

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.85 OF 2019

Shri Krishnakanth B. Mhaloji,
50 years of age,
married, businessman,
Indian National,
Resident of Flat No.401,
M. N. Resort, Gorbhat Vaddo,
Arpora, Bardez Goa. ... Petitioner

Versus

1. Village Panchayat of Arpora- Nagoa,
Through its Secretary
having office at
Arpora-Nagoa,
Bardez Goa.
2. State of Goa,
Through Chief Secretary,
Secretariat, Alto-Porvorim,
Bardez Goa.
3. The Deputy Collector,
Mapusa, Bardez Goa.
4. The Block Development Officer,
Mapusa, Bardez Goa.
5. Shri David Fernandes,
Resident of Diwan Bhatti,
Arpora, Bardez Goa.

6. Shri Dominic Fernandes,
Resident of Diwan Bhatti,
Arpora, Bardez Goa.

... Respondents

Mr. Sayed Sufiyan, Advocate for the Petitioner.

Mr. P. Sawant, Advocate for Respondent No.1.

Mr. V. Sardessai, Additional Government Advocate for Respondent Nos.2, 3 and 4.

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

Date : 26th February, 2019

Oral Judgment (Per M. S. Sonak, J)

Heard Mr. S. Sufiyan, learned counsel for the Petitioner, Mr. V. Sardessai, learned Addl. Government Advocate for Respondent Nos.2, 3, and 4 and Mr. P. Sawant, learned counsel for Respondent No.1.

2. Rule. With the consent and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3. The learned counsel appearing for the respective Respondents waive service on Rule.

4. The main relief prayed for in this petition reads thus :

“This Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus, or a writ, order or direction thereby directing the Respondent Nos.1 to 4 to implement the Demolition Order dated 13/6/2018 and demolish the illegal construction of the Respondent Nos.5 and 6 in the property bearing survey No.129/10, 129/18 and 129/20 of Arpora Village.”

5. Mr. V. Sardessai, learned Addl. Government Advocate appearing for Respondent Nos.2, 3 and 4 places on record the order dated 19th February, 2019 made by the Deputy Collector and S.D.M. and Incharge of Demolition Squad, North Goa District at Panaji Goa, which reads thus :

No. DEMO-SQUAD/95/2018

Dated : 19/02/2019

O R D E R

Whereas, the Block Development Officer-I&II, Bardez, Mapusa Goa, vide letter No.3-EOVP-II/BDO-BAR/Dem-Req/2018-19/5686 dated 4/9/2018 requested to provide the demolition squad and police protection for the demolition of illegal construction of shed built/erected in survey No.129/10, 18, 20 at Ghorbhatwaddo, Arpora, Bardez Goa, carried out by David Fernandes and Domnic Fernandes, Diwanbhatti, Arpora, Bardez Goa.

Now therefore, I, Shri Shashank Mani Tripathi, IAS, Sub

Divisional Magistrate/Incharge of the Demolition Squad, North Goa District, Panaji Goa hereby grant the demolition squad to Block Development Officer I & II, Bardez, Mapusa, Goa on 26/04/2019 and request the following authorities/agencies as under :

1.The Superintendent of Police, North Goa District, Porvorim, Bardez Goa : to depute 15 police personnel, including the 05 lady police personnel headed by P.I./P.S.I. on the above schedule date at 9.00 a.m.

2. The Dy. Collector & S. D. M., Bardez Taluka, Mapusa : to depute Executive Magistrate/Mamlatdar on the date mentioned above to effectively carry out the demolition and also to take care of law and order problems on the above mentioned date.

3. The Executive Engineer, Work Division-XIII, P.W.D., Mapusa Goa : to provide the demolition team of 12 labourers, along with other necessary tools and equipment to demolish/remove of above mentioned illegal construction etc., on the above schedule date at 9.00 a.m.

4.The Executive Engineer, DIV-VI/concerned Division, Electricity Dept., Mapusa- Goa : to depute electrical personnel in order to disconnect the electric supply if any at the above mentioned site.

5. The Block Development Officer -I&II, Bardez, Mapusa Goa : shall be responsible for proper identification of said illegal construction mentioned above as per his aforesaid request. He is also personally responsible to monitor the demolition work and get the work done effectively completed as per his aforesaid requisition and send the compliance report of the demolition to this authority after execution of this order within two days of execution.

6. The Block Development Officer I&II, Bardez, Mapusa Goa is also responsible for service of the present order to Authority/Agency at Sr. No.2 to 6 mentioned below in this order and submit compliance report of the same before date of demolition. If the said work is postponed due to non presence or non compliance of the present order and if any consequences caused then upon due to postponement of work of demolition then concerned officer will be solely held responsible for it.

All the Officers/Officials are instructed to report to Block Development Officer I & II, Bardez, Mapusa, Goa on the scheduled date & time. The Mamlatdar/Joint Mamlatdar will then co-ordinate the work of demolition and carry out the work expeditiously. The instruction given in Circular No.4-36-96-DEM-SQUAD/RB dated 2/12/2009 by the Collector of North Goa District, Panaji shall be strictly followed.

Sd/-

(Shashank Mani Tripathi, IAS)

Dy. Collector & S. D. M.

*& Incharge of the Demolition Squad,
North Goa District, Panaji Goa.*

6. Upon our query as to why the date of demolition is fixed as 26th April, 2019, Mr. Sardessai states that there is possibility of code of conduct coming into force. According to us, there can be no difficulty in executing the demolition orders which have been attained finality merely because the code of conduct is to set in. In any case, if the apprehension is that the code of conduct will shortly set in, then, the date of demolition should have been preponed and not postponed

as has been done in the present case.

7. Mr. Sardessai, learned Addl. Government Advocate however makes a statement that the demolition order will be executed as expeditiously as possible and the date 26th April, 2019 is only the outer time limit. He states that in this matter no extension of time will be applied for to carry out the demolition. All these statements are accepted as the statements made to this Court. According to us, the aforesaid order dated 19th February, 2019 substantially works out the main relief applied for by the Petitioner in the present petition.

8. Accordingly, the rule is made absolute in the aforesaid terms and the Respondent Nos.4 and 5 are directed to demolish the illegal construction in question, in terms of their own order dated 19th February, 2019 as expeditiously as possible and in any case on or before 26th April, 2019.

9. All concerned to act on the basis of the authenticated copy of this order.

Prithviraj K. Chavan, J.

M. S. Sonak, J.

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