

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 847 OF 2017****MOHAN BHANUDAS GOKHARANKAR.,**

Son of Bhanudas Gokharankar,
major, married, Indian National,
resident of House no.541/B, Khalchawada,
Arambol, Pernem-Goa.

... Petitioner**Versus****THE SARPANCH, VILLAGE PANCHAYAT****ARAMBOL,****Taluka Pernem-Goa and 2 ORS.,****... Respondents**

Mr. Rohit Bras De Sa and Mr. A. Nagvenkar, Advocates for the Petitioner.
Mr. Ashwin D. Bhobe with Ms. S. Bhobe, Advocates for Respondent no.2

Coram:- C. V. BHADANG, J.**Date:- 26th September 2017.**

Oral Order:

Leave to add ground granted. Amendment to be carried out forthwith.

2. By this petition, the petitioner is challenging the judgment and order dated 30/3/2017 passed by the learned Ad-hoc District Judge at Mapusa in Civil Revision Application No.15/2016. By the impugned judgment, the learned District Judge while dismissing the revision application has confirmed the judgment and order dated 29/9/2015 passed by the learned Additional Director of Panchayat-II in Panchayat Appeal No.ADP-II/P.A.125/2015. The net result is that the action of demolition of the subject

structure of the petitioner by the respondent/Village Panchayat stands confirmed.

3. The brief facts are that; the Village Panchayat had conducted a spot inspection and a panchanama was drawn on 27/6/2014 in which the petitioner was found to have undertaken new construction in sand, cement, stone, and cement poles (15 in number) admeasuring 18.10 metres x 5.00 x 2.50 mtrs. The Village Panchayat had issued a show cause notice on 19/7/2014 to the petitioner, purportedly under sub section 3 of section 66 of the Panchayat Raj Act 1994 (Act for short). A perusal of the show cause notice dated 19/7/2014 shows that the petitioner was directed to demolish the said construction at his own cost, failing which, the panchayat was to take action as contemplated under sub section 4 of section 66 of the Act. The petitioner unsuccessfully challenged the said notice initially before the Additional Director of Panchayats and thereafter before the learned District Judge.

4. The only contention raised on behalf of the petitioner is that the petitioner was not put to notice that the construction undertaken by the petitioner was illegal and unauthorized for want of a permission from the Village Panchayat.

5. On behalf of the petitioner reliance is placed on the decision of the Supreme Court in the case of **Shri B. D. Gupta Vs. State of Haryana** (1973) 3 SCC 149, **Gorkha Security Services Vs. Government (NCT of Delhi) and others** (2014) 9 SCC 105 and **Commissioner of Central Excise, Bangalore Vs. Brindavan Beverages (P) Ltd. and others** (2007) 5 SCC 388. It is contended that unless and until the petitioner is put to a specific notice that the contemplated action was on account of the construction being illegal and unauthorized, the impugned order directing demolition could not have been passed. It is contended that the show cause notice on the contrary refers to the subject construction being likely to affect the public health or likely to cause danger to life or property. It is also submitted that the Village Panchayat has granted No Objection Certificate (NOC) to the petitioner for running a hotel and restaurant and that the Village Panchayat is recovering taxes. No other contentions are raised.

6. Shri Bhobe, the learned counsel for the respondent/Village Panchayat points out that the show cause notice dated 19/7/2014 is clear and the petitioner was also aware that the entire action is on account of the construction allegedly being carried out without a licence. He points out that the reply filed to the said show cause notice would also make it clear that the petitioner was aware as to the circumstances in which the proposed action

was being taken. He further points out that this ground was neither raised before the Additional Director of Panchayats nor before the learned District Judge and also does not find place as a ground in the present petition.

7. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. At the outset it is necessary to mention that the ground about the notice dated 19/7/2014 being vague was not raised either in the reply, before the Village Panchayat, the Additional Director nor before the learned District Judge in the Revision application. In the petition as it was originally filed, this ground was not raised and only at the stage of hearing that liberty was sought to add this ground, which has been granted. The fact remains that in the absence of any such ground being raised, this Court would be slow in entertaining the said ground in the writ petition. That apart, even on facts, it cannot be accepted that the show cause notice was vague or that the petitioner was aware about the nature and the reason of the action taken against him. In the very first para the show cause notice makes it explicit that it was noticed by the Panchayat that the petitioner had carried out construction/development of plot without any written permission from the Village Panchayat. The petitioner was further directed to stop the construction immediately and to show cause as to why the construction

should not be demolished. It can thus clearly be seen that the show cause notice specifically made a mention about the proposed construction being carried out without permission of the Village Panchayat. In fact the reference to the proposed construction likely to affect the public health or likely to cause danger to life or property appears to be a part of the standard format which is not filled in, as the information is shown to be nil. It can thus clearly be seen that the action was not proposed to be taken on account of the fact that the development was likely to affect the public health or to cause danger to life and property and the action was only taken as the construction was found to be without a licence.

8. At this stage a reference can be made to the reply filed by the petitioner to the show cause notice on 6/8/2014. The second para of the reply reads as under:

“It is alleged that I have carried out Construction/Development of plots as per the details mentioned therein without the return permission of the panchayat, which is totally false, as such development is already carried out by the owner of the property which has allotted the premises to me to run the shack and which is in exclusive possession of mine for last more than 10 years.”

9. It would be evident from the aforesaid reply that the petitioner

was aware that the show cause notice is on account of the fact that the construction was allegedly made without obtaining a licence. The contention, therefore, in my considered view cannot be accepted. The decisions cited on behalf of the petitioner cannot come to the aid of the petitioner in this case. There cannot be any manner of dispute with the proposition that the show cause notice has to be specific and the person proceeded against should be put to a clear notice of the nature of the action proposed. The question whether the show cause notice is specific or vague would entirely depend upon facts and circumstances of each case. As noticed earlier, the show cause notice was clear enough to put the petitioner on notice that the proposed action was on account of the Village Panchayat finding the construction to be carried out without any licence.

10. In the cases cited on behalf of the petitioner, on facts, it was found that the show cause notice was vague.

11. In so far as the recovery of taxes and NOC is concerned, this ground was also not raised before any of the authorities below. That apart, it is now well settled that mere recovery of taxes cannot make the structure legal or prevent a local authority from taking action, if the structure and/or construction is found to be unauthorized. For these reasons, I do find that any

case for interference is made in the concurrent findings recorded by the learned Additional Director of Panchayats and the learned District Judge. The petition is without any merit and is accordingly dismissed.

C. V. BHADANG, J.

ap/-