

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 893 OF 2017

Uday Jayanand Naik & Ors ... Petitioners
Versus
Curchorem Cacora Municipal Council Ors ... Respondents

Ms A Agni, *Senior Advocate with Ms G Xettigar, Advocate for the Petitioner.*

Mr AD Bhobe, *Advocate for Respondent No 1.*

Mr Dattaprasad Lawande, *Advocate General with Mr V Sardesai, Additional Government Advocate for Respondent Nos 2 & 3.*

CORAM: G.S. PATEL &
NUTAN D. SARDESSAI, JJ
DATED: 11th October 2017

PC:-

1. It appears to us clear that the structure in question described at the Municipal Market old building on survey No.90/10 of Village Curchorem is extensively damaged.

2. Mr Bhobe for Respondent No 1, Curchorem Cacora Municipal Council submits that it is dilapidated beyond repair and needs to be entirely torn down and reconstructed. The Petitioners represented by Ms Agni seriously dispute this. They do not dispute that the building is old and therefore like all old buildings need repairs. They say that there is no material to indicate unequivocally that it is so damaged it cannot be repaired. They have themselves

obtained structural reports to show that repairs are possible. They also point that the Municipal Council has not shown any great anxiety since 2014, and, indeed, even for the decade preceding. It cannot be that all of a sudden this building has now become so very precarious.

3. We are of course not in a position to assess competing structural reports. In any case that will serve no purpose. We must lean towards ensuring public safety and look to the larger or broader public interest. This is a Municipal market building. That means that the people likely to be affected are not just the Petitioners (who, in any case are only some and not all of the occupants), but also the public that visit the market and even passers by. Should this building suffer a sudden collapse, as Mr Bhobe's client apprehends, the damage and loss will not be contained or restricted to the Petitioners. In fairness, Ms Agni accepts this. Her grievance is two-fold. First, that for reasons that are entirely unclear, the Petitioners' request to be allowed to reconstruct the building at their own cost has not been accepted. Although the Petitioners are only lessees of various portions of the building, they are willing to spend whatever is necessary for this purpose. Second, she submits that whenever requests have been made for information and, specifically, when the Petitioners have asked for details of the proposal and plans, nothing has been given to them. To this extent, we believe Ms Agni is correct. There is no reason to withhold from the Petitioners or other occupants details of the arrangements proposed for transit or temporary premises while the reconstruction work is going on and there is certainly no reason to keep from the Petitioners details of

the proposed new construction. Indeed we believe both are essential.

4. This is a ground plus one structure with a mezzanine and what is proposed is a ground plus three structure. This immediately raises certain issues so far as the Petitioners are concerned. Some of them may require to be on the ground floor for the purpose of conducting their business. Others may well be accommodated on higher floor without any adverse effect. The shops are mostly cloth and textile vending outlets. There is, inevitably, also a bar and restaurant. A transparent process in the allotment of a new premises and keeping this open and transparent is necessary. An essential component will be to ensure that the area of the existing premises for each lessee is not reduced in the reconstructed building. All of this must be achieved in a fair and transparent manner only once there is a disclosure. We understand this is principally Ms Agni's grievance and there can be no two views on it.

5. This does not, however, mean that we should allow the risk that we have noted to continue and we do not accept the submission that the Petitioners should be protected from being required to vacate their premises indefinitely. In fairness Ms Agni does not suggest this either but emphasises that any such proposal to shift must be fair and open.

6. We will give the Petitioners time to vacate till 15th January 2018. The Petitioners agree that the Petitioner No 12 Digambar L Adpaikar and Petitioner No 13 Shekhar Gopi Naik will be the

representatives for all Petitioners and also the other lessees of premises. They will form themselves into an association of persons. They will endeavour to obtain the consent of others who are not before us today but who, we understand, are still in occupation. We indicate this only to ensure that there is no misunderstanding in communication between the 1st Respondent and the Petitioners. The 1st Respondent will communicate therefore with Petitioner Nos 12 and 13 and will communicate to them, details of the arrangement proposed for temporary transit rehabilitation; particulars of the reconstruction proposed; details of the method and manner of allotment of premises in the reconstructed building; and copies of the structural reports obtained by the 1st Respondent, if not already given.

7. We wish to clarify two aspects. There has to be no further dispute in regard to the structural condition. We are accepting the proposal for the reconstruction, this being a municipal market. We also make it clear that as regards the allotment, the 1st Respondent must evolve a fair and neutral method of making the allotment. There are several options and a draw of lots is only one of them. If such a draw is to be conducted, it must be in the presence of the Petitioners chosen representatives, so that there is no ambiguity about the process. There may also be other methods of allotment and these are not ruled out at this stage. We also leave it open to the Petitioners to suggest an alternate method given that a new building is ground plus three structure. This leaves the question of what we called risk management and here the Petitioners must be put to terms, because they insist that the building is not unsound and does not present a danger. For this, we will require an undertaking signed

by the Petitioners that they will vacate by the date indicated; that they will obtain the consent of the others allottees or lessees if possible; and in any event will undertake to bear and pay all costs of any loss or damage to the property or life of all persons in building or any passers by including meeting any claim for damages. We believe this undertaking is essential having regard to the condition of the building and especially to some of the photographs that are shown to us at pages 394 and 395. We clarify in saying so we are only attempting to protect third party interests and those of the persons involved but are not assessing the matter on merits at this stage.

8. We make it clear that the 1st Respondent will also disclose the plans approved or sanctioned by the GSUDA to the representatives of the Petitioners. We make it abundantly clear to the Petitioners that every request for obtaining an exactly equivalent area for the premises in the same location (i.e. ground floor for ground floor, or first floor for first floor, or equivalent of frontage) may not be feasible. The two structures, old and new, are differently dimensioned and if the Petitioners wish to participate in this process it cannot be in this one-sided manner where they as lessees or tenants virtually get to dictate terms as if they were owners. The undertaking referred to above are to be furnished within three weeks from today.

9. The Petitioners will sign the necessary agreements, a draft of which to be forwarded to the 1st Respondent's Advocate.

10. This in our view, disposes of the petition. There will be no order as to costs.

NUTAN D. SARDESSAI J.

G. S. PATEL J.