

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 894 OF 2016**

- (1) LA CITADEL RESIDENTS
ASSOCIATION, a Society
registered under the
Societies Registration
Act, 1860, through
MR. EMERICO AFONSO,
Authorised person,
having Office at Plot
No. C/4, La Citadel
Colony, Dona Paula-Goa.
- (2) MR. EMERICO AFONSO, son
of Jose Boaventura Afonso,
aged 65 yeas, Indian
National, resident of
Plot No. C/4, la Citadel
Colony, Dona Paula-Goa.

.... Petitioners*Versus*

- (1) VILLAGE PANCHAYAT OF
TALEIGAO, through its
Secretary/Sarpanch,
having Office at
Village Panchayat of
Taleigao, Tiswadi-Goa.
- (2) THE MEMBER SECRETARY,
North Goa Planning and
Development Authority,
having Office at
Archdiocese Building,
1st Floor, Mala Link
Road, Panaji-Goa.
- (3) TRISHA DEVELOPERS AND
CONTRACTORS PVT. LTD.,
having Office at X/B-2,
Pelican Apartments, near

Panaji Church, Altinho
Road, Panaji – Goa.

(4) THE DEPUTY COLLECTOR &
SDO, Government of Goa,
having Office at
Collectorate Building,
Panaji – Goa.

.... Respondents.

Mr. Devidas J. Pangam, Advocate for the Petitioners.

Mr. H. D. Naik, Advocate for the Respondent no. 2.

Mr. F. E. Noronha, Advocate for the Respondent no. 3.

Mr. S. D. Lotlikar, Advocate General with Mr. D. Shirodkar, Additional
Government Advocate for the Respondent No. 4.

**CORAM:- F. M. REIS,
NUTAN D. SARDESSAI, JJ.**

DATE:- 31st JANUARY, 2017

ORAL JUDGMENT: (Per. F. M. REIS)

Heard Shri Devidas J. Pangam, learned Counsel appearing for the
Petitioner, Shri S. D. Lotlikar, learned Advocate General appearing for the
Respondent no. 4 and Shri F. E. Noronha, learned Counsel appearing for the
private Respondent no. 3.

2. Rule. Heard forthwith with the consent of the learned Counsel
appearing for the respective parties. Learned Counsel appearing for the
Respondents waive service.

3. We have extensively heard learned Counsel appearing for the
respective parties.

4. During the course of the hearing, Mr. Pangam, learned Counsel appearing for the Petitioner submits that challenge to the Impugned Order essentially is on the grounds that it was passed in breach of the principles of natural justice as, according to him, though oral submissions were heard by the previous incumbent in the office of the Respondent no. 4, the Impugned Order was not passed by him.

It is further pointed out that no oral submissions were heard by the Respondent no. 4 before passing the Impugned Order. It is also submitted that though the roznama entry discloses that the proceedings were disposed on 21.10.2015, surprisingly, the Respondent no. 3 whilst filing the reply, produced a certified copy of the Impugned Order as dated 07.09.2015. It is further submitted that though the Petitioners filed an application for certified copy immediately after the proceedings were disposed of on 21.10.2015, no such copy has been delivered to the Petitioners up to this date. Learned Counsel further submits that this itself indicates some manipulation of the records which would vitiate the Impugned Order passed by the Respondent no. 4. The learned Counsel has minutely taken us through the roznama of the concerned proceedings before the Respondent no. 4 to point out that, in fact, there was no hearing on 07.09.2015 and, on the subsequent date when the matter was taken up, the records reveal that the Order was not ready. Learned Counsel, as such, points out that on this ground alone, the Impugned Order deserves to be quashed and set aside.

5. On the other hand, Mr. F. E. Noronha, learned Counsel appearing for the Respondent no. 3 has vehemently disputed the contention of the learned Counsel appearing for the Petitioners. The learned Counsel has pointed out that the Petitioner no. 1 is not a legal entity as, according to him, the registration of the Society has lapsed. It is further pointed out that the Petitioner no. 3 has produced a letter of the Managing Committee of the Petitioner no.1, inter alia, disclosing that the Petitioner no. 2 was not authorised to file the above Writ Petition. The learned Counsel further submits that as far as the discrepancy in the date of the Impugned Order is concerned, the Respondent no. 3 is unable to say anything with that regard, but, according to him, this matter can be explained by the Respondent no. 4 himself. The learned Counsel further pointed out that in the present case though oral submissions were advanced before the previous incumbent of the office of the Dy. Collector, nevertheless, when the present incumbent took charge, the matter first came up for hearing on 21.10.2015 and the roznama entry disclosed that based on the written arguments, matter was posted for order. It is further pointed out that for reasons best known to the Petitioners, they failed to remain present on the said date and as such, the said Order is binding on the Petitioners. It is further pointed out that on the subsequent date the Counsel appearing for the Petitioners was, in fact, present and accepted the subsequent date fixed by the learned Dy. Collector for orders without any objection which itself would suggest that the Petitioners have

