

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION (REVIEW) NO. 12 OF 2019
IN
PUBLIC INTEREST LITIGATION WP NO. 14 OF 2016

GERA DEVELOPMENTS PVT. LTD., REP.
BY DWARKA RAO., ... Applicant

Versus

BETQUI CANDOLA SAMVARDHAN SAMITEE,
THR. ITS AUT. MEMBER, ARUN
MADGAVKAR., ... Respondent

Mr. S.D.Lotlikar, Senior Advocate with Mr. Anthony Joe
D'silva, Advocate for the Applicant.

Mr.Nigel Da Costa Frias, with Ms. Bavina Kukalekar, Advocate
for Respondent No.1.

Coram:- S. C. GUPTE &
PRITHVIRAJ K. CHAVAN, JJ.

Date:- 19th June 2019

P.C.:

This civil application seeks review of a judgment and order passed by this Court on a PIL petition challenging various permissions granted to the present review petitioner for a Group Housing Project.

2. The permissions were challenged essentially on three grounds:(a) It was submitted that the contour plan, on the basis of which the planning permission was granted, was mechanically

accepted by the authorities without any proper scrutiny. It is submitted that the records of the case showed that there were about six contour plans prepared, each of which was different from the other, for seeking various permissions of the authorities including the conversion sanad and the planning permission; (b) It was secondly submitted that the permission was granted for the project without compliance with the statutory access road requirement for a Group Housing Project having a commercial element; and (c) Thirdly, it was submitted that the FAR considered for the project was 80%, whereas the correct FAR in the facts of the case was 60%.

3. It is the case of the Review Petitioner that this Court, whilst disposing of the PIL petition, did not, in particular, find fault with the contour plan, on the basis of which the permission was granted for the project by the Town Planning Department; there was no finding that the same was in fact incorrect or could not have been made the basis of a planning permission. Even on the other two aspects, namely, the requirement of access road and exploitation of FAR, there are no final findings rendered by the Court. The review petitioner submits that quashing of a statutory permission without finding any particular infraction of statute in the grant of such permission, amounts to an error apparent on the face of the record.

4. Learned Counsel for the respondents, firstly, raises a preliminary objection of limitation. It is submitted that the review application is beyond time. On merits, learned Counsel supports the order under review. He submits that the Court has basically come to a conclusion that there was non application of mind on the part of the Town Planner in the matter of grant of permission; that was the basis on which the impugned planning permission was quashed by this Court. It is submitted that the developer has the liberty to once again approach the authorities and seek a fresh planning permission; the Town Planner would then consider the matter afresh in the light of the observations made by the Court in the judgment and order. Learned Counsel submits that recall of the judgment and order on the grounds urged by the Review Petitioner is but an exercise to be undertaken by an appellate court and not by a review court.

5. The original petition was disposed of on 27.09.2018. The petitioners thereafter applied for a modification of the final judgment and order. This application was disposed of and the judgment and order was modified on 31.10.2018. The review petitioner filed the present review application on 02.11.2018, that is to say, within 2 days of the modified order. It is submitted by the respondents that the modification ordered by the Court is not material from the point of view of the present review application. Even if one were to grant that and reckon the date of the original

order as the relevant commencement date for limitation, there is clearly a case for condonation of the delay of 6 days (i.e. from the date of the original order). That the review petitioner waited till the passing of the modification order before filing for review, is a fair explanation, deserving acceptance as a reasonable excuse for the ensuing delay. We, accordingly, proceed to consider the merits of the review application.

6. The development permission granted by the Chief Town Planner can be set aside if it is found to have been granted contrary to the provisions of law. The chief objection of the original petitioner, which appears to have weighed with the court whilst setting aside the permission, was about the gradient of the plot in question from the point of view of permissible construction. The Building Regulations provide that no development would be permitted if the gradient exceeds 25%. To that end, the regulations inter-alia require indication of block level at 5.00 mts. centre to centre or alternatively, contour plan at 1.00 mts. interval, whilst submitting plans for development of a plot which has a gradient of 1:10 or more. The contour plan is to be certified by a Chartered Surveyor or Civil Engineer, who would be held responsible for the accuracy of the plan. In keeping with this legal requirement, the speaking order passed by the Town Planner on 16.10.2014 required the review petitioner to submit a contour plan prepared by a Chartered Surveyor. It is

not in dispute that the Review Petitioner did in fact submit such plan certified by a Chartered Surveyor. The Town Planner appears to have accepted the contour plan and granted permission to the Review Petitioner. It was also submitted by the Town Planner in his affidavit before the Court that he had duly verified the contour plan submitted by the Review Petitioner, whilst granting the planning permission.

7. On these facts, the Writ Court had to basically come to a conclusion whether or not the contour plan submitted by the Review Petitioner could have been accepted and planning permission granted by the Town & Country Planning Department based on it. The Writ Court was expected to apply the standard of scrutiny based on the well-known principles of *Wednesbury* unreasonableness usually applied in cases of challenge to state action. For a Writ Court to set aside a decision by a public authority or state instrumentality it must be shown to be so unreasonable that no reasonable person acting reasonably could have made it. The measures that the court applies for actually deciding the matter are: whether the authorities had disregarded any relevant or germane material or circumstance, or taken into account any irrelevant or non-germane material or circumstance and whether the order was in any way perverse. The Writ Court in the present case has not come to any such conclusion. At the most, what the Court appears to have

considered is that there was inadequate scrutiny on the part of the statutory authority before the impugned order was passed.

8. Relying on a private surveyor's report on the contour plan submitted by the Review Petitioner earlier, the Court simply came to a conclusion that there was no application of mind. In the first place, the report of the surveyor relied upon by PIL petitioner did not in fact consider the contour plan submitted by the Review Petitioner through the Chartered Surveyor and which was made the basis of the planning permission. The surveyor's report relied upon by the PIL petitioner reflects upon the earlier contour plans submitted by the previous owner of the property and their variance with each other, without reference to the actual contour plan submitted by the review petitioner, which was made the basis of the planning permission. This aspect of the matter clearly reveals an error apparent on the face of the record and calls for review of the order.

9. The same can be said even about the other two material aspects, namely, the requirement of access road and its satisfaction or otherwise in the Group Housing Project under consideration and the FAR that could be used for the project. On either of these issues the Court has not come to any definitive finding. There is no finding either that the access road did not exist at site or that the FAR considered for the project was not in

accordance with law. The Court simply required the Town Planner to reconsider these aspects afresh. That, we are afraid, is not permissible. What was in challenge before the Court was the planning permission granted by the Chief Town Planner under the Goa Town and Country Planning Act. What the Court had to consider, in the premises, was whether the planning permission was vitiated on any of the principles on which state action can be faulted in judicial review. The permission cannot be set aside simply on the ground that there ought to be a better consideration. If there was inadequate consideration, it was for the Court to then consider the matter further and, quash and set aside the permission order if it was found to be vitiated on account of any statutory violation or perversity. After all, every material fact bearing on the three issues was already before the Court; there was no further fact finding inquiry to be undertaken.

10. If it were a matter of a proper lis between two contesting parties before it, the Court would have required the applicant to prove to the hilt infraction of a statute for quashing of any statutory order. Just because the applicant before it is a PIL petitioner, it is not permissible to the court to relax the level or standard of scrutiny. In a PIL, what the court does is to take a broader view of the locus of the petitioner, but the degree or standard of scrutiny is just the same as for any other private

petitioner.

11. Accordingly, we accept the review petition and recall the order under review passed on 27.09.2018, and set down the main PIL petition for a fresh hearing in the light of what we have observed above.

12. Since we have recalled the order under review, the petition will be heard from the stage at which it was pending hearing before this Court. The ad-interim order operating in the PIL petition during its pendency shall accordingly continue to operate till the petition is heard.

13. Place the PIL petition under the caption of 'directions' on 15.07.2019, when a date for its final hearing can be fixed.

14. In case respondent No.1 to the PIL petition (i.e. the review petitioner herein) proposes to make any application for vacating the interim order, he is free to do so. All contentions of the parties in that behalf are kept open.

PRITHVIRAJ K. CHAVAN, J.

S. C. GUPTE, J.

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