

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.697 OF 2018

Delma Rodrigues ... Petitioner

Versus

State of Goa & Ors. Respondents

Mr. C. Padgaonkar, Advocate for the Petitioner.

Mr. R. Shivolkar, Additional Government Advocate for Respondent No.1.

Mr. S. Redkar holding for Mr. C. A. Coutinho, Advocate for the Respondent No.2.

Mr. Arjun Naik, Advocate for the Respondent No.3.

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

Date : 15 October 2018.

P.C. :

By this petition, the Petitioner has sought the following relief.

“(a) For a writ of mandamus or any other writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction, directing the Margao Municipal Council to conduct a fresh site

inspection of the illegal construction and to specifically ascertain the extent of illegal construction, the construction in open space and the obstruction of the septic tank meant for common use in a time bound matter.”

Essentially, the Petitioner seeks a writ or direction in respect of the construction put up by the Respondent No.3 on the ground that it is not legal.

2. The process under the relevant enactment has already been initiated as against the construction put up by the Respondent No.3. Pursuant to it, the Respondent No.3 has filed an appeal before the Municipal Appellate Tribunal which is pending. The Petitioner having filed a complaint against the construction of the Respondent No.3, should be joined as party Respondent in the appeal. The Respondent No.3 will accordingly amend the appeal memo of the appeal filed before the Appellate Tribunal and join the Petitioner as party Respondent. Copy of the appeal memo and the compilation be served on the Petitioner. Both the amendment and service of compilation to be done within a period of one week.

3. We make it clear that we have not gone into the rival contentions raised in this petition. The learned counsel for the

Petitioner has sought time to file rejoinder in view of the certain allegations made in the reply, but since we are disposing of this petition, they deemed not to have been admitted by the Petitioner for non filing of the rejoinder.

4. The learned counsel for the Petitioner sought to contend that the basis of the process i.e. the site inspection report, is incorrect. Since the appeal is pending before the Appellate Authority, request can be made to the Appellate Authority, which will consider the same on its own merits. If the Appellate Authority comes to the conclusion that the fresh inspection report is warranted in law and facts, it may do so.

5. In these circumstances, we do not find that keeping this petition pending will serve no purpose as the cause is being adjudicated before the Appellate Tribunal. Keeping all contentions open as above, the writ petition is disposed of. The Appellate Authority may consider taking up the appeal expeditiously subject to earlier time bound commitments.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.