

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 817 OF 2018**

Antonio Fernandes,
Son of Mr. Vitorino Fernandes,
54 years of age,
R/o House no.6-A,
Dandi, Agassaim-Goa.

.... Petitioner.

V e r s u s

1. State of Goa,
through the Chief Secretary,
having office at Secretariat,
Porvorim, Goa.
2. Goa Coastal Zone Management Authority,
C/o Department of Science,
Technology and Environment (Government
of Goa), 1st floor,
Pt. Deendayal Upadhyay Bhavan,
Pundalik Nagar, Alto, Porvorim,
Bardez-Goa.
3. Shri Lourence Diogo Jose Rodrigues,
Major in age, R/o House No.7,
Dandi, Agassaim,
Ilhas-Goa.
4. Village Panchayat Sao Lourenco,
Agassaim,
Ilhas-Goa.

..... Respondents

Shri E. Dias, Advocate with Adv. R. Shet for the Petitioner.

Mr. A. Jamadar, Additional Government Advocate for the Respondent nos. 1

and 2.

Adv. J. Supekar with Adv. Sayeed Sufiyan for the Respondent no.3.

Adv. J. Godinho for the Respondent no.4.

CORAM: C. V. BHADANG, J.

Reserved on: 11/2/2019.

Pronounced on: 15/2/2019.

J U D G M E N T :

Rule, made returnable forthwith. The learned counsel for the respective respondent waive service. Heard finally by consent of parties.

2. By this petition, the petitioner is challenging the order dated 25/7/2018 passed by the second respondent/ Goa Coastal Zone Management Authority (GCZMA) under section 5 of the Environment (Protection) Act, 1986 (Act, for short) directing demolition of the structures belonging to the petitioner situated in property bearing survey no.1151/1-F, of Velha Tiswadi Goa which are hereinafter referred to as the subject structures.

3. On the basis of a complaint dated 29/10/2015 filed by the third respondent a show cause notice was issued to the petitioner on 2/11/2015 and after considering the reply and the findings of the Village Panchayat in letter dated 2/12/2015 the complaint was disposed of on 14/12/2015 stating that no

further action was required in the matter.

4. The third respondent challenged the order dated 14/12/2015 before this Court in Writ petition Stm (Main) No.4057/2015 which was not entertained in view of the alternate remedy available to the third respondent of approaching the National Green Tribunal (NGT). Accordingly the third respondent approached the NGT in an application No.12/2016 which was disposed off on 22/9/2016, with a direction to the second respondent to hear the parties and disposed of the matter finally in accordance with law.

5. It appears that thereafter on 15/2/2017, a site inspection was conducted by the expert members of the second respondent in which it was found that the repairs/renovation was carried out by the petitioner without the permission of the second respondent. The matter was taken up for consideration by the second respondent in its meeting held on 26/9/2017 (158th Meeting) and after hearing the parties, the order was reserved.

6. The matter was again taken up by the second respondent in its meeting held on 26/6/2018 (177th Meeting) and after considering the fact that the parties were heard and the submissions were recorded in the earlier meeting i.e 158th Meeting and considering the finding of the Expert Committee, the

second respondent in the Meeting dated 26/6/2018 decided to direct demolition of the subject structures. On the basis of the said decision, the impugned order was issued on 25/7/2018.

7. I have heard Shri Dias, the learned counsel for the petitioner, Shri Jamadar, the learned Additional Government Advocate, for the Respondent nos.1 and 2. I have also heard Shri Supekar, the learned counsel for the respondent no.3 and Mr. Godinho, the learned counsel for the respondent no.4.

8. The learned counsel for the petitioner has raised a solitary contention. It is submitted that there was a specific direction by the NGT to the second respondent to decide the matter after 'hearing the parties'. It is submitted that the hearing was afforded by the second respondent in its meeting held on 26/9/2017 (158th Meeting) wherein Mr. Daulat Hawaldar was the Chairman. It is contended that the matter was eventually decided by the second respondent in its meeting held on 26/6/2018 (177th Meeting) wherein one Mr. Ravi Jha was the Chairman as well as the Member Secretary. It is submitted that the Constitution of the second respondent had undergone a change after the personal hearing was granted and therefore, the second respondent after the reconstitution could not have decided the matter on the basis of the

personal hearing granted earlier, where the composition of the authority was different. Reliance on behalf of the petitioner is placed on the Constitution Bench decision of the Supreme Court in the case of **Gullapalli Nageswara Rao and others Vs. Andhra Pradesh State Road Transport Corporation, AIR 1959 SC 308.**

9. The learned Additional Government Advocate submits that this Court may pass appropriate order as may be deemed just and necessary.

10. The Constitution Bench of the Hon'ble Supreme Court as far as back in the year 1959 in the case of **Gullapalli Nageswara Rao (supra)** has held in para 31 of the judgment as under:

“ Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party- appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.

11. In a subsequent decision in the case of **Rasid Javed Vs. State of U.P 2010 7 SCC 781**, the Supreme Court held that a person who hears must

decide and divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted. A similar view has been expressed in several subsequent authorities including the case of **Union of India and others Vs. Shiv Raj and others (2014) 6 SCC 564** and it is not necessary to multiply authorities .

12. In the present case it is undisputed and it is a matter of record that the constitution of the second respondent when it decided the matter on 26/6/2018 had undergone a change than the constitution of the authority on 26/9/2017 when the personal hearing was granted. In as much as in the interregnum, the Chairman of the authority was changed. When the personal hearing was granted, Mr. Daulat Hawaldar was the Chairman, while the Committee which decided the matter had Mr. Rajiv Jha as the Chairman as also the Member Secretary. This in my view would clearly be in breach of principles of natural justice, when there was a specific direction by the NGT to grant personal hearing. Thus in my considered view in a case where either the GCZMA decides to grant personal hearing to the parties, (depending upon facts and circumstances of each case) and/or where there is a specific direction by a competent court/Tribunal to decide the matter after affording an opportunity of personal hearing to the parties, it would be necessary that the authority which hears ought to decide the same without change of its

constitution.

13. I have not examined the question (as it does not arise in this case) namely, where the successor authority after the change of the constitution decides the matter on the basis of the reply filed to the show cause notice, the documents on record and the notes of arguments/submissions, if any placed on record, where there is no specific decision by the GCZMA or there is no order of a competent Court/Tribunal to afford an opportunity of personal/oral hearing.

14. In the result the following order is passed:

- (i) The petition is partly allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The second respondent shall grant an opportunity of personal hearing to the petitioner and the respondent no.3 and shall then decide the matter afresh on its own merits and in accordance with law, preferably within a period of four months from the receipt hereof.
- (iv) Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

ap/-

