

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.628 OF 2019

Ganesh alias Sujay Pai,
son of late Shripad Pai,
aged about 47 years, Indian
National, R/o. House No.128,
Khalchawada, Arambol, Pernem, Goa. Petitioner.

Versus

1. State of Goa,
through its Chief Secretary,
having his office at Secretariat,
Porvorim, Goa.

2. Goa Coastal Zone Management
Authority, through its
Member Secretary, having his
office at C/o. Department of Science,
Technology and Environment
(Govt. of Goa), 1st Floor,
Pt. Deendayal Upadhyay Bhavan,
Pundalik Nagar, Alto,
Porvorim, Bardez, Goa.

3. Suresh N. Pai,
major of age, r/o. Deul Wada,
Harmal, Pernem, Goa. Respondents.

Mr. Sandesh Padiyar, Advocate for the Petitioner.

Mr. Manish Salkar, Government Advocate for Respondent Nos. 1
and 2.

Mr. Nikhil Pai, Advocate for Respondent No.3.

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

Date : 23rd July, 2019.

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

Heard Mr. Padiyar for the Petitioner, Mr. Salkar for Respondent Nos. 1 and 2 and Mr. Pai for Respondent No.3.

2. The challenge in this Petition is to the order/directions dated 24/06/2019 made by the Goa Coastal Zone Management Authority (GCZMA) invoking the provisions of Section 5 of the Environment (Protection) Act, 1986, read with Rule 4 of the Environment (Protection) Rules, 1986.

3. Though, a preliminary objection on the basis of availability of alternate and efficacious remedy is raised by and on behalf of the Respondents, for a limited purpose we issue Rule in this Petition. At the request of and with the consent of the learned Counsel for the parties, Rule is made returnable forthwith.

4. The impugned order, directs demolition of the Petitioner's structures under Survey Nos. 162/17 and 162/10 of Arambol Village, Pernem Taluka. Mr. Padiyar points out that in so far as the structures in Survey No.162/10 are concerned, there was absolutely no reference to the same in the show cause notice dated 1st March, 2019

issued to the Petitioner. He, therefore, submits that the impugned order, at least in so far as the structures in Survey No.162/10 are concerned, is in total breach of the principles of natural justice and fair play. He submits that in such circumstances, a bar of alternate remedy is required to be waived and the impugned order is required to be set aside for failure to comply with the principles of natural justice and fair play.

5. Mr. Padiyar submits that in so far as structures in Survey no.162/17 are concerned, there is failure of natural justice, because some of the most important contentions raised by and on behalf of the Petitioner, have not been taken into consideration. He points out that there was already an application made by the Petitioner seeking permission in so far as the structures in Survey No.162/17 are concerned. The issue of pendency of such an application has not at all been considered. He, therefore, submits that this is a fit case where the writ petition should be entertained even in respect of the structures in Survey No.162/17.

6. Mr. Salkar, learned Government Advocate concedes that in the show cause notice there was no reference to the structures in survey No.162/10, even though there was a complaint with regard to the structures in the said survey number. Mr. Pai, learned Counsel for Respondent No.3 also states that Respondent No.3 has made a

specific complaint with regard to structures in Survey No.162/10. He submits that on the basis of some technicalities, the impugned order may not be interfered with.

7. According to us, the impugned order is divisible into two parts. The first part relates to the structures in survey No.162/10 and the second part relates to the structures in Survey No.162/17, both of Village Arambol, Pernem, Goa. In so far as the first part of the impugned order is concerned, it is apparent that the same is vitiated for non-compliance with the principles of natural justice. This is because the show cause notice had made no reference whatsoever to the structures in Survey no.162/10 and consequently, the Petitioner had no opportunity to make any response in respect of the said structures. The impugned order, in so far as it relates to the structures in Survey no.162/10 is, therefore, required to be quashed and set aside and is, hereby, quashed and set aside.

8. The impugned order, in so far as it relates to the structures in Survey No.162/17 is concerned, cannot be said per se vitiated for failure to comply with the principles of natural justice. At the highest, the complaint of the Petitioner is that there was no adequate opportunity and this is not a case of 'no opportunity', as was the case in relation to the structures in Survey Nos. 162/10. In the latter case, therefore, the Petitioner will have to make out a case that there was

not only some substantial violation of the principles of natural justice, but further, the Petitioner was seriously prejudiced on that count. Besides, Mr. Padiyar seeks to raise certain contentions on merits of the impugned order, in so far as it relates to the structures in Survey no.162/17 is concerned. All this exercise can be effectively undertaken in an appeal against the impugned order, which is admittedly available under the provisions of the National Green Tribunal Act, 2010. There is no case made out to entertain this Petition, in so far as the structures in Survey no.162/17 are concerned.

9. Mr. Padiyar, learned Counsel for the Petitioner, on the basis of instructions, states that the Petitioner will institute an appeal against the impugned order in so far as it relates to the structures in Survey No.162/17 are concerned. He, however, seeks for some protection for a period of two weeks from today, so as to enable the Petitioner to institute an appeal before the National Green Tribunal and also apply for suitable interim orders. This request is quite reasonable and in the facts and circumstances of the present case deserves to be considered.

10. Mr. Pai, learned Counsel for Respondent No.3 submits that quashing of the impugned order to the extent it concerns the structures in Survey no.162/10 may be construed as disability to the

GCZMA to take further proceedings in respect of the said structures. According to us, there is no reason for any such apprehension. We have only quashed the portion of the impugned order because there was no show cause notice issued to the Petitioner in respect of the structures in Survey No.162/10. Therefore, it is open to the GCZMA to take fresh proceedings in relation to such structures. However, the GCZMA will have to comply with the principles of natural justice.

11. Accordingly, Rule is made partly absolute in the present Petition. The impugned order, in so far as it relates to the structures in Survey No.162/10 is concerned, is quashed and set aside. However, this shall not disable the GCZMA to take further proceedings in relation to such structures, but by complying with the principles of natural justice. The impugned order, in so far as it relates to the structures in Survey No.162/17 is not interfered with in the present Petition. However, liberty is granted to the Petitioner to avail the alternate remedy of appeal before the National Green Tribunal. Accordingly, all contentions of all the parties with regard to that portion of the impugned order are specifically kept open.

12. Further, it is directed that the impugned order in so far as it relates to the structures in Survey No.162/17 is concerned, will not be implemented for a period of two weeks from today.

13. Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

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

Nutan D. Sardesai, J.

M.S. Sonak, J.