

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO. 1186 OF 2018***

Sylvester D'Souza

... Petitioner

Versus

The State of Goa, Thr. Chief Secretary
and 7 Ors.

.... Respondents

Mr. S.D. Lotlikar, Senior Advocate with Mr. Jayant Umesh Karn,
Advocate for the Petitioner.

Mr. Amogh Prabhudesai, Additional Government Advocate for the
Respondent Nos. 1, 2, 4 to 7.

Mr. Kapil D. Kerkar, Advocate for the Respondent No.3.

Mr. Neelesh A. Takkekar, Advocate for the Respondent No.8.

***Coram : M.S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 28 February 2019.

Oral Order (Per M.S. Sonak, J) :

Heard Mr. S.D. Lotlikar, Senior Advocate alongwith Mr. J. Karn, learned Counsel for the Petitioner, Mr. N. Takkekar, learned Counsel for the Respondent No.8, Mr. Kapil Kerkar, learned Counsel for the Respondent No.3, and Mr. A. Prabhudesai, learned Additional Government Advocate for the Respondent Nos. 1, 2, 4 to 7.

2. The petitioner seeks a Writ of Mandamus to enforce the

demolition orders which have attained finality right upto the Hon'ble Apex Court, in relation to the structures put up by the Respondent No.8 in the property in question.

3. On 28.01.2019, upon hearing the parties, we made the following Order:

“ Heard Mr. S. D. Lotlikar, learned Senior Advocate appearing for the petitioner and Mr. N. Sardesai, learned Senior Advocate for the respondent no.8.

2. The order of demolition, as against respondent no.8, has attained finality. In fact, Hon'ble Apex Court by its Order dated 10.8.2018 had directed respondent no.8 to demolish building in question. The Hon'ble Apex Court order dated 10.8.2018 reads thus:-

“Heard learned Senior Counsel appearing on behalf of the petitioners as well as learned senior counsel on behalf of respondent no.2, at length.

None present on behalf of other respondents.

We are not inclined to interfere with the impugned orders passed by the High Court. The Special leave petitions are, accordingly, dismissed.

The petitioners are, however, permitted to continue with their business for a period of three months from today. After the expiry of

three months, the petitioners have to demolish the building, as per the orders passed by the Village Panchayat.

As a sequel to the above, pending applications, if any, shall also stand disposed of.”

3. In this petition, petitioner complains that despite aforesaid, building in question has not been demolished by the Authorities and respondent no.8 continues to use the said building as a hotel.

4. On the last date i.e 9.1.2019, we were informed that review petition has been filed before the Hon'ble Supreme Court with regard to aforesaid order dated 10.8.2018. On that date as well, Mr. Lotlikar learned Senior Counsel appearing for the petitioner had made a statement that no review petition is pending.

5. Mr. Sardesai, now points out that what was filed, was an application for clarification. He states that even this application for clarification was withdrawn on 25.1.2019 and now, a review petition has been filed before the Hon'ble Apex Court. This suggests that at least on 9.1.2019 there was no review petition pending before the Hon'ble Supreme Court. Mr. Sardesai, now states that even on 9.1.2019 review petition was pending.

6. Be that as it may, Mr. Lotlikar, learned Senior Counsel for the petitioner has placed on record a copy of the application for clarification filed by the

respondent no.8 before the Hon'ble Apex Court. Paragraph 3 of this application reads thus:-

“The Petitioner, on the expiry of the said period of 3 months i.e. on 11.11.2018, has commenced the demolition in compliance with the order of this Hon'ble Court.”

7. The aforesaid application for clarification was filed or atleast verified on 20.11.2018 at or around time when the three months period granted by Hon'ble Supreme Court expired.

8. If the aforesaid statement is regarded as a correct statement, then, by now, entire building ought to have been demolished.

9. Mr. Sardesai, however submits that, in the meanwhile, the respondent no.8 had obtained certain documents and based on such documents, application for review/clarification was filed. He submits that the demolition, which had actually commenced in compliance with the order of Hon'ble Apex Court was stopped by respondent no.8.

10. If demolition, had already commenced in compliance with the Hon'ble Supreme Court, then, respondent no.8, had no right or authority to unilaterally halt such demolition on the alleged ground that it had discovered some documents now. The demolition could not have been halted unless, interim orders were to be obtained from Hon'ble Apex

Court either in the application seeking review or clarification. As on date, there is no interim order on the basis of which the demolition could have been halted by respondent no.8 unilaterally.

11. Taking into consideration the conduct of the respondent no.8, we are not inclined to grant any further time in the matter. As of now, not only the demolition order has attained finality but, even there is direction issued by the Hon'ble Apex Court that the building in question be demolished within three months. This three months period had also expired in November 2018. The respondent no.8 on one hand informed the Hon'ble Apex Court in November, 2018 that demolition has already commenced and thereafter, quite unilaterally, not only claims to have stopped the demolition process but continues to operate a hotel through premises which were ordered to be demolished by the Hon'ble Apex Court. This cannot be countenanced.

12. Accordingly, we direct, by way of an interim order, respondent nos.1,2,4,5,6 and 7 to forthwith disconnect the electricity supply and water supply to the offending structure, so that, respondent no.8 is in a position to continue with the demolition in compliance with the order made by the Hon'ble Apex Court and in accordance with respondent no.8's own statement in application for clarification before the Hon'ble Apex Court.

13. Place this petition for further consideration on

5.2.2018. We direct the respondent nos. 6 and 7 to file affidavit of compliance.

14. At this stage, learned Senior Counsel for respondent no.8 seeks for stay on the direction, which we have just issued. According to us, direction which we have just issued, is on the basis of order made by the Hon'ble Apex Court on 10.8.2018. Direction is also on the basis of submission of respondent no.8 herself in her application seeking clarification before the Hon'ble Supreme Court. Accordingly, we are unable to accede to the request for stay.”

4. Thereafter, on 05.02.2019, we made it clear that since there was no interim relief granted by the Hon'ble Apex Court in the review petition which was stated to be pending, the Panchayat could not avoid implementation of its own demolition order. On that occasion, the learned Additional Government Advocate appearing for the State, had also made it clear that, in case the Panchayat requests the assistance of a demolition squad, the same could always be made available.

5. Today, the Respondent No.8 has quite fairly placed on record, the Order dated 19.02.2019 made by the Hon'ble Apex Court, dismissing the review petitions instituted by the Respondent No.8. The Order dated 19.02.2019 made by the Hon'ble Apex Court

reads thus:

“ *Delay condoned.
The application for oral hearing is rejected.
The instant petitions for review have been filed
by the petitioners against the dismissal of
aforementioned special leave petitions vide this
Court's order dated 10.08.2018.
Having carefully perused the petitions for
review and the papers connected therewith, we do not
find any reason for reconsideration of the above-
mentioned order.
The review petitions are accordingly dismissed.*”

6. The Respondent No.8 has, in continuation of her earlier affidavit-in-reply dated 01.02.2019, filed additional affidavit-in-reply dated 27.02.2019.

7. The paragraphs 5, 6, 7 and 8 of the aforesaid affidavit-in-reply dated 27.02.2019, read as follows:

“5. I say that, the demolition work of the disputed structures has been re-commenced immediately after getting the information about the decision of the Hon'ble Supreme Court on 21.02.2019.

6. I say that, the second floor of the existing building which comprises of the disputed structure has been already erased and further demolition

process is being carried out on daily basis to completely erase the disputed structures. I am attaching 3 photographs of the site, which depict the true position at loco as on date, for the perusal of this Hon'ble Court.

7. I say that, without the intervention of any outside agency, I hereby