

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 837 OF 2016**

ANAND S. NAIK

... Petitioner

Versus

CURCHOREM CACORA MUNICIPAL
COUNCIL AND 3 ORS.,

... Respondents

Shri Ryan Menezes, Advocate for the Petitioner.

Shri Shivan Desai, Advocate for Respondent No.3.

CORAM:- C. V. BHADANG, J.**DATE:- 24th JANUARY, 2017.****ORAL ORDER:**

By this petition, the petitioner is challenging the judgment and order dated 04.01.2016, passed by the Goa Municipalities Appellate Tribunal, Panaji (Tribunal, for short), in Municipal Appeal No. 68/2012. By the impugned judgment, the Tribunal, while dismissing the appeal filed by the petitioner, has confirmed the final notice of demolition issued by respondent no.1.

2. On the basis of a complaint lodged by respondent no.3, the respondent no.1 inspected the site near Mahadev Temple in survey no. 218/1 at Ward No. VIII, Baagwada, Shirfod, Curchorem, Goa, in which it was found that the petitioner had carried out illegal masonry work admeasuring 3.50 x 3.00 metres with a height of 3.00 metres, covered with asbestos sheet roofing. Accordingly, a document of transgression was drawn. In pursuance thereof, a show cause notice was issued to the petitioner on 02.08.2012, to which the petitioner filed a reply claiming that the construction is in existence much prior to 1980 and belongs to his brother, Pradeep Naik. It was claimed that the petitioner was in trade of sale of sweets, cigarettes, bidis etc., in the structure under the name and style as 'M/s Purush Maru General Stores' and the said establishment is registered in the office of the Labour Inspector, Curchorem since March, 1986. It was contended that the complaint lodged by respondent no.3 is false. The petitioner claimed that the show cause notice be dropped.

3. Respondent no.2 by a final notice dated 01.10.2012, directed the petitioner to demolish the said structure within 15 days, failing which, it was to be demolished by respondent no.1 at the cost and risk of the petitioner.

4. The petitioner challenged the said final notice before the Tribunal and raised various contentions. The Tribunal by the impugned order has dismissed the appeal. Hence, this petition.

5. I have heard Shri Menezes, the learned Counsel for the petitioner and Shri Desai, the learned Counsel for respondent no.3. There was no appearance on behalf of respondent nos.1 and 2. Respondent No.4 is a formal party.

6. It is submitted by Shri Menezes, the learned Counsel for the petitioner that the structure is in existence much prior to 1980. The learned Counsel has referred to a receipt dated 05.11.2012 in respect of trade license fee, for the financial year 2012-13 issued by respondent no.1 in the name of Shri Pradeep Naik, pertaining to House No.566, which is referred to as a

'General Store'. It is submitted that this would go to show that the structure is authorised structure, where the petitioner is carrying on business of a general store. It is contended that the final notice does not show that the reply filed by the petitioner and the material produced, has been considered. It is submitted that a bare statement that the reply to the show cause notice was found to be not satisfactory, is not sufficient to satisfy the requirements of the basic principles of natural justice. The learned Counsel was at pains to point out that the statutory authority, which is authorised to take a decision, which would affect the rights of the party, is expected to pass an order, which would indicate that the contentions raised, have been properly considered. It is submitted that this is part of principles of natural justice, which stand violated in this case. The learned Counsel in all fairness stated that although, a formal judgment is not expected to be passed in such a case, the submission is that some reasons should have been recorded, to show that the reply filed by the petitioner or the document produced by the petitioner, is properly considered. It is submitted that the Tribunal has also failed to correct the error in appeal. It is submitted that in

respect of an old construction, it is not expected that a party would possess the necessary license/permission and that may not be the sole test to decide the matter.

7. On the contrary, it is submitted by Shri Desai, the learned Counsel appearing for respondent no.3 that all that is required in such a case is a license/permission with a sanctioned plan, which is admittedly not forthcoming in this case. The learned Counsel has pointed out that the subject structure is abutting the shop premises and is a recent structure raised without necessary license/permission. It is submitted that the petitioner having failed to produce any such license/permission or any document to show that the construction was made prior to 1980, cannot now claim the protection. It is contented that the Tribunal has elaborately considered the contentions raised by the petitioner and the judgment does not call for interference.

8. I have carefully considered the arguments advanced on behalf of the parties. The document of transgression describes the structure as a masonry work admeasuring 3.50 x 3.00 metres

with a height of 3.00 metres, covered with asbestos sheet roofing, which is subject matter of dispute in this case. The learned Counsel for the petitioner has produced three photographs, which are taken on record and collectively marked 'X' for identification. The photographs clearly show that the subject structure is abutting the shop premises. The shop premises appear to be a structure in wood with corrugated asbestos sheets. Thus, the document of transgression, the show cause notice and the consequent demolition notice, does not pertain to the shop premises. The learned Counsel for the petitioner submitted that the shop premises alongwith the abutting structure is a single structure in existence prior to 1980. The submission in my considered view cannot be accepted. In the first place, the structure appears to be distinct and the disputed structure is found to be constructed in brick masonry with corrugated asbestos sheets, which is described in the document of transgression. The document of transgression does not describe the structure as a shop. Secondly, the receipt dated 05.11.2012, pertains to House No. 566 standing in the name of the brother of the petitioner namely, Pradeep Naik and that

structure is described as a 'General Store'. The receipt is in respect of the trade license fee for the financial year 2012-13. Thus, the said document cannot take the case of the petitioner any further, in as much as the receipt pertains to the shop premises and secondly, there is no document produced, such as a tax receipt, to show that the subject structure was an existing structure much prior to 1980. Admittedly, the petitioner is not having any construction license/permission. Insofar as exception taken to the impugned final notice on the ground that it fails to record reasons is concerned, it needs to be mentioned that the Chief Officer is not expected to write a detailed order, in such a case. Even otherwise, in a dispute of the present nature, all that is required is that a person, who is issued with a show cause notice has to produce the valid license/permission and an approved plan. In a case where it is claimed that the structure is an old existing structure, the person can show documents, such as a survey plan or any document to show the existence of the construction. None of these, is forthcoming in this case. The Tribunal has found and to my mind rightly so, that the petitioner has not been able to produce any document with his reply to the

show cause notice and/or at the time of personal hearing, to show that the subject structure is legal.

9. It was also contended on behalf of the petitioner that respondent no.1 should have verified it's record to find out whether, the structure is legal or not. The contention in my considered view cannot be accepted. The respondent no.1 on the basis of the document of transgression was claiming that the construction was illegal and all that the petitioner was required to show was that he had a valid permission/approved plan or any other document to show that it was an old/existing structure. The petitioner admittedly has none and even, the claim that the structure is in existence much prior to 1980 has not been substantiated on record. Thus, I do not find that any case for interference is made out. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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