

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 110 OF 2013

- 1 Mrs. Conceicao Da Costa,
 alia Conceicao Gomes,
 major of age,
 and her husband,
- 2 Mr. Domingo Jose Gomes,
 Major of age,
 Both residing at H.No.164,
 2nd Daddio, Talaulim,
 Navelim, Salcette, Goa.
- 3 Mrs. Filomena Correia e D'Cunha,
 Filomena D'Cunha,
 major of age,
 and her husband,
- 4 Mr. Agnelo D'Cunha,
 Major of age,
 Both residents of H.No.34,
 Seraulim, Salcette, Goa.
- 5 Mrs. Martina De Sa,
 alias Martha Fernandes,
 major of age,
 Resident of H.No.4,
 Bhawani Chawl,
 Out Post Santa Cruz (East),
 Mumbai – 29.
- 6 Mrs. Filomena De Sa e Dias,
 alias Filomena de Sa,
 major of age,
 residing at H.No.144,
 Arossim, Sukbhat,
 Cansaulim, Goa.
- 7 Mr. Assis Dias,

- Major of age,
and his wife,
- 8 Mrs. Perpetua Dias,
Major of age,
Both residing at H.No.144,
Arossim, Sukbhat,
Cansaulim, Goa.
- 9 Mrs. Canceicao Dias,
Major of age,
and her husband,
- 10 Mr. Custodio Fernandes,
Major of age,
Both residing at H.No.132/2,
Luis Waddo, Calata,
Majorda, Salcete, Goa.
- 11 Miss. Remediana Dias,
Major of age,
Residing at H.No.144,
Arossim, Sukbhat,
Cansaulim, Goa.
- 12 Mr. Jose Francisco Dias,
Major of age,
and his wife,
- 13 Mrs. Savitra Dias,
Major of age,
Both residents of H.No.144,
Arossim, Sukbhat,
Cansaulim, Goa.
- 14 Mrs. Sucorrina Dias,
Major of age,
and her husband,
- 15 Mr. Alex Peter Caldeira,
Major of age,
Both residents of H.No.1452,

Mazilwado, Benaullim,
Salcette, Goa.

(The petitioners at Serial No.1 to
15 above are represented by their
Attorney Shri Vijay Prabhudesai
as per the General Power of
Attorney dated 13.05.2010)

... Petitioners

Versus

- 1 Mrs Maria De Sa,
Major of age,
widow of Caetan Santan De Sa,
resident of H. No.5,
Guirim, Nuvem,
Salcette, Goa.
- 2 Village Panchayat Nuvem,
Nuvem, Salcette, Goa.
- 3 Shri Minguel D'Sa,
Major of age,
(deceased through L.R.'s)
Adelina De Sa,
(also deceased through L.R.'s)
 - a) Mrs. Fatima Teixeira
Major of age,
 - b) Mr. Magno Teixeira
Major of age,
Both residents of H.No.2257,
Comba, Paricotta, Cuncolim,
Salcette, Goa.
 - c) Mrs. Anita Coutinho,
Major of age,
 - d) Mr. Veles Coutinho,
Major of age,

Both residents of H.No.47,
Comba, Paricotto, Cuncolim,
Salcette, Goa.

- e) Mr. Pobre D'Sa,
Major of age,
- f) Mrs. Inacinha D'Sa,
Major of age,

Both residents of H.No.2269,
Comba, Paricotto, Cuncolim,
Salcette, Goa.

- g) Mr. Carmo D'Sa,
Major of age,
- h) Mrs. Adelia D'Sa,
Major of age,

Both residents of H.No.2269,
Comba, Paricotto, Cuncolim,
Salcette, Goa.

- i) Mrs. Remy Fernandes,
Major of age,
- j) Mr. Anthony Fernandes,
Major of age,

Both residents of Flat No.2,
1st floor, Jack Flower
Apartments, Malbhat,
Margao, Goa.

- k) Mrs. Linda D'Sa,
Major of age,
- l) Mr. Tommy Francisco
Rodrigues,
Major of age,

Both residents of House
No.47, Comba, Paricotto,
Cuncolim, Salcette, Margao,
Goa.

m) Mrs. Salita D'Sa e Antao,
Major of age,

n) Mr. Jackson Antao,
Major of age,

Both residing at H.No.739/1,
Colloso, Near Police Outpost,
Chandor, Goa.

