

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 845 OF 2019

GOAN HOTELS AND REALTY PVT. LTD.,
REP. THR. ITS AUT. REP., BRIG. S.
C. K. PURI.,

... Petitioner

Versus

THE SECRETARY, VILLAGE PANCHAYAT
OF CURCA AND 3 ORS.,

... Respondents

Mr. Jitendra P. Supekar and Mr. Sufiyan Sayed, Advocates for
the Petitioner.

Mr. Manish Damodar Salkar, Government Advocate for
Respondent Nos. 2, 3 and 4.

Coram:- C. V. BHADANG &
NUTAN D. SARDESSAI, JJ.

Date:- 22nd November, 2019

ORAL ORDER:

By this Petition under Article 226 and Article 227 of the Constitution of India, the petitioner is challenging the letter dated 21.08.2019, issued by the first respondent. By the impugned letter, the first respondent has informed the petitioner that as per the instructions of the Director of Panchayats, a team consisting of the first respondent alongwith EO(RE) of BDO, Tiswadi, will visit the hotel premises on 22.08.2019 to verify the area of the hotel building. A perusal of the said letter shows that the Director of Panchayats alongwith the BDO and the first respondent had visited the premises of the said hotel and the residential complex in survey no. 12/1 and 99/2 of village

Bambolim, for verification of the hotel building. Further, a perusal of the affidavit filed by the Director of Panchayats shows that an information was received from reliable sources that the petitioner had carried out illegal construction. The inspection appears to be for the verification of the said information.

2. Mr. Supekar, the learned Counsel for the petitioner urged that the Secretary could not have issued the said letter, without it being backed by a resolution of the Village Panchayat. For this purpose, reliance is placed on Section 47(ii) of the Goa Panchayat Raj Act, 1994 (Act, for short). Further, on the basis of Section 113 of the said Act, it is contended that the Secretary is a Government official and not an Officer of the Village Panchayat.

It is submitted that the impugned letter is issued at the behest of the Director of Panchayats, which is not permissible. In the submission of the learned Counsel, the Deputy Director/Director can assume powers under Section 66(6) of the Act, only in the event of default by the Village Panchayat. It is submitted that if any adverse action is taken against the petitioner in pursuance of the inspection carried out (which is at the behest of the Director of Panchayats), the petitioner will be left with no effective remedy to challenge the same. The learned Counsel pointed out that the remedy, in case, any such order is passed, is only before the Director or the Deputy Director of Panchayats, as the case may be. Except this, there are no other contentions raised.

3. Mr. Salkar, the learned Government Advocate for the respondent nos. 2, 3 and 4 submitted that all that the impugned communication states is that an inspection of the premises of the hotel building and the residential complex of the petitioner shall be carried out and as of today, there is nothing adverse or prejudicial to the interest of the petitioner, if such inspection is carried out.

4. We have considered the submissions made and we do not find that any case for interference is made out. As has been rightly submitted on behalf of the respondents, all that the impugned communication states is that an inspection of the premises of the hotel and the residential complex of the petitioner shall be carried out, which, is in pursuance of the oral information received about the alleged illegal construction carried out by the petitioner. As at present, there is neither any finding recorded nor any opinion expressed by the Director of Panchayats about the petitioner having carried out any illegal construction. It is thus difficult to accept the resistance of the petitioner for such inspection being carried out.

5. The contention based on Section 47(ii) of the Act cannot be accepted for the reason that the said section requires that for initializing action for stoppage and/or for demolishing an

unauthorized structure, the Panchayat can act only after the resolution is passed to that effect. As at present, there is neither any stop work order nor any demolition order, which is passed. Thus, the provisions of Section 47(ii), cannot be called into aid. The impugned letter is signed by the Secretary of the Panchayat. It cannot be disputed that even though, as per Section 113 of the Act, a Secretary is an Officer of the Government, he is required to perform all the duties and exercise all the powers imposed or conferred upon him by or under the Act or any rules or bye-laws made thereunder. Section 113-A of the Act specifically provides for duties, powers and responsibilities of the Secretary of the Village Panchayat. It cannot be disputed that the Secretary can authorizedly represent the Panchayat and merely because he is stated be an Officer of the Government, it cannot be accepted that the Secretary is not authorized to issue the letter on behalf of the Village Panchayat.

6. In our considered view, the impugned communication does not act to the prejudice or affects the rights of the petitioner, as all that it states is that an inspection is to be carried out by the Secretary and the EO(RE) of BDO, Tiswadi. In that view of the matter, we decline to entertain the Petition, which is accordingly dismissed. We make it clear that nothing in this order shall affect the right of the petitioner to take appropriate action, as may be available in law and if so advised, if any adverse order is

passed. It will be open to the first respondent and the EO(RE) of BDO, Tiswadi, to carry out such inspection, with prior intimation to the petitioner.

NUTAN D. SARDESSAI, J.

C. V. BHADANG, J.

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