

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 764 OF 2015**

Mr.Sylvester D'Souza, aged 50 years, resident
of Sautawaddo, Calangute, Bardez, Goa. ... Petitioner

Versus

1. The Village Panchayat of Calangute,
Through its Secretary, with its office at
Calangute, Bardez, Goa.
2. Block Development Officer, Bardez,
Mapusa, Goa.
3. Deputy Collector & S.D.M., Panaji, Goa.
4. Mr. Nalini Fernandes, major of age,
resident of Sautawaddo, Calangute,
Bardez, Goa. ... Respondents

Shri S.D. Lotlikar, Senior Advocate with Ms. Aditi Naik
Advocate for the Petitioner.

Shri Nikhil Pai, Advocate for the Respondent No. 1.

Ms. Amira Razaq, Additional Government Advocate for the
Respondent Nos. 2 and 3.

Shri J.E. Coelho Pereira, Senior Advocate with Shri V. Braganza,
Advocate for the Respondent No. 4.

CORAM : C.V. BHADANG, J.

Reserved on : 5th February, 2018

Pronounced on : 26th February, 2018

JUDGMENT:

Rule returnable forthwith. Advocate Pai, waives
service on behalf of respondent no. 1, the learned Additional
Government Advocate, waives service on behalf of respondent
nos. 2 and 3 and Advocate Braganza, waives service on behalf
of respondent no. 4. Heard finally by consent of parties.

2. The challenge in this petition, under Articles 226 and 227 of the Constitution of India, is to the judgment and order dated 15.07.2015, passed by the learned District Judge, Mapusa in Civil Revision Appln. No. 59/2011, whereby the order dated 06.12.2011 of the learned Additional Director of Panchayat, is set aside and Panchayat Petition No. 28/2011 has been restored to the file of the learned Additional Director of Panchayat.

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

The petitioner and the respondent no. 4, are neighbours, having certain structures at Calangute, Bardez, Goa. On 13.07.2009, the petitioner filed a complaint with the respondent no. 1-Village Panchayat of Calangute, alleging that the respondent no. 4, has carried out illegal construction in property surveyed under No. 242/1 at Sautawaddo, Calangute, which is within 200 metres of the "High Tide Line" (HTL). Pursuant to the said complaint, the Village Panchayat, issued a show cause notice to the respondent no. 4. It appears that as the Village Panchayat failed to take any further action, the petitioner approached this Court in Writ Petition No. 493/2009, which was disposed of by this Court on 07.12.2009, after taking a note of the fact that the Village Panchayat, having issued the

show cause notice, was expected to take it to its logical conclusion, within a period of four weeks. The Village Panchayat on consideration of all the relevant documents, came to the conclusion that the respondent no. 4 has carried out illegal construction of a second floor of the building, situated under Survey No. 242/1 of Calangute and directed its demolition by order dated 28.01.2010.

4. The said order was challenged in appeal before the learned Additional Director of Panchayat. In appeal, vide order dated 30.08.2010, the learned Additional Director of Panchayat came to the conclusion that the respondent no. 4 was not given proper opportunity to file reply to the show cause notice and as opportunity of personal hearing was not granted, the order of demolition came to be set aside and the matter was remanded to the Village Panchayat for deciding the matter afresh.

5. The said order, was challenged by the petitioner before this Court in Writ Petition No. 737/2010, which was withdrawn on 07.12.2010, on account of the fact that under the amended provisions, a remedy of revision was available to the petitioner before the District Court, under Section 201-B of the Goa Panchayat Raj Act, 1994 (Act, for short).

6. The petitioner thereafter filed Civil Revision Application No. 02/2011, challenging the order dated 30.08.2010, passed by the learned Additional Director of Panchayat, which was allowed by the learned District Judge on 30.07.2011, restoring the order of demolition of the second floor. Undisputedly, the said order has not been challenged any further by the respondent no. 4 and has thus, attained finality.

7. The petitioner then pursued the matter before the Village Panchayat for execution of the order of demolition. After persistent efforts, the Village Panchayat issued a communication dated 29.10.2011 to the Block Development Officer, Mapusa (BDO), requisitioning a demolition squad. The said communication was challenged by the respondent no. 4, before the learned Additional Director of Panchayat in Panchayat Petition No. 28/2011. The learned Additional Director of Panchayat by an order dated 06.12.2011, dismissed the petition on the ground that the order dated 28.01.2010, issued by the Village Panchayat (respondent no. 1) has attained finality and on the ground that mere requisition for a demolition squad, does not amount to an order and as such, the challenge was not maintainable.

