringing to the notice of the Authority that an illegal construction is being carried out in the subject-property. The learned Counsel further points out that though an inspection was held and in fact, a direction was issued to stop the work, the respondents No.5 and 6 have failed to honour the directions issued by the respondent No.3-BDO. The learned Counsel further points out that a similar complaint has been lodged before the local Panchayat respondent No.2, as well as to the Town Planning Department respondent No.7 with regard to the subject-construction. The learned Counsel further submits that there is no licence obtained from the Statutory Authorities and as the respondents No.2, 3, 4 and 7 have failed to perform their statutory duties, the above petition has to be examined under Article 226 of the Constitution of India. The learned Counsel further points out that the subject-construction is being put up adjoining the house of the petitioner, contrary to the statutory Regulations. The learned Counsel further submits that though no licence has been obtained by the private respondents, the Statutory Authorities have failed to proceed to take action despite of cogent material produced by the petitioner to substantiate his claim that the subject-construction is illegal and without obtaining sanction in law.

4. On the other hand, Mr. P. Dangui, learned Additional Govt. Advocate appearing for the respondents No.1, 3, 4 and 7, upon instructions from the BDO Shri P. P. Naik, submits that an order stopping the subject-construction work, the respondents No.5 and 6

had stopped carrying on such activity. Mr. Dangui, however, points out that though the BDO-respondent No.3 had issued directions to the local Panchayat to take action against the subject-construction as no action was taken, the respondent No.3 proceeded to hold a fresh inspection in connection with the subject-construction. The learned Additional Govt. Advocate further submits that the respondent No.3 has found that no sanctions were brought to his notice and, as such, steps are being taken to file a complaint before the respondent No.4 to assume powers under Section 66 (5) of the Goa Panchayat Raj Act.

The learned Additional Govt. Advocate further submits that the contention of the petitioner that no action has been taken, is not at all justified and, as such, the petition deserves to be rejected.

5. We have considered the submissions of the learned Counsel and we have also gone through the records. The records clearly reveal that the petitioner and the respondents No.5 and 6 are co-owners of the subject-property. The records further reveal that in fact, the petitioner has filed a regular civil suit in the Court of Civil Judge, Sr. Division at Ponda, in connection with the subject construction which is pending adjudication. Mr. Agni, learned Counsel appearing for the petitioner points out that no ad interim relief has been granted by the learned Judge, though notice has been issued on an application for temporary injunction before the learned Civil Judge, which is pending consideration. It cannot be disputed that on a complaint lodged before the Statutory Authorities, after

examining the veracity thereof, the Authorities are expected to take a decision or action in accordance with law.

6. In the present case, considering that the suit is already pending before the learned Civil Judge which, by itself, may not disentitle a party approaching this Court in a petition under Article 226 of the Constitution of India, we find that in the peculiar facts and circumstances of the case and considering the contention of the learned Additional Govt. Advocate that necessary action is in the offing, there is no irreparable failure of justice to the petitioner which would call for interference of this Court under Article 226 of the Constitution of India.

7. In such circumstances, we find that accepting the statement of the learned Additional Govt. Advocate upon instructions from BDO Shri P. P. Naik, that action would be taken in accordance with law, nothing survives in the present petition at this stage. The petition stands, accordingly, disposed of. Needless to say, all contentions of the private parties, as well as the petitioner, in respect of the subject-construction, are left open.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

ssm.