

IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO.35 OF 2018

Edwin Mascarenhas	...	Petitioner
Versus		
State of Goa & Ors.	...	Respondents

Mr. C. A. Ferreira, Advocate for the Petitioner.

Mr. D. Shirodkar, Additional Government Advocate for Respondent Nos.1 and 2.

Mr. S. Korgaonkar, Advocate for Respondent Nos.3 and 4.

***Coram : M. S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 9th January, 2019

P.C.:

Heard Mr. C. A. Ferreira, learned counsel for the Petitioner, Mr. D. Shirodkar, learned Additional Government Advocate for Respondent Nos.1 and 2 and Mr. S. Korgaonkar, learned counsel for Respondent Nos.3 and 4.

2. The petitioner, by instituting the present petition had applied for the following reliefs.

“(a) Issue a writ of quo warranto or in the nature of a quo warranto or any other appropriate writ, order or direction, calling in question the legality and propriety of the appointment of Respondent No.5 as the Chairman of Respondent No.3 and the exercise of such powers by Respondent No.5 and to an order to quash the Order Ref. No. MPDA/Constt-5/TCP(P)/2018/50 dated 10.01.2018(Ann K);

(b) Issue a writ of mandamus or in the nature of mandamus of any other appropriate writ, order or direction commanding the Respondent No.1 to constitute the Respondent No.3 in terms of Section 20 of the TCP Act, 1974;

(c) Issue an appropriate writ, order or direction, quashing the appointment of Respondent No.5 as the “First Appellate Authority” under the RTI Act, 2005, in terms of the Order Ref. No. MPDA/Constt-5/TCP(P)/2018/50 dated 10.01.2018 (Annexure K);

(d) Issue an appropriate writ, order and direction prohibiting the Respondent Nos.4 and 5 from taking any decisions, approving any plans or functioning as the MPDA/Respondent No.3, unless the Respondent No.3 is duly constituted in terms of Section 20 of the TCP Act;

(e) Direct the Respondent Nos.1 and 2 to quash and set aside the Development Permissions and other

permissions granted by Respondent No.4 alone or by Respondent Nos.4 and 5 as the MPDA in accordance with law;

(f) Grant an interim Order restraining Respondent Nos.4 and 5 from taking any decisions relating to approval of plans or proposals made to the PDA, pending hearing and disposal of the present petition (except day-to-day administrative matters for office functioning of Respondent No.3);

(g) Grant an ad-interim order to restrain Respondent Nos.4 and 5 from taking any decisions, approving any plans or functioning as the MPDA, unless the MPDA/Respondent No.3 is constituted under Section 20 of the TCP Act, 1974 and Rules framed thereunder, pending hearing and disposal of the present petition (except day-to-day administrative matters for office functioning of Respondent No.3);

(h) Pass such orders as this Hon'ble Court deems fit in the facts of the case.”

3. On 16th October, 2018, we made the following order.

“The learned counsel for the Petitioner submits that the Respondent-Authority is not properly constituted in terms of Section 20 (3) of the Goa, Daman and Diu Town and Country Planning Act, 1974 and Rules, 1976 and for the last 18 months, it is functioning only with the Chairman, the Member Secretary and no other Members

have been appointed. This factual position not disputed.

2. Section 2 (23) defines 'Planning and Development Authority' to be the one constituted under the Act. Constitution of the Development Authority is provided under Section 20 (3), which reads thus:

"20.(3) Every Planning and Development Authority constituted under sub-section (1) shall consist of the following members, namely:—

(i) a Chairman to be appointed by the Government;
(ii) a Town Planning Officer to be appointed by the Government in consultation with the Chief Town Planner (Planning) who shall be the Member Secretary of the Planning and Development Authority;

9[(iia) All the Members of Legislative Assembly representing a planning area;]

(iii) representatives of local authorities, to be composed as follows:—

(a) in the case of a planning area in which only one local authority has jurisdiction, a representative nominated by that local authority from among its members and the Chief Executive Officer of that local authority;

(b) in the case of a planning area in which two or more local authorities have jurisdiction, representatives of such local authorities as the Government may consider necessary to be represented, 10[];

(iv) such number of other members, not exceeding 11[five], appointed by the Government, who, in the opinion of the Government, have special knowledge of, or practical experience in, matters relating to town and country planning, architecture, engineering, transport,

industry, commerce and agriculture.

(4) The Government may, if it thinks fit, appoint one of the members of the Planning and Development Authority as its Vice-Chairman.

(5) The Government may, in consultation with the Board, appoint any local authority as the Planning and Development Authority for the area comprised within the local limits Manual of Goa Laws (Vol. IV) —827 —Town & Country Planning Act & Rules of the jurisdiction of such local authority and for such other contiguous or adjacent area or areas as the Government may declare as a planning area under section 18

(6) Where a local authority is appointed as a Planning and Development Authority under sub-section (5), the provisions of sub-section (3) of this section and sections 21, 23 and 25 shall not apply, and the provisions of the Act by which such local authority is constituted shall continue to apply to it in respect of matters covered by the aforesaid sections.”

It is quite obvious that the Planning Authority has to be reconstituted under the Act, that is as per Section 20 (3).

3. The learned Advocate General seeks time of two weeks to make a statement regarding steps to be taken by the State Government.

3. Since the time is taken on the above ground and in view of what is mentioned as above about the legal

composition of Authority, the Respondent nos. 4 and 5 will defer taking the decisions as referred in prayer clause (g) of the Petition till further orders.

4. Stand over to 30 October 2018.”

4. Thereafter, in our order dated 30th October, 2018, we noted the statement made by the learned Advocate General that the State Government is in process of notifying the Planning and Development Authority as defined under Section 2(23) of the Goa Town and Country Planning Act, 1974, in terms of the provisions of Section 20(3) of the said Act.

5. Thereafter, Notification dated 7th November, 2018 was placed on record for constituting the Planning and Development Authority. The said Notification dated 7th November, 2018 is taken on record and marked 'A' for the purpose of identification.

6. Mr. Ferreira, learned counsel for the Petitioner states that the constitution of the Planning and Development Authority vide Notification dated 7th November, 2018 may not be in accordance with law or that there may be some infirmities with regard to the qualifications of some of the Members who constitute the Authority.

7. In the present petition, as noted earlier, a writ of quo warranto was applied for to question the legality of the appointment of Respondent No.5 as the Chairman of the Authority. The Petitioner had also pointed out that the Authority, which was functioning on the date when the petition was instituted comprised only this Chairman and Member Secretary. In this context, not only the appointment and continuance of Respondent No.5 was questioned but further a writ of mandamus was sought for directing Respondent No.1 to constitute the Planning and Development Authority in terms of Section 20 of the said Act.

8. By the issuance of the Notification dated 7th November, 2018, the main grievance raised in this petition stands redressed, in the sense that the Planning and Development Authority has been constituted. Now whether this constitution suffers from any infirmities or not can be subject matter of independent challenge. For that reason, it is not necessary to keep the present petition pending.

9. The reliefs in terms of the prayer clauses (a), (b), (c) and even (d) of the writ petition stand worked out by issuance of Notification dated 7th November, 2018, though the issue of legality of

the said Notification can always be kept open in case the Petitioner has any serious grievance as regards the same.

10. In so far as the relief in terms of prayer clause (e) is concerned, Mr. Ferreira, learned counsel for the Petitioner on the basis of the instructions from the Petitioner states that such relief is not pressed for the present in this petition. He however, states that liberty may be granted to the Petitioner to pursue such remedy as is available under law in respect of such relief. There is no difficulty in accepting this suggestion particularly, because such remedy will perhaps involve notice to the parties in whose favour the permissions may have been granted.

11. Since, with the issuance of Notification dated 7th November, 2018, the issue raised in the present petition stands substantially worked out, this petition can be disposed of. Accordingly, the present petition is disposed of. However, the Petitioner is at liberty to take out appropriate proceedings if so advised in relation to the constitution of the Authority as well as the relief in terms of prayer clause (e) of this petition. If at all such proceedings are taken out, needless to add the same shall be considered and disposed of in

accordance with law. All contentions of the parties in this regard are expressly kept open.

12. The petition is disposed of in the aforesaid terms with liberties as prayed for.

Prithviraj K. Chavan, J.

M. S. Sonak, J.

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