

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1000/2019

MRS. SHUBADHA SUBHASH
MASURKAR.,

.... Petitioner

V/s.

STATE OF GOA, THR. THE
CHIEF SECRETARY AND ORS.

.... Respondents

Mr. Shivan Desai with Mr. Virendra Parsekar, Advocates for the
Petitioner.

Mr. D. Pangam, Advocate General with Mr. Shivadatta Munj,
Additional Government Advocate for Respondent Nos.1, 3, 4 and 6.

Mr. V. Pednekar, Advocate for Respondent No.2.

Mr. Menino Pereira, Advocate for Respondent No.5.

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

Date:- 20th November, 2019

P. C.:

Heard Mr. Shivan Desai for the petitioner. Mr. V. Pednekar,
appears for respondent no.2, Mr. Menino Pereira for Respondent
No.5 and Mr. D. Pangam, learned Advocate General along with Mr.
Munj appear for respondent nos.1, 3, 4 to 6.

2. The challenge in this petition is to the order dated 12.06.2019 issued by the Mormugao Planning and Development Authority and the communication dated 27.03.2019 issued by the Margao Municipal Council. Both these communications reject the petitioner's plea for regularization of the unauthorised construction put up by the petitioner.

3. The petitioner has placed on record communication dated 13.02.2019 issued by the Mormugao Planning and Development Authority (MPDA) as well. However, the said communication has not been challenged by the petitioner.

4. Mr. Desai, learned counsel for the petitioner submits that this is a case where the petitioner had demolished the existing structure and reconstructed the present structure by maintaining the same plinth. He submits that in such circumstances the provisions of Land Development and Building Construction Regulations, 2010 (said Regulations) cannot apply with all rigor and the various provisions for relaxation are liable to be invoked. He submits that the petitioner had furnished a response on these lines to the MPDA. However, such response has not even been considered by the MPDA. He submits that both the Goa Municipalities Act, 1968 as well as said Regulations contemplate regularization and therefore, the petitioner's application for regularization was required to be considered and grant in the facts

and circumstances of the present case. Mr. Desai submits that these are sufficient grounds to set aside the impugned orders and to direct the authorities to regularize the structure put up by the petitioner.

5. Learned counsel for the respondents defend the impugned orders on the basis of the reasoning reflected therein. They submit that the construction put up by the petitioner is wholly unauthorised and such construction cannot be regularized because the same is in breach of the said Regulations. They submit that the petitioner in the present case, has taken several chances and has prolonged the execution of demolition orders, which have attained finality. For these reasons, they submit that this petition may be dismissed.

6. We have perused the records as well as the said Regulations in the context of the contentions raised before us. However, in the facts and circumstances of present case, we are unable to accept the contention raised by and on behalf of the petitioner, for reasons indicated hereinafter.

7. This is a case where the petitioner, in gross disregard of the provisions of Goa Town and Country Planning Act, 1974 (said Act), the said Regulations and the Goa Municipalities Act, 1968 has proceeded to put up a wholly illegal and unauthorised construction, by completely demolishing the existing structure at the site. An entirely

new structure of ground plus one storey has been put up and the record indicates that there is really no co-relation between the earlier structure and this new structure put up by the petitioner. The record also does not bear out that the new structure is upon the same plinth as the old structure. Not that this factor would have made much difference, when it comes to compliance with the said Regulations. However, before doing all this, the petitioner, neither bothered to obtain permissions from the planning authorities or the municipal authorities, nor did the petitioner bother to ensure that the new structure is within the parameters prescribed in the said Regulations.

8. The authorities, upon noticing the unauthorised construction, issued show cause notice to the petitioner, which the petitioner responded to, by raising mostly frivolous defences. Upon due compliance of principles of natural justice and fair play, the authorities finally issued demolition order. This was challenged by the petitioner by instituting an appeal before the Tribunal. The Tribunal by its Judgment and Order dated 12.03.2018 rejected almost all the contentions of the petitioner and upheld the demolition order. The Tribunal however, by referring to the decision in *Syed Muzaffar Ali and ors. v/s. Municipal Corporation of Delhi (1995 Supp.(4) S.C.C. 426)* and certain other decisions, partly allowed the petitioner's appeal and directed the authorities to examine if the structure under reference can be regularized in accordance with law.

9. The operative portion of the Judgment and Order dated 12.03.2018 made by the Tribunal reads as follows:

“

ORDER

Appeal is partly allowed.

The Respondent shall examine if the structure under reference can be regularized in accordance with the law. If the structure is amenable to compounding the Appellant shall obtain all relevant NOC/permissions from the appropriate authorities as required by the Respondent.

This exercise shall be completed within 6 months from the date of this order.