forfeited their right of advancing oral arguments. Learned Counsel appearing for the Respondent no. 3 further pointed out that though this Court has taken a view that oral arguments are necessary, nevertheless, in the facts of the present case, the ratio laid down therein would not be applicable to the present circumstances. Learned Counsel further submits that there is no infirmity committed by the Respondent no. 4 whilst passing the Impugned Order which would call for interference of this Court in the present Writ Petition. Learned Counsel further pointed out that the Petition itself has become infructuous as the grievances of the Petitioners have already been worked out.

6. Shri S. D. Lotlikar, learned Advocate General pointed out that without going into the correctness or otherwise of the entries in the roznama, the Respondent no. 4 shall give a fresh hearing to both the parties and take a fresh decision in the matter. Learned Advocate General further pointed out that in fact oral arguments were heard by the previous incumbent of the office of Respondent no. 4 and no such oral arguments were heard by the Respondent no. 4 thereafter.

7. We have considered the submissions of the learned Counsel and we have also gone through the records. Mr. Pangam, learned Counsel appearing for the Petitioner is justified to contend that, prima facie, there is ambiguity as far as the date on which the Impugned Order was pronounced. The

roznama entries clearly disclose that the proceedings were disposed on 21.10.2015. But, however, the copy of the Order produced by the Respondent no. 3 discloses that in fact the Order was passed on 07.09.2015. Considering the submissions of the learned Advocate General, as it appears that there is no possible explanation to such discrepancy, we find that on this ground alone the Impugned Order passed by the Respondent no. 4 deserves to be quashed and set aside.

8. Apart from that, it is admitted position from the records that oral arguments were heard by the previous incumbent in the office of Respondent no. 4 and the Impugned Order was passed by the present incumbent in the office of Respondent no. 4. It is well settled that oral arguments form part of the hearing as reserved to the parties. Oral arguments are essentially required so that the Presiding Officer can clear any doubts or seek clarification with regard to the rival contentions advanced by the parties. Even in case in which written arguments are filed it is very essential that the authorities fix the matter for oral arguments or for clarification so that any doubts are cleared. No doubt the learned Advocate appearing for the Petitioner could have exercised his right to advance oral arguments when the matter was posted for orders, but the fact remains that the Respondent no. 4 after taking charge, posted the matter for orders without giving the parties an opportunity of being heard. Having failed to proceed in that directions in terms of the

observation of this Court in the Judgment reported in **2015(4) Maharashtra Law Journal page 777** in the case of **Antonio Jose Da Silva (since deceased) through his Lrs. Mrs. Arcangelo Colaco and others vs. Horizon Realtors, Velsao, Goa** and **2013 (4) Maharashtra Law Journal page 53** in the case of **Celina Almeida v/s. Minister of Urban Development, Goa**, we find that the Impugned Order passed by the Respondent no. 4 deserves to be quashed and set aside.

9. As far as the contention of Mr. F. E. Noronha, learned Counsel appearing for the Respondent no. 3 that the Managing Committee of the Petitioner No. 1 has informed the Respondent no. 3 that the Petitioner No. 2 was not authorised to file the present Petition, we find that such resolution came to be passed only after the present Petition was filed. As far as the contention of Mr. F. E. Noronha, learned Counsel appearing for the Respondent no. 3, that the cause of action no longer survives as, according to him, the registration of the Petitioner No. 1 has lapsed, we find that such objection, if any, may be raised by the Respondent no. 3 before the learned Dy. Collector whilst considering the complaint filed by the Petitioners afresh.

10. In view of the above, we pass the following:-

ORDER

- i) The Impugned Order dated 07.09.2015 passed by the learned Dy. Collector is quashed and set aside.

- ii) The complaint filed by the Petitioners is restored to the file of Respondent no. 4.
- iii) Respondent no. 4 is directed to proceed to decide such complaint afresh after hearing the Petitioner and as the Respondent no. 3, in accordance with law, within three months from the date of appearance of the parties.
- iv) All contentions of both the parties on merits are left open.
- v) Parties are directed to appear before the Respondent no. 4 on 23.02.2017 at 03:30PM.
- vi) Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

msr.