

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.627 OF 2017**

1. Shri Fakruji Govind Gawas,
R/o H. No.198,
Nadora Wadi,
Nadora, Bardez, Goa.

2. Shri Gajanan Bala Gawas,
Major of age,
Son of Bala Fakare Gawas,
R/O H. No. 198,
Nadora Wadi,
Nadora, Bardez-Goa.

.... Petitioners

V e r s u s

1. Mr. Sagun Narayan Morajkar,
Major of age, Son of Narayan Morajkar,
R/o H. NO.203, Nadorawadi,
Nadora, Bardez-Goa.

2. Village Panchayat of Nandora,
Through its Secretary,
Having office at Village Panchayat
of Nadora, Nadora, Bardez-Goa.
(All registered addresses)

.... Respondents

Adv. Nigel Da Costa Frias for the Petitioners.

Adv. Ryan Da Piedade Menezes for Respondent no.1.

CORAM: C. V. BHADANG, J.
DATE: 21ST NOVEMBER, 2017.

ORAL ORDER:

On 4/9/2017, a notice for final disposal was issued in this case. I have accordingly heard the learned counsel for the petitioners and the learned counsel for the respondent no.1. None appears for the second respondent though served. The petition is being disposed of finally.

2. The short point involved in this petition is whether there is a limitation of one month which can be read into section 66 (5) of the Goa Panchayat Raj Act, 1994 (Act, for short) for the Village Panchayat to take action against an illegal and unauthorized construction.

3. The learned District Judge while deciding Revision Application No. Civil Revision no.75/2015 by order dated 16/12/2016 has taken a view that the Village Panchayat ought to have taken action within one month of the issuance of the show cause notice in the face of section 66(5) of the Act.

4. In order to appreciate the issue involve it would be necessary to set out section 66 of the Act which reads thus:

66. Regulation of the erection of buildings.— (1)

Subject to such rules as may be prescribed, no person shall erect any building or alter or add to any existing building or reconstruct any building without the written permission of the Panchayat. The permission may be granted on payment of such fees as may be prescribed.

[(2) If a Panchayat does not, within thirty days from the date of receipt of application, determine whether such permission should be given or not and communicate its decision to the applicant, the applicant may file an appeal within thirty days from the date of expiry of aforesaid period, to the Deputy Director who shall dispose of the same within thirty days from the date of filings of such appeal. If the Deputy Director fails to dispose of the appeal within thirty days, such permission shall be deemed to have been given and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or bye-laws made under this Act.

(3) Whenever any building is erected, added to or reconstructed without such permission or in any manner contrary to the rules prescribed under sub-section (1) or any conditions imposed by the permission granted, the Panchayat may,

(a) direct that the building, alteration or addition be stopped; or

(b) by written notice require within a reasonable period to be specified therein, such building alteration or addition to be altered or demolished

(4) In the event of non-compliance with terms of any notice under clause (b) of sub-section (3) within the period specified in the notice, it shall be lawful for the Panchayat to take such action as may be necessary for the completion of the act thereby required to be done, and all the expenses therein incurred by the Panchayat shall be paid by the person or persons upon whom the notice was served and shall be recoverable as if it were a tax imposed under this Act.

(5) Where the Panchayat fails to demolish the building which is erected, added to or reconstructed without the permission of the Panchayat, or in any manner contrary to 41 Substituted by the Amendment Act 1 of 1997. 42 The words omitted by the Amendment Act 1 of 1997. 43 Existing sub-section (5) omitted and thereafter new sub-section (5) to (7) inserted by the Amendment Act 1 of 1997. Manual of Goa Laws (Vol. III) –545– Panchayat Raj Act & Rules the rules made under the Act or any conditions imposed in the permission, within a month from the date of the knowledge, the Deputy Director shall assume the powers of the Panchayat under sub-sections (3), (4) and (5) and take such steps as may be necessary for the demolition of such building.

(6) -

(7) -

5. It can thus be seen that under sub section 5 of Section 66 of the Act, if the Panchayat fails to demolish the illegal and unauthorized construction. which is erected, added to or reconstructed, without the permission, of the Panchayat within one month of the date of the knowledge, the Dy. Director of Panchayat shall assume powers of the Panchayat under Sub sections 3, 4 and 5 of section 66 of the Act and can take such steps as may be necessary for the demolition of such a building. The said provision cannot be read to mean

that the Panchayat can act against an illegal and unauthorized construction. only within one month from the date of knowledge. Sub section (5) of Section 66 of the Act is an enabling provision under which a person affected by the illegal and unauthorized construction can approach the Dy. Director and/ or the Dy. Director can suo motu assume powers of the Panchayat in the event the Panchayat fails to take action within one month. It cannot be the import of sub section 5 of section 66 of the Act that the panchayat would be without jurisdiction and power to take action against the illegal and unauthorized construction after the expiry of one month from the date of knowledge. Such a construction in my considered view would be against the object and the intention behind the framing of section 66 (5) of the Act.

6. I would hasten to add that this Court has not considered the question whether after the Dy. Director assumes the powers under Sub Section 5 of Section 66 of the Act, it would open to the Panchayat to take action. The said question does not arise in the facts of the present case.

7. The learned counsel for the respondent no.1 has submitted that even otherwise the impugned demolition notice is misconceived. I am afraid that this aspect cannot be gone into for the simple reason that the learned District Judge has simplicitor allowed the appeal on the finding that there is a period

of limitation for the Panchayat to take action within one month. The impugned judgment does not show that the learned District Judge has gone into the merits of the notice of demolition and the order passed by the learned Addl. Director. In that view of the matter in my considered view the Civil Revision application has to be remanded back to the learned District Judge for deciding it afresh in accordance with law. The petition is thus partly allowed. The impugned judgment and order dated 16/12/2016 passed by the learned Ad-hoc District Judge, Mapusa in Civil Revision Application No.75/2015 is hereby set aside. Civil Revision Application No.75/2015 is restored back to the file of the District Judge for deciding it afresh on its own merits and in accordance with law. The petition is disposed off in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/