

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 465 OF 2019**

Shamba Pauto Pagi @ Kankonkar Petitioner
Versus
The Chief Officer, Canacona
Municipal Council & 4 Others Respondents

Mr. Guru Shirodkar, Advocate for the Petitioner.

Mr. Sudesh Usgaonkar with Ms. Rosette Pereira, Advocates for Respondent No. 1.

Mr. Vibhav Rajiv Amonkar, Advocate for Respondent Nos. 2, 3 and 4.

Mr. Arun Talaulikar, Additional Government Advocate for Respondent No. 5.

CORAM : C.V. BHADANG, J.

DATE : 26th June, 2019

ORAL ORDER:

Heard Mr. Shirodkar, the learned Counsel for the petitioner, Mr. Usgaonkar, the learned Counsel for the respondent no. 1, Mr. Amonkar, the learned Counsel for the respondent nos. 2, 3 and 4 and the learned Additional Government Advocate for the respondent no. 5. Perused record.

2. The challenge in this petition is to the following orders:

- (i) The final notice dated 28.01.2016 by the Municipal Council in Case No. CMC/Tech.Sec/2010-11/899/43.
- (ii) The judgment and order dated 20.12.2017, passed by the Administrative Tribunal in Municipal Appeal No. 8/2016.
- (iii) The order dated 14.06.2018, passed by the Municipal Council, rejecting the application for regularization in respect of the said structure and
- (iv) The order dated 20.05.2019, passed by the Revisional Authority in Revision Application No. MIN(UD)/20/2018.

3. Insofar as orders at serial nos. (i) and (ii) above are concerned, which are in respect of a notice of demolition of the subject structure, the petitioner had challenged the same before this Court in Writ Petition No. 306/2018, which was disposed off as withdrawn on 02.07.2018. The said petition was withdrawn in view of the statement on behalf of the petitioner that the petitioner intends to take recourse to appropriate remedy of regularization and for compounding. In view of the fact that the said writ petition was withdrawn, the challenge to the orders at serial nos. (i) and (ii) above, cannot be entertained in this petition.

4. Thus, the challenge in this petition survives insofar as the order, by which, the competent authority has rejected the application for regularization, which order has been

confirmed by the revisional authority.

5. A perusal of the impugned order passed by the Municipal Council, shows that the Municipal Council, by a letter dated 23.01.2018 had asked the petitioner to produce the following documents:

- (a) Approved plan from Town & Country Planning Department.
- (b) Technical Clearance from Town & Country Planning Department.
- (c) Property documents/title documents.
- (d) Original Survey Plan & Form I & XIV and
- (e) Conversion Sanad.

6. Mr. Shirodkar, the learned Counsel for the petitioner pointed out that the petitioner is not the owner of the property and as such, is unable to produce the property documents/title documents and the conversion sanad. It is submitted that the petitioner claims to be a mundkar of the suit house and the application for declaration as a mundkar is pending before the Mamlatdar. He submits that in as much as the petitioner is seeking regularization of the suit structure, the petitioner cannot be asked to produce the approved plan and technical clearance from the Town & Country Planning Department (TCP).

7. Mr. Usgoankar, the learned Counsel for the respondent no. 1-Municipal Council has pointed out Regulation no. 22.4.(a) of the Goa Land Development and Building Construction Regulations, 2010 (Regulations, for short), which require the recommendation of the TCP or the Planning and Development Authority, for the purpose of regularization and/or compounding. The learned Counsel has submitted that the petitioner has to first approach the TCP, seeking such recommendation. He has also pointed out Regulation no. 3.6.1, (Category II), which prescribes for the procedure to be followed for regularization. He submits that the suit structure, which is falling in Category II and which is within the jurisdiction of the TCP, the petitioner has to first approach the TCP.

8. I have considered the submissions made. It can be seen that the application for regularization has simpliciter been rejected on account of non-compliance by the petitioner to the letter dated 23.01.2018. It is for the petitioner to produce the documents as are required or to satisfy the concerned authority as to why the documents are either not necessary or to justify as to why the petitioner is unable to produce the

same. Thus, the challenge to the impugned order cannot be favourably considered. The petition is accordingly dismissed, with no order as to costs. This shall however not preclude the petitioner from approaching the TCP Department for obtaining the approved plan/technical clearance and then to approach the Municipal Council for regularization as per the applicable Rules and Regulations. It is made clear that this Court has not expressed any opinion on the merits of the claim for regularization.

C. V. BHADANG, J.

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