

Mrs. Marina Lobo ... Petitioner
versus

who contended that the Director of Panchayats despite holding that the construction carried out by the respondent No.2 was illegal, that the respondent No.2 had carried out the construction of the house in an area of 110 sq.mts. unlike the original area of 108 sq.mts. without maintaining setbacks and without permissions from the concerned authorities, still proceeded to observe that she had filed an application before the Deputy Collector, Mormugao requesting for regularisation of her construction under the Goa Regularisation of unauthorized Construction Ordinance, 2016 and in view thereof party allowed her appeal. The Additional Director of Panchayats had no power to order regularisation in terms of Section 66 of the Goa Panchayat Raj Act, 1994 and Rules. Without prejudice, it was contended that when there was a clear finding that the construction was illegal, he could not give any finding contrary thereto. It was also not permissible for the Additional Director of Panchayats to direct her to regularise her construction within 90 days. There was no application before the Additional Director of Panchayats for regularisation and yet such an order had been made by him. Both the orders passed by the Courts below were dehors the Act. The learned District Judge while passing the impugned Order dated 11/10/2017 was again swayed by the observations made by the Additional Director of Panchayats regarding the Regularisation of Unauthorised Construction Act,

2016 and proceeded on that premise to observe that the findings so rendered by the Additional Director of Panchayats was neither perverse nor illegal and in that view of the matter held that no interference was called for in revision and dismissed the petitioner's application.

3. Ms. S. Linhares, learned Advocate for the respondent No.1 submitted that no application for regularisation was filed by the respondent No.2 before it till date. Shri Shivan Desai, learned Advocate for the respondent No.2 adverted to the impugned order and submitted that it had not been quashed and set aside and therefore no prejudice was caused to the petitioner. The order passed by the Additional Director of Panchayats was equitable and there was no violation of the petitioner's rights. The learned Additional Director of Panchayats had considered the judgment of the Hon'ble Apex Court in **Sayed Mujafar Ali & others v/s. The Municipal Corporation of Delhi** [1995(4) SCC 426] and in that view of the matter and without disturbing the findings of the respondent No.1 had directed the respondent No.2 to regularise her structure within 90 days and kept an option open to the respondent No.1 to initiate steps to demolish the same as envisaged under the Act. It was the policy of the State Government to regularise the structure under the Goa

Regularisation of Unauthorised Construction Act, 2016 and on instructions submitted that the application for regularisation had been made by the respondent No.2 to the Deputy Collector, Vasco and a report made by the Mamlatdar. There was no case made out for an interference with the impugned order and therefore the petition had to be dismissed.

4. I have considered the submissions of Shri Godinho, learned Advocate for the petitioner, those of Ms. S. Linhares, learned Advocate for the respondent No.1 and Shri Shivan Desai, learned Advocate for the respondent No.2.

5. The respondent No.2 as the appellant had sought to challenge the order passed by the respondent No.1 dated 23/01/2014 pursuant to which she had been directed to demolish the illegal construction within 15 days or face demolition at their instance in an appeal before the Additional Director of Panchayats. The learned Additional Director while dealing with the appeal filed at her instance under Section 66(7) of the Panchayat Raj Act ('the Act', for short hereinafter) came to a clear finding on a consideration of the material at large before her that the area of the house of the appellant was 108 sq.mts. only as per the Deed of Purchase and Sale but that in the application for repairs she had mentioned the area as 110 sq.mts. which was clearly more

than the purchased area. The learned Additional Director came to a further finding that the construction of the house was absolutely illegal, that under the garb of repairs to the house she had reconstructed an altogether new house without permissions from the concerned authorities nor had she produced any approved plan for carrying out the repairs of the house in question. The learned Additional Director was equally seized off the fact that it was to decide whether the respondent No.2 had carried out the repairs or reconstructed the structure or whether the same was legal or illegal. However, despite these observations and that it was an admitted fact that the respondent No.2 had reconstructed her house without obtaining permissions/ license from the competent authorities and the local body i.e. the respondent no.1 and that she had taken the authorities and the law for a ride thus undermining the importance of license / approval while undertaking the construction and which act was deprecated, nonetheless; the learned Additional Director was somehow swayed by the fact the the respondent No.1 had filed an application before the Deputy Collector Mormugao for regularisation of her structure under the Goa Regularisation of unauthorised Construction Ordinance, 2016.

