

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 812 OF 2015

SHRI.RUDRESH NAIK.

... Petitioner

Versus

THE STATE OF GOA, THROUGH ITS
CHIEF SECRETARY AND 3 ORS.,

... Respondents

Mr. Kaif Noorani, Advocate for the petitioner.

Mr. M. Salkar, Government Advocate for respondent nos.1, 3 and 4.

Mr. Hanumant D. Naik, Advocate for respondent no.2.

Coram:- F. M. REIS &
K. L. WADANE, JJ.

Date:- 6th January, 2016

P.C.

Heard Mr. K. Noorani, learned counsel appearing for the petitioner, Mr. H. D. Naik, learned counsel appearing for the respondent no.2 and Mr. M. Salkar, learned Government Advocate appearing for the respondent nos.1, 3 and 4.

2. We have heard the learned counsel appearing for the respective parties. The main grievance of Mr. Noorani, learned counsel appearing for the petitioner is that though the petitioner has all requisite licences for the subject construction, nevertheless, the respondent no.2 has refused to grant a permission within the stipulated time which forced the petitioner to file an appeal before the Dy. Director of the Panchayat under Section 66(2) of the Panchayat Raj Act. The learned counsel further points out that the Dy. Director

has disposed of the said appeal on the ground that the appeal has become infructuous in view of an erroneous rejection of the permission sought by the petitioner from the respondent no.2 vide resolution dated 08.10.2015. The learned counsel further points out that the said order is itself patently illegal as according to him there is no reason to refuse the permission as sought by the petitioner. The learned counsel as such points out that the impugned order be quashed and set aside and the respondent no.2 be directed to issue the permission to the petitioner for the subject construction.

3. On the other hand, Mr. H. D. Naik, learned counsel appearing for the respondent no.2 points out that the decision rejecting the permission dated 8.10.2015 has not been challenged by the petitioner in terms of the provisions of the Panchayat Raj Act and consequently, the question of entertaining the above petition when the petitioner has an alternate remedy is not justified. The learned counsel further points out that the respondent no.2 on justifiable reason has refused the permission to the petitioner.

4. Mr. M. Salkar, learned Government Advocate appearing for the respondent nos.1, 3 and 4 points out that the petitioner has an alternate remedy to challenge the decision dated 08.10.2015 and as such the question of entertaining the above petition does not arise.

5. Upon hearing the learned counsel appearing for the respective parties, it is not disputed that the decision dated 08.10.2015 is amenable to an appeal in terms of the Panchayat Raj Act. In such circumstances, when the petitioner has an alternate remedy to challenge such decision, the question of entertaining the above writ petition under Articles 226 and 227 of the Constitution of India is not at all justified. But however, the Dy. Director of the Panchayat was not justified to dismiss the appeal preferred by the petitioner as being infructuous when such appeal was filed in terms of Section 66(2) of the Panchayat Raj Act which the Dy. Director ought to have considered on its own merits.

6. Be that as it may, considering that in the meanwhile the respondent no.2 has already taken a decision on 08.10.2015 in connection with the application filed by the petitioner for permission of the subject construction, we find it appropriate to dispose of the above writ petition by granting liberty to the petitioner to file an appropriate appeal in terms of the Panchayat Raj Act in accordance with law. The observations of the authorities below while passing the impugned order disposing of the appeal preferred by the petitioner under Section 66(2) of the Panchayat Raj Act will not influence the decision while disposing of the appeal to be filed by the petitioner, on its own merits. Such appeal by the petitioner shall be disposed of as expeditiously as possible and preferably within three months from

the date of filing of such appeal.

7. With the aforesaid directions, the petition stands disposed of accordingly.

K. L. WADANE, J.

F. M. REIS, J.

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