... Respondents

Shri J. Godinho, Advocate for the petitioners.

Shri V. Menezes, Advocate for the respondents.

CORAM : NUTAN D. SARDESSAI, J.

RESERVED ON : 13th June 2018.

PRONOUNCED : 19th June 2018.

JUDGMENT :

1. The petition takes exception to the judgment and order dated 11/01/2013 passed by the learned District Judge-I, South Goa, Margao, by virtue of which he allowed the revision and quashed and set aside the judgment and order of the Additional Director of Panchayats which had ordered the remand of the proceedings to the Panchayat to decide the matter in accordance with the Rules framed under the

Panchayat Regulation Rules, 1971.

2. Heard Shri J. Godinho, learned Advocate for the petitioners who invited attention to the order of the Additional Director of Panchayats and the photographs on record apart from the order under challenge and submitted that the findings rendered by the learned District Judge were contrary to law. The respondent No.1 had constructed a new structure which was confirmed from the photographs on record and therefore in view of such construction, she was required to obtain the permission. The notice issued to her also clearly indicated her admission on the construction of the structure. However, the learned District Judge misconstrued the order passed by the Additional Director of Panchayats and fell in error in quashing and setting aside the same and the order of demolition passed by the Panchayat and hence, it was liable to be interfered within this petition.

3. Shri V. Menezes, learned Advocate for the respondent No.1 invited attention to Section 66 of the Goa Panchayat Raj Act, 1994 (the 'Act' for short) and submitted that Section 66

thereof did not envisage taking of permission for carrying out the repairs. It was also not the case of the petitioners that the respondent No.1 had carried out any alterations/construction to the structure existing in the common property. He also referred to Section 100 of the Act and adverted to the definition of "building" contained in Section 2(15) viz-a-viz Section 66 of the Act and concluded his arguments that no interference was called for with the impugned order.

4. I have considered the submissions of Shri J. Godinho, learned Advocate for the petitioners and Shri V. Menezes, learned Advocate for the contesting respondent No.1 and besides perused the provisions of the Act. Section 2 defines a "building" which includes a house, outhouse, stable, privy, urinals, shed, hut, wall and any other structure whether of masonry, bricks, wood, metal or any other material, but does not include a temporary structure erected on ceremonial or festive occasion or a tent. Section 2 sub-section 15 defines "erection or re-erection or enlargement" of any building and includes nine categories thereof including any material alteration or enlargement, the conversion by structural

alteration, the conversion of one or more places of human habitation into a greater number of such places or the conversion of two or more places of human habitation into a lesser number of such places, alteration of a building as would effect a change in the drainage or sanitary arrangements, the addition of any rooms, buildings, houses or other structures, the conversion, by any structural alteration, roofing or covering an open space between wall or buildings, conversion into a stall, shop, warehouse or godown or any building not originally constructed for use as such and construction of a door in a wall adjoining any street or land not vested in the owner of the wall and opening in such street or land.

5. Section 66 of the Act deals with the regulation of the erection of buildings. Sub-section 1 clearly postulates that subject to such rules as may be prescribed, no person shall erect any building or alter or add to any existing building or reconstruct any building without the written permission of the Panchayat. In other words, the written permission of the Panchayat is a prequel or a necessity whenever any person erects any building or alters or adds to any existing building

or reconstructs any building and not otherwise.

6. The respondent no.1 was issued a Show Cause Notice dated 21/05/2010 by the respondent No.2 in terms of sub-section 3 of the Section 66 of the Act to demolish the illegal storeroom or to show cause as to why the said unlawful construction should not be demolished on the allegation that she had carried out an illegal construction of the storeroom without written permission from the Panchayat. The respondent No.1 had shown cause to the notice and had clearly spelt out in her reply that the storeroom which was alleged to be illegally constructed by her was existing since long which was earlier used as a cattle shed cum storeroom and that her son had carried out its repairs in view of the fast approaching monsoon. Besides, they had bonafide believed that no permission was required from the Panchayat for renovation or repairs of the existing structure.

