

IN THE HIGH COURT OF BOMBAY AT GOA.

***PUBLIC INTEREST LITIGATION WRIT PETITION NO.18
OF 2017.***

Mr. Kashinath Jairam
Shetye and 4 ors.

... Petitioners.

Versus

The State of Goa and anr.

... Respondents.

***WITH
CONTEMPT PETITION NOS. 32 OF 2018, 36 OF 2018,
IN
PUBLIC INTEREST LITIGATION WRIT PETITION NO.18
OF 2017.***

Petitioner no.1 present in person.

Mr. D. Lawande, Advocate General with Mr. D. Shirodkar, Addl.
Govt. Advocate for the Respondents.

***WITH
STAMP APPLICATION NO. 2676 OF 2018
IN
PUBLIC INTEREST LITIGATION WRIT PETITION NO.18
OF 2017.***

Mr. D. Lawande, Advocate General with Mr. D. Shirodkar, Addl.
Govt. Advocate for the Applicants.

Respondent no.1 present in person.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 25 September 2018.

P.C.:

PILWP No. 18 of 2017 is filed by the Petitioners in person for

various directions to implement the provisions of the Goa Real Estate(Regulation and Development) Act, 2016.

2. On 6 March 2018, we had passed the following order in PIL petition, relevant portion of which reads thus:-

“1

3. *The Petitioner in person states that the last date for registration is 23 March 2018, which is a third extension. Now, since the Website has been put up and is functional, and that an Interim Regulatory Authority has been also established, there should not be any reason for extending the date for registration any further, as it is a beneficial provision. If there are any emergent and cogent reasons for such extension, the State shall apply to the Court and satisfy the Court that the extension is necessary, by making an appropriate application in this pending PIL Writ Petition.*

4. *To consider further development, we defer the hearing of this petition to 2 May 2018.”*

3. Thereafter it was brought to our notice by the Petitioners by filing Contempt Petition no.36 of 2018 that without seeking any leave from this Court, the State Government has proceeded to grant extensions. The order to that effect issued by the Goa Real Estate(Regulation and Development) Act, 2016 was placed on record. The communication indicated that last date of registration was extended. The subsequent order for extension included clause of levying of penalty of Rs.3,00,000/- which was earlier Rs.50,000/-.

4. When the Contempt Petition came up for consideration, we had observed on 24 July 2018 as follows:-

- “1.
2. *The Petitioner has pointed out to us that inspite of this position the State has granted extension subject to certain penalty without seeking leave from this Court.*
3. *Prima facie, this step taken by the State is in contravention of our directions, however, the learned Advocate General on behalf of the Officer who has issued the letters tenders an apology and states that the application for extension with material as stated in the order dated 6 March 2018 will be filed and till further orders the orders granting extension will be kept in abeyance. We accept the statement. To enable the State to take steps, the hearing of these petitions is deferred to 13 August 2018.”*

The learned Advocate General on behalf of the Officer who had issued letters had tendered an apology on that day and had stated that extensions will be kept in abeyance and an application would be filed for extension.

5. Accordingly, Real Estate Regulatory Authority has filed an application bearing Stamp Number (Appln) No. 2676 of 2018.

6. When this application came up on board we had passed following order on 4 September 2018:-

“This is an application filed by the State Government seeking an extension to receive the

applications for registration of ongoing projects and process the same after the imposition of penalty up to 1 October 2018.

2. *The earlier orders granting extensions have been annexed to the Contempt Petition by the Petitioners. It is clear from the orders that the State is granting extensions by invoking the powers under Section 59(1) of the Real Estate (Regulation and Development) Act, 2016, however, the orders granting extension have stated that the penalty will be imposed at the flat rate treating all the projects equally. Our attention is drawn to Section 59(1) of the Act which reads thus:*

“59(1). If any promoter contravenes the provisions of Section 3, he shall be liable to a penalty which may extend up to ten per cent, of the estimated cost of the real estate project as determined by the Authority.”

Section 59(1) refers to the estimated cost of the real estate project as determined by the Authority, that is the Authority defined under the Act. A bare perusal of this provision indicates that the flat rate treating all the promoters equally is not in contemplation of the Legislation, but the estimated cost of the real estate project has to be determined by the Authority.

3. *The learned Advocate General seeks time to examine this aspect and make an appropriate statement accordingly. We also expect that by the next date of the hearing, the State will inform us as regards the constitution of the Real Estate Regulatory Authority. Stand over to 10 September 2018”*

In this order we had indicated that provisions of Section 59(1) of the Act, 2016 do not contemplate a penalty at flat rate and the penalty is to be levied up to 10% of the cost of the Real Estate Project as determined by the Authority.

7. The learned Advocate General submits that position as envisaged in Section 59(1) of the Act, 2016 which we have referred to in order dated 4 September 2018, is binding and will have to be followed. He states that accordingly, letters of extension which have been issued will not be implemented and registration if any now would be by following provisions of Section 59(1) of the Act, 2016. The statement is accepted.

8. The learned Advocate General states that since the State will adopt methodology provided under Section 59(1) of the Act, 2016, there is no question of formal extension, as Section 59(1) of the Act, 2016 lays down sufficient parameters to deal with such a situation.

9. Therefore, there shall be no registration dehors Section 59(1) of the Act, 2016.

10. The Petitioner no.1 present in person states that it is come to his knowledge that some of the projects which are ongoing projects are being registered as new projects. The learned Advocate General

states that ongoing projects will have to be treated as one, and the new project will be treated differently and if there are such instances as pointed out, corrective measures will be taken.

11. The Act of 2016 makes a distinction between new project to be registered and an ongoing project. Therefore, the State Authority will scrutinize each case to ascertain whether it is ongoing project or new project and deal with the case accordingly.

12. In view of this position, which State will have to follow henceforth, the application filed by the State and Contempt Petitions filed by the Petitioners stand disposed of.

13. Place the PIL WP no.18 of 2017 on board after a period of four weeks. Stand over to 23 October 2018.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.