

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NOS.463 AND 464 of 2016****WRIT PETITION NO.463 of 2016**

Mr. Sandesh B. Naik,
S/o Bhikaro Naik,
Age 43 years, businessman,
residing at House No.201/CL/120,
Adarsh Nagar, Post Chicalim, Goa, .. Petitioner

V/s

1. Mormugao Municipal Council,
through its Chief Officer,
Municipal Building,
Vasco-da-Gama, Goa- 403 802.
2. Mr. Mahadev N. Naik,
Son of Narayan Naik,
Major, businessman,
Resident of House No.68,
Dabolim, Post Chicalim, Goa .. Respondents

WITH**WRIT PETITION NO.464 of 2016**

Mr. Saneep B. Naik alias Tatu Naik,
S/o Bhikaro Naik,
Age 45 years, businessman,
residing at House No.201/CL/120/1,
Adarsh Nagar, Post Chicalim, Goa, .. Petitioner

V/s

1. Mormugao Municipal Council,
through its Chief Officer,
Municipal Building,

Vasco-da-Gama, Goa- 403 802.

2. Mr. Mahadev N. Naik,
Son of Narayan Naik,
Major, businessman,
Resident of House No.68,
Dabolim, Post Chicalim, Goa .. Respondents

Mr. T. Pereira, Advocate for the petitioners in both the petitions.

Mr. S. D. Padiyar, Advocate for the respondent no.1 in both the petitions.

Mr. A. Nachinolkar, Advocate for the respondent no.2 in both the petitions.

CORAM :- C. V. BHADANG, J.

Date : 18th January, 2017

ORAL JUDGMENT :

Taken up for final disposal by consent of the parties. Both these petitions involve common questions of law and fact as such, they are being disposed of by this common judgment.

2. The first respondent Mormugao Municipal Council had conducted an inspection on 03/04/2009 in respect of certain structures, which were erected at Adarshnagar, Chichlim, Vasco-da-Gama, without

obtaining licence. The Municipal Council drew a document of transgression along with a sketch (page 39 of the compilation), in which 10 such structures were found in the subject land.

3. Writ Petition No.463/2016 pertains to structure nos.8, 9 and 10, while Writ Petition No.464/2016 pertains to structure nos.5 and 6. In pursuance of the inspection and the report of transgression, a show cause notice under Section 184 of the Goa Municipality Act, 1968 (the Act, for short), was issued to the petitioner/s, to which the petitioner/s sent their reply. The petitioner/s claimed that the structures are existing structures at least from the year 1996. It was contended that the structures are assessed for house tax by the Municipal Council and the electricity connection is released after obtaining No Objection Certificate (NOC) from the Municipal Council. The petitioner in W.P.No.463/2016 also contended that the Municipal Council has granted a licence for general store and kerosene licence in respect of the said structure. It was contended that the structures are situated in the land belonging to Comunidade of Vadde and an application for regularisation is filed with the Collector in the year 2001 in pursuance of the provisions of Article 372-A of the Code of Comunidade, (as amended.) It was,

however, not disputed that there was no licence obtained for erection of the said structures.

4. The Municipal Council, after considering the reply, issued a final notice of demolition on 22/05/2009, calling upon the petitioner/s to demolish the structures within 15 days, failing which, the demolition was to be carried out by the Municipal Council at the expense of the petitioner/s. Feeling aggrieved, the petitioner/s approached the Municipality Appellate Tribunal (Tribunal, for short). The Tribunal, by a judgment and order dated 04/05/2015, has dismissed the appeals. Hence, these writ petitions.

5. I have heard Shri Pereira, the learned Counsel for the petitioner/s and Shri Padiyar, the learned Counsel for the first respondent. I have also heard Shri Nachinolkar, the learned Counsel appearing for the second respondent. With the assistance of the learned Counsel for the parties, I have perused the record and I have gone through the impugned order passed by the Tribunal.

6. On behalf of the petitioner/s, the following contentions are

raised :

- (i) The subject structures are assessed by the Municipal Council and the Municipal Council is recovering house tax. It is submitted that the electricity connection is released in favour of the petitioner/s in respect of the disputed structures some time in the year 2001. The subject structures are also being assessed for water tax and the water connection was released after the Municipal Council granted NOC in the year 2001.
- (ii) It is submitted that the fact that the structures are assessed to tax, would amount to regularisation of the structures within the meaning of Section 184(21) of the Act.
- (iii) It is contended that in so far as the land, on which the structures are standing, it is belonging to Comunidade of Vadde and there are applications for regularisation sent to the Collector in the year 2001, for regularisation of the structures under Article 372-A of the Code of Comunidade, as introduced by virtue of the amendment in the year 2001 and on the basis of the policy decision of the Government of the year 2000.
- (iv) It is submitted that during the pendency of the appeals before the Tribunal, the petitioners have applied for regularisation of the structures

with the Municipal Council.

It is submitted that thus, the Tribunal was in error in upholding the final notice of demolition.

7. On the contrary, it is submitted by Shri Padiyar, the learned Counsel for the first respondent that merely because the structures are assessed for house tax or that the electricity and the water connection is released in favour of the petitioner/s, cannot clothe the structures with a legal status. The learned Counsel has pointed out that the NOCs were subject to and without prejudice to the right of the Municipal Council to take appropriate action in respect of the structures. The learned Counsel has placed reliance on the decision of this Court in the case of ***Jagadish Amrutlal Caria and another Vs. The Bombay Municipal Corporation***; [2001(4) Bom CR 673] and the decision of the Supreme Court in the case of ***Pradeep Oil Corporation Vs. Municipal Corporation of Delhi and Anr.***; [2011 Law Suit (SC) 374], in order to submit that the assessment of tax cannot have the effect of regularisation of the structures. It is submitted that imposition of tax is for the revenue/ fiscal purpose and has no bearing on the legality or otherwise of the structures.