8. The respondent no. 4, challenged the order of the learned Additional Director of Panchayat passed on 06.12.2011, before the learned District Judge in Civil Revision Application No. 59/2011. The learned District Judge by the impugned judgment dated 15.07.2015 has allowed the revision application, restoring the Panchayat Petition No. 28/2011, to the file of the learned Director of Panchayat, for disposal in accordance with law. Feeling aggrieved, the petitioner is before this Court.

9. I have heard Shri Lotlikar, the learned Senior Counsel for the petitioner, Shri Pai, the learned Counsel appearing on behalf of the respondent no. 1-Village Panchayat, Ms. Razaq, the learned Additional Government Advocate for the respondent nos. 2 and 3 and Shri Pereira, the learned Senior Counsel for the respondent no. 4. Perused record.

10. It is submitted by Shri Lotlikar, the learned Senior Counsel for the petitioner that an order/communication, merely requisitioning a demolition squad, cannot be said to be an 'order' or 'resolution', which is amenable to a challenge under Section 178 of the Act. It is submitted that the learned District

Judge committed a grave error in holding that the order dated 30.11.2011, requisitioning a demolition squad, would be an 'order', which can be challenged under Section 178 of the Act. It is submitted that in any case, unless and until the order or resolution, as the case may be, is found to be unjust or unlawful, the challenge under Section 178 of the Act, cannot be entertained. It is submitted that the learned District Judge failed to see that the order of demolition had attained finality and thus, the respondent no. 4 was persistently trying to obstruct the demolition and the execution of the demolition notice, to save the structure, which has been held to be illegal and unauthorised.

11. Shri Pereira, the learned Senior Counsel for the respondent no. 4 has supported the impugned order. It is submitted that under Section 178 of the Act, the Director has wide powers to suspend the execution of any order or resolution of the Panchayat, if the same is found to be unjust, unlawful or improper. It is submitted that the learned District Judge after considering the scope of Section 178 of the Act, has rightly come to the conclusion that the order passed by the learned Additional Director of Panchayat on 06.12.2011, was an order, which is amenable to be challenged, under Section 178

of the Act and thus, this Court in exercise of the extra ordinary supervisory jurisdiction, would be slow in interfering with such an order. It is pointed out that the learned District Judge has merely restored the Panchayat Petition No. 28/2011 to the file of the learned Director of Panchayat and thus, the same cannot result into any manifest injustice, requiring interference. It is submitted that the petitioner has no locus standi to challenge the said order, passed by the learned District Judge. It is submitted that there is material change in the circumstance, in as much as, the Village Panchayat has now withdrawn the resolution and the notice of demolition. It is thus submitted that the petition be dismissed.

12. The learned Counsel for the respondent no. 1 has submitted that the Village Panchayat has since withdrawn the notice of demolition, in view of the fact that an application for regularisation, filed by the respondent no. 4, is pending before the Goa Coastal Zone Management Authority (GCZMA), since the year 2003.

13. The learned Additional Government Advocate for the respondent nos. 2 and 3 has supported the petitioner.

14. I have carefully considered the rival circumstances and the submissions made. The notice of demolition which has given rise to the present petition pertains to the second floor of the building standing in the Survey No. 242/1, about which, there is no dispute. The Village Panchayat issued the demolition notice on 28.01.2010. In an appeal filed by the respondent no. 4, the learned Additional Director also came to the conclusion that the construction of the second floor was illegal and unauthorised, however, on the ground that no proper opportunity was given to the respondent no. 4 to file a reply and in order to grant an opportunity of personal hearing, the learned Additional Director of Panchayat set aside the order of demolition. However, the learned District Judge by an order dated 30.07.2011 has restored the order of demolition. The learned District Judge had found and to my mind rightly so that this Court, while deciding Writ Petition No. 493/2009 by an order dated 07.12.2009, had directed the respondent no. 4 (who was respondent no. 8 in Writ Petition No. 493/2009) to respond to the show cause notice within a period of two weeks and thereafter, the Village Panchayat was directed to take action on the show cause notice, in accordance with law, within a period of four weeks.

