

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1223 OF 2018

Shri Shaikh Muktar,
Son of Shaikh Shamsuddin,
Age 57 years, Indian National,
Resident of Hafiza Manzil,
Gogol, Margao, Salcete,
Goa 403601.

Represented by his Power of
Attorney Shri Custodio Fernandes,
Son of Marcel Fernandes,
Aged about 47 years,
Resident of House No. 181,
Villa Maria, Behind VKS Society,
Collem, Goa 403410

... Petitioner

Versus

1. The Village Panchayat of
St. Jose de Areal,
Through its Secretary,
Sao Jose de Areal,
Salcete, Goa, 403 709.

2. State of Goa,
through the Chief Secretary,
Secretariat, Porvorim,
Goa – 403521.

... Respondents

Mr. Shane Gomes Pereira, Advocate for the Petitioner.

Mr. Arun Talaulikar, Addl. Government Advocate for Respondent No.2.

Mr. Srirang Agrasini, Secretary of Respondent No.1 present in person.

WITH
WRIT PETITION NO. 1224 OF 2018

Shri Shaikh Shamshun Muktar,
daughter of Shaikh Mohidin
Shaikh Dawood,
Age 55 years, Indian National,
Resident of Hafiza Manzil,
Gogol, Margao, Salcete,
Goa 403601.

Represented by his Power of
Attorney Shri Custodio Fernandes,
Son of Marcel Fernandes,
Aged about 47 years,
Resident of House No. 181,
Villa Maria, Behind VKS Society,
Collem, Goa 403410

... Petitioner

Versus

1. The Village Panchayat of
St. Jose de Areal,
Through its Secretary,
Sao Jose de Areal,
Salcete, Goa, 403 709.

2. State of Goa,
through the Chief Secretary,
Secretariat, Porvorim,
Goa – 403521.

... Respondents

Mr. Shane Gomes Pereira, Advocate for the Petitioner.

Mr. Rajesh Shivolkar, Addl. Government Advocate for Respondent No.2.

Mr. Srirang Agrasini, Secretary of Respondent No.1 present in person.

WITH
WRIT PETITION NO. 1225 OF 2018

Shri Shaikh Muktar,
Son of Shaikh Shamsuddin,
Age 57 years, Indian National,
Resident of Hafiza Manzil,
Gogol, Margao, Salcete,
Goa 403601.
Represented by his Power of
Attorney Shri Custodio Fernandes,
Son of Marcel Fernandes,
Aged about 47 years,
Resident of House No. 181,
Villa Maria, Behind VKS Society,
Collem, Goa 403410

... Petitioner

Versus

1. The Village Panchayat of
St. Jose de Areal,
Through its Secretary,
Sao Jose de Areal,
Salcete, Goa, 403 709.

2. State of Goa,
through the Chief Secretary,
Secretariat, Porvorim,
Goa – 403521.

... Respondents

Mr. Shane Gomes Pereira, Advocate for the Petitioner.

Mr. Rajesh Shivolkar, Addl. Government Advocate for Respondent No.2.

Mr. Srirang Agrasini, Secretary of Respondent No.1 present in person.

***Coram : R. D. Dhanuka &
Prithviraj K. Chavan, JJ.***

Date : 11th March 2019.

JUDGMENT

Rule.

2. Mr. Srirang Agrasini, Secretary, Village Panchayat of St. Jose de Areal, is present in person, waives service. Addl. Government Advocate, for the respondent no. 2, waives service on behalf of

respondent no.2.

3. By consent of parties, the petition is heard finally. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a writ of Mandamus or any other appropriate writ, order or direction against the respondent no. 1 to issue construction licence as directed by the additional Director of Panchayats-I, South Goa, Margao in case no. PA No.MAR-1/34/2017 and for other reliefs.

4. The petitioner had filed application for construction licence to respondent no. 1 on 13.02.2017. By an order dated 14.03.2017, the respondent no. 1, rejected the said application for construction licence filed by petitioner on 13.02.2017. The petitioner preferred an appeal before the Addl. Director of Panchayats, South Goa, Margao under Section 66 (7) of the Goa Panchayat Raj Act, 1974. By an order dated 17.01.2018 the Addl. Director of Panchayats -I, South Goa, Margao, Goa allowed the said appeal preferred by the petitioner and directed the respondent no. 1, to issue construction licence to the petitioner with various conditions prescribed in the said order. The said order was duly served on respondent no.1.

5. By order dated 18.2.2019 this Court, permitted the respondent no. 1 to file affidavit in reply. Pursuant to the said order the respondent no. 1, has filed an affidavit in reply on 07.03.2019. The learned Counsel for the petitioner submits that the order passed by the Addl Director of Panchayats -I, South Goa, Margao dated 17.01.2018 could be challenged by respondent no. 1 by way of revision under Section 201B of the Goa Panchayat Raj Act, 1994 before the District Court within the jurisdiction of which the subject matter of dispute lies.

6. It is submitted that no such revision is filed by the respondent no. 1 till date. He submits that the order passed by the Addl. Director of Panchayats -I, South Goa, Margao has attained finality and has to be complied with by respondent no.1. The Secretary, Village Panchayat of St. Jose de Areal who appears in person, states that the respondent no. 1 has not filed any revision impugning the said order dated 17.01.2018. He further submits that in view of the objections raised by the villagers against the issuance of any construction licence to the petitioner, the said order passed by the Addl. Director of Panchayats -I, South Goa, Margao has not been complied with by respondent no.1.

7. The Learned Additional Government Advocate submits that since the order dated 17.01.2018 passed by the Addl. Director of Panchayats -II, South Goa, Margao has attained finality, he has no objection if appropriate order is passed against respondent no. 1 to comply with the said order.

8. It is not in dispute that the respondent no. 1 has already been served with the order passed by the Addl. Director of Panchayats -II, South Goa, Margao. The respondent no. 1, if aggrieved by the said order, could have filed a revision under Section 201B of the Goa Panchayat Raj Act, 1994, within 30 days, from the date of said order. Admittedly, no such revision has been preferred by respondent no. 1 before the said District Court. The said order has thus attained finality.

9. In so far as the submission of respondent no. 1, that there are objections raised by the villagers is concerned, a perusal of the order dated 17.01.2018 passed by the Addl. Director of Panchayats -I indicates that in the said order, the respondent no. 1 has been directed to issue construction licence to the petitioner with various conditions prescribed in the said order. The grievance of the villagers if any, would be taken care of by the said conditions to be incorporated in

the said order by respondent no.1. The respondent no. 1 cannot refuse to comply with the said order dated 17.01.2018 passed by the Addl. Director of Panchayats -I, South Goa, Margao, which has attained finality.

10. The petitioner, has thus made out a case for issuance of Writ of Mandamus as prayed.

11. The respondent no. 1 shall comply with the order dated 17.01.2018 passed by the Addl. Director of Panchayats-I, South Goa, Margao within two weeks from today.

12. Rule is made absolute in the above terms.

13. The respondent no. 1 to act on the authenticated copy of this order.

14. No orders as to costs.

PRITHVIRAJ K. CHAVAN, J.

R. D. DHANUKA, J.