The execution of the impugned final notice shall be subject to the decision on the regularization.

The application for stay stands disposed accordingly.”

10. From the aforesaid, it is quite clear that the appeal in so far as it challenged the demolition order, was dismissed by the Tribunal. However, the authorities were required to consider whether the structure put up by the petitioner was capable of being regularized in accordance with law or was amenable to compounding, again in accordance with law. The authorities were required to complete this exercise within 6 months and the demolition order was not to be executed in the meanwhile. In fact, the demolition order was made subject to the decision on the issue of regularization.

11. Based upon the aforesaid Judgment and Order dated 12.03.2018, the petitioner applied to the MPDA and the Mormugao Municipal Council (MMC) for regularization. The authorities, failed to take any concrete decision on the issue of regularization within the period of 6 months, mainly because the petitioner, failed to comply with all prescribed procedures or furnish complete information in regard to the structure in question. Ultimately, the MMC wrote to the petitioner to produce the necessary No Objection Certificate from the MPDA as well as other clearances within 7 days, failing which the petitioner's application for regularization would be filed. This was the import of MMC's communication dated 30.08.2018.

12. The MPDA also addressed some communications to the petitioner but took no concrete decision on the issue of regularization. Apprehending demolition, the petitioner instituted Writ Petition No.83 of 2019 before this Court. This petition was disposed of by order dated 29.01.2019, by directing the MPDA and MMC to dispose of the petitioner's application for regularization, again in accordance with law.

13. The MPDA officials held a site inspection and on the basis of the same, addressed a communication dated 13.02.2019 to the petitioner pointing out to the following deficiencies in relation to the unauthorized construction put up by the petitioner:

- 1.Existing structure and the plans submitted does not tally as per what is constructed on site.*
- 2.The permissible coverage is 50%, and the consumed coverage is 72.72% which is more then the permissible (22.72% extra).*
- 3.Ventilation shown on the dead wall are not permitted.*
- 4.The required front/rear setback of 3.00 mtrs. is not maintained.*
- 5.Ventilation in toilet on the first floor are not shown.*
- 6.Void shown on the plan and on the site does not tally.*

14. The communication dated 13.02.2019 further pointed out to the petitioner that the petitioner's application was for reconstruction, even though, the petitioner, had already put up the construction at the site. The petitioner was informed that the petitioner should have in fact applied for regularization and that such application must make it clear that the construction of which regularization is applied for complies with the parameters of the said Regulations.

15. The petitioner, almost after 3 months, submitted a response dated 14.05.2019. From the perusal of the response, it is apparent that the petitioner, once again, raised frivolous and irrelevant issues. The petitioner, did nothing to rectify the deficiencies pointed out by the MPDA in its communication dated 13.02.2019. Instead, a case was sought to be made out that the petitioner, had an existing structure at the site and on such basis, application for regularization be considered. At this belated stage, reference was made to the order made by the

Collector on 25.01.1985, which again, has really no bearing on the issue of regularization.

16. From the tenor of the response, it is apparent that the petitioner merely wished to delay the execution of the demolition order, which had attained finality on 12.03.2018.

17. Upon due consideration of the petitioner's response and upon satisfaction that the unauthorized construction put up by the petitioner is totally in breach of the said Regulations, the MPDA and the MMC have made the impugned orders rejecting the petitioner's applications seeking post facto permissions for reconstruction/regularization.

18. According to us, there is absolutely no illegality in the impugned communication made by the MPDA and MMC. So also, there is no merit in the contention raised by Mr. Desai for and on behalf of the petitioner, merely because there may have been an existing structure, that did not entitle the petitioner to raise such structure to the ground and construct an entirely new structure at the site. In putting up this new structure, the petitioner, not only failed to apply for and obtain permissions from the various statutory authorities, including the MPDA and the MMC but further, the petitioner, had no regard whatsoever to the said Regulations or the Municipal Bye-laws. In these

circumstances, the authorities, were justified in declining regularization.

19. The contention that when a construction is put up after demolishing an earlier existing construction, the said Regulations do not apply in any rigor, deserves no acceptance whatsoever. If such contention is accepted, then, it will be very easy for parties to put up constructions in breach of the said Regulations by only showing that earlier, there was some structure at the site. As noted earlier, record does not bear out any co-relation between the earlier existing structure and the wholly unauthorized structure put up by the petitioner at the site.