15. It can thus be seen that the order of demolition stands restored and confirmed as per the order of the learned District Judge passed in Civil Revision Application No. 2/2011. The respondent no. 4 did not carry the matter any further and thus, the order of demolition has attained finality. What happened subsequently is merely execution of the order of demolition. However, the record bears out that the respondent no. 4 made persistent efforts, which cannot be said to be bonafide, to create hurdles in the execution of the order of demolition by one way or the other. In one such attempt, the respondent no. 4 challenged the communication dated 29.10.2011, by which, the Village Panchayat had merely written to the BDO, requesting for a demolition squad. It is difficult to understand as to how, such a communication can be subject matter of challenge under Section 178 of the Act before the learned Additional Director of Panchayat. The learned Additional Director of Panchayat dismissed the said appeal being Panchayat Petition No. 28/2011 on 09.11.2011. The subsequent order dated 30.11.2011, passed by the learned Deputy Collector, is again for constitution of the demolition squad and nothing more. However, the petitioner again approached the learned Additional Director of Panchayat by filing Panchayat Appeal No. 28/2011, purportedly under Section

178 of the Act, which was dismissed by the learned Additional Director on 06.12.2011. The learned District Judge found that the order of the Deputy Collector would be amenable to challenge under Section 178 of the Act. Section 178 of the Act reads thus:

“178. Power of suspending execution of unlawful orders or resolution.— (1) If in the opinion of the Director, the execution of any order or resolution of a Panchayat or Zilla Panchayat or any order of any authority or officer of the Panchayat or the Zilla Panchayat or the doing of anything which is about to be done, or is being done, by or on behalf of a Panchayat or a Zilla Panchayat is unjust, unlawful or improper or is causing or is likely to cause injury or annoyance to the public or to lead to a breach of peace, he may by order suspend the execution or prohibit the doing thereof.

(2) When the Director makes an order under sub-section (1), he shall forthwith forward to the Government and the Panchayat or Zilla Panchayat affected thereby a copy of the order with a statement of the reasons for making it, and the Government may confirm or rescind the order or direct that it shall continue to be in force with or without modification permanently or for such period as it thinks fit: Provided that no order of the Director passed under sub-section (1) shall be confirmed, revised or modified by the Government without giving the Panchayat or the Zilla Panchayat

concerned a reasonable opportunity of showing cause against the proposed order.”

It can thus be seen that under Section 178 of the Act, if in the opinion of the Director, the execution of any order or resolution of the Panchayat or the doing of anything, which is required to be done or is to be done by or on behalf of the Panchayat, is unjust or unlawful or improper or is causing or is likely to cause injury or annoyance to the public or to lead to a breach of peace, the Director may suspend the execution or prohibit the doing of any act.

Under sub-section 2 of Section 178 of the Act, any order passed by the Director, is subject to confirmation by the Government with or without modification.

16. Section 178 of the Act is aimed at catering to a distinct contingency and not to a situation where an order which has been confirmed on judicial side, is sought to be executed. It is difficult to understand as to how an order, which has been confirmed in revision by the learned District Judge and which has attained finality, when sought to be executed by a mere constitution of a demolition squad, can be said to be unjust, unlawful or improper or can be said to likely to cause injury or annoyance to the public or to lead to breach of peace.

The learned District Judge in my considered view, has committed a grave error in remanding back the Panchayat Petition, in as much as the order of demolition had attained finality and all that was done by the learned Deputy Collector was to constitute a demolition squad for execution of such an order.

17. The objection raised on behalf of the respondent no. 4 on the locus standi of the petitioner, in my considered view, cannot be accepted. The petitioner and the respondent no. 4 are neighbours and any adjoining neighbour, would normally be aggrieved by an illegal and unauthorised construction in his neighbourhood. The entire action was taken on the basis of the complaint lodged by the petitioner. Even assuming for a moment and for the sake of argument that the petitioner has no locus standi, this Court can act suo motu under Article 227 of the Constitution of India, to correct the jurisdictional error, committed by Courts and the Tribunals below. This is a case where the learned District Judge has committed a patent illegality in restoring the Panchayat Petition to the file of the learned Additional Director of Panchayat and in such a case, this Court is not only justified, but, is duty bound to step in and correct the error.

18. Coming to the aspect of subsequent development, namely, the resolution passed by the Village Panchayat, rescinding the order of demolition. It was not disputed during the course of the arguments at Bar that the said resolution, does not pertain to the subject structure. In that view of the matter, the said resolution would be inconsequential.

19. In view of the discussion above, the petition has to succeed. The petition is accordingly allowed. The impugned order is hereby set aside. The Village Panchayat shall proceed with the execution of the order of demolition for which, the respondent nos. 2 and 3, shall furnish all necessary assistance.

Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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