

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1088 OF 2018

JHONY FERNANDES AND ANR., ... Petitioners

Versus

**STATE OF GOA, THR. CHIEF SECRETARY
AND 6 ORS.,** ... Respondents

Adv. A. Mandrekar for the Petitioners.

Ms. Priyanka Kamat, Addl. Government Advocate for
Respondent nos.1,2,3 & 4.

Adv. Ms. Annelise Fernandes for Respondent no.5.

Adv. Nigel Costa Frias for Respondent no.6.

Adv. S. Usgaonkar for Respondent no.7.

Coram:- C. V. BHADANG, J.

Date:- 27th February 2019

Oral Order:

Heard learned counsel for the parties.

2. The petitioner was issued with a show cause notice, about an alleged illegal construction, in property bearing survey no. 275/1, 257/1-B and 275/1-C at Morambi-O-Grande, Mercês.

3. It appears that the matter was taken up by the respondent no.2/Goa Coastal Zone Management Authority in its meeting

held on 31/7/2018 (180th meeting). However, on that day, the petitioner remained absent and hence the second respondent decided to grant a final opportunity to the petitioner to present his case and the matter was adjourned to 14/8/2018 (181st meeting) for grant of personal hearing to the petitioner. In that meeting the petitioner sought time and hence the petitioner was granted time to file submissions, if any, before 28/8/2018. The record, however, discloses that the matter was not taken up in the meeting held on 28/8/2018 (182nd meeting) and obviously therefore, the petitioner claims that he could not file any written submissions before the second respondent. It appears that the second respondent took up the matter in its meeting held on 31/8/2018 (183rd meeting) and decided to issue an order of demolition. On the basis of said resolution the impugned order for demolition is issued on 20/9/2018.

4. The only contention raised on behalf of the petitioner is that the order is passed in breach of the principles of natural justice.

The learned counsel for the petitioner states that the petitioner shall not carry out any further construction in the disputed property. The statement is accepted.

5. On hearing the learned counsel for the parties it does appear that the petitioner was granted time on 14/8/2018 and the matter was to be taken up in the meeting dated 28/8/2018 on which

date, it was not on the agenda and thereafter the second respondent decided to issue an order of demolition in its meeting dated 31/8/2018 without granting any opportunity to the petitioner to file reply or of personal hearing. The petition, therefore, in my considered view, has to succeed on this short count alone. Hence 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 petitioner shall file a reply along with documents, if any before the second respondent within two weeks from today.
- (iv) The second respondent shall then proceed to decide the matter on its own merits and in accordance with law after granting an opportunity of personal hearing to the petitioner as well as the respondent nos.6 and 7.
- (v) The second respondent in its discretion can decide to grant personal hearing to respondent no.5 also, if found necessary.
- (vi) The second respondent shall decide the matter as expeditiously as possible and preferably within a period of four

weeks from the receipt of the reply.

C. V. BHADANG, J.

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