

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.82 OF 2019

Mr. Ravishekhar G. Nipanikar & Anr. ... Petitioners

Versus

State of Goa & Ors. ... Respondents

Mr. Prashant Vengurlekar, Advocate for the Petitioners.

Mr. Sagar Gurudas Dhargalkar, Addl. Government Advocate for Respondent Nos.1,2 & 3.

Mr. Sahish Mahambrey, Advocate for Respondent Nos.5 and 6.

***Coram : M. S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 30th January, 2019

P.C.

Heard Mr. Vengurlekar, learned counsel for the Petitioners, Mr. Dhargalkar, learned Additional Government Advocate for Respondent Nos.1, 2 and 3 and Mr. Mahambrey, learned counsel for Respondent Nos.5 and 6.

2. The challenge in this petition is to the order dated 10th October, 2018 by which the Deputy Town Planner has declined regularization of a structure put up by the Petitioners in survey No.239/4 of Morombi-O-Grande Village of Tiswadi Taluka.

3. Mr. Vengurlekar, learned counsel for the Petitioners submits that the structure is put up as an extension to an existing structure. He submits that the existing structure was put up prior to the year 1976. He submits that there is no over utilization of F.A.R. He therefore submits that the power of relaxation under Regulation 22.2 of the Goa Land Development and Building Construction Regulations, 2010 ought to have been exercised by the Deputy Town Planner. Such non exercise is illegal and therefore warrants interference.

4. Mr. Vengurlekar points out that the Deputy Town Planner was required to make an order in terms of Appendix-C10 appended to the aforesaid Regulations. He submits that the impugned communication dated 10th October, 2018, is not in accordance with the Form prescribed in Appendix-C10 and this is yet another ground to interfere with the impugned communication dated 10th October, 2018.

5. Mr. Dhargalkar, learned Additional Government Advocate defends the order dated 10th October, 2018. He points out that the provisions of Regulation 22.2 cannot come to the aid of the Petitioners who have constructed an entirely new structure without seeking permissions from any Authorities. He refers to Regulation 22.5 and points out that compounding of deviation can be permitted in case of minor deviations which have occurred due to site conditions provided the deviation does not affect the FAR/Coverage and height of the building beyond 5% of the permissible limits. He points out that the site inspection was undertaken and it was found that the compounding which the Petitioners were seeking was much beyond the permissible limits. He submits that no right can insist upon the regularization of unauthorized construction as a matter of right. He submits that there is no infirmity in this impugned order and therefore petition be dismissed.

6. Mr. Mahambrey, learned counsel for Respondent Nos.5 and 6 points out that several opportunities were granted to the Petitioners and the Petitioners are only delaying the demolition of patently unauthorized structure. He points out that the Respondents had instituted a Writ Petition No.1005 of 2017, in which, an order was made on 27th November, 2018 which order, has been suppressed

by the Petitioners while instituting the present petition. He points out that there is no infirmity in the impugned order and, therefore, this petition may be dismissed.

7. From the record, we find that the Petitioners have put up an unauthorized construction. The Petitioners also admit this position and it is only on the basis of this admission that the Petitioners were permitted to seek regularization/relaxation, if permissible under the Regulations. For considerable time the issue of demolition of the unauthorized construction was postponed in order to afford a fair opportunity to secure regularization/relaxation by the impugned order dated 10th October, 2018. The Deputy Town Planner by relying upon the Regulations has rejected the proposal for regularization. The Deputy Town Planner has clearly observed that the proposal submitted by the Petitioners does not meet even the criteria prescribed under the Regulations. The Petitioners have also failed to place on record any material, on the basis of which, it can be said that the structure in question means that the criteria prescribed for regularization is in such a situation, it is difficult to find default with the impugned order.

8. Besides, as pointed out by Mr. Dhargalkar, learned Addl.

Government Advocate the provisions of Regulation 22.5 may also come in the way of the Petitioners' structure. The Petitioners, are not at all clear as to whether this is a case of demolition of old structure and reconstruction of an entirely new structure in its place or whether this is a case of extension to the existing structure. In either situation, if the plan annexed to the petition at page 120 of the paper book is perused, it is apparent that entirely a new structure has been unauthorizedly put up by the Petitioners without bothering to seek any permissions from the statutory authorities or without bothering to verify whether such structure fulfill the Building Regulations or Planning Regulations. The regularization or relaxation, in such circumstances can never be demanded as a matter of right. In fact, if we examine the application dated 16th October, 2016 (Exhibit P-20 Colly at page 118 of the paper book) there it apparent, that the Petitioner in the year 2016 applied to the Sarpanch/Secretary that he intends to carry out addition/alteration in plot bearing survey No.239/4. On a query as to whether by this date the structure in question had already been put up, Mr. Vengurlekar for the Petitioners admits that by this date the structure was already in place.

9. We further find that Respondent Nos.5 and 6 had instituted a Writ Petition No.1005 of 2017 in this Court complaining

about inaction against the Petitioners' structure. In the said petition, the Petitioners had simply contended that they intend to challenge the order dated 10th October, 2018 by which the Petitioners' plea for regularization has been turned down by the Deputy Town Planner. Based upon such statement, we had made it clear that it is open to the concerned Respondents which means the Petitioners herein to take out appropriate proceedings within four weeks and secure appropriate orders for protecting the construction raised by the Petitioners. We had also made it clear that in the event of failure on the part of the Petitioners to secure appropriate protection orders from the appropriate forum within four weeks from the date of the order i.e. 27th November, 2018, the Panchayat should take action of demolition of the illegal construction within a period of six weeks from the date of expiry of four weeks period. This order was quite crucial however the Petitioners in the present petition neither referred to such order or annexed such order along with the petition. Even the timeline of four weeks set out by this Court has long since expired.

10. The contention that the communication dated 10th October, 2018 is not in the prescribed Form i.e. Appendix-C10 is required to be stated to be rejected. In the first place, it is not at all clear as to why the impugned order required to be made under

Appendix-C10. This is because Appendix-C10 refers to refusal of technical clearance. The Petitioners had not applied for any technical clearance but the Petitioners have applied for regularization of an unauthorized construction put up by them. The issue of technical clearance normally arises before the permission for construction is granted and the construction is put up. Secondly, even assuming that some Form is prescribed, the fact that the order is not in the prescribed Form does not render it illegal or without jurisdiction. Ultimately, it is substance of the order which is always important in such cases. Therefore, we see no merit in this contention of the Petitioners.

11. For all the aforesaid reasons, we see no merit in this petition. Accordingly, this petition is dismissed. There shall be no order as to costs.

Prithviraj K. Chavan, J.

M. S. Sonak, J.

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