

IN THE HIGH COURT OF BOMBAY AT GOA**Writ Petition No.347/2017**

Mr. Mandar Dinkar Kharkande,
Son of Shri. Dinkar Kharkande,
Aged about 37 years, bachelor, in business,
Indian National and Residing at H.No.96,
Kodal, Karapur Tisk, Karapur, Sanquelim,
Taluka of Bicholim-Goa. **Petitioner**

Versus

1. State of Goa.
Through its chief Secretary,
Secretariat Porvorim Goa.
2. The Chief Town Planner,
Town and Country Planning Department,
Dempo Towers, Patto,
Panaji-Goa.
3. The Deputy Town Planner,
Office of Deputy Town Planner,
Town and Country Planning Department,
Cicholim/Sattari Taluka Office,
Bicholim-Goa.
4. Village Panchayat of Karapur-Sarvan,
Through its Secretary,
Karapur-Sarvan,
Taluka of Bicholim-Goa. **Respondents**

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Shri N.N.Sardessai, Senior Advocate with Shri
Deepak Gaokar, Advocate for the petitioner.
Shri P. Danguai, AGA for the respondent nos.1 to 3.
None for the respondent no.4.

**CORAM : F.M. REIS &
NUTAN D. SARDESSAI, JJ.
DATED : 12/04/2017.**

ORAL JUDGMENT :(Per F.M.REIS, J.)

1. Heard Shri Nitin N. Sardessai, learned Senior Counsel appearing for the petitioner and Shri P. Dangui, learned AGA appearing for the respondents no.1 to 3.

2. Rule. Heard forthwith with the consent of learned counsel appearing for the parties. The learned AGA appearing for the respondents no.1 to 3 waives notice.

3. A short point which arises for consideration in the above Writ Petition is whether the impugned order dated 23.1.2017 revoking the technical clearance granted on 28.1.2016 is sustainable as no hearing was given to the petitioner.

4. Shri Nitin Sardessai, learned Senior Counsel appearing for the petitioner points out that the impugned order revoking technical clearance was passed by the authorities without giving a hearing to the petitioner. The learned counsel further points out that while disposing of the Writ Petition No.447/2016 and PIL WP No.10/2016 by judgment dated 25.11.2016 directions were issued to the respondents to decide the show cause notice dated 25th May 2016 in

accordance with law and thereafter the impugned decision was passed by the respondent no.3 without affording a hearing to the petitioner. The learned Senior Counsel, as such, points out that on this ground alone, the impugned decision deserves to be quashed and set aside.

5. On the other hand, learned AGA submits that in compliance with the directions issued by this Court in the said judgment, no hearing was given to the petitioner. The learned AGA, as such points out that in case the Court directs the petitioner would be given a hearing and take a afresh decision on the said show cause notice.

6. We have considered the submissions of the learned counsel appearing for the respective parties and we have also gone through the records.

7. Merely because a direction was issued by this Court to decide the show cause notice would not, by itself, mean that such decision can be taken without following the principles of natural justice. In the present case, it is an admitted position that the show cause notice issued by the respondent no.3 was decided without giving a hearing to the petitioner. Such order

would affect the substantive rights of the petitioner and as such the order revoking the technical approval cannot be sustained and deserves to be quashed and set aside as the petitioner was not afforded an adequate hearing before passing such order. Shri Nitin Sardesai, learned Senior Counsel also points out that based on the impugned decision an order was passed by the respondent no.4 dated 23.1.2017 revoking the construction license. As the basis of such order was the impugned decision passed by the respondent no.3. On considering the view we propose to take on such decision, the decision taken by the respondent no.4 dated 23.1.2017 would no longer survive.

8. In view of the above, we pass the following order:-

- (i) The impugned decision dated 23/1/2017 passed by the respondent no.3 revoking the technical approval of the petitioner is quashed and set aside.
- (ii) The respondent no.3 is directed to give hearing to the petitioner before taking the decision on the said show cause notice dated 25th May, 2016 in accordance with law within three months from today.
- (iii) Interim relief reflected in the judgment passed by

this Court dated 25th November, 2016 in the said writ petition shall continue to operate until the decision by the respondent no.3.

9. Rule is made absolute in the aforesaid terms.

NUTAN D. SARDESSAI, J.

F.M.REIS, J.

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