6. The learned Additional Director of Panchayats went off at a

tangent to observe that in all fairness it had to look into the aspects as to whether the construction was authorised or unauthorised and could be regularised or not and in that view of the matter, placed undue reliance in the judgment of the Hon'ble Apex Court in the case of **Sayed Mujafar Ali** (supra), and held that it squarely applied to the case and partly allowed the appeal of the respondent No.2. No doubt it directed the appellant therein i.e. the respondent No.2 herein to regularise her structure within 90 days and ordered the respondent no.1 to initiate steps to demolish the structure on failure to do so, nonetheless, this was clearly beyond the powers of the Additional Director of Panchayats while concluding that the structure was illegal and that she had thrown caution to the winds and taken the law for a ride.

7. No doubt the Hon'ble Apex Court held in **Sayed Mujafar Ali** (supra), that "it is not necessary that each and every illegal construction is required to be demolished and it is for the authorities to decide which are the cases which can be regularised or which are the cases which require demolition. Furthermore, mere departure from the authorised plan or putting up the construction without sanction does not ipso facto justify the demolition of the structure. Some are amenable to compounding and some may not be." Nonetheless, by applying this judgment

in a blanket manner despite holding that the structure constructed by the respondent no.2 was illegal, it was not for the Additional Director to go beyond its powers in terms of Section 66 of the Act and allow the appeal.

8. Section 66 of the Act deals with the regulation of the erection of the buildings and clearly provides in sub-section (1) that no person shall erect any building or alter or add to any existing building or reconstruct any building without the written permission of the Panchayat. The permission may be granted on payment of such fees as may be prescribed. Sub-section (3) provides that whenever any building is erected, added to or reconstructed without such permission or in any manner contrary to the rules prescribed under sub-section (1) or any conditions imposed by the permission granted, the Panchayat may,— (a) direct that the building, alteration or addition be stopped; or (b) by written notice require within a reasonable period to be specified therein, such building alteration or addition to be altered or demolished. Sub-section 4 provides that in the event if there is no compliance with such notice in terms of sub-Section 3(b) within the period specified in the notice, the Panchayat shall take such action as may be necessary for the completion of the act. Sub-section 5 takes within its sweep that where the Panchayat fails to

demolish the building which is erected, added to or reconstructed without the permission of the Panchayat, or in any manner contrary to the rules made under the Act or any conditions imposed in the permission, within a month from the date of the knowledge, the Deputy Director shall assume the powers of the Panchayat under sub-sections (3), (4) and (5) and take such steps as may be necessary for the demolition of such building. Sub-section 7 provides that an appeal shall lie to the Director, within a period of thirty days from any order of direction or notice issued under any of the provisions of this section and the decision of the Director on such appeal shall be final. Therefore on a bare perusal of Section 66, there is no power in the Additional Director to allow the party to proceed for regularisation when it is strictly directed to take recourse to sub-section (3), (4) and (5) in the matter of demolition. Therefore, the order passed by the learned Additional Director was totally contrary to its powers contemplated under Section 66 of the Act.

9. The learned District Judge while deciding the matter in revision was unduly swayed by the findings of the learned Additional Director, without any basis observed that Section 66 of the Act dealt with "**Regularisation** of the erection of building" when it clearly dealt with "Regulation of the erection of buildings".

The learned District Judge for that matter was also unduly swayed by the provisions of the Goa Regularisation of Unauthorised Construction Act, 2016 and the judgment referred to in **Sayed Mujafar Ali** (supra), and in that view of the matter hastily concluded that no perversity or illegality was committed by the learned Additional Director while passing the order as it did and dismissed the revision filed at the instance of the petitioner. There were no powers in the Additional Director to consider the aspect of regularisation while clearly holding that the construction carried out by the respondent No.2 was illegal and by flouting the Rules and allowing a protective shield to the respondent No.2 to regularise the construction which was beyond the scope of his powers. The learned District Judge too virtually reiterated the findings recorded by the Additional Director and fell in error reflecting a perversity in the impugned order which cannot be allowed to stand. In the result, therefore, the impugned order cannot be sustained and is therefore quashed and set aside.

10. The Writ Petition stands disposed off with no order as to costs.

NUTAN D. SARDESSAI, J.