

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 167 OF 2010**

DR. MARILYN ESTIBEIRO AND 3
ORS.

... Petitioners

Versus

THE STATE OF GOA, THROUGH CHIEF
SECRETARY AND 3 ORS.

... Respondents

Mr. S. Keny, Advocate for the Petitioners.

Ms. Susan Linhares, Addl. Government Advocate for Respondent Nos.1
and 3.

Mr. Vithal Naik, Advocate for Respondent No.2.

Mr. L. Raghunandan, Advocate for Respondent No.4.

Ms. Sampada Poll holding for Mr. J. Vaz, Advocate for Respondent
Nos.5, 6, 7, 8, 11, 12, 14, 16, 18, 19, 20.

**Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Date:- 16th September, 2019

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

Heard the learned counsel for the parties.

2. In pursuance of our order dated 22.08.2019, the
Respondent No.4 has today filed an affidavit before this Court.

3. The learned counsel for Respondent No.4 states that the
compound wall in question may be demolished by the Panchayat at the

cost of Respondent No.4. Accordingly, the Respondent No.4 is directed to deposit with the Panchayat an amount of Rs.10,000/- within a period of one week from today. Upon such deposit, the Panchayat is directed to demolish the compound wall within a period of four weeks, if necessary, by taking assistance of the demolition squad. In fact we are told that this compound wall is hardly of two metres and therefore, there may not be necessity to take any assistance of the demolition squad and the Panchayat can undertake this exercise by engaging labourers. In case the cost exceeds Rs.10,000/-, the Panchayat will have to call upon the Respondent No.4 to pay the same and the Respondent No.4 to pay the same within one week from the date of demand. In case of any surplus, the Panchayat shall refund the same to the Respondent No.4. We make it clear that if the Respondent No.4 delays in the matter of deposit of cost or if the Panchayat delays in the matter of demolition, we will be constrained to take a serious view in the matter, including initiation of the contempt proceedings. The Panchayat in such a case to proceed with the demolition expeditiously and then recover costs from the Respondent No.4.

4. In so far as the demolition of the portion of the third floor of the building is concerned, the affidavit makes a reference to the consultation with and report of Architect Mr. Ashish G. Usgaonkar. The Respondent No.4 seeks six months time to carry out demolition under the supervision of the said Architect on the basis of the said report

of the Architect. According to us, this request on behalf of Respondent No.4 is not quite reasonable and cannot be accepted.

5. The Respondent No.4, is beneficiary of the permission granted by the Town and Country Planning Department in relation to revised plans. On the basis of such revised plans, the Respondent No.4 has completed the construction in question. There were two conditions imposed upon the Respondent No.4 i.e. condition nos.16 and 17, which read as follows :

“16. The part of the 3rd floor shown to be demolished should be actually demolished and Panchayat shall ensure about the same.

17. The compound wall between the two plots shall be demolished as per the “Affidavit” submitted by applicant and before applying for occupancy certificate.”

6. The Respondent No.4, has taken advantage of permission in relation to his revised plans but he is now lingering in the matter of compliance with aforesaid conditions. On the basis of Architect's report, the Respondent No.4 cannot avoid demolition of the portion of third floor which is clearly indicated in the plan annexed to approval dated 21.06.2013.

7. Accordingly, the Respondent No.4 is directed to complete the demolition on the part of the third floor which is shown to be demolished in the plan as expeditiously as possible and in any case

within three months from today. Upon completion of the demolition, the officer of the Town and Country Planning Department as also the Panchayat to inspect the site and satisfy themselves whether the demolition is in accordance with the plans and the portion which is shown to be demolished has actually been demolished by the Respondent No.4.

8. If the Authorities as aforesaid find that there is no compliance of condition nos. 16 and 17 as aforesaid, then, the Authorities are directed to take further action in relation to the entire structure no doubt, by compliance with the procedure prescribed under the law.

9. In this matter, we note that the Respondent No.4 has not at all been candid to this Court. By one means or the other the Respondent No.4 has avoided compliance with the condition nos.16 and 17 subject to which the Respondent No.4 was permitted to revise the plans. Now that the construction in terms of the revised plans is complete, the Respondent No.4 is avoiding compliance with the two conditions subject to which the revision was permitted. This is not at all proper and therefore, we direct the Authorities to take action, in case they find that there is no compliance.

10. With the aforesaid order, we dispose of this petition. The

Respondent No.4 to file compliance report in this Court within four months from today. The copy of such compliance report to be furnished to the Petitioners as well as the learned counsel for the Respondents.

11. If no compliance report is filed, liberty to the Petitioners to apply to this Court.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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