

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 870 OF 2015

1. Smt. Sebastiana Cardozo,
Major of age,
Through POA holder,
Nazareth Barreto.

2. Shri Camilo Barreto,
Major of age,
Through POA holder,
Nazareth Barreto.

3. Shri Nazareth Barreto,
Major of age,

4. Floriana Barreto,
Major of age,
Through POA holder,
Nazareth Barreto.

All residents of H. No.126,
Behind old Survey Office,
Borda, Margao, Goa.

..... Petitioners

V e r s u s

1. State of Goa through Chief Secretary
With Office at Secretariat, Porvorim Goa.

2. South Goa Planning & Development Authority,
Through its Member Secretary,
Having office at 4th Floor, "D" Wing,
Osia Commercial Arcade,
Near SGPDA Market Complex,
Margao-Goa.

3. Town and Country Planning Board
With office at Dempo Towers,
Patto Plaza.
4. Shri Mohamed Rizwana also known as Mohamed
Rizwan Memon,
Son of Abdul Razak, aged 31 years,
Indian National, Residing at House No.803,
Behind St. Sebastian Church, Aquem Alto,
Margao 403601, Salcete Goa.
(deleted as per order dtd.3.3.2016 in MCA 230/2016)

Shri Mohamad Rizwan,
Also known as Mohamed Rizwan Memon
Son of Abdul Razak, aged 31 years,
Resident of H. No.803,
Mariam Manzil,
Behind St. Sebastiana Church,
Aquem Alto, Margao, Goa.

.... Intervener

Smt. A. Agni, Senior Advocate with Ms. A. Kamat, Advocate
for the Petitioners.

Shri M. Pereira, Advocate for Respondent no.2.

Shri P. Faldessai, Additional Government Advocate for the
Respondent nos. 1 and 3.

Shri C. A. Ferreira, Advocate for the Intervenor.

CORAM: C. V. BHADANG, J.
DATE: 27th September, 2016.

JUDGMENT:

Rule made returnable forthwith. The learned counsel for the respondents waive service. Heard finally by consent of the parties.

2. The challenge in this petition is to the order dated 27/10/2015 passed by the Town and Country Planning Board (Board for short), by which the appeal preferred by the petitioners under section 52 of the Town and Country Planning Act 1974 (the Act, for short) has been dismissed thereby confirming the demolition notice dated 17/10/2011 issue by the South Goa Planning and Development Authority (Authority, for short).

3. The brief facts are that on the basis of a complaint lodged by the respondent no.4 a site inspection of the residential premises of the petitioner was carried out on 10/8/2011, in which the Authority found that there was an illegal construction of a building made, which consisted of a ground plus one and a ground plus two structure having the

ground floor area of 8.50×4.10 sq.mtrs = 34.85 sq.mtrs and 8.00×5.80 mtrs. = 46.40 mtrs. (total ground floor area of 81.25 sqmtrs) constructed of laterite walls with RCC frame structure, part of which was found to be within the road widening area and without maintaining the necessary set backs. The board issued a show cause notice dated 30/8/2011. The notice was replied by the petitioner no.1 on 8/9/2011 in which it was denied that any illegal construction has been made. It was contended that the copy of the complaint filed by the respondent no.4, the site inspection report, the panchanama/sketch was not supplied. No site inspection was carried out on 10/8/2011. It is the material contention that the structure referred to in the show cause notice is a mudkarial house which is in existence since last more than 60 years and is reflected in the survey plan. The dwelling house along with appurtenant land has been purchased under the Goa Daman and Diu Mundkars (Protection from Eviction) Act, 1975. The road is being widened now while the house is in existence prior to the construction of the road and therefore there was no question of maintaining any set backs.

The Authority by a notice dated 17/10/2011 had directed the structure to be demolished failing which the Authority was to take action for demolition.

4. The petitioner no.1 challenged the same before the Board in appeal under section 52 of the Act which was dismissed on 22/11/2011. The petitioners challenged the same before this Court in Writ Petition No.766/2013, which was allowed and the matter was remanded back to the Board to pass a reasoned order. After remand, the Board vide order dated 27/10/2015 has again dismissed the appeal, which is subject matter of challenge in this petition.

5. I have heard Smt. Agni, the learned Senior Counsel for the petitioners, Shri Faldessai, the learned Additional Government Advocate for the respondent nos.1 and 3, Shri Pereira, the learned counsel for the Respondent no.2 and Shri C. A. Ferreira, learned counsel for the Respondent-4/intervenor.

