

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1042 OF 2018**

Smt. Telma De Sa Pinto,
Indian National, aged 87 years,
r/o H.NO. 508,
Betim, Bardez, 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,
through its Member Secretary,
having office at 3rd floor,
Dempo Towers, Patto,
Panaji, Goa.

3. Anthony D'Souza,
Major of Age,
r/o 65 Vaddy Siolim,
Bardez, Goa.

4. Joseph A. Noronha,
Major of age,
r/o Bamon Vaddo,
Siolim, Bardez, Goa.

..... Respondents

Shri Shivan Desai, Advocate for the Petitioner.

Ms. Sushan Linhares, Additional Government Advocate for the Respondent
nos. 1 and 2.

Adv. Ms. Anamika Gode for the Respondent no.3.

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 17/9/2018 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 all the structures along with concrete flooring, jetty and swimming pool in survey no.301/1, of Siolim, Bardez, Goa which are hereinafter referred to as the subject structures. The petitioner has been directed to demolish the said structures and to restore the land to its original condition.

3. For the purpose of disposal of the present petition, it would not be necessary to set out the facts in details. Suffice it to mention that on the basis of the complaint lodged by Siolim Vaddy Nagarik Samittee, a show cause notice was issued to the petitioner by the second respondent on the subject structures being erected allegedly in breach of the Coastal Management

Regulations (CRZ). The second respondent issued a show cause notice to the petitioner on 20/10/2015 and also conducted a preliminary site inspection on 9/6/2015.

4. The petitioner filed her objection to the preliminary site inspection report dated 9/6/2015 and subsequently filed a detailed reply to the show cause notice on 20/10/2015.

5. The second respondent as per the decision taken in its meeting dated 28/2/2017 directed demolition of the subject structures. The petitioner filed a representation against the said order on 3/3/2017 inter alia contending that the record about Google images and the finding in the preliminary site inspection report could not have been relied upon. For this purpose reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Anand Aarya and anr. Vs. Union of India (2011) 1 SCC 744**. The petitioner also raised certain other grounds in the representation. The record discloses that the second respondent in its meeting on 18/4/2017 (147th meeting) decided to grant an opportunity of hearing to the petitioner and the respondent nos.3 and 4. It appears that the petitioner was accordingly heard on 23/5/2017 and on the basis of the decision taken in the said meeting again directed demolition of the subject structures vide order dated 29/5/2017.

Feeling aggrieved the petitioner approached this Court in Writ petition no.531/2017. This Court disposed off the petition on 3/7/2017 in the following terms :

- (a) The petition is partly allowed.
- (b) The impugned order is hereby set aside.
- (c) The respondent no.2 shall hear the petitioner and the respondent nos.3 and 4 afresh, on the representation dated 3/3/2017 and shall decide the matter afresh, in accordance with law, preferably within a period of four months from receipt of this order.
- (d) Rival contention of the parties are left open.
- (e) Rule is partly made absolute in the aforesaid terms, with no order as to costs.

6. It appears that the second respondent in its meeting dated 26/9/2017 (158th Meeting) under the chairmanship of Mr. Daulat Hawaldar with Member Secretary Mr. Parag Nagarsekar and other members granted personal hearing to the petitioner and the order was reserved.

7. Thereafter the petitioner was served with the impugned order dated 17/9/2018 directing demolition of the subject structures. The said order is issued on the basis of a decision taken by the second respondent in its meeting dated 14/8/2018 (181st meeting) which is subject matter of challenge in this petition. It is a matter of record that the Meeting dated

14/8/2018 was chaired by Mr. Sanjiv Gihar as the Chairman along with the Member Secretary Mr. Ravi Jha.

8. The contention on behalf of the petitioners is that there is breach of the principles of natural justice in as much the authority which heard is not the authority which has decided to direct demolition of the subject structures. Reliance in this regard is placed on the 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** and in the case of **Union of India and others Vs. Shiv Raj and Others (2014) 6 SCC 564**.

9. Ms. Linhares, the learned Additional Government Advocate for the respondent nos.1 and 2 submitted that the second respondent is constituted as per the Notification dated 26/10/2016 by the Ministry of Environment, Forest and Climate Change. It is submitted that the Principal Secretary (Environment) of Government of India is the Ex Officio Chairman, while the the Director, Department of Environment, Government of Goa is the Ex Officio Member Secretary. It is submitted that there are other Officers of the State Government such as, Director of Panchayats, Director/Directorate of Survey and Land Record, Director of Tourism, Director/Directorate of Fisheries, Chief Engineer, Water Resources Department who are the Ex

Officio members of the authority apart from certain private individuals. It is submitted that on account of the transfer and posting of the officers who are Ex Officio Chairman, Member Secretary and the Members of the authority, it is not always possible to ensure that the decision would be taken by same Officers who afford hearing to the parties. It is submitted that even in such a case where the Officers change, they can on the basis of the record of the earlier hearing would be in a position to take the decision. Thus there is no breach of principles of natural justice in this case.

10. The learned counsel for the respondent nos.3 and 4 have also supported the impugned order.

11. I have carefully considered the circumstances and submissions made.

12. A Constitution Bench of the Hon'ble Supreme Court way back in the year 1959 in the case of **Gullapalli Nageswara Rao (supra)** has held that the person who hears must decide. This is what is held in para 31 of the judgment.:

“ 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.

13. In a subsequent decision in the case of **Rasid Javed Vs. State of U.P 2020 7 SCC 781** (supra) it has been held that a person who hears must decide and divided responsibility is destructive of the concept of judicial hearing is too fundamental a principle to be doubted. A similar principle is reiterated in the decision in the case of **Shiv Raj (supra)**.

14. In the present case, it is a matter of record that personal hearing was afforded to the petitioner by the second respondent in its Meeting dated 26/9/2017, (158th meeting) wherein Mr. Daulat Hawaldar was the Chairman and Mr. Parab Nagarsekar was the Member Secretary, while the impugned order is issued on the basis of the decision taken in the Meeting dated 14/8/2018 (181th Meeting) wherein Mr. Sanjiv Gihar was the Chairman, while Mr. Ravi Jha was the Member Secretary.

15. It is significant to note that the second respondent in its Meeting dated 18/4/2017 had decided to grant an opportunity of hearing to the petitioner as well as the respondent nos.3 and 4 and this Court also while deciding Writ

Petition no.531/2017 on 3/7/2017 directed the second respondent to hear the petitioner and the respondent nos.3 and 4 afresh on the representation dated 3/3/2017 and to decide the matter afresh.

16. In such circumstances if there is any change in the constitution of the second respondent, after the matter was heard and the decision was reserved, the successor authority would not be in a position to decide the same on the basis of the personal hearing afforded earlier. 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 specific direction by the competent court/tribunal to decide the matter after upholding an opportunity of person hearing to the parties, it would be necessary that the authority which hears ought to decide the same, without change of its constitution.

17. I have, however, not examined the question (as it does not arise in this case), 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 to the parties.

18) In the result the following order is passed:

O R D E R:

- (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 nos.3 and 4 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/