

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 438 OF 2019**

Kayji Real Estate Pvt. Ltd., Rep. by its
Constituted Attorney, Chandrakumar
Huilgol Petitioner
Versus
The Sarpanch, Carmona & 3 Others Respondents

Mr. Yogesh V. Nadkarni with Mr. N. Noronha, Advocates for the
Petitioner.

Mr. Amey Kakodkar, Advocate for Respondent Nos. 1 and 2.

Mr. Vivek Rodrigues, Advocate for Respondent Nos. 3 and 4.

CORAM:- C. V. BHADANG, J.

RESERVED ON: 26th September, 2019

PRONOUNCED ON: 27th September, 2019

ORDER:

The challenge in this Petition is to the judgment and order dated 29.04.2019, passed by the learned District Judge, South Goa at Margao, in Civil Revision Application Nos. 5/2018 and 42/2018.

By the impugned judgments, the learned District Judge, while allowing the two revision applications, has set aside the judgment and order dated 22.01.2018, passed by the learned Additional Director of Panchayats-I, Margao, in Panchayat Appeal No. MAR-I/90/2017. The net result is that the resolution dated 22.10.2017, passed by the respondent no.

1, Village Panchayat, not to renew and to withhold the licence granted to the petitioner, has been restored.

2. The brief facts are that the petitioner is running a resort, a bar and restaurant and spa at Village Carmona, Salcete, under the name and style as "The Verda", for which, the respondent no. 1 had granted a trade licence on 27.10.2016, which was valid till 27.10.2017. The petitioner applied for renewal of the said trade licence on 25.09.2017, which was considered by the Village Panchayat in its meeting held on 22.10.2017, in which, it was found that the premises, where the petitioner was running the resort was a residential project and therefore, the respondent no. 1 decided not to renew and has withhold the trade licence, "till the issue regarding permission for change of user from residential to commercial, is resolved". Feeling aggrieved, the petitioner challenged the same before the Additional Director of Panchayats in Panchayat Appeal No. 90/2017, under Section 72(3) of the Goa Panchayat Raj Act, 1994 (Act, for short). The Additional Director of Panchayats, by a judgment and order dated 22.01.2018, allowed the Appeal and directed the respondent no. 2 to renew the trade licence. That was challenged by the Village Panchayat and respondent nos. 3 and

4 in the two aforesaid revision applications, before the learned District Judge under Section 201B of the said Act. The learned District Judge found that the permission for change of user from residential to commercial was required from the Town and Country Planning Department and has also found that the learned Additional Director of Panchayats has ignored that the petitioner was required to obtain the approval/permission from the Town & Country Planning Department to change the user from residential to commercial. In that view of the matter, the civil revision applications came to be allowed and the order passed by the learned Additional Director of Panchayats, has been set aside. Feeling aggrieved, the petitioner is before this Court.

3. I have heard Mr. Nadkarni, the learned Counsel for the petitioner, Mr. Kakodkar, the learned Counsel for the respondent nos. 1 and 2 and Mr. Rodrigues, the learned Counsel for the respondent nos. 3 and 4. With the assistance of the learned Counsel for the parties, I have gone through the record.

4. Mr. Nadkarni, the learned Counsel for the petitioner has strenuously urged that the petitioner has indeed obtained

the trade licence from the Village Panchayat on 27.10.2016 and this is not a case where the petitioner had started the resort and the spa without any licence. It is submitted that at the time when the renewal was sought, the issue of change of user had cropped up and therefore, the Additional Director of Panchayats was justified on the principles of “continuity of administrative action” to direct the Village Panchayat to renew the trade licence. The learned Counsel has pointed out the interim relief granted by this Court on 22.05.2019, wherein the stay of the impugned judgment and order was granted, subject to the petitioner filing an affidavit that no further bookings will be accepted in respect of the resort, on the condition that the petitioner shall desist from operating the spa and serving alcohol in the restaurant. The learned Counsel has referred to the affidavits dated 28.05.2019, 14.06.2019, 15.07.2019 and 18.07.2019, filed on behalf of the petitioner by Mr. Chandrakumar Huilgol, the Constituted Attorney of the petitioner.

