

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.121 of 2018**

Cedric Bosco Savio Lobo .. Petitioner

Vs.

The Sarpanch/ Secretary
Village Panchayat of Calangute
And 2 Ors. .. Respondents.

Petitioner in person.

Shri R. Shirodkar, Advocate for the respondent no.1.

Shri Sarvesh Kalangutkar, Advocate for the respondent no.2(a), 2(b), 2(bb), 2(c) and 2(cc).

Shri V. Sardessai, Additional Government Advocate for the respondent no.3.

CORAM :- C. V. BHADANG, J.

Date : 4th July, 2018

ORAL ORDER :

The challenge in this petition is to the order dated 29/02/2016, passed by the learned Additional Director of Panchayat, which order has been confirmed by the learned District Judge, Mapusa on 28/11/2017 in Civil Revision Application No.25/16.

2. The brief facts, necessary for the disposal of the petition, may be stated thus :

On the basis of a complaint filed by the petitioner, a

show cause notice was issued to the respondent no.2, claiming that the respondent no.2 has effected some illegal and unauthorised construction in Survey No.231/16 of village Calangute. It appears that an inspection was conducted and a transgression report was prepared, in which it was found that the respondent has constructed two structures admeasuring 86.25 square metres and 35 square metres each. The learned Deputy Director, by an order dated 30/01/2015, directed demolition of the said illegal structures. The second respondent challenged the same in appeal before the learned Additional Director of Panchayat. That appeal was filed on 06/04/2015. It appears that the second respondent obtained an ex-parte stay of the order of demolition on 20/05/2015 and prior to that on 22/04/2015, had applied to the concerned Village Panchayat and NGPDA for regularisation of the two structures. It further appears that NGPDA directed regularisation of the structures on 31/07/2015 and a formal order to that effect was passed by the Village Panchayat on 14/10/2015.

3. Taking note of the subsequent development about regularisation of the structures, the learned Additional Director allowed the appeal filed by the respondent no.2 on 29/02/2016. That was, in turn, challenged by the petitioner before the learned

District Judge in CRA No.25/2016, which has been dismissed on 28/11/2017. Feeling aggrieved, the petitioner is before this Court.

4. Shri Lobo, the petitioner, who appears in person, has submitted that there is fraud played on the Court, which would vitiate everything. To a specific query as to what is the fraud played, Shri Lobo submitted that the second respondent had applied for regularisation during the pendency of the appeal before the learned Additional Director. Secondly, it is submitted that the appeal before the Additional Director was not maintainable because these structures were illegal, although the second respondent claimed that the structures are legal. On behalf of the petitioner, reliance is placed on the decision of the Supreme Court in the case of **A. V. Papayya Sastry and Others; Government of A.P. & Ors.**; (2007)4 SCC 221 and the decision in the case of **S. P. Chengalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) By Lrs and Ors**; (1993) Supp. 3 SCR 422. It is submitted that fraud vitiates everything and such a challenge can also be raised in a collateral proceeding. Except this there are no other contentions raised.

5. It is submitted on behalf of the second respondent that the structures are legal. The learned Counsel further submits that

mere filing of an application for regularisation during the pendency of the appeal, cannot amount to fraud. It is submitted that once the structures are regularised, the Additional Director was justified in allowing the appeal and the impugned orders do not show any infirmity.

6. I have carefully considered the circumstances and the submissions made and I do not find that any case for interference is made out.

7. Admittedly, the second respondent had applied for regularisation and the Competent Authority i.e. NGPDA had decided to regularise the structure on 31/07/2015 and a formal order to that effect was also passed by the Village Panchayat on 14/10/2015. The only question is whether filing of an appeal (claiming that the structures are legal) and applying for regularisation during the pendency of the appeal, before the learned Additional Director, can amount to fraud on the Court. In my considered view, the contention as raised by the petitioners, cannot be accepted. It is pertinent to note that the application for regularisation was made prior to obtaining of stay on 20/05/2015. I am unable to persuade myself to hold that mere filing of an application for regularisation during the pendency of the appeal

can, by any stretch of imagination, amount to fraud on the Court.

8. It is further pertinent to note that the petitioner had filed W.P. No.152/2016 before the Division Bench of this Court, challenging the order passed by the NGPDA, which petition has since been rejected on 08/06/2016. A perusal of para 6 of the judgment would show that a contention was raised on behalf of the petitioner that there was no power for regularisation in terms of the provisions of Town and Country Planning Act, 1974. However, the Division Bench found that Section 52(2)(a) of the said Act clearly provides that the occupier of the land can be permitted to retain such construction, provided he meets the requirements of Section 44 of the said Act. The Division Bench also noted that the permission under Section 44 of the said Act has already been issued by the Town and Country Planning Authority and in case the petitioner was aggrieved by the construction licence/permission granted by the Village Panchayat, the petitioner had an alternate remedy, if so advised, to challenge such permission before the Competent Authority. It is not the contention that after disposal of the petition any such recourse to any remedy was taken.

9. Be that as it may, there cannot be any dispute with the

proposition that fraud would vitiate everything and in a given case, such a challenge can also be raised in a collateral proceeding as held by the Hon'ble Supreme Court in the case of **S. P. Chengalvaraya Naidu** (supra). However, whether there is such a fraud played on the Court, would always be a question of fact, which would depend on the facts and circumstances of each case. In the present case, it cannot be accepted that there is a fraud played on the Court only because the application for regularisation was made during the pendency of the appeal before the learned Additional Director. In that view of the matter, no case for interference is made out. The Writ Petition is, accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA