

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 748 OF 2019

Jose Filipe Francisco Noronha Alvares,
5th Floor, Reliance Trade Centre,
V.V. Road, Margao, Goa.

.... Petitioner

Versus

1. Town and Country Planning Board
Through Member Secretary,
Town and Country Planning Department,
Patto-Panaji.

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

.... Respondents

Mr. Sudin Usgaonkar, Senior Advocate along with Mr. Kishan Padgaonkar, Advocate for the petitioner.

Mr. D. Pangam, Advocate General along with Ms. Maria Correia, Additional Government Advocate for respondent no.1.

Mr. M. Pereira, Advocate for respondent no.2.

Coram:- M.S. SONAK &
PRITHVIRAJ K. CHAVAN, JJ.

Date:- 3rd October, 2019

ORAL JUDGMENT (Per M. S. Sonak, J.)

Heard Mr. Sudin Usgaonkar, learned Senior Advocate along with Mr. Kishan Padgaonkar, Advocate for the petitioner, Mr. D. Pangam, learned Advocate General along with Ms. Maria Correia, Additional Government Advocate for respondent no.1 and Mr. M. Pereira, learned Advocate for respondent no.2.

2. Rule. Rule is made returnable forthwith with the consent and at the request of learned counsel for the parties. The counsel appearing for the respective respondents waive service.

3. In this case, the petitioner applied for approval for revision of plan and completion certificate to the respondent no.2, which approval was declined by respondent no.2 by order dated 23.01.2019.

4. Thereupon, the petitioner, instituted an appeal under Section 45 of the Goa Town and Country Planning Act, 1974 before the Town and Country Planning Board, which was inwards under No.1269 on 22.03.2019.

5. The Board, failed to dispose of the petitioner's appeal within three months from the date of which the same was instituted/inwards. Mr. Usgaonkar, relying upon the Proviso of Section 45 of the said Act, submits that the Board is required to

dispose of every appeal within three months from the date of preferring the same and if not so disposed, it shall be deemed that the prayer of the appellant is granted. On this basis Mr. Usgaonkar submits that the prayer of the petitioner in the appeal is deemed to have been granted and necessary directions may therefore be issued to the respondent no.2 to grant approval to the revised plan submitted by the petitioner and issue the completion certificate on the said basis.

6. Mr. D. Pangam, learned Advocate General and Mr. M. Pereira appearing for respondent no.2 point out that on basis of the Proviso to Section 45 of the said Act, there is no question of the petitioner insisting upon approval or completion certificate, unless it is established that the revised plans submitted by the petitioner are in accordance with law/regulations/bye-laws and further the construction at the site is also completed in terms of the law/regulations/bye-laws as may be applicable.

7. Learned Advocate General in fact placed reliance upon the decision of this Court in ***Prashant Bhongade and others v/s. Municipal Corporation, Amravati*** in Second Appeal No.28 of 1998 disposed of by the learned Single Judge of this Court on 03.03.2010 in support of his contention.

8. We have heard the learned counsel for the parties and we have also perused the material on record. The Proviso to Section 45 of the said Act indeed provides that the Board shall dispose of every appeal within three months from the date of preferring the appeal, and if not so disposed, it shall be deemed that the prayer of the appellant is granted.

9. However, we are of the opinion that the aforesaid provision for deemed approval or deemed permission cannot be stretched to the extent of permitting a construction or securing approvals for plans, which are not consistent to the provisions of law/regulations/bye-laws as may be prescribed.

10. In *Prashant Bhongade (supra)* the learned Single Judge of this Court has made out a distinction between actual sanction of plans and deemed sanction of plans under the provision similar to the provision contained in the Proviso to Section 45 of the said Act. Even in case of deemed sanction, the learned Single Judge of this Court has held that the requirement that the construction is in accordance with law/regulations/bye-laws as may be prescribed, has not been waived.

11. The relevant discussion in case of *Prashant Bhongade (supra)* at paragraphs 17 and 18 reads as follows:

“17. In order to consider this contention, it is necessary to consider the provisions of Rules 6.7.1, 6.7.2 and 6.10.1, which are re-produced below :

Rule 6.7.1 :

“ The Authority may either sanction or refuse the plans and specifications or may sanction them with such modifications or directions as it may deem necessary and thereupon shall communicate its decision to the person giving the notice in the prescribed form given in Appendix D and E.”

Rule 6.7.2 :

“ If within sixty (60) days of the receipt of the notice, under 6.1 of the Byelaws, the Authority fails to intimate in written to the person, who has given notice, of its refusal or sanction or sanction with such modification or directions, the notice with its plans and statements shall be deemed to have been sanctioned, provided nothing shall be construed to authorise any person to do anything on the site of the work in contravention of or against the terms of lease or titles of the land or against any regulations, byelaws or ordinance.”

