

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.447 OF 2019**

Mr. Vassudev Rama Vernekar,
76 years of age,
s/o Rama Vernekar,
r/o H.No.11/21, Mapusa,
Bardez Goa.

.... Petitioner

Versus

Chief Officer,
Mapusa Municipal Council,
Mapusa Goa.

... Respondents

Mr. A. D. Bhobe, Advocate for the Petitioner.

Mr. S. D. Padiyar and Mr. S. Bhangui, Advocates for the Respondent.

**Coram:- PRADEEP NANDRAJOG, CJ &
M. S. SONAK, J.**

Date:- 7th October, 2019

ORAL JUDGMENT (Per Pradeep Nandrajog, CJ.):

Rule. Rule made returnable forthwith. The misery of the Petitioner commenced when the shop bearing No.11/21 at Khorlim, Bardez Goa, required refurbishing due to the building suffering wear and tear. As per the law in the State of Goa, repairs require a permission from the Mapusa Municipal Council. The Petitioner applied for and was granted necessary permission to repair the shop on 6th May, 2013. It is the case of the Petitioner that during repairs, so old was the

structure that it collapsed and compelled him to rebuild the shop. Laying RCC pillars, columns with beams, the Petitioner reconstructed the shop and received from the Municipal Council a show cause notice dated 5th July, 2013 alleging reconstruction without sanction. It was alleged that under the garb of repairs the Petitioner had reconstructed the shop and while doing so had laid the front column on a part of land reserved for a road. The Petitioner questioned the same. The response of the Petitioner was turned down and a demolition order dated 15th January, 2015 and final notice was served on the Petitioner. The Petitioner ran before the Appellate Authority i.e. the Tribunal constituted under the Municipal statute and promptly lodged Municipal Appeal No.25/2015 which was dismissed by the Tribunal on 28th January, 2016 but in view of law declared by the Supreme Court in the judgment reported in 1995 Supp.(4) SCC 426 Sayed Muzafar Ali & Ors. Vs Municipal Corporation of Delhi directed that the Petitioner could apply for compounding of the construction. This necessitated the Petitioner to approach the North Goa Planning and Development Authority for the reason the building laws for construction or reconstruction envisages the permission from the said Authority and not Municipal Council. After the permission is obtained from the said Authority, the permission also has to be obtained from the Municipal Council.

2. The Petitioner, who appears to be a layperson, did not

realise that the Municipal Officers were vigilant. Noting that the Petitioner had not obtained necessary permission from the North Goa Planning and Development Authority, the Council issued a final notice on 16th July, 2018 threatening demolition. The Petitioner once again took refuge before the Appellate Tribunal. He filed Municipal Appeal No.46/2018 which was dismissed vide impugned order dated 23rd January, 2019 holding that the appeal was not maintainable.

3. But, immediately after filing the appeal the Petitioner filed necessary application before the Deputy Collector, Mapusa on 16th July, 2018 as also the application before the North Goa Planning and Development Authority on 3rd August, 2018.

4. It is apparent that by the time a final notice dated 16th July, 2018 was issued by the Council, the Petitioner had not approached the North Goa Planning and Development Authority.

5. The procedures of law cannot override to take away the substantive right of the party and therefore on this principle we dispose of the petition issuing a writ of prohibition, prohibiting the Mapusa Municipal Council to give effect to its final notice dated 16th July, 2018 till the North Goa Planning and Development Authority decides the application filed by the Petitioner seeking regularization/permission to reconstruct the shop sought vide application dated 3rd August, 2018.

The said Development Authority not being impleaded as Respondent, we can only request the said Authority to take an expeditious decision on the Petitioner's application. Counsel for the Petitioner shall serve on the Authority a certified copy or an authentic copy of the present order containing a request to the North Goa Planning and Development Authority. Needless to state, if the Petitioner obtains order of regularization of the shop, the Municipal Council shall not give effect to the final notice dated 16th July, 2018. If the Petitioner is unsuccessful before the Development Authority, the Petitioner would be entitled to the remedies as per law.

6. No costs.

M. S. SONAK, J.

CHIEF JUSTICE

at*