

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 356 OF 2018**

PRASHANT KANTA KUDASKAR ... PETITIONER

Versus

CHIEF OFFICER, BICHOLIM MUNICIPAL
COUNCIL, BICHOLIM & ANR.

... RESPONDENTS

Shri Arjun F. Naik, Advocate for the Petitioner.

Shri Prashil Arolkar, Advocate for the Respondent No. 1.

Shri Chaitanya Padgaonkar, Advocate for the Respondent No. 2.

CORAM : C.V. BHADANG, J.**Date : 20th December, 2018****ORAL ORDER:**

Heard Shri Naik, the learned Counsel for the petitioner, Shri Arolkar, the learned Counsel for the respondent no. 1 and Shri Padgaonkar, the learned Counsel for the respondent no. 2. Perused record.

2. The petitioner is challenging the order of demolition, passed by the respondent no. 1, which has been confirmed by the Goa Municipalities Appellate Tribunal (Tribunal, for short) vide judgment and order dated 21.08.2017, in Municipal Appeal No. 9/2016.

3. It appears that on the basis of a complaint made by the respondent no. 2, an inspection was conducted and a

transgression report was drawn on 18.03.2013 of the construction allegedly undertaken by the petitioner. A perusal of the transgression report shows the following four structures:-

- (i) A house admeasuring 9 metres x 8.95 metres
- (ii) A shed admeasuring 8.20 metres x 2.40 metres
- (iii) A store room admeasuring 6.10 metres x 2 metres and
- (iv) Staircase, admeasuring 4.10 metres x 0.90 cm.

The transgression report also encloses sketch of the construction of the house, storeroom, staircase/steps and the shed. It appears that a show cause notice dated 08.04.2013 was issued to the petitioner, by the respondent no. 1 and the petitioner filed his reply claiming that the structure is old existing structure and there were some repairs carried out in pursuance of the repair licence dated 22.05.1995.

4. The Chief Officer by an order dated 29.02.2016, found that the reply of the petitioner was unsatisfactory and that the petitioner had failed to prove the legality of the said structure. In that view of the matter, the Chief Officer directed demolition of the said structure. The petitioner unsuccessfully challenged the said order before the Tribunal.

5. A perusal of the judgment and order of the Tribunal shows that the Tribunal in para 13 of the impugned order has observed that the respondent is bound to consider the observations of the Hon'ble Supreme Court in the case of **Syed Muzaffar Ali & Others Vs. Municipal Corporation of Delhi, 1995 Supp. (4) SCC 426**, before the execution of the final notice/order. The Tribunal has also observed that the dismissal of the appeal shall not stand in the way of the respondent no. 1 from examining and granting such relief, as the petitioner is entitled to under the law.

6. I have heard Shri Naik, the learned Counsel for the petitioner and perused record.

7. It is submitted by Shri Naik, the learned Counsel for the petitioner that the petitioner has only carried out certain repairs to the existing house in pursuance of the permission for repairs granted on 22.05.1995. It is submitted that the staircase was already existing, which was leading to the pathway and now, the only change effected is that the staircase is running parallel to the pathway. It is submitted that the staircase does not in any way obstruct the pathway. Reliance is placed on the decision of this Court in the case of **Pradeep K.R. Sangodker Vs. State of**

Goa, 2007 (Supp.) Bom. CR 544, in order to submit that the impugned order of demolition was passed three years after the show cause notice was issued and is vitiated on account of the same.

8. The learned Counsel for the respondents have supported the impugned order. It is pointed out that the repair permission was granted on a specific condition that the petitioner shall not change the plinth area i.e. of 9.15 metres x 8 metres. It is submitted that in the transgression report, the area found was in excess of what was the plinth area earlier. It is submitted that the petitioner has not produced any licence or repair permission of the staircase, storeroom and the shed and thus, the impugned order of demolition as confirmed by the Tribunal is legal and proper.

9. I have considered the rival circumstances and the submission made and I do not find that any case for interference is made out.

10. According to the petitioner, he had only carried out repairs in pursuance of the repair permission granted in the year 1995. It would be significant in this regard to note that under

the said repair permission there was a specific condition under clause no. 12 that the petitioner shall not change the plinth area of 9.15 metres x 8 metres. The transgression report shows atleast three structures i.e. the shed, the staircase and the storeroom, which were found to be constructed, for which, there is no licence or permission shown to be obtained by the petitioner. The Tribunal on appreciation of the material has found on facts that the entire construction is without permission and at the same time observed that the respondent no. 1 may consider granting reliefs to the petitioner in view of the decision of the Supreme Court in the case of **Syed Muzaffar Ali** (supra).

11. At this stage, Shri Naik, the learned Counsel for the petitioner, on instructions, states that the petitioner shall file an application for regularization before the competent authority. Needless to mention that if such an application is filed, the competent authority shall decide the same on its own merits and in accordance with law. In that view of the matter, no case for interference is made out and the petition is dismissed with no order as to costs.

C.V. BHADANG, J.