6. It is submitted by the learned Senior Counsel for

the petitioner that although the appeal was remanded to the Board for passing a reasoned order, the Board has ended up passing yet another order, which cannot be said to be reasoned. It is submitted that the Board was expected to pass a well reasoned order which would show that the contentions raised by the petitioners have been properly considered. Reliance is placed on the decision of the Supreme Court in the case of **Kranti Associates Pvt. Ltd. and anr. Vs. Masood Ahmed Khan and others** (2010) 9 SCC 496 **Oryx Fisheries Pvt. Ltd. Vs. Union of India and others** (2010) 13 SCC 427, in order to submit that the necessity of giving reasons, is paramount and any quasi judicial authority or even an administrative authority, passing order affecting the rights of the parties, must speak. The learned Senior Counsel has submitted that the house of the petitioner is a mudkarial house purchased under the Mundkar's Act, in pursuance of the judgment of the Mamlatdkar dated 16/3/2001. It is submitted that in the city survey record the area of the chalta no.73 is shown as 200 sq.mtrs. It is thus submitted that the construction cannot be said to be illegal. The learned Senior Counsel has then referred to the impugned order, to

submit that although the impugned order mentions that photographs were submitted by the competent authority, the authority had not submitted any photographs but the photographs were produced by the petitioners. It is submitted that the order does not reflect any reasons, worth the name and is thus vitiated.

7. On the contrary it is submitted by the learned counsel for the respondent no.2 that unlike a regular Court, the Board is not expected to pass a judgment. The learned counsel has taken me through the impugned order to show that the documents produced on record and contentions raised have been considered and reasons are given.

8. The learned counsel for the respondent no.4 has relied upon the decision of the Supreme Court in the case of **Ouseph Mathai and others Vs. M. Abdul Khadir** (2002) 1 SCC 319. and **Maharashtra State Board of Secondary and Higher Secondary Education Vs. K. S. Gandhi and others** (1991) 2 SCC 716 and **Raj Kumar Soni and Another Vs. State of U.P. And anr.** Manu/SC/7271/2007.

It is submitted that the impugned order cannot be said to be unreasoned. It is submitted that the question whether the reasons given are sufficient would depend upon facts and circumstances of each case. It is submitted that admittedly the petitioners have not shown any permission for effecting construction. It is submitted that the documents pertaining to the tax assessment of the house, with Margao Municipal Council would show that the area of the house was only 20.50 sq.mtrs consisting of earthen walls, tiled roof with two rooms and one verandha. The learned counsel has pointed out Clause 7 of the Form of Assessment titled in which the structure is shown to be comprising of mud walls, mangalore tiles and mud floor. It is submitted that the present structure does not compare well with the structure as mentioned in the relevant record as to assessment of tax. With reference to the photographs produced by the petitioners before the Board, it is submitted that the said structure cannot be said to be a house in existence for more than 60 years. There is suppression of these documents by the petitioners which would dis-entitle them from any relief. He therefore submitted that the petition is without any merit.

9. I have carefully considered the rival circumstances and submissions made. The subject house is bearing no.126, chalta no.73 of P.T. Sheet 156 within the limits of Margao Municipal Council. The show case notice dated 30/8/2011 describes the alleged illegal construction as under:

“ the construction of building having part G+2 storyed and part G+1 storyed and having ground floor area of 8.50×4.10 mts.=34.85 m² and 8.00×5.80 mtrs = 46.40m² respectively, thus having total ground floor area of 81.25m², which construction is of laterite masonry walls with RCC frame structure and which is within the r/w area and without maintaining the minimum required side setbacks.

10. The case made out in the reply by the petitioners was that it is a mudkarial house which is in existence since last more 60 years, which is purchased under the orders of the Mamlatdar. The order of the Mamlatdar dated 16/3/2001 would show that the petitioner no.1, Sebastiana Cardozo was allowed to purchase an area of 200 sq.mtrs including the

dwelling house. It can thus be seen that 200 sq.mtrs is the entire area which would include the plinth area of the dwelling house and the appurtenant land. As per the plan annexed, the area of the dwelling house is shown to be 60 sq.mtrs. It is evident that a mundkar is not entitled to carry out any additions to the plinth area. The present plinth area as shown in the notice is 81.25 sq.mtrs. Not only that the structure is partly comprising of a ground plus one storey, while part comprising of ground plus two storey structure. It appears that the Board had directed a fresh inspection on 29/1/2013, the report of which is at pages 68-69 of the compilation. The inspection was carried out on 3/10/2012 by the Member Architect Shri Chandan Parab and the present secretary in the presence of the petitioner no.1. The report mentions that the structure shown in the survey plan and as reflected in mundkarial plan does not conform to the area of the structure existing on site and the petitioner/appellant did not produce any approvals obtained from the competent authority for the development undertaken. In the previous round, the Board had dismissed the appeal with a one line order. The Board after noticing the rival contentions had

passed an order in the following terms:

After deliberation the Board passed
the following order:

O R D E R

"The TCP Board dismissed the appeal since construction in the plot does not confirm to prevailing regulations."

