

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.577 OF 2019

1) Mrs. Orfelinda Menezes,
major, wife of late Eurico
Menezes, r/o. Regency Plaza, 3rd Floor
Flat No.T.F.7, Comba, Margao, Goa.

2) Mrs. Sarika Colaco, major,
wife of Juscelino Colaco,
r/o. Regency Plaza, 3rd Floor
Flat No.T/F-3, Comba, Margao, Goa.

.... Petitioners.

Versus

1) The Margao Municipal Council,
through its Chairperson,
Margao, Salcete, Goa.

2) The South Goa Planning and Development
Authority, through its Member
Secretary, Margao, Salcete.

3) Mr. Lyndon D'Silva,
55 years of age,
r/o. Flats No.FF-9 and FF-10,
Regency Plaza, Margao,
Salcete - Goa.

4) Mrs. Maria Do Carmo D'Silva,
53 years of age, wife of
Mr. Lyndon D'Silva,
r/o. Flats No.FF-9 and FF-10,
Regency Plaza, Margao,
Salcete - Goa.

..... Respondents.

Mr. V. Sawant, Advocate for the Petitioners.

Ms. Asmita N. Tirodkar, Advocate for Respondent No.1.

Mr. Menino Pereira, Advocate for Respondent No.2.

Mr. Abhijit Kamat with Mr. A. Prabhudessai, Advocates for Respondents No.3 & 4.

***Coram : M.S. Sonak &
Nutan D. Sardesai, JJ.***

Date : 9th September, 2019.

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

Heard Mr. V. Sawant for the Petitioners, Ms. Asmita N. Tirodkar for Respondent No.1, Mr. Menino Pereira for Respondent No.2 and Mr. Abhijit Kamat for Respondents No.3 & 4

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

3. The Petitioners complain about inaction on the part of Respondents No.1 and 2 in the matter of alleged illegal construction put up by Respondents No.3 and 4.

4. Mr. Pereira, the learned Counsel for Respondent No.2 points out that Respondent No.2 has issued a stop work order/show cause notice dated 1st August, 2019 to Respondent No.3, who is the husband of Respondent No.4. The stop work order/show cause notice, reads thus :

“Whereas a complaint has been received from Mrs. Orfolinda Menezes & Mrs. Sarika Colaco resident of Regency Plaza, Comba, Margao-Goa, vide dated 07.05.2019 regarding illegal construction on the 4th floor of the building.

Whereas the official of this Authority inspected the site on 26.07.2019 at 4.30 p.m., during the course of site inspection it was noticed that you have carried out major renovation on the flat no.F-09 & F-10 and also constructed a toilet on the open terrace. The said work is done without prior permission from this Authority as required under section 44 of TCP Act, 1974.

Now I hereby direct you to stop the work forthwith and appear in person or through duly authorized person along with approved plans of the above referred flat and also show cause within 7 days from the receipt of this notice as to why action should not be initiated to demolish/remove the illegal work as per under section 52 of TCP Act, 1974.

Sd/-

(K. Ashok Kumar)

Member Secretary”

5. Mr. Pereira states that the show cause notice will be disposed of in accordance with law, and on its own merits, as expeditiously as possible and in any case, within a period of three months from today. This statement is accepted. Respondent No.2 to comply with the principles of natural justice and fair play in the matter of disposal of the show cause notice.

6. The show cause notice-cum-stop work order dated 1st August, 2019 bars Respondent No.3 and 4 from undertaking any further work at the site. Mr. Kamat for Respondents no.3 and 4

states that Respondents No.3 and 4 will not undertake any further work at the site. However, he submits that doors and windows need to be fitted to the suit structure as, otherwise, stray animals might get into the structure. He submits that there is even possibility of some miscreants encroaching into the structure. He assures this Court that until the show cause notice is disposed of, Respondents no.3 and 4 will not occupy the suit structure, which is even, otherwise, incomplete.

7. According to us, the request made by Mr. Kamat is reasonable. Despite the stop work order, we permit Respondents No.3 and 4 to undertake the work of fixing doors and widows to the suit structure. However, Respondents No.3 and 4 not to undertake any other work, or to occupy the suit suit structure, until the show cause notice is disposed of by Respondent No.2. Respondent No.2 to comply with the principles of natural justice and fair play, whilst disposing of the show cause notice.

8. Respondent No.1 has also issued a show cause notice to Respondents No.3 and 4. Accordingly, we direct Respondent No.1 to also dispose of the said show cause notice, on its own merits and in accordance with law, within a period of 3 months from today. Respondent No.1 also to comply with the principles of natural justice and fair play.

9. The Petitioners, who are complainants in the matter, be also given an opportunity of hearing by both, Respondent No.1, as well as Respondent No.2. The decisions, which the Respondents No.1 and 2, take in the matter should be communicated to the Petitioners, as well as Respondents No.3 and 4, within a period of 15 days from the date the same are taken.

10. With the aforesaid directions, this Petition is disposed of. Rule is made absolute⁴ in aforesaid terms. No costs.

11. All concerned to act on the basis of an authenticated copy of this order.

Nutan D. Sardesai, J.

M.S. Sonak, J.