20. The communication dated 13.02.2019 issued by the MPDA, which is not even challenged by the petitioner in this petition is based upon evaluation of the plan submitted by the petitioner as well as the report of site inspection. The communication noticed that the existing structure and the plan submitted do not tally with what is constructed at the site. The communication records and it is not even challenged by the petitioner that though the permissible coverage in the said Regulations is only 50%, the petitioner had proceeded to put up a structure which consumes coverage of 72.72%, thereby exceeding the permissible coverage by 22.72%. The communication noticed and this is not even disputed by the petitioner that the required front/rear

setback is 3 mtrs. as per the said Regulations but the same has not been maintained by the unauthorized construction put up by the petitioner. There are several other deficiencies pointed out which, again, make it clear that the construction violates the parameters prescribed in the said Regulations. In these circumstances, the authorities were justified in rejecting the petitioner's plea for regularization.

21. In *Syed Muzaffar Ali and ors. (supra)*, the Hon'ble Apex Court has held that mere departure from the authorized plan or putting up a construction without sanction does not ipso facto and without more necessarily and inevitably justify demolition of the structure. There are cases and cases of such unauthorized constructions. Some are amenable to compounding and some may not be. There may be cases of grave and serious breaches of the licensing provisions or building regulations that may call for the extreme step of demolition. These are matters for the authorities to consider having regard to the nature of the transgressions.

22. The aforesaid means that where there are grave and serious breaches of the licensing provisions or the building regulations, there is no question of the authorities regularizing such construction. In the present case, the record makes it clear that the petitioner, has not merely departed from an authorized plan but put up a construction, which is beyond the parameters prescribed under the Building

Regulations. In the present case the petitioner, has proceeded to put up an wholly unauthorized construction in breach of the building regulations. Thus, by applying the principles in *Syed Muzaffar Ali and ors. (supra)*, the structure put up by the petitioner was not amenable to compounding or regularization.

23. In *Shanti Sports Club and Another v/s. Union of India and others – (2009) 15 S.C.C. 705*, the Hon'ble Apex Court, has, after advertng to its several earlier judgments on the subject, taken cognizance of buildings constructed in violation of municipal and other laws and emphasized that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings. The Hon'ble Supreme Court proceeded to state that unfortunately, despite repeated judgments of the Supreme Court and High Courts, illegal constructions continue to mushroom and thereafter, pleas are made for regularization on grounds of compassion and hardship. Hon'ble Supreme Court has observed that it is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions.

24. In *Royal Paradise Hotel (P) Ltd. v/s. State of haryana and others - (2006) 7 S.C.C. 597*, the Hon'ble Supreme Court rejected

the plea for regularization of a construction made in violation of the provisions of the planning and municipal legislation by observing that no authority administering municipal laws and other laws like the act involved in the matter, can encourage such violations. Even otherwise, compounding is not to be done the when violations are deliberate, designed, reckless or motivated. Marginal or insignificant accidental violations unconsciously made after trying to comply with all the requirements of the law can alone qualify for regularization which is not the rule, but a rare exception.

25. In *Friends Colony Development Committee v/s. State of Orrisa and others – (2004) 8 S.C.C. 733*, the Hon'ble Apex Court has observed that though the municipal laws permit deviations from sanctioned constructions being regularised by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are *bona fide* or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum.

26. Applying the aforesaid principles to the facts and circumstances of the present case, there is absolutely no ground made out to interfere with the impugned orders.

27. The petition, we must note, proceeds on the misconception that regularization is virtually a matter of right or that the petitioner, is entitled to relaxations merely because there was a structure existing at the site earlier. As it has been pointed out by the Hon'ble Apex Court, regularization or relaxation cannot be claimed as a matter of right but rather, the same can be extended only in some genuine cases where the structure put up is substantially within the parameters prescribed under the municipal or planning laws and regulations but not otherwise. Regularization can be permitted where there are deviations from the sanctioned plan but such deviations are well within the parameters prescribed in the building regulations. In the given case, regularization may also be permitted where for some bonafide reasons no sanctions were obtained to put up a construction, but ultimately it is found that the construction is well within the parameters prescribed in the building regulations, in case of similar residential structures put up by individuals not well versed in the legal procedures. However, in the present case, no such circumstances exist and therefore, the authorities, were justified in rejecting petitioner's plea for regularization.

28. Even otherwise, we find that the petitioner, in the present case, has merely stalled the demolition which has attained finality in March, 2018 by raising repeated frivolous pleas. Despite having no credible defence, the petitioner, stalled the issuance of demolition order, by raising frivolous defences to the show cause notice. After that failed, the petitioner appealed to the Tribunal, again, on grounds which were found to be frivolous. Thereafter, the petitioner, stalled the demolition by delaying the process of consideration of her application for regularization of the structure. The petitioner, in such circumstances, even otherwise, would not be entitled to any equitable relief under Article 226 of the Constitution of India.

29. For all the aforesaid reasons, we dismiss this petition. However, there shall be no order as to costs.

C. V. BHADANG, J.

M. S. SONAK, J.