

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 31 OF 2017

MR. MARTIN FERNANDES., ... Petitioner
Versus
STATE OF GOA, THR. THE CHIEF
SECRETARY AND 4 ORS., ... Respondents

Mr. Salil Satish Saudagar, Advocate for the petitioner.
Ms. P. Sawant, Additional Govt. Advocate for respondents No.1
to 3.
Mr. G. Naik, Advocate for respondent No.4.
Mr. D. Pangam, Advocate for the respondent No.5.

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

Date:- 17th January, 2017

P.C.:

Heard Mr. S. Saudagar, learned Counsel appearing for the petitioner, Ms. P. Sawant, learned Additional Govt. Advocate appearing for respondents No.1 to 3, Mr. G. Naik, learned Counsel appearing for the respondent No.4 and Mr. D. Pangam, learned Counsel appearing for the respondent No.5.

2. The challenge in the above petition is to an alleged residential house claimed to have been erected by the petitioner adjoining the disputed structure ordered to be demolished in PIL Writ Petition No.18/2014 disposed of by the Judgment dated 14th October, 2015.

3. The learned Counsel appearing for the petitioner submits that the subject matter of the said PIL WP was merely a structure which had already collapsed way back in the year 2004 and, as such, according to him, the demolition ordered in the contempt petition filed by the respondent No.5 is not in respect of the subject matter of the said PIL WP. It is further pointed out that adjoining to such structure, there was a residential house constructed by the petitioner prior to the year 2002 and, as such, according to him, as there is a serious dispute with regard to the identity of the structure ordered to be demolished in the said PIL WP, it would be appropriate to direct an inquiry to be conducted prior to such demolition. The learned Counsel further points out that though the petitioner does not have permissions from the statutory authorities with regard to the structure in question, nevertheless, as the petitioner was not given an adequate hearing prior to the order of such demolition, the action on the part of the respondents itself is arbitrary and has no sanction in law. The learned Counsel has taken us through the orders passed by this Court in the PIL WP as well as in the proceedings before the Authorities to point out that the residential house is not the subject matter of the show cause notice nor the order of demolition passed by this Court in the PIL WP. The learned Counsel, as such, points out that the respondents be restrained from taking any action based on the orders passed in the PIL WP.

4. We have considered the submissions of the learned Counsel and with their assistance, we have gone through the records. The records undisputedly disclose that the petitioner is trying to save the structure which does not have permission from any statutory authority. On this ground itself, the question of exercising extraordinary jurisdiction of this Court in favour of the petitioner under Article 226 of the Constitution of India would not at all be justified.

5. Be that as it may, on perusal of the said Judgment passed in PIL WP No.18/2014, it is seen that the fact that the subject structure therein was already demolished in the year 2004 has not even been pleaded, nor contended by the petitioner who was a party to the said petition. Apart from that, on perusal of the order passed in respect of the demolition of the subject structure, we find that the contention of the petitioner that there was a residential house adjoining the subject structure ordered to be demolished has not been disclosed, nor found by the Authorities at the time of the inspection directed to be conducted by this Court. In fact, while disposing of the writ petition filed by the petitioner, challenging the orders passed by the Director of Panchayats, dismissing the appeal preferred by the petitioner, we find that there was a contention raised that the structure intended to be demolished was a new structure which has been

rejected by the learned Single Judge of this Court by order dated 12th May, 2004, passed in Writ Petition No. 221/2004. Looking into the Judgment passed by this Court and the undisputed facts of the present case, we find that there is no case made out for grant of any relief to the petitioner in exercise of extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

6. The petition stands accordingly rejected.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

ssm.