7. This assertion unlike the contention of Shri J. Godinho, learned Advocate for the petitioners does not at all amount to an admission that she had carried out an illegal construction in the property bearing Survey No.160/8 of

village Nuvem. It is another matter that being aggrieved by the demolition notice upon rejecting her reply that she was constrained to challenge the order in an appeal before the Additional Director of Panchayats under sub-section 7 of Section 66 of the Act. In this appeal too she had reiterated her case that there was a structure in existence which was used as a cattle shed cum storeroom and that her son had carried out the repair works to prevent water leakage and damage to the goods stored therein on account of the impending monsoon and otherwise challenged the order of the Panchayat - respondent No.2 as being arbitrary, unjust and illegal.

8. It is another matter that learned Additional Director of Panchayats by his judgment dated 27/04/2011 disposed off the appeal despite recording that the cattle shed was shown in the survey plan and the same was converted into a storeroom which was in a dilapidated condition and that the repair works was carried out by the respondent No.1 and her son. Here too Shri J. Godinho, learned Advocate for the petitioners tried to take benefit of this finding, however to no avail. The learned Additional Director however in his wisdom

referred to the judgment of the Apex Court in **Sayed Muzaffar Ali and others v/s. Municipal Corporation of Delhi** [1995 Supp 4 SCC 426] and remanded the matter to the respondent No.2 to decide the same in terms of sub-Rule 6 of Rule 3 of the Goa, Daman & Diu Village Panchayat (Regulation of Buildings) Rules, 1971.

9. The respondent No.1 assailed the judgment of the Additional Director in revision under Section 201 B of the Act before the learned District Judge who on hearing the learned Advocates for the parties and considering the relevant provisions of the Act and the Village Panchayat Regulation Rules came to a clear finding that the judgment of the Additional Director of Panchayats was liable to be interfered with and in that view of the matter quashed and set aside the said judgment as also the demolition order dated 01/07/2010 issued by the Panchayat-respondent No.2 against the respondent No.1 while confirming once again that she had only carried out the repairs of an earlier existing structure and there was no question of obtaining any permission from the respondent No.2 before carrying out the repairs.

10. The learned District Judge had found on examination of the judgment passed by the Additional Director and from the records examined by him that the cattle shed was shown on the survey plan which was in a dilapidated condition and converted into a storeroom by the respondent No.1. He had further referred to the judgment of the Additional Director where it was observed that the respondent No.1 had failed to obtain the permission from the respondent No.2 and that it was an illegal construction. The learned Judge found from the material on record that the applicant before him i.e. the present respondent No.1 had carried out the repairs of an existing structure by converting it to a store room and on considering the provision of Section 66 of the Act formulated a question whether she was at all required to obtain permission under the provisions of the Act for carrying out repairs. In that context, he observed that the question of permission arose only in case of erection, addition, alteration or reconstruction and that in the factual matrix the work of repairs carried out by the respondents did not fall within the prerequisites of Section 66 of the Act.

11. The learned District Judge further observed that the

Additional Director of Panchayats had held that the respondent No.1 had only carried out the repairs to the cowshed within the plinth area and that in the absence of any challenge to these findings by the petitioners herein, the same had become final. For that matter the learned District Judge found from the records that the respondent No.1 had only carried out the repairs of an existing cowshed by renovating the same which did not amount to a reconstruction and therefore no question arose of obtaining permission from the respondent No.2 in terms of Section 66(1) of the Act nor any necessity arose of seeking its regularisation. In that view of the matter, the learned District Judge found that the Additional Director of Panchayats was in error to remand the matter and ultimately allowed the revision petition at the instance of the respondent No.1 and quashed and set aside the judgment of the Additional Director of Panchayats as also quashed and set aside the demolition order issued by the Panchayat-respondent No.2. There is no illegality or perversity in the findings rendered by the learned District Judge as to exercise the powers under Article 227 of the Constitution of India. The petitioners have

failed to establish that they are entitled to the impugned order being quashed and set aside on the ground of illegality, perversity or a fundamental error of law.

12. In that view of the matter, i do not find any merit in the petition which is hereby dismissed. Rule discharged.

NUTAN D. SARDESSAI, J.

mv