

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.830 of 2015**

1. Shri Dilip Trimbak Alve,
2. Shri Narayan alias Ajit Trimbak Alve, Both major of age, sons of late Trimbak Alve, Indian Nationals, residing Near Popular High School, Comba, Margao, Goa. .. Petitioners

Versus

1. The Chief Officer, Margao Municipal Council, Margao, Goa.
2. Minister for Urban Development (Appellate Authority), Government of Goa, Secretariat, Porvorim, Goa.
3. Shri M. Ashraf Nagarwala, s/o late Usman Nagarwala, 56 years of age, r/o H.No.2/C, Indraprastha Building, Jama Masjid Road, Malbhat, Margao, Goa. .. Respondents

Mr. Nitin Sardessai, Senior Advocate with Mr. D. Shirodkar and Ms. Neha Shirodkar, Advocates for the petitioners.

Mr. S. D. Padiyar with Ms. A. Agrawal, Advocates for the respondent no.1.

Mr. A. D. Bhobe, Advocate for the respondent no.3.

CORAM :- S. B. SHUKRE, J.

Reserved on : 28th January, 2016.

Pronounced on : 10th March, 2016

JUDGMENT :

Heard. Rule. Rule, made returnable forthwith. Heard finally by consent.

2. By this writ petition, the legality and correctness of the order dated 03/09/2014 passed by the Goa Municipalities Appellate Tribunal in Municipal Appeal No.67/2014 is challenged. Facts of the case, in so far as they are relevant for adjudicating upon the challenge involved in this petition are stated in brief as under :

The case of the petitioners is that they are the owners of shop bearing No.14/482 situated at New Market, Margao, Goa which is under occupation of the respondent no.3 and in this shop, the respondent no.3 has, without any permission from the petitioners or the respondent no.1 Municipal Council, made some illegal construction/ repairs. According to the petitioners, the works carried out by the respondent no.3 in the shop qualify to be termed as construction of a building as contemplated under Section 184 of the Goa Municipalities Act, 1968 (the Act, 1968, for short). The petitioners, on noticing the same, made a complaint dated 10/04/2014 with the respondent no.1 for taking of action against the respondent no.3. The respondent no.1 conducted site inspection on 17/04/2014 and prepared a transgression report in

which, the illegal works carried out by the respondent no.3 were described. On 22/04/2014, the respondent no.1 issued notice to the respondent no.3 calling upon him to stop the work and show cause as to why the work should not be demolished or the shop premises be not sold. The matter was heard by the respondent no.1 and an order dated 12/05/2014 was passed by the respondent no.1 directing the Technical Section of Margao Municipal Council to seal the shop. A further direction was given to it to issue a show cause notice under Section 184 of the Act, 1968 to the respondent no.3.

By the order dated 12/05/2014, though sealing of the shop was ordered, the demolition of the works carried out by the respondent no.3 which were, according to petitioners, illegal, was not ordered. Therefore, the petitioners filed a Revision Application before the respondent no.2, the Hon'ble Minister, under Section 303 of the Act, 1968 seeking specific direction regarding demolition of the alleged illegal works. An application for issuance of a direction of status-quo was also filed along with the Revision Application. An ex-parte order of status-quo was passed on 25/06/2014 by the Hon'ble Minister. It is not in dispute that this order is still in operation.

Meanwhile, respondent no.3 also felt aggrieved by the sealing order dated 12/05/2014 passed by the respondent no.1

and, therefore, he too resorted to proceedings for challenging the said order. But, the proceedings resorted to by the respondent no. 3 were not in the nature of any Revision Application under Section 303 of the Act, 1968 but, an appeal under Section 184(13) of the Act, 1968. The petitioners took an objection on the maintainability of the said appeal. The appeal was heard on the said preliminary objection as well as on merits and rejecting the preliminary objection, the learned Presiding Officer of the Tribunal found that no prima facie case as regards the construction was established and, therefore, sealing order ought not to have been passed by the respondent no.1. Thus, allowing the appeal by the order passed on 03/09/2014, the learned Presiding Officer quashed and set aside the order dated 12/05/2014 of the respondent no.1 and directed removal of the seal within 10 days.