5. It is submitted that the petitioner has not accepted any bookings, in contravention of the order passed by this Court. The learned Counsel submitted that the petitioner has entered into three contracts i.e. dated 12.03.2019, 03.04.2019

and 18.02.2019 with the Chartered Tour Operators and therefore, the abrupt stoppage of business may result into grave and serious prejudice to the petitioner. It is submitted that this will adversely affect the employees, who are working at the resort. He submitted that the petitioner has applied to the Town and Country Planning Department on 13.06.2019 for change of the user from residential to commercial and the inspection in pursuance thereof is carried out on 10.07.2019. He, therefore, urged that this Court in the exercise of equitable jurisdiction may permit the continuation of the commercial activity to the extent the bookings are already made.

6. The learned Counsel for the respondents have submitted that admittedly, the premises where the resort is being run was sanctioned as a residential project, where commercial activity is not permitted and therefore, the Village Panchayat was justified in withholding the renewal till the issue for change of user is sorted out. It is submitted that the resolution of the Village Panchayat is dated 22.10.2016 and the petitioner has applied for change of user only on 13.06.2019, which lacks bonafide. It is submitted that this is not a case where the Village Panchayat has ordered demolition of the subject premises and all that is done is withholding of the

renewal, which would only entail stoppage of the commercial activity, which will not cause any prejudice to the petitioner.

7. I have given my anxious consideration to the circumstances and the submissions made. The material facts are not in dispute. It is not disputed that the premises where the business is carried on, is not sanctioned for commercial use. Admittedly, the petitioner is running a resort, spa and bar and restaurant in the premises, which is a commercial activity. It is true that the Village Panchayat had initially granted trade licence on 22.10.2016. However, has withhold the renewal, till the issue of change of user is resolved. It is also a matter of record that the petitioner has applied for change of user on 13.06.2019. The question is whether, this Court, in such a case, in the exercise of the jurisdiction, under Article 227 of the Constitution of the India, can permit the act which is per se not permissible in law and the answer in my considered view, has to be in the negative.

8. The argument on behalf of the petitioner is centered on the abrupt stoppage of the commercial activity, which to my mind cannot be accepted. The petitioner was put to notice on the issue of change of user, way back on 22.10.2017, when the

Village Panchayat had withheld the renewal of the licence. The petitioner has applied for such change of user only on 13.06.2019 and in the meantime, certain bookings of the resort have been accepted. It is true that a majority of such bookings are during the period when the stay was operating, except some of the bookings at serial nos. 45, 49, 50, 51 (page 204 of the compilation), which have been accepted after the decision of the learned District Judge and before the interim relief was granted by this Court on 22.05.2019. Be that as it may, as rightly submitted on behalf of the respondents, under the exercise of the supervisory jurisdiction under Article 227 of the Constitution of India, it would not be permissible to allow the petitioner to continue with the commercial activity, when ex facie it is against the provisions of law.

9. It is now well settled that the supervisory jurisdiction under Article 227 of the Constitution of India is aimed at ensuring that the subordinate Courts and the Tribunals act within the bounds of their authority and the orders so passed do not result into any manifest injustice (see **Shalini Shyam Shetty & Another Vs. Rajendra Shankar Patil (2010) 8 SCC 329**). Here is a case where no jurisdictional error can be found, in the order of the learned

District Judge nor the order so passed can be said to be resulting into any manifest injustice. It is significant to note that by interim order dated 22.05.2019, the petitioner has already been directed not to accept any further bookings and therefore, it cannot be said that the commercial activity is being abruptly brought to an end. This is also not a case where the Village Panchayat has taken any extreme step for demolition of the subject premises. Thus, no case for interference is made out. In the result, the Petition is dismissed, with no order as to costs.

10. At this stage, the learned Counsel for the petitioner seeks extension of the interim relief for a period of four weeks.

As interim relief was operating from 22.05.2019, the ad-interim relief, already operating, shall continue for a period of four weeks from today.

C. V. BHADANG, J.

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