

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 177 OF 2017

SHRI. SACHIN KALOKHE.,

... Petitioner

V e r s u s

MRS. MUMTAZ BI MANIYAR AND 4 ORS.,

... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.

Mr. Pravin Faldessai, Addl. Government Advocate for the Respondent no. 2.

Coram :-

F. M. REIS,

NUTAN D. SARDESSAI, JJ.

Date : 16th February, 2017

ORAL ORDER(Per F. M. Reis, J.)

Heard Mr. Nigel Da Costa Frias, learned Counsel appearing for the Petitioner and Mr. Pravin Faldessai, learned Counsel appearing for the Respondent no. 2.

2. The challenge in the above Petition is to an Order dated 22.12.2015 passed by the Respondent no. 2 in terms of the provisions of Section 94 A of The Goa Public Health Act 1985 (Amendment Act 10 of 2004), (for short, said Act).

3. Mr. Nigel Da Costa Frias, learned Counsel appearing for the Petitioner, submits that the Respondent no. 1 has put up an illegal

construction in the property belonging to the Petitioner and though the Respondent no. 1 has no statutory permissions to put up such construction, the Respondent no. 2 has proceeded to release water connection to such premises. The learned Counsel further submits that though Section 94 A of the said Act provides that such power should be exercised only in appropriate cases, according to him, the Respondent no. 2 has not applied his mind to the issue involved whilst granting such water connection. The learned Counsel further submits that on plain reading of the provisions of Section 94 A of the said Act, it gives arbitrary discretion to the Respondent no. 2 to release such water connection without considering whether the Applicant has any right to occupy such premises. Learned Counsel further pointed out that grant of such arbitrary discretion has been deprecated by the Apex Court in a Judgment reported in **AIR 1974 SC 543** in the case of **State of Punjab & anr vs. Khan Chand**. The learned Counsel as such pointed out that there are no proper guidelines issued by the State Government specifying the manner in which such discretion has to be exercised and, as such, the question of releasing such water connection to the Respondent no. 1 is not at all justified. Learned Counsel further pointed out that the Petitioner has also filed a representation to the Respondent no. 2 dated 18.10.2016 raising their objections which have not yet been considered.

4. On the other hand, Shri Pravin Faldessai, learned Addl. Government Advocate appearing for the Respondent no. 2, has pointed out

that the water which has been released is in compliance with the provisions of Section 94A of The Public Health Act to provide only essential services to the occupants of such premises. Learned Addl. Government Advocate further submits that release of such water connection does not in any way prejudice or impede any right of the Petitioner from getting any relief before the appropriate forums as provided in Section 94 A of sub-section (4) of the said Act. Learned Addl. Government Advocate further submits that such water has been released after complying with the relevant provisions of law and, as such, according to him, there is no merit in the above Petition which deserves to be rejected.

5. We have considered the rival considerations of the learned Counsel and we have also gone through the relevant provisions of the said Act. On the basis thereof, the point for determination is whether the provisions of Section 94 A of the said Act are arbitrary and, as such, the impugned Order passed by the Respondent no. 2 deserves to be quashed and set aside. In this context, this Court in a Judgment passed in Writ Petition no. 192 of 2008 dated 18.12.2014, wherein one of us (*F. M. Reis, J.* was a party), has examined a challenge to the constitutional validity of the said provisions and has observed at Para 14 and 15 thus :

“14. On close scrutiny of above referred decisions and the principles laid down by the Supreme Court for observance while determining

question of constitutionality of any provision, we are of the opinion that the provisions of Chapter X-A of the Act or the Guidelines laid down in the memorandum issued by the State cannot be said to be arbitrary or violative of provisions of Article 14 of the Constitution of India. Infact, the provisions contained in section 94A(1) and 94A(2) support the object of Article 21 of the Constitution of India. The object of the provision is to ensure maintenance of essential services to the public at large and promote health and well being of the citizens of the State of Goa. It must be observed that providing for adequate and safe drinking water is one of the essential services for a citizen. Ensuring maintenance of essential services is necessary for promoting and protecting public health. In the year 1981, 34th World Health Assembly in a resolution emphasised that safe drinking water is the basic element of "primary health care" which is the key to attainment of "Health for all by the year 2000 AD". Millennium Development Goals included safe water and sanitation as the attainable goal. Lack of essential service such as electricity and water supply leads to unhygienic condition which in turn leads to serious health hazards. Lack of hygienic condition may lead to disease, infections, epidemics etc. It is the responsibility of the State to keep the environment safe for its citizens. Considering the object of the provisions,

