

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 833 OF 2016

SHAIKH SALIM @ ABOO MOHAMED SK
HUSSAIN.,

... Petitioner

Versus

MORMUGAO MUNICIPAL COUNCIL, THR.
ITS CHIEF OFFICER.,

... Respondent

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 6th February, 2017

ORAL ORDER:

Heard Mr. Nigel Costa Frias, the learned Counsel for the petitioner. None appears for the respondent.

2. On the basis of a complaint dated 16.04.2013, the Municipal Council drew a document of transgression, in which, the petitioner was found to have constructed a laterite stone masonry admeasuring 5.50 metres x 3 metres with height of 2 metres without necessary permission. A show cause notice was issued to the petitioner, to which, the petitioner filed a reply contending that it was an existing structure prior to 30 years. The Municipal Council by final order dated 10.02.2014, directed demolition of the structure, which was challenged by the petitioner before the Goa Municipalities Appellate Tribunal at Panaji (Tribunal, for short) in Municipal Appeal No. 12/2014. The Tribunal has dismissed the appeal on 23.04.2016, which is

subject matter of challenge in this petition.

3. The learned Counsel for the petitioner submits that there were proceedings before the Mamlatdar at Mormugao in the year 1990, under Section 133 of the Code of Criminal Procedure, 1973 (Cr.P.C., for short), claiming that the subject structure was in the nature of a public nuisance. It is submitted that by order dated 05.11.1991, there was a direction to the petitioner to remove the old construction of the garage. It is submitted that subsequently, these proceedings were dropped and this aspect has not been considered by the Tribunal. It is submitted that affidavits of two neighbours stating that the subject structure is an old structure, are not considered. The learned Counsel submits that the structure is standing on the Government land in respect of which, the petitioner has submitted an application on 01.09.2016 to the Government for regularisation. Except this, no other submission has been made.

4. I have considered the circumstances and the submissions made. Firstly, there is nothing on record to show that the structure, which was subject matter of proceedings under Section 133 of Cr.P.C. corresponds to the structure, which is now directed to be demolished. Secondly, although, it is claimed that proceedings under Section 133 of Cr.P.C. were dropped, the learned Counsel for the petitioner, in all fairness, states that there

is nothing on record to show that the said proceedings were dropped. Thirdly, a perusal of the grounds in appeal before the Tribunal would show that the ground based on dropping of proceedings under Section 133 of Cr.P.C., was not raised before the Tribunal.

5. The Municipal Council after inspection and on the basis of the report of transgression has found that the structure was illegal and even otherwise, on the petitioner's own saying the structure is standing on the Government land in respect of which, an application for regularisation is pending. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity, so as to require interference. The petition is accordingly dismissed. It is made clear that the dismissal of the petition will have no bearing on the merits of the application for regularisation. It would be open to the State Government to decide the application, if filed, on its own merits and in accordance with law.

C. V. BHADANG, J.

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