

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.459 OF 2017**

Mr. Damodar P. Fadte, son of
Shri Pandurang Raghoba Fadte,
major in age, married, Indian
National, businessman, Resident
of H.No:621/L Camarxete,
Shri Vallabh Housing Society
Curtorim Salcete, Goa.

.. Petitioner

Vs

1. Margao Municipal Council,
Through its Chief Officer,
Having office at Margao-Goa
2. State of Goa
Through its Chief Secretary
Having office at New Secretariat
Complex, Porvorim,
Bardez-Goa
3. The Director,
Directorate of Municipal
Administration, having office
at Panaji-Goa

.. Respondents

Mr. Shivan Desai and Mr. J. Ramaiya, Advocates for the petitioner.

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

Ms. P. Kalangutkar, Additional Government Advocate for
respondent nos.2 and 3.

Coram :- M. S. SONAK, J.

DATE :- 8th May, 2017

ORAL JUDGMENT :-

Heard Mr. Shivan Desai for the petitioner, Ms. Lobo

for respondent no.1 and Ms. Kalangutkar, Additional Government Advocate for respondent nos.2 and 3.

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

3. The petitioner has been allotted 'sopo' space by respondent no.1 Council. On 22/03/2013, a show cause notice was issued to the petitioner alleging that the petitioner had undertaken illegal construction in or upon such 'sopo' space. The petitioner states that he had submitted his reply to the show cause notice on 01/04/2013. On 26/10/2016, it is the case of the petitioner that, the Council has referred the issues / dispute to the Market Committee.

4. Mr. Shivan Desai, the learned Counsel for the petitioner submits that the show cause notice dated 22/03/2013 is yet to be disposed of. However, the petitioner, on 03/05/2017 was informed by certain officials of the Council that demolition will take place within four days. Mr. Desai contends that since the show cause notice is yet to be disposed of, the Council cannot proceed with any such demolition, even before any final order is made in the matter. He submits that once final order is made, there are

provisions for appeal against the same. He submits that such an opportunity cannot be deprived to the petitioner, even assuming that the final order might be adverse to the petitioner.

5. Ms. Lobo, the learned Counsel for respondent no.1 states that the apprehension expressed by the petitioner with regard to demolition may not be correct. In any case, she submits that the show cause notice will be disposed of within six weeks from today and the final order will be communicated to the petitioner. Before show cause notice is disposed of, an opportunity of hearing will also be afforded to the petitioner.

6. The aforesaid takes care of the apprehension expressed by the petitioner. Mr. Desai is right in his submission that no demolition ought to take place until final order is passed, after afford of an opportunity of hearing to the petitioner.

7. Accordingly, respondent no.1 Council is directed to dispose of the show cause notice on its own merits and in accordance with law, within a period of six weeks from today. The Council or its Prescribed Authority to afford of an opportunity of hearing to the petitioner before the final order is made. Final order is required to be communicated to the petitioner. Further,

the same will not be acted upon for further period of 15 days in case the same is adverse to the petitioner.

8. This Court has not examined the merits of the matter and, therefore, all the contentions of the parties, with regard to the illegality or otherwise of the construction allegedly undertaken by the petitioner, are left open.

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

10. Parties to act on the authenticated copy of this order.

M. S. SONAK, J.

SMA