Rule 6.10.1 :

“ In addition to the provisions of Section 51 of the Maharashtra Regional and Town Planning Act, 1966, the Authority may revoke any building permit issued under the provisions of the byelaws, wherever there has been any false statement or any misrepresentation of material fact in the application on which the building permit was based. And similarly, in case of deemed permission, the development carried out is not according to rules. The whole work shall be treated as unauthorised.

In the case of revocation of permit based on false statements or any material misrepresentation of Fact in the application no compensation should be paid. “

A combined reading of the aforesaid provisions make out a distinction between a deemed sanction and the actual sanction. Firstly, a deemed sanction is conditioned by a proviso that nothing shall be construed to authorise any person to do anything on the site of work, in contravention of or against the terms of lease or titles of land or against any regulation, byelaws or Ordinance. This is, however, not the case in respect of actual sanction. The reason is obvious that the actual sanction is granted after verifying that the plan submitted for sanction conforms to the requirements of rules, regulations, byelaws or Ordinances and that it is not in contravention of or against the terms of lease or titles of land. There is an application of mind by various Authorities under the Corporation, involved in the process of actual sanction of plan, at different levels. It is only after such verification and scrutiny that the sanction is accorded or it is accorded with some conditions to be specifically prescribed in the order of sanction. In case of a deemed sanction, such stages are normally not completed or there remain some compliance or deficiencies to be removed. Secondly, actual sanction can be revoked under Rule 6.10.1 only when there has been any false statement or misrepresentation of material fact found in the application on which the building permit was based. Thus, legality is deemed to be attached to an order of actual sanction and it is for the Corporation to point out when such sanction is revoked that it was based upon false statement or any misrepresentation of material fact in the application for sanction, as alleged in the order of revocation of sanction. However, this is not a case in respect of deemed sanction. It is only a factum of sanction which is contemplated by provision of Rule 6.7.2. and no legality is attached to it. When such sanction

is revoked under Rule 6.10.1., it is for the person concerned in whose favour deemed sanction is granted, to point out that the work carried out, is not in contravention of or against the terms of lease or titles of land or against any regulations or byelaws or Ordinances, as alleged in the order of revocation of sanction. Where sanction is revoked : whether actual or deemed, the whole work carried out pursuant to such sanction becomes unauthorised.

18. Rule 6.7.2 of the Building byelaws creates a legal fiction. The principles of interpreting a provision creating legal fiction are well settled. The Court has to ascertain the purpose of creating legal fiction. In construing legal fiction, it is not to be extended beyond the purpose for which it is created or beyond the language of Section by which it is created. It cannot be extended to create another legal fiction. What can be deemed to exist under a legal fiction, are the facts and not the legal consequences which do not flow from the law, as it stands. Here in the present case, the purpose of creating legal fiction of granting deemed sanction is, to avoid any hardship being caused to any person seeking sanction, because of delay beyond 60 days caused on the part of the Authorities of the Corporation, who grant sanction. But this does not mean that some inaction on the part of Corporation Authorities within stipulated period, would legalise the plan submitted or its sanction, which otherwise is not in conformity with the rules, regulations, byelaws or Ordinances. The deeming sanction brings into existence only a factum of sanction without sanction of legality to it. To treat a deemed sanction as legal, the same, would amount to creating another legal fiction. It is not permitted by any of the aforesaid Rules. On the contrary, to treat the deemed sanction as legal one would be in contravention of express language of Rule 6.7.2. The area of operation of deemed sanction and its consequences are controlled by the provisions

itself and it cannot be extended to the area of operation and legal consequences of actual sanction. In view of this, the contention of Mr. Gordey, Adv. that once deemed sanction is granted, it would be deemed to be legal unless the Corporation proves the construction to be unauthorised or illegal cannot be accepted.”

12. Applying the aforesaid principle to the facts of the present case, we uphold the contention of Mr. Usgaonkar that the Proviso to Section 45 of the said Act applies, however, with the rider that the respondent no.2 will have to verify whether the revised plans as also the request for furnish of completion certificate is in accord with the provisions of law/regulations/bye-laws as may be applicable and only thereafter, issue the necessary approval/completion certificate to the petitioner. We direct respondent no.2 to complete this exercise as expeditiously as possible and in any case within a period of two months from today.

13. The Rule is made partly absolute in the aforesaid terms. There shall be no orders as to costs.

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

PRITHVIRAJ K. CHAVAN, J.

M. S. SONAK, J.