

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.411 OF 2017**

1. Shri Ajay Bherumal Jain
Son of late Bherumal Jain,
Age-42 years, occupation-
business, Resident of 3rd Floor,
Rajnil Royal, Malbhat, Margao,
Goa
2. Shri Ashok Bherumal Jain
Son of late Bherumal Jain
Age-43 years,
Resident of Akar Gardens,
Aquem Alto, Margao, Goa

The Petitioner No.2 is represented
through his constituted Power of
Attorney the Petition No.1 abovenamed. .. Petitioners

Vs

1. The Chief Officer
Margao Municipal Council,
Municipal Building,
Margao, Goa
2. Smt. Dwarka Vithal Borkar
Widow of late Vithal Borkar
Major of age,
3. Shri Mohandas Vithal Borkar
Son of late Vithal Borkar,
Age-42 years,
4. Smt. Sweta Mohandas Borkar
Wife of Mohandas Borkar,
Major of age,

All Residents of H. No.669/K
Krishna Kunj,
Opp. Sincro Hotel
Fatorda, Margao, Goa

.. Respondents

Mr. Sudesh Usgaonkar, Advocate for the petitioners.

Ms. A. Lobo, Advocate for respondent no.1.

Mr. C. A. Coutinho, Advocate for respondent nos.2 to 4.

Coram :- M. S. SONAK, J.

DATE :- 9th May, 2017

ORAL JUDGMENT :-

Heard Mr. Usgaonkar for the petitioners, Ms. A. Lobo for respondent no.1 and Mr. Coutinho for respondent nos.2 to 4.

2. Rule. With the consent and at the request of the learned Counsel for the parties, rule is made returnable forthwith.

3. The challenge in this petition is to the order dated 19/04/2017 made by respondent no.1, in the purported exercise of powers vested in him under the provisions of Section 184(A) of Goa Municipalities Act, 1968 (the said Act).

4. Mr. Usgaonkar, the learned Counsel for the petitioners submits that the show cause notice under Section 184 of the said Act was issued to the petitioners on 06/01/2017, in which, it was alleged that the petitioners are illegally renovating the shops bearing Nos.99/A and 99/B, without obtaining prior permission as required under the said Act. He submits that till date, this show

cause notice has not been disposed of and in the meantime, the impugned order has been issued. He submits that the impugned order is in breach of the principles of natural justice. He submits that this visits the petitioners with serious consequences in as much as his business of selling crockery and glassware, etc. has been brought to grinding halt since 20/04/2017.

5. Ms. Lobo, the learned Counsel for respondent no.1 submits that despite grant of opportunities to the petitioners, it is the petitioners, who have failed to avail the same. She submits that despite stop work order, since the petitioners continued with offending works, respondent no.1 was left with no alternative than to exercise power under Section 184(A) of the said Act. In these circumstances, she submits that this petition may be dismissed. However, she submits that respondent no.1 will dispose of the show cause notice dated 06/01/2017 in accordance with law.

6. Mr. Coutinho, the learned Counsel for respondent nos.2, 3 and 4, who claim to be owners of the suit shops, submits that the petitioners, under the garb of renovations, have put up a mezzanine floor in the suit shops. He submits that despite stop work orders of respondent no.1, the petitioners with impunity, continued the illegal unauthorised work and, therefore, the order under Section 184(A) of the said Act, has been rightly made. Mr.

Coutinho points out that under Section 184(A)(3), an appeal is provided against the impugned order and this is an additional reason why this Court should not entertain the present petition.

7. Upon considering the aforesaid submissions of the learned Counsel for the parties and perusing the material on record, in the first instance, some directions are required to be issued to respondent no.1 to dispose of the show cause notice dated 06/01/2017 as expeditiously as possible.

8. There appears to have been some issue with regard to filing of reply by the petitioners and some issue as to the date of personal hearing. Rather than going into such details, the interest of justice will be met, if respondent no.1 is directed to consider the averments in this petition itself as a reply to the show cause notice dated 06/01/2017. In addition to the same, the petitioners are also permitted to file a reply to show cause notice on or before 11/05/2017.

9. Ms. Lobo states that the matter was posted by respondent no.1 on 11/05/2017 for afford of personal hearing to the petitioners. Accordingly, on the said date, respondent no.1 shall afford an opportunity of personal hearing to the petitioners. Thereafter, respondent no.1 shall dispose of the show cause notice

dated 06/01/2017 as expeditiously as possible and in any case within a period of two weeks from today. Such disposal shall be in accordance with law and on its own merits. It is made clear that this Court has not adverted to the rival contentions and, therefore, all such matters are left open for the determination of respondent no.1, again in accordance with law and on their own merits.

10. It is prima facie not possible to accept that the petitioners have an alternate remedy in terms of Section 184(A)(3) of the said Act against the order made by the Chief Officer under Section 184(A)(1) of the said Act. An appeal would, however, lie against the order made by the Chief Officer under Section 184(8) of the said Act, in terms of the provisions contained in Section 184(13) of the said Act. In such an appeal, no doubt, the Appellate Authority can order de-sealing of premises in case in the meanwhile, the order has been made by the Chief Officer under Section 184(A) of the said Act. This would be prima facie a harmonious manner of reading the provisions of Sections 184(13) and 184(A)(3)(b) of the said Act. These are only prima facie observations. Since, in this case, there is an allegation of violation of principles of natural justice, even otherwise the petition can always be entertained without, relegating the parties to resort to alternate remedy, if available.

11. Mr. Usgaonkar, the learned Counsel for the petitioners states that neither any construction has been undertaken since the issuance of show cause notice/ stop work order dated 06/01/2017 nor do the petitioners propose to undertake any further construction. Mr. Usgaonkar submits that the petitioners are actually undertaking the business of selling of crockery and glassware from the suit shops. Taking into consideration the fact that the show cause notice dated 06/01/2017 is yet to be disposed of, the impugned order to the extent it directs sealing of the suit shop, is required to be interfered with. The interference is really not on merits, but basically on the ground of lack of procedural compliances. As noted earlier, the merits can be left open for the respondent no.1 to determine in the proceedings before it. Accordingly, the impugned order dated 19/04/2017, to the extent it orders the sealing of shop No.14/99/B is set aside. The Chief Officer shall de-seal the suit shop forthwith.

12. Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

13. All concerned to act on the authenticated copy of this order.

M. S. SONAK, J.

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