

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 511 OF 2016

Shri Bonifacio Fernandes & Anr.

... Petitioners

Versus

State of Goa and Ors.

... Respondents

**Mr Rohit Bras De Sa and Mr. Govind Salkar, Advocates for
the Petitioners.**

**Mr P Dangui, Government Advocate for the Respondent nos 1
and 3.**

Mr Pankaj Pai Vernekar Advocate for the Respondent no 6.

**CORAM: G.S. Patel &
Nutan D. Sardessai, JJ**
DATED: 12th September 2017

ORAL ORDER (per GS PATEL J):

1. The short point canvassed by the Petitioner is that the Village Panchayat of Calangute and other authorities could not, while granting permission for “repairs and renovation”, have permitted the alteration, though not structural, of the exterior nor any reconfiguration of the interior of a construction on an existing plinth.

2. Having heard Mr Rohit Bras De Sa for the Petitioners, we are not persuaded that this Petition calls for our interference in exercise of our powers under Article 226 of the Constitution of India.

3. The two Petitioners are brothers. Their case is against the 6th Respondent. They say that her proposed repairs and renovation in survey no. 238/10 of Cobrawado, Calangute, is in no way either a repair or a renovation but is a wholly new construction. The Petitioners obtained information under the RTI Act in regard to a construction licence issued to Respondent No. 6 on 26th April 2016. They also obtained from the Village Panchayat copies of the relevant documents. These were in respect of house No. 6/130 on survey no. 238/10.

4. The Petitioners' case is that in the guise of "repairs and renovation", what is proposed is an entirely new construction. The construction licence, they say, does not restrict the 6th Respondent to repairs and reconstruction. It does not contain the necessary limitations. The construction license, they urge, should be quashed.

5. A copy of the construction licence is at annexure 'A' to the petition at page 43. The licence is in the usual form and contains more or less the usual requirements. We are not persuaded that any additional conditions ought to have been stipulated in it. Annexure 'B' to the petition is an order of 21st March 2016 of the North Goa Planning and Development Authority, Respondent No.2. This was also issued to Respondent No.6. It is a permission issued under Section 44 of the Goa Town and Country Planning Act 1974 with a three-year validity period. There is, as part of this permission from the NGPDA, an architectural plan or drawing at page 47. The top portion shows the existing front elevation. Below this is the ground floor plan of the structure, before and after. To the right is a

computation of the built-up area for the purposes of floor area ratio (“**FAR**”) computation.

6. The existing front elevation and the proposed front elevation show the shifting of a door and certain architectural embellishments. There is an additional window and a restructuring of the existing entrance and window. We do not think this in itself makes the construction entirely new.

7. The floor plan shows the limits of the Petitioners’ arguments even more starkly. The existing ground floor plan had a single bedroom, a kitchen with a WC next to it, an elongated living area and then the frontage verandah. In the ground floor plan proposed, the dimensions of the bedroom, kitchen and living room have been changed. The position of the WC has been shifted adjacent to the bath area (not shown on the existing ground floor plan). The verandah is slightly foreshortened, and to its right is shown a stairway.

8. The FAR computation is not shown to reflect any increase after the works in question.

9. Mr De Sa’s argument is based on reading of section 2(112) of the Goa (Regulations of Land Development and Building Construction) Act 2008 and the accompanying Regulations of 2010. In these, repairs and renovations are defined thus:

“2(112) “Repairs/Renovations” means any alteration, improvement or maintenance care of any building which

affects only its interior but does not affect materially the exterior provided that it does not violate the existing coverage, right of way, setbacks, floor area ratio and height of the building.”

10. What the argument overlooks is that repairs and renovations, as perhaps distinct from repairs and reconstruction, are specifically said to mean also alterations and improvements in addition to maintenance. The definition provides that the exterior is not to be “materially” affected and there must not be any violation of existing coverage, right of way, setbacks, FAR and height. We have not understood the Petitioners’ case to be that there are such violations, but only that the new structure is different from the old one. We specifically put to Mr De Sa whether, on his interpretation, the renovated structure had to have the same *internal* lay out and configuration as the old; i.e., the WC in an awkward corner next to the kitchen and a suboptimal utilisation of space. He responded in the affirmative. It is therefore the Petitioners’ case that, for all intents and purposes, such a permission as the one the 6th Respondent has obtained is restricted to routine maintenance only.

11. Mr. De Sa seeks to draw support from the decision of a Single Judge of this Court in the case of *Dhirubhai H. Ambani v Dhanapati Thakersi*.¹ The reference is inappropriate. The discussion there was in regard to repairs and reconstruction. Renovation is the term used in the applicable Act and Regulations. On a plain reading of the definition, it contemplates changes. It does not contemplate a

1 (1980) 82 Bom LR 382

continuance in stasis of existing conditions in perpetuity. It may be another matter altogether if, on having obtained such a licence, the licence holder violates the terms of that licence and, for instance, builds beyond the plinth. Then of course the Licensing Authority must act. But that is not the Petitioners' case as canvassed by Mr. De Sa. Their case is that a repair/renovation permission cannot permit any alteration at all, not even in the internal configuration of the various parts of the house.

12. On the face of it, we are unable to accept the proposition as canvassed. Indeed it seems to us that accepting such a proposition is wholly against the statutory intent. Building regulations are not meant to freeze development in time for all perpetuity. The needs of a society, a community, a neighbourhood and an individual all evolve with time. Families grow. Individual needs arise. Even construction methodologies and materials change, permitting now that which was structurally not possible even a few years earlier. There is absolutely no reason why, within the framework of the definition, and so long as that which is prohibited is not done, there should be such a complete freezing of living conditions. It is entirely possible, and this is common experience, that even because of climatic changes, situations that were acceptable one generation ago in terms of living spaces and the way they are arranged are no longer viable. New provisions must be made for ventilation, something that may have been unnecessary twenty or thirty years ago, and were perhaps then either unaffordable or even unavailable.

13. We see no merit in the Petition. It is rejected.

14. There will be no orders as to costs.

NUTAN D. SARDESSAI J.

G. S. PATEL J.