

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 842 OF 2016

ANDREW PEREIRA AND 18 ORS., ... Petitioners

Versus

THE MORMUGAO MUNICIPAL COUNCIL,
THR ITS CHIEF OFFICER AND 2 ORS., ... Respondents

Adv. Nigel Da Costa Frias for the Petitioners.

Adv. V. V. Pednekar for Respondent no.1.

Ms. A. Razaq, AGA for Respondent no.2.

Adv. Yogesh V. Nadkarni with Adv. D. Shirgam for Respondent no.3.

Coram:- C. V. BHADANG, J.

Date:- 6th February 2018

P.C.:

Heard Shri Costa Frias, the learned counsel for the petitioners. I have also heard Shri Pednekar, the learned counsel for the respondent no.1, Ms. Razaq, the learned Addl. Government Advocate for Respondent no.2 and Mr. Nadkarni, the learned counsel for the respondent no.3.

2. The challenge in this petition is to the concurrent finding of the Courts below that the construction of the structures by the petitioners is unauthorized and without obtaining the permission of the Municipal Council. At the outset, it is necessary to note that an objection was raised on behalf of the respondents that a

joint petition by as many as 19 petitioners is not maintainable. Certain orders were passed by this Court keeping the issue of maintainability as raised open. Subsequently by an order dated 20/7/2017, this Court had recorded that the respondent no.1 can consider the notice in the light of certain documents showing the structures in the existing survey plan. Today, Mr. Pednekar, the learned counsel for the respondent no.1 submits that they had written to the survey authorities, however, on account of preoccupation with similar matters, respondent no.1 could not get the structures verified as against the survey plan with the assistance of the survey authorities.

3. Shri Nadkarni, the learned counsel for the respondent no.3 has pointed out that a joint petition in the present situation would not be maintainable particularly in view of the fact that some of the petitioners had not filed any reply to the show cause notice while some others had filed a reply raising certain contentions. It is also submitted that on verification if the survey authorities find that the certain structures were either existing or there is an unauthorized extension to the same, it will vary from petitioner to petitioner and it will not be possible to examine the same, particularly in a writ petition where such disputed questions of fact cannot be gone into. He also points out that in para 21 (v) an omnibus statement is made that the petitioners have filed their reply which is factually incorrect. He, therefore, submits that

the petition ought to be dismissed on this ground alone.

3. On hearing the learned counsel for the parties, I find that the learned counsel for the respondents are right that a common petition cannot be entertained as the petitioners stand on different footing both with reference to the fact whether they had filed reply to the show cause notice and also the nature of the structures and extension, if any. Thus it is not possible to examine the issue in a petition which is jointly filed by the petitioners. Secondly, in para 21 (v) the petitioners have made a statement which is corrected, if not false. For these reasons also this court is not inclined to entertain the petition.

4. At this stage Shri Costa Frias, the learned counsel for the petitioners, on instructions, seeks liberty to withdraw the petition with liberty to file separate petitions.

5. The learned counsel for the respondents have no objection for the same.

6. In such circumstances, the petition is dismissed as withdrawn with liberty as prayed.

7. It is, however, made clear that the aspect of incorrect/false statement made in the present petition may be considered in the

petitions, if so filed.

8. Stand over to 20/2/2018.

9. By consent, the ad interim relief to continue for a period of two weeks. No further extension shall be granted.

C. V. BHADANG, J.

ap/-