The petitioners could not accept the order dated 03/09/2014 passed by the Municipalities Appellate Tribunal and, therefore, preferred a Second Appeal under Section 184D of the Act, 1968, being Municipal Appeal No.MIN/UD/44/2014 before the respondent no.2 together with an application for stay. After hearing the petitioners, the respondent no.2 passed an order granting ex-parte stay of the order dated 03/09/2014 of the Tribunal. The respondent no.3 filed a Writ Petition No.612/2014 before this Court alleging non-action on the part of the respondent

no.1 with regard to giving effect to the order dated 03/09/2014. When the petitioners pointed out to the Court that the order dated 03/09/2014 was stayed by the Hon'ble Minister, the respondent no.2, on 29/09/2014, this Court disposed of the petition by directing the respondent no.2 to decide the Second Appeal within a period of six weeks from 30/09/2014. The respondent no.2, on request, was granted further time by this Court for disposing of the said appeal. The respondent no.2, however, could not do so as by the judgment dated 04/12/2014 in W.P.No.92/2007, this Court struck down Section 184D of the Act, 1968, which was the source of power of the respondent no.2 to hear the appeal against the order of the Municipalities Appellate Tribunal or the Second Appeal. Subsequently, the respondent no.2 sent a communication dated 02/04/2015 to the Advocate of the respondent no.3 that the respondent no.2 was divested of his jurisdiction under Section 184D of the Act, 1968 in view of the judgment of this Court dated 04/12/2014 passed in W.P.No.92/2007.

The aforesaid communication created a sort of stalemate in the matter as on one hand, the Second Appeal preferred by the petitioners could not be decided by the respondent no.2 and had no immediate prospect of it's being decided by any competent authority appointed by the Government and on the other, the stay granted to the effect and operation of

the order dated 03/09/2014 by the order dated 29/09/2014 continued to remain in operation. In order to get over the impasse, the respondent no.3 filed a Writ Petition being Writ Petition No.409/2015 to challenge the order of stay dated 29/09/2014 passed by the respondent no.2. After hearing both sides, this Court allowed the Writ Petition by the judgment dated 20/10/2015. By this judgment, the order dated 29/09/2014 came to be quashed and set aside and direction was also issued to respondent no.1 to open the seal within a period of one week. The additional direction regarding opening of seal within a week's time was clarified by this Court as forming part of the clause (i) of the judgment dated 20/10/2015 by which the prayer clause (a) of the Writ Petition was allowed by an order passed in M.C.A. No.780/2015 on 28/01/2016.

The effect of the judgment rendered in W.P.No.409/2015 on 20/10/2015 of this Court was that the order dated 03/09/2014 was revived which in turn created a peculiar situation..... *of catch 22*, this time only in relation to the petitioners. While the Second Appeal filed by the petitioners could not be decided for want of competent authority being appointed in place of Hon'ble Minister to exercise jurisdiction in the matter, the petitioners could not place their grievance before any authority under the Act, 1968 for it's being redressed properly. In order to

get over it, the petitioners are before this Court by invoking supervisory jurisdiction of this Court under Article 227 of Constitution of India.

3. Shri Nitin Sardessai, learned Senior Counsel submits that the order dated 12/5/2014 that was challenged by the respondent no.3 by filing a Municipal Appeal was an order passed under Section 184A of the Act, 1968 against which, no appeal is provided. He submits that Section 184(13) of the Act, 1968 provides for an appeal only against an order passed under subsection (8) of Section 184 by the Chief Officer of the Municipal Council. The order passed under subsection (8) relates to stopping of construction and altering or demolishing of construction. Under subsection (8), learned Senior Counsel further submits, there is no reference to the power of the Chief Officer to direct sealing of the disputed premises. Power to seal disputed or unauthorised constructions, learned Senior Counsel points out, is provided under Section 184A. Therefore, learned Senior Counsel submits that the order impugned in this petition is illegal and without jurisdiction. Learned Senior Counsel further submits that the law regarding remedy of appeal is well settled, according to which, an appeal cannot be filed, unless expressly provided under a Statute with the remedy of appeal itself being a

creation of Statute. He submits that there is no inherent power in any authority to hear an appeal. In support, he places his reliance upon the cases of ***D.M. Taneja Vs. Bhajan Lal***; 1988(3) SCC 26 and ***Smt Ganga Bai Vs. Vijay Kumar and others***; 1974(2) SCC 393. Learned Senior Counsel, on merits of the case, submits that the repairs carried out by the respondent no.3 to the shop in question amounted to material alternations within the meaning of Section 184(1) of the Act, 1968 and, therefore, required a permission from the respondent no.1, which was not taken by the respondent no.3. On this ground also, he urges that the order is illegal.

Correction carried out
as per order
dt.28/04/16 in MCA
379/16.

Sd/-
P.S.

4. Shri Padiyar, the learned Counsel for the respondent no.1 did not support the impugned order. He submits that no remedy of appeal has been provided against the order passed under Section 184A of the Goa Municipalities Act, 1968 and that the Appellate Tribunal was not empowered to pass the order of removal of seal, in an appeal, filed under the Act.