providing for water connection for such households which are not provided with water supply cannot be construed as illegal even if the structure raised is illegal. Essential services like water and electricity supply is a must to maintain basic living condition of a human being. The provisions of Chapter X-A are as stated above in furtherance of protecting the guarantee provided under Article 21 r/w directive principles of State Policy particularly clauses (e) and (f) of Article 39 and are also framed with due regard to covenants contained in Civil and Political Rights, 1966 as also the International Covenant of economic Social Rights of 1966 which proclaims the inherent dignity and the equal and inequitable rights of all Members of the Human Family as foundation of Justice and Peace of the world. Hence the provision made for maintaining essential supplies like water and electricity which is the basic requirement of life does not in any way violate the rights of petitioner. Rights of petitioner, if any, cannot be equated as preferred as against the basic human rights of respondent or any other person. The basic human rights of an individual will have an precedence in contrast with right of an individual in respect of property or any other such right. It is also to be noted that in the State of Goa, the preliberation law Portaria No. 6802 relates to the Regulation of water supply within the State of Goa. Supply of water

including installation of other items, are governed by the said Portaria.

15. Provisions of section 94A cannot be said to be arbitrary and it cannot be accepted that the powers are vested sans any safe-guard. Sub-section 4 of Section 94A provides that in the event of any private right being affected or dispute having arisen, or any person, owner or occupier being entitled to any compensation, either under the Electricity Act, 2003, Land Acquisition Act, 1894 or any other law for the time being in force, right of such person to determine, claim and receive such compensation shall remain unaffected. Sub-section (b) of said section provides that in the event of any dispute as regards land, building, apportionment, encroachment, including legality or illegality of structure or occupation of any structure by any person or any question related or incidental thereto, such dispute, lis, proceedings, right, privilege shall remain unaffected and shall not prejudice any person in any way whatsoever. Clause (c) provides that providing water supply connection, electricity supply connection or any other essentials service, shall not in any way be taken to have regularized, validated or legalised any such structure, premises, house, hut, area or occupation of or by any such person, as an order under sub-section (1) is relatable to all matters of health only. Thus, prayer of petitioner seeking

eviction of respondent no. 5 remains unaffected by the action of respondent no. 4 in directing supply of water. There are in-built safe-guards provided under sub-section 4 (a), (b) and (c) of section 94A and as such argument that act seeks to invest unbridled and unregulated power in the authorities is without any basis.”

6. Taking note of the said observations, we find that upon reading the relevant provisions specially Section 94 A (4) of the said Act, a view has been taken that such provisions are not arbitrary which in fact are only to facilitate the occupants to obtain basic services of water, etc., as stipulated therein. As such, as no right of the Petitioner gets affected in view of the safeguards as provided in Section 94 A(4) of the said Act, we find that the contention of Mr. Nigel Da Costa Frias, learned Counsel appearing for the Petitioner, that such provisions are arbitrary, cannot be accepted. The guidelines issued by the State Government were also under challenge in the said Writ Petition and this Court has found that such guidelines as well as the provisions as incorporated in The Public Health Act Chapter X-A, cannot be said to be unconstitutional. As such, we find that the question of re-examining the matter in the context of the contention of Mr. Nigel Da Costa Frias, learned Counsel appearing for the Petitioner, does not arise at all. Learned Addl. Government Advocate appearing for the Respondent no. 2, pointed out that any such application, if any, pending shall be examined by

the Respondent no. 2 in accordance with law.

7. As far as the challenge to the inaction on the part of the local Panchayat with regard to the alleged illegal construction, we find that the Petitioner has an efficacious alternate remedy to raise such contention before the appropriate Authority in terms of the Panchayat Raj Act and, as such, the question of examining such grievance in the present Petition, would not be justified at all. Needless to say, all the contentions of the private Respondents are left open.

8. In view of the above, the Petition stands rejected.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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