

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.439 OF 2019**

M/s. Swapna Developers,
Osia Complex, Ground Floor,
'C' Wing Building, near SGPDA
Market Complex, Margao-Goa.
Through Mr. Prakash Kothari,
Authorised representative
of the petitioner.

... Petitioner

Versus

1. South Goa Planning &
Development Authority,
through its Member Secretary,
having office at 4th Floor,
'D' Wing, Osia Commercial
Arcade, near SGPDA Market
Complex, Margao-Goa.
2. Town & Country Planning
Board, State of Goa,
through its Member Secretary,
having office at 2nd Floor,
Dempo Tower, Patto Plaza,
Panaji-Goa.
3. The Dy. Collector/SDO,
Margao, Salcete-Goa.

... Respondents

Mr. Y.V. Nadkarni and Mr. Sanket Kamat, Advocates for the
Petitioner.

Mr. Menino Pereira, Advocate for Respondent No.1.
Mr. D. Pangam, Advocate General with Mr. Sagar Dhargalkar,
Additional Government Advocate for Respondents No.2 & 3.

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

Date :- 29th JULY, 2019

ORAL JUDGMENT :(Per M.S. SONAK, J.)

Heard Mr. Y.V. Nadkarni with Mr. Sanket Kamat, the learned Advocates for the petitioner. Mr. Menino Pereira, learned Advocate appears for respondent no.1 and Mr. D. Pangam, the learned Advocate General appears for respondents no.2 & 3.

2. Mr. D. Pangam, the learned Advocate General places on record the order dated 11/01/2019 made by the Town and Country Planning Board. Mr. Nadkarni, the learned Counsel for the petitioner seeks leave to challenge the said order dated 11/01/2019, since, such order was never served upon the petitioner. Leave is granted. Amendment to be carried out forthwith.

3. Taking into consideration the peculiar facts and circumstances of the present case, we proceed to grant Rule. Rule made returnable forthwith with the consent of and at the request of the learned Counsel appearing for the parties. Learned Counsel appearing for the respective respondents waive service.

4. The challenge in the petition, prior to its amendment was to the communication dated 09/05/2019 addressed by the South Goa Planning and Development Authority (respondent no.1) to the Deputy Collector (SDO) in charge of demolition squad, Margao Goa to demolish petitioner's structure.

5. Mr. Pereira, the learned Counsel points out that the communication dated 09/05/2019 was addressed to the in charge of the demolition squad because the Town and Country Planning Board by its order dated 11/01/2019 had in fact dismissed the appeal instituted by the petitioner and thereby confirmed the demolition order relating to the petitioner's structure. As noted earlier, we have granted leave to the petitioner to challenge the Board's order dated 11/01/2019.

6. The record indicates that the hearing before the Board on the petitioner's appeal was initially scheduled on 14/01/2019. However, by notice dated 08/01/2019, the petitioner was purported to be informed that the same is preponed to 11/01/2019. This notice dated 08/01/2019 was served upon the petitioner only on 19/01/2019. Therefore,

the petitioner, vide letter dated 24/01/2019 brought this position to the notice of the Member Secretary of the Board.

7. In the aforesaid circumstances, obviously, the Board's order dated 11/01/2019 will have to be set aside for failure to comply with principles of natural justice. The learned Advocate General for State of Goa also accepts that the order dated 11/01/2019 will have to be set aside and the petitioner's appeal before the Board will have to be reheard and disposed of in accordance with law.

8. Since the impugned communication dated 09/05/2019 has a direct nexus with the Board's order dated 11/01/2019, now that the Board order dated 11/01/2019 is being set aside, even the communication dated 09/05/2019 will not survive and will have to be set aside.

9. Accordingly, the Board's order dated 11/01/2019 and the SGPDA's communication dated 09/05/2019 are hereby set aside. The petitioner's appeal is restored for hearing before the Town and Country Planning Board. The appeal will have to be disposed of in accordance with law on

its own merits after affording the petitioner opportunity of being heard. The Board is directed to dispose of the petitioner's appeal as expeditiously as possible and in any case within a period of three months from today. Mr. Pereira, the learned Counsel appearing for respondent no.1, points out that in this matter there are already High Court directions in relation to the petitioner's structure.

10. Rule is made absolute in the aforesaid terms. There shall be no order as to costs. All concerned to act on the authenticated copy of this order.

NUTAN D. SARDESSAI, J.
NH

M.S. SONAK, J.