

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 415 OF 2019

Shri Siddharth Shirodkar,
son of late Anand Shirodkar,
age 37 years, Indian National,
Businessman,
r/o House No.262/1,
Diaswado, Nagoa, Bardez, Goa.

... Petitioner.

Vs.

1. The Director,
Directorate of Panchayats,
Government of Goa,
Junta House, Panaji, Goa.

2. The Block Development Officer-II,
Office of the Block Development
Officer,
Mapusa, Bardez, Goa.

3. Alex Philip Sequeira,

4. Agustine Sequeira,
both r/o Ft.No.265,
Dias Waddo, Nagoa,
Bardez, Goa.

... Respondents

Mr. Vibhav R. Amonkar, Advocate for the Petitioner.

Mr. Vishwadh Sardessai, Addl. Government Advocate for Respondent

Nos. 1 & 2.

Mr. Ganesh Naik, Advocate for Respondent Nos. 3 & 4.

WITH
Stamp Application No. 2908/2019.

Mr. S. Madgaokar, Advocate for the intervenor.

Coram : M. S. Sonak &
Nutan D. Sardesai, JJ.

Date : 14th August, 2019.

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

Heard Mr. V. Amonkar, learned Counsel for the petitioner, Mr. V. Sardesai, learned Addl. Government Advocate for respondent Nos. 1 and 2, Mr. Ganesh Naik, learned Counsel for respondent Nos. 3 and 4, Mr. S. Madgaokar, learned Counsel for the intervenors who have filed intervention application bearing Stamp Number (Appln). No. 2908/2019.

2. The intervention application is not on board. However, at the request of and with the consent of the learned Counsel for the parties, the same is taken on board .

3. Rule. Rule is made returnable forthwith at the request of and with consent of the learned Counsel for the parties.

4. The petitioner challenges the order dated 15.03.2019 made by the Block Development Officer (BDO) on the basis of the complaint made by respondent Nos. 3 and 4.

5. The impugned order directs the petitioner to stop construction activities. The order was made without affording any opportunity of hearing to the petitioner. The petitioner points out that the complaint of respondent Nos. 3 and 4 is relating to access and infact, the Civil Court has recorded a categorical finding that there is no access through the petitioner's property. For this reason, Mr. Amonkar, learned Counsel submits that the impugned order warrants interference.

6. Mr. G. Naik, learned Counsel for the respondent Nos. 3 and 4 submits that under Section 66 (6) of the Goa Panchayat Raj Act, the BDO has merely issued the stop work notice since the petitioner was constructing in violation of the provisions of the Act and Rules and bylaws made therein. He submits that, for making such an order, there is no necessity of issuing any notice to the petitioner or the person making such unauthorized construction.

7. Mr. Madgaokar, the learned Counsel for the intervenors supports the contention raised by Mr. G. Naik. He submits that even the intervenors have filed a complaint, similar to the complaint made by the respondent Nos. 3 and 4. He submits that the impugned order has been made even on the basis of the complaint made by the intervenors.

8. Mr. G . Naik and Mr. S. Madgaokar point out that in this petition, the petitioner chose not to implead the respondents and the intervenors in the first instance despite full knowledge that it is on their complaint that the impugned order came to be passed. He submits that the ex-parte stay was obtained by the petitioner and such conduct ought to dis-entitle the petitioner for seeking alternate relief under Article 226 and 227 of the Constitution of India.

9. Mr. V. Sardesai, learned Addl. Government Advocate states that the impugned order is indefensible in as much as prior opportunity of hearing should have been granted to the petitioner as well as the complainants.

10. According to us, in a matter of this nature, we are more concerned with the decision making process rather than the decision itself. Therefore, we are not persuaded to go into the issue of whether

there is really any access at the site or whether petitioner indeed put up some illegal construction.

11. According to us, before the impugned order was made, in particular facts of present case, the petitioner should have atleast be heard. It is not clear whether or not any further proceedings were contemplated before the BDO or not. The impugned order gives an impression that it is a final order. Such an order visits petitioner with consequences. The same should therefore, have not been made without afford of opportunity of hearing to the petitioner.

12. On this short ground, we propose to set aside the order dated 15.03.2019 and relegate all the parties including the intervenors to appear before the BDO who can be directed to dispose of the complaint made by respondent Nos. 3 and 4 as well as the intervenors on their own merits and in accordance with law after affording opportunity of hearing to all parties and also the intervenors.

13. Accordingly, we set aside the order dated 15.03.2019. We direct the petitioner, respondent Nos. 3 and 4 as well as the intervenors to appear before the BDO on 26.08.2019 at 4.00 p.m. and seek directions on the said date. The BDO to fix a convenient date and dispose of the complaints made by respondent Nos. 3 and 4

and the intervenors in accordance with law and on their own merits by affording opportunity of hearing to all the parties.

14. We make it clear that we have not considered the rival contentions and therefore, all rival contentions of all parties are specifically left open.

15. The Rule is accordingly made absolute in the aforesaid terms.

16. No order as to costs.

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

18. The intervention application is allowed on the aforesaid terms. Since, the learned Counsel for the intervenors was heard in the present petition, the intervention application is accordingly disposed of.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

MF/-