

Heard Mr. G.Panandikar, learned Advocate for the petitioners
and Mr. Arsekar, learned Advocate for the respondent No.1.

2. Rule. Rule is made returnable forthwith with the consent and at the request of the petitioner and the learned Counsel appearing for the respondents.

3. The record indicates that the respondent No.2 has already been served. By our order dated 05/08/2019 we had made it clear that endeavour shall be made to dispose of this petition finally at the admission stage.

4. The challenge in this petition is to the orders made by the Additional Director of Panchayats and the Adhoc District Judge-I, FTC-I, South Goa, Margao by which the order of the Deputy Director of Panchayats dated 08/12/2014 has been set aside.

5. On the basis of the complaint of the petitioner, the respondent No.2-Panchayat issued Show Cause Notice dated 15/05/2013 to the respondent No.1. On the ground that there was no further action taken by the Panchayat, the petitioner, instituted proceedings before the Deputy Director of Panchayats.

6. The Deputy Director of Panchayats vide order dated 08/12/2014 not only directed the Panchayat to dispose of the Show Cause Notice dated 15/05/2013 but to also demolish the structure of

the respondent No.1 referred in the Show Cause Notice. This order is required to be read with the corrigendum dated 08/01/2015.

7. From the perusal of the aforesaid order of the Deputy Director of Panchayats, we are satisfied that the first direction for disposal of the Show Cause Notice dated 15/05/2013 was quite correct. However, the second direction to proceed with the demolition of the structure of the respondent No.1 was totally incorrect and in fact, in excess of jurisdiction in the peculiar facts and circumstances of the present case.

8. The respondent No.1, aggrieved by the order of the Deputy Director preferred an appeal before the Additional Director of Panchayats. The Additional Director of Panchayats vide the Judgment and Order dated 22/11/2017 has set aside the Deputy Director's order dated 08/12/2014 in its entirety. The petitioner's revision against the order of the Additional Director of Panchayat's came to be dismissed by the revisional authority vide judgment and order dated 18/02/2019. Hence, the petitioner has instituted the present petition to challenge the orders of Additional Director of Panchayats and the Adhoc District Judge- I.

9. Mr. Panandikar, learned Counsel submits that the Additional Director of Panchayat's may have been justified in setting aside the order for demolition made by the Deputy Director. However, the Additional Director, could not have set aside the Deputy Director's entire order, including in particular, the portion relating further action in terms of Show Cause Notice issued by the Panchayat.

10. Mr. Arsekar, learned Counsel for the respondent No.1 submits that there is absolutely no jurisdictional error in view taken by the Additional Director of Panchayats and the Adhoc District Judge-I. He submits that there was a civil suit between the parties, in which, the position has been clarified. This clarified position supports the case of the respondent No.1 and demolishes the case of the petitioner. He submits that the petitioner has suppressed the relevant and vital documents with relation to the civil suit and therefore, this petition may not be entertained. He submits that even on merits there is no illegal construction undertaken by the respondent No.1 and therefore, no useful purpose will be served if the Show Cause Notice is required to proceed. He submits that in fact this will only result in the duplication as the Additional Director and Adhoc District Judge as concurrently actual position and recorded concurrent findings in the

matter. For all these reasons, Mr. Arsekar, learned Counsel submits that the present petition may be dismissed.

11. According to us, it will not be appropriate for us to go into any disputed questions of fact which undoubtedly arise in this matter. The short issue is whether the Additional Director of Panchayats was right in setting aside the Deputy Director's order in its entirety or whether the Additional Director should have only interfered with the directions issued by the Deputy Director to straight away demolish the structure of the respondent No.1.

12. According to us, in the facts and circumstances of the present case, the Deputy Director's order to the extent it had directed the demolition of the structure of the respondent No.1 was in excess of the jurisdiction vested in the Deputy Director. Therefore it is only that portion of the order of the Deputy Director which warranted interference by the Additional Collector and subsequently by the Adhoc District Judge. The other direction to merely proceed with the Show Cause Notice did not warrant any interference.

13. The Panchayat, having issued a Show Cause Notice was required to take Show Cause Notice to its logical conclusion one way or the other. The Panchayat in the present case, simply abandoned

the proceedings post issuance of the Show Cause Notice. In this circumstances the Deputy Director was justified in directing the Panchayat to proceed with the Show Cause Notice. The Deputy Director was however not justified in directing the Panchayat to straight away demolish the structure of No.1 by virtually prejudging the issue and in it is this later portion had warranted the interference and not the entire order.

14. The issue in relation to the civil suit between the parties or the defence of the respondent No.1 is something which the Panchayat will have to consider once it proceed with the Show Cause Notice. It will neither be possible nor appropriate for us to go into this issue for the first time. Similarly, it was not at all proper for the Additional Director of Panchayats or for that matter the Adhoc District Judge to go into this issues for the very first time. These are matters which should have been left for the decision of the Panchayat atleast in the first instance.

15. For all the aforesaid reasons we set aside the order dated 22/11/2017 made by the Additional Director of Panchayats and the order dated 18/02/2019 made by the Adhoc District Judge-I, South Goa at Margao. We also, set aside the portion of the Deputy

Director's order dated 08/12/2014 as corrected on 08/01/2015 to the extent it seeks to express some final opinion on construction of the respondent No.1 and also seeks the demolition of the construction of the respondent No.1. This portion of the Deputy Director's order was clearly in excess of jurisdiction and was required to be set aside. However, we restore the Deputy Director's order to the extent it merely directs the Panchayat to dispose of the Show Cause Notice dated 15/05/2013 in accordance with law and on its own merits.

16. We accordingly, direct the Panchayat to dispose of the Show Cause Notice dated 15/05/2013 on its own merits and in accordance with law without in any manner being influenced by the orders made by the Deputy Director, Additional Director as also the Adhoc District Judge. The Show Cause Notice will have to be disposed of on its own merits and after afford of opportunity of hearing to both the petitioner as well as the respondent No.1.

17. We have no doubt that the Panchayat will take into consideration the defences raised by the respondent No.1, including the defence based upon the decrees of the Civil Court in the matter. The Show Cause Notice to be disposed of within three months from

the date on which the petitioner files an authenticated copy of this Judgment and order before the Panchayat. The Panchayat will have to issue notice to the respondent No.1 and afford the respondent No.1 an opportunity of hearing in the matter.

18. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

19. All concerned to act on the authenticated copy of this judgment and order.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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