8. It is submitted by the learned Counsel for the second respondent that in a petition filed by the second respondent, it was the Municipal Council, which came with a case that the structures are standing on the land belonging to respondent no.2. It is submitted that the second respondent has purchased the land under a Sale Deed dated 10/02/2004. It is submitted that in any event, once the structures are found to be without necessary licence/ permission, the demolition notice cannot be faulted with. The learned Counsel has pointed out to letter dated 12/02/2003, sent by the petitioner Sandeep Naik, for transfer of the house tax for part of the house bearing No.MHN120. It is submitted that in the said communication, which is addressed to the first respondent, the petitioner has claimed that the area of the house (which is shown to be standing in land Survey No.144/1), is approximately 60 square metres. It is submitted that the petitioner/s claim that the area of the house is 165 square metres, which does not match with the area as stated in the letter dated 12/02/2003. It is also contended that the area shown in the tax receipt in the year 2000, is 12 square metres, while in the year 2007, it is shown to be 27 square metres, which again does not match with the area as claimed on behalf of the petitioner/s.

9. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out.

10. Admittedly, the petitioners are not having any licence/permission from the Municipal Council for erection of the structures. On their own saying, the structures are erected in the land belonging to Comunidade, for which they are seeking regularisation. Respondent no.2 claims that the structures are standing on the land belonging to him, which he has purchased under Sale Deed dated 10/02/2004. In my considered view, the Tribunal is justified in holding that the only issue in the present case, is whether the subject constructions are illegal in the context of the provisions of the Act. In the present proceedings, it is neither necessary nor possible to go into the question, whether the structures are standing in the land belonging to Comunidade or in the land belonging to second respondent. The material contention on behalf of the petitioner/s is that the structures are assessed for house tax and water tax and electricity connection has been released on obtaining NOC from the Municipal Council which has the effect of regularisation of the structures. The contention cannot be accepted. In the Division Bench

judgment in the case of ***Jagdish Karia*** (supra), the following question was referred to Division Bench for decision :

“When admittedly the structures in relation to which property tax or general tax is being levied are unauthorised structures, in the sense that they have been constructed without getting building plans sanctioned by the Corporation and they have been occupying without Corporation issuing the occupation certificate be subjected to levy of property tax or general tax of the Corporation?”

The Division Bench answered the reference in the following terms :

“The Municipal Corporation is entitled to levy property or general tax prescribed in case of unauthorised or illegal structures which are constructed without getting the Building Plans sanction by the Corporation and which are occupied without the Corporation issuing the Occupation Certificate.”

11. It can, thus, be seen that the imposition of the tax or water tax cannot tantamount to the structures being acknowledged as legal by the local authority. They are entirely distinct appeals. The Tribunal, to my mind, has rightly found that although the structures are assessed and

the Municipal Council is collecting the taxes, it does not mean that the Municipal Council has acquiesced or waived the right to initiate the action for removal of unauthorised construction. That apart, the NOCs issued by the Municipal Council also show that they were without prejudice and subject to the right of the Municipal Council to take appropriate action in respect of the illegal construction. Thus, the contention based on the structures being assessed to tax, to my mind, cannot be accepted. The submission made on behalf of the petitioner/s based on Section 184(21) of the Act, also cannot be accepted for more reasons than one. Firstly, this contention, specifically with reference to Section 184(21) of the Act, was not raised either before the Municipal Council or before the Tribunal and is raised for the first time before this Court. That apart, this Court has in the case of ***Sidharam Yengandul Vs. State of Maharashtra***, [2006 Law Suit (Bom) 1447], *inter alia*, held in para 6 of the judgment that once it is proved that the structure is unauthorised, the mere fact that the structure is assessed to property tax, would not have the effect of deemed regularisation or the structure being treated as authorised.

12. This takes me to the contention based on the application for

regularisation of the land, which is said to be pending before the Collector under Article 372-A of the Code of Comunidade. In the first place, at this stage, there are no orders for regularisation obtained although it is claimed by the petitioner/s that the applications are pending from the year 2001 and even assuming that the land is eventually regularised, the requirement of appropriate licence/permission from the Municipal Council, cannot be whittled down. The learned Counsel for the first respondent has pointed out that the land falls in the Planning area and as such, before applying for permission to Municipal Council, the petitioner/s would be required to obtain the development permission from the Planning and Development Authority. Be that as it may, once the structures are found to be without permission, I do not find that any exception can be taken to the impugned order passed by the Tribunal.

13. The impugned orders also do not suffer from any infirmity. The supervisory jurisdiction under Article 227 of the Constitution of India, cannot be exercised at the instance of the petitioners, who on their own saying, have constructed the structures on the land belonging to Comunidade and that too, without obtaining licence. It would be

necessary to mention that in a petition under Article 227 of the Constitution of India, which is an equitable extraordinary remedy, it is expected to ensure that the Tribunals and authorities below act within the bounds of their authority. For the aforesaid reasons, I decline to entertain the petitions, which are, accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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