

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 812 OF 2011**

Shri Chandrakant Ruppo Gaude, major of age,
son of Ruppo Gaude, Adnwada, Marcaim, Goa. Petitioner

Versus

1. Village Panchayat of Marciam, through its Secretary/Sarpanch, having its office at Marcaim, Ponda, Goa.
2. Shri Chandrakant H. Naik, major of age, r/o Adanwada, Marcaim, Goa.
3. The Additional Director of Panchayats-II, office of Director of Panchayats, Junta House Panaji, Goa.
4. Deputy Director of Panchayats, office of Director of Panchayats, Junta House, Panaji, Goa. Respondents

Mr. Ashwin D. Bhobe with Ms. Shradha Bhobe, Advocates for the Petitioner.

CORAM:- C.V. BHADANG, J.

DATE:- 21st November, 2017.

ORAL JUDGMENT:

Heard Shri Bhobe, the learned Counsel for the petitioner. None for the respondents when called.

2. By this petition, under Article 227 of the Constitution of India, the petitioner is challenging the order dated. 14.06.2002, passed by the learned Deputy Director of

Panchayats, ordering demolition of the subject structure, which is the residential house of the petitioner. The order passed by the Deputy Director of Panchayats has been confirmed in appeal by the learned Additional Director of Panchayats on 13.01.2010 and finally by the learned District Judge, in Civil Revision Application No. 3/2010 vide judgment and order dated 21.11.2011.

3. The brief facts are that the petitioner, who was a mundkar of a structure (which is described as a hut), had purchased the said hut, situated in Survey No. 81/0 at Adanwada, Marcaim, from his bhatkar by a registered Sale Deed dated 09.08.2002. Respondent No. 2-Chandrakant Naik filed a complaint with the Village Panchayat on 30.08.1999, claiming that the construction by the petitioner in Survey No. 81/0 at Adanwada, Marcaim was illegal and unauthorised. It appears that acting on the complaint, the Village Panchayat issued a show cause notice on 15.05.2000. As the Village Panchayat failed to take action within one month of the lodging of the complaint, the Deputy Director of Panchayats assumed powers under Section 66(5) of the Goa Panchayat Raj Act, 1994 (Act, for short). The learned Deputy Director caused an inspection to be done, based on which a panchanama was

drawn on 26.06.2000, in which it was found that the petitioner had constructed a structure admeasuring 6.30 x 12.40 x 0.80 metres in laterite stones, mud, masonry and mangalore tiles. The learned Deputy Director of Panchayats after issuing the show cause notice, directed demolition of the structure by an order dated 14.06.2002. The said order has been confirmed by the learned Additional Director of Panchayats and the learned District Judge.

4. It is submitted by Shri Bhobe, the learned Counsel for the petitioner that the Village Panchayat by a resolution, adopted in meeting dated 30.08.2001 has resolved that the petitioner had carried out minor repairs and the subject structure cannot be said to be illegal. He submits that the Village Panchayat has resolved to dismiss the complaint filed by Chandrakant Hari Gawde. He submits that this aspect has neither been considered by the learned Deputy Director of Panchayats nor by the learned Additional Director of Panchayats and the learned District Judge. He submits that the structure is assessed for house tax and there is also an electricity connection released in favour of the petitioner in the subject premises. He therefore submits that the impugned orders suffer from infirmity and are required to be set aside.

5. On hearing the learned Counsel for the petitioner, I do not find that a case for interference is made out.

6. Under Section 66(5) of the Act, the Deputy Director can assume powers exercised by the Panchayat, if the Panchayat fails to take action and to demolish the building, which is found to be unauthorised, within one month from the date of knowledge. In the present case, the record discloses that the complaint was filed on 30.08.1999 and the Village Panchayat did not take action for a period of more than seven months, in as much as the show cause notice was issued on 15.05.2000. In such circumstances, no exception can be taken to the act of the Deputy Director of Panchayats in assuming powers, in directing inspection of the premises and further directing demolition. The subsequent resolution of the Panchayat in my considered view, cannot have any effect once the Deputy Director of Panchayats had assumed powers and had taken action. Insofar as the ground that the structure is assessed to house tax is concerned, it is now well settled that the fact that the structure is assessed to tax, does not tantamount to the structure being authorised. Admittedly, there is no license for construction shown or produced on

record. I have carefully gone through the impugned orders and I do not find that they suffer from infirmity, so as to require interference under Article 227 of the Constitution of India.

7. In such circumstances, the petition is dismissed, with no order as to costs. Rule is discharged. It would, however, be open to the petitioner to apply for regularisation. If such application is made, the competent Authority may decide it on its own merits and in accordance with law.

C. V. BHADANG, J.

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