11. This Court vide judgment and order dated 24/2/2015 found that the order was unreasoned and the appeal was remanded back. The Board has now dismissed the appeal by order dated 27/10/2013 which is mainly challenged on the ground that the order is unreasoned.

12. I have carefully gone through the impugned order passed and I am unable to accept the contentions as raised. A perusal of the order passed would show that the Board has considered the show case notice dated 30/8/2011, the notice under section 52 of the Act dated 17/10/2011, the judgment of the Mamlatdar, Salcete dated 16/3/2001, the show cause

notice issued by the Chief Officer, Margao Municipal Council on 23/11/2011, the certificate of purchase dated 10/10/2001 issued by the Dy. Collector under section 16(8) of the Goa Daman and Diu Mundkars (Protection from Eviction) Act, 1975, the report of inspection of Mr. Chandan Parab, the photographs produced and then has referred to the submissions as under:

- (i) that as per form B of City Survey, house of appellant admeasures 200.00m². The Board observed that as per plan annexed to mundkarial order area under house no.573 is 60.00 ms, area under huts is 11.00m² & 7.00m², area under WC is 2.00m², while open land admeasures an area of 120.00m². Therefore Board concluded that submission of Advocate of appellant are not correct. As per mundkarial order as well as Form B total area of plot admeasures 200.00m².
- (ii) that existing structure is more than 80 years old.

The board observed that as per photographs submitted by South Goa PDA construction appears to be a new. In this regard Board also observed that Advocate

of the appellant has not produced any relevant documents.

Lastly the Board has concluded as under:

On perusal of the above and on basis of submissions made by Advocate of the appellant and advocate of respondent PDA, Board is of the considerate opinion that appellant has carried out illegal construction at Chalta No.22 and 23 of P.T. Sheet No.156 of Margao Town as detailed at (b) above. The Advocate of appellant failed to prove by way of producing any relevant documents that there are no illegalities at plot under reference. Therefore TCP Board dismiss the appeal.

13. It can thus be seen that the order cannot be said to be unreasoned. The sufficiency or otherwise of the reasons given would depend upon facts and circumstances of each case. There cannot be any dispute with the proposition that a quasi judicial authority or an administrative authority affecting the rights of the parties must give reasons. As held by the Hon'ble Supreme Court in the case of **Kranti Associates P. Ltd.(supra)**, the order must not be like "the

inscrutable face of a Sphinx”.

14. In **Maharashtra State Board of Secondary and Higher Secondary Education (supra)** it is held that :

Unless the rule expressly or by necessary implications, excludes recording of reasons, it is implicit that the principles of natural justice or fair play does require recording of reasons as a part of fair procedure. In an administrative decision, its order/decision itself may not contain reasons. It may not be the requirement of the rules, but at the least, the record should disclose reasons. It may not be like a judgement. But the reasons may be precise. In *S.N. Mukherjee v. Union of India*, J.T. 1990 (3) SC 630 the Constitution Bench of this Court surveyed the entire case law in this regard, and we need not burden the Judgement to reiterate them once over and at page 643 in paragraph 40 it held that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the

reasons for its decision. In para 36 it was further held that recording of reasons excludes changes of arbitrariness and ensure a degree of fairness in the process of decision making. The said principle would apply equally to all decisions and its applications cannot be confined to decisions which are subject to appeal, revision or judicial review. "It is not required that the reasons should be as elaborate as in the decision of a Court of law." The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given the consideration to the points in controversy. The need for recording reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons. If the appellate or revisional authority disagrees, the reasons must be contained in the order under challenge."

15. It can thus be seen that the order of a quasi

judicial authority cannot be treated on par with the judgment of a regular Court and it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons. If the appellate or revisional authority disagrees, the reasons must be contained in the order under challenge.

16. Thus, I do not find that the order suffers from any infirmity on the ground of it being unreasoned or even on the ground that the reasons are insufficient. Admittedly the petitioners have not produced any construction licence or permission. I have also perused the photographs produced by the petitioners and the structure cannot be said to be anything but new. In any case, the structure cannot be said

to be of a mudkarial house which is more than 60 years old. For these reasons I do not find that any case for interference is made out. The petition is without any merit and it is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

Ap/