5. Shri Ashwin Bhobe, learned Counsel for the respondent no.3 submits that the power of appeal can be inferred from the provisions of Section 184A itself and it becomes amply clear from the provisions of subsection (3)(b) of Section 184A of

the Act, 1968. He submits that when the Appellate Tribunal has been conferred with a power to order removal of the seal to be exercised in an appeal, it is obvious that the Legislature intended to provide for an appeal against an order passed under Section 184A of the Act, 1968. He further submits that the words "may prefer the appeal against the order to the Appellate Tribunal" employed in subsection (13) of Section 184 conferring power upon the Appellate Tribunal to hear appeal filed against an order of the Chief Officer passed under subsection (8) must be interpreted as conveying a meaning that the appeal is provided against any order of the Chief Officer. He submits that such an interpretation is further supported by subsection (3) of Section 184C which relates to power of the Appellate Tribunal to make an interim order after giving opportunity to the Municipal Council or its Officer. He submits that care has been taken by the Legislature that during appeal proceedings, no interim order shall be passed by the Appellate Tribunal to the prejudice of the Municipal Council or his Officers, unless opportunity of hearing is granted to it or its officers.

6. Learned Counsel further submits that in this case, the impugned order has not been challenged by the Municipal Council but, it has been by the petitioners. He submits that by the

impugned order, a direction has been issued to the Municipal Council for removal of the seals and, therefore, the aggrieved party in reality is the Municipal Council. According to him, the petitioners do not have any *locus standi* to prefer the present Writ Petition. He also submits that since the proceedings initiated upon the complaint made by the petitioners have been disposed of by the Chief Officer finally, the appeal would be maintainable before the Appellate Tribunal. Thus, he submits that there is no need to make any interference with the order dated 03/09/2014 impugned herein.

7. On merits of the case, learned Counsel for the respondent no.3 submits that the Appellate Tribunal has rightly held that there was no construction of any building requiring any permission from the respondent no.1. Thus, he submits that there is no need to make any interference with the impugned order.

8. Upon perusal of the provisions of Chapter XII of the Act 1968, it is seen that the remedy of appeal has been provided by the Legislature under Section 184(13) and there is no other provision apart from subsection (13) which expressly creates any remedy of appeal in matters as the present one. Section 184(13) reads as under :

“S.184(13)- Any person aggrieved by an order of the Chief Officer made under sub-section (8) may prefer an appeal against the order to the Appellate Tribunal within the period specified in the order for the demolition of the construction or work to which it relates.”

9. It is clear from the language of subsection (13) of Section 184 that appeal has been provided only against that order of the Chief Officer which is passed under subsection (8) of Section 184 of the Act, 1968. Subsection (8) of Section 184 comes into picture when the Chief Officer, by written notice requires a person to stop illegal construction and to alter or demolish an illegal construction already made and specified in the notice. This subsection further provides that if within 15 days from the service of said notice, the demolition work is not commenced, the Chief Officer may cause such work to be done and recover the expenses incurred therefor from that person. In other words, any order passed by the Chief Officer regarding stopping of construction or requiring a person to alter or demolish any construction already made would only be amenable to challenge in an appeal under Section 184(13) of the Act, 1968. No doubt, there is also use of the words "may prefer an appeal against the order to the Appellate Tribunal" but, the particular word "order" used in this line cannot be interpreted as referring to any order passed by the Chief

Officer. The word "order" has to be understood in the context in which it is set and the context is of an order of the Chief Officer made under subsection (8) of Section 184 of the Act, 1968. So, the remedy of appeal provided under subsection (13) of Section 184 is against an order passed by the Chief Officer under subsection (8) of Section 184 of the Act, 1968. This remedy of appeal has not been provided against any other orders passed by the Chief Officer by resorting to the powers under other subsections of Section 184 or other sections of Chapter XII, including Section 184A of the Act, 1968.

10. The impugned order challenged before the Appellate Tribunal in Municipal Appeal No.67/2014, was an order passed by the Chief Officer under Section 184A(1) of the Act, 1968. We have already seen that no appeal has been specifically provided under the Act, 1968 against an order passed under Section 184A of the Act, 1968. According to learned Counsel for the respondent no.1 and respondent no.3, the remedy of appeal can be inferred from subsection (3)(b) of Section 184 of the Act, 1968. I must say, the law regarding remedy of appeal is well settled, according to which, right of appeal cannot be inferred by implication and unless it is expressly provided in the Statute, power to hear appeal cannot be impliedly conferred on or assumed by an Authority

under the Statute. This can be clearly seen from Section 184A which reads as under :

“184A. Power to seal unauthorized constructions-

(1) It shall be lawful for the Chief Officer, at any time, before or after making the order of demolition or of the stoppage of the construction under section 184, to make an order directing the sealing of the premises in which such construction is being carried on or has been completed for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such constructions.

(2) Where any premises in which any construction is being carried on has been sealed, the Chief Officer may, for the purpose of demolishing such construction in accordance with the provisions of this Act, order the seal to be removed.

(3) No person shall remove such seal except—

(a) Under an order made by the Chief Officer under sub-section (2); or

(b) under an order of an Appellate Tribunal or the Government, made in appeal under this Act.”

11. From the plain reading of this Section particularly subsection 3(b), one can see that the power conferred upon an Appellate Tribunal or the Government to direct removal of the seal while deciding an appeal is the power to enable the Appellate Tribunal to effectively decide the appeal filed before it in accordance with the provisions of the Act, 1968. That would mean

that the power to order removal of seal can be exercised by the Appellate Tribunal only when an appeal filed under Section 184(13) is pending for its adjudication and not otherwise. Power granted to an Appellate Tribunal to order removal of seal in exercise of its appellate jurisdiction cannot be stretched to confer jurisdiction on an Appellate Tribunal to hear an appeal filed against the order of sealing of premises passed by the Chief Officer under Section 184A(1) of the Act, 1968. So, the argument that the power to hear appeal filed against the sealing order passed under Section 184A can be read in subsection (3)(b) of Section 184A as inhering in Appellate Tribunal is devoid of any substance. The well settled principles of law governing the field would not permit such an interpretation to be made. These principles lay down that no person has a right of appeal as, unlike a right to sue which every person inherently possesses, right of appeal inheres in no one and, therefore, no person can file an appeal unless remedy of appeal has been clearly created by law. This position of law has been stated in clear terms by the Hon'ble Apex Court in the case of **Smt. Ganga Bai** (supra) which has been reiterated in the case of **D. N. Taneja** (supra). A useful reference to the observations of Hon'ble Apex Court in this regard made in paragraph 15 of its judgment in the case of **Smt. Ganga Bai** (supra) can be made and relevant observations are reproduced

thus :

“15.... There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute.”

12. Even in the case of **Muni Suvrat Swami Jain S.M.P. Sangh Vs. Arun Nathuram Gaikwad and Ors.**: AIR 2007 SC 38 referred to me by learned Counsel for the respondent no.3, the Hon'ble Apex Court has reiterated the aforestated principles of law when it referred to observations made in the case of **G. J. Kanga, Administrator of Municipal Corporation, Greater Bombay and another Vs. S. S. Basha**; 1992(2) Mh.L.J. 1573, wherein it has been held that the provisions of appeal, revision or review cannot be inferred by implication and that they have to be provided for in specific terms. For these very reasons, the

argument that right of appeal is available as the order dated 12/05/2014 finally disposes of the proceedings would have to be rejected and is rejected.

13. In the instant case, there is no right of appeal expressly conferred upon the person aggrieved by the order of Chief Officer directing sealing of premises passed under Section 184A(1) of the Act, 1968. The appropriate remedy in such a case, would be a revision application filed under Section 303 of the Act, 1968. The learned Presiding Officer of Municipalities Appellate Tribunal has ignored the well settled principles of law when he recorded his finding that the remedy of appeal can be inferred from the interpretation of Sections 184, 184A and other provisions of Chapter XII of the Act, 1968. In fact, there is no question of referring to the other provisions, including the provision of Section 184C(3), as the learned Counsel for the respondent no.3 would like to do for implying the presence of power to decide appeal filed against an order passed under Section 184A(1) by the Chief Officer, in view of the settled principles of law discussed earlier. It is pertinent to note here that the learned Presiding Officer of Municipalities Appellate Tribunal in the impugned order has admitted that there is no express statutory provision laying down that the appeal shall lie from the order of sealing passed under

Section 184A (please see page 16 of the impugned order) and yet he has painstakingly carried out the whole exercise to carve out a right of appeal by implication. The finding recorded in the impugned order regarding maintainability of appeal against the order passed by the Chief Officer under Section 184A is perverse and cannot be sustained in the eye of law.

14. Once it is found that the appeal filed by the respondent no.3 before the Municipalities Appellate Tribunal in this case, was not maintainable, the order passed in such an appeal would also have to go and then there would not be any need for dealing with the arguments of both sides on merits of the case. The judgment of the Hon'ble Apex Court in the case of **Muni Suvrat Swami Jain** (supra) pressed into service by the learned Counsel for the respondent no.3 for demonstrating the fact that the sealing order passed by the Chief Officer was not in accordance with the provisions of Goa Municipalities Act, 1968 being related to merits of the matter can also not be considered in these circumstances. As regards the argument of absence of *locus standi* of the petitioner to file a writ petition, I must say, it deserves rejection outrightly as in a case of this nature who else than the landlord could be said to be affected by the impugned order and it is rejected accordingly.

15. In the circumstances, the Writ Petition deserves to be allowed. The Writ Petition stands allowed. The impugned order is hereby quashed and set aside.

16. Rule is made absolute in the above terms. No costs.

S. B. SHUKRE, J.

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