

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1018 OF 2018**

Krishna Bharat Parab,
Son of Shri Bharat,
Indian National,
31 years of Age,
Indian National having
address of Anjuna Bardez, Goa.

..... Petitioner

Versus

Goa Coastal Zone Management Authority
through its Member Secretary with office
at C/o Department of Science, Technology
and Environment, 1st floor,
Deendayal Upadhyay Bhavan,
Pundlik Nagar, Alto, Porvorim,
Bardez, Goa

..... Respondent

Mr. J. E. Coelho Pereria, Senior Advocate with Adv. Mr. V. Korgaonkar and
Adv. Vilas Pavithran for the Petitioner.

Mr. Deep D. Shirodkar, Addl. Government Advocate for Respondent.

Coram:- C. V. BHADANG, J.

Date:- 2nd August, 2019.

Oral Judgment,

Rule, made returnable forthwith. The learned Additional Government
Advocate waives service on behalf of the Respondent. Heard finally by
consent of parties.

2. The challenge in this petition is to the Resolution dated 5/9/2018 and the consequent direction dated 17/9/2018 issued by the Respondent directing the demolition of huts/shacks erected in land survey no.354/2, 355 and 356/7A of village Anjuna, Bardez-Goa within a period of thirty days. This is presumably on the ground that the erection of the shacks/huts is in violation of the Beach Carrying Capacity.

3. I have heard Shri Coelho Pereira, the learned Senior Counsel for the petitioner and Mr. Shirodkar, the learned Additional Government Advocate appearing for the respondent. With the assistance of the learned counsel for the parties, I have gone through the record.

4. The principal contention raised on behalf of the petitioner is that there was no show cause notice issued to the petitioner prior to the passing of the impugned order and therefore, the same is patently in breach of the principles of natural justice. The learned Senior Counsel for the petitioner has pointed out that there was a notice of personal hearing dated 30/8/2018 issued by the respondent which was received by the petitioner subsequent to the passing of the impugned order i.e. on 6/9/2018, when the hearing was fixed on 5/9/2018.

It is a matter of record that the petitioner did attend the personal hearing. However, the contention is that the petitioner was not aware as to what is the object and the purpose of the hearing and on what ground the respondent was proposing to take action. The learned Senior Counsel has also referred to the contents of the notice dated 30/8/2018 in order to show that even assuming that the show cause notice was received by the petitioner prior to the date of the hearing, all that the show cause notice required was clarification of certain anomalies in the ownership documents submitted by the petitioner.

5. Mr. Shirodkar, the learned Additional Government Advocate submitted that there was a Public Interest Litigation prior to the initiation of the action against the petitioner in which the petitioner was a party and the very same ground about the NOC/permission being issued in violation of the Beach Carrying Capacity was the ground made out in the said PIL. The contention is that the petitioner was aware as to on what ground the proposed action was being taken and therefore the absence of any formal notice prior to the date of hearing is inconsequential. The learned Additional Government Advocate, however, in all fairness did not dispute that there was no formal show cause notice which was received by the petitioner prior to the hearing which was held on 5/9/2019.

6. I have considered the submissions made. At the out set it is necessary to note that although the petitioner has an alternate remedy before the National Green Tribunal (NGT) the ground raised on behalf of the petitioner is based on breach of principles of natural justice. It is now well settled that this Court can exercise the jurisdiction notwithstanding the availability of an alternate remedy, inter alia in a case where a party demonstrates that the impugned action was taken or the order was passed in breach of the principles of natural justice (See the judgment of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others (1998) 8 SCC 1**). In my considered view the present case falls in the same category.

7. Admittedly, there was no show cause notice which was received by the petitioner prior to the date of hearing afforded to the petitioner on 5/9/2018. The only show cause notice issued which is dated 31/8/2018 was received by the petitioner subsequent to the date of hearing. The entire object and the purpose of issuing a show cause notice is to put the person (who is sought to be proceeded against) on notice as to what is the action proposed, on what ground the action is proposed and what is the material, which the authority proposes to rely upon. In the present case as noticed earlier there was no such

show cause notice which was received by the petitioner before the date of hearing.

8. The learned counsel for the petitioner submitted that there is a subsequent development in which the National Centre for Sustainable Coastal Management (NCSCM) Chennai had conveyed their recommendation to the Ministry of Environment Forest and Climate Change (MoEF) which were in turn communicated by the MoEF to the respondent. It is submitted that the respondent in its 197th Meeting held on 26/4/2019 had accepted the recommendation of the NCSCM permitting even an establishment of a hotel to have more than one shack on the beach. It is not necessary to go into this aspect at this stage as it is for the respondent to consider all the relevant circumstances before passing any order.

In the result the following order is passed:

O R D E R:

- (i) The petition is partly allowed.
- (ii) The impugned resolution/communication is hereby set aside.
- (iii) It will be open to the respondent to issue a formal show cause notice to the petitioner and then pass appropriate order after hearing the petitioner or

its representative in accordance with law.

(iv) Rival contentions of the parties on merits are left open.

(v) Rule is partly made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

ap/-