

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 134 OF 2019

Durvas Vinayak Durbhatkar,
son of Vinayak Durbhatkar,
aged 55 years, married, service,
r/o. H.No.590, Caranzalem,
Madkaim, Ponda, Goa.

.... Petitioner

Versus

1. State of Goa
Through its Chief Secretary,
having office at Secretariat,
Porvorim, Goa.
2. Dy. Town Planner,
office of the Town Planner,
Town and Country Planning
Department, Ponda Taluka
Office, Ponda, Goa.
3. Village Panchayat of Bandora
through its Secretary, having
Office at Bandora, Goa.
4. The Secretary, Village Panchayat
of Bandora, having office at
Bandora, Goa.
5. Shree Mahalaxmi Saunsthan
Bandiwade, Ponda-Goa,
403401, through its President/
Secretary, having office at
Bandora, Goa.

... Respondents

Mr. Abhay Nachinolkar, Advocate for the Petitioner.

Mr. P. Faldessai, Addl. Government Advocate for Respondents No.1 and 2.

Mr. Nikhil Vaze, Advocate for Respondents No.3 & 4.

Mr. A. D. Bhobe, Advocate for Respondent No.5.

Coram:- M.S. SONAK &
C. V. BHADANG, JJ.

Date:- 26th November, 2019

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

Heard Mr. Nachinolkar for the Petitioner, Mr. P. Faldessai, Additional Government Advocate for the Respondents No.1 and 2, Mr. Nikhil Vaze for Respondents No.3 and 4 and Mr. A. D. Bhobe for Respondent No.5.

2. Mr. Nachinolkar makes it clear that the petitioner for the present, is not pursuing reliefs in terms of prayer clauses (a) and (c) because, the petitioner, intends to pursue these reliefs before the authorities under the Panchayat Raj Act. Even according to us, since, the petitioner, has alternate and efficacious remedy under the Panchayat Raj Act in so far as the reliefs in prayer clauses (a) and (c) are concerned, it would not be appropriate for us to entertain the petition in so far as the said reliefs are concerned. Accordingly, we grant liberty

to the petitioner to pursue such reliefs before the appropriate authority under the Panchayat Raj Act.

3. In so far as the relief in terms of prayer clause (b) is concerned, we grant Rule. We make the Rule returnable forthwith with the consent and at the request of learned counsel for the parties.

4. The record indicates that the respondent no.2 had in fact cleared the proposal put forward by the petitioner for construction of a building at Survey No.11/8 of Bandora Village at Ponda. Thereafter, respondent no.5, made a complaint to the Minister for Town and Country Planning on 02.07.2018. On this complaint, the Minister, has put up a noting which reads as follows:

"Proposed building impedes the view of the historic temple. We may allow only residential house of applicant. Please examine and revert."

5. Based upon the aforesaid noting, the respondent no.2, has addressed the impugned communication dated 18.08.2018 to the Sarpanch of the village Panchayat of Bandora requesting the said Sarpanch not to grant licenses to the petitioner for construction of building at Survey No.11/8 of Bandora Village of Ponda till further orders.

6. According to us, the impugned communication dated 18.08.2018 is totally without jurisdiction and in any case breach of principles of natural justice and fair play. As on date, the clearance granted by respondent no.2 stands. As long as such clearance stands, the respondent no.2, had no authority to request the Sarpanch not to issue licenses to the petitioner. Besides, the records bear out that the petitioner, was never heard before any action was taken depriving the petitioner the benefits of the clearance granted by respondent no.2 on 16.03.2018.

7. Accordingly, without going into the allegations and counter allegations, we set aside the impugned communication dated 18.08.2018.

8. The Rule is accordingly made absolute in the aforesaid terms. There shall be no order as to costs.

C. V. BHADANG, J.

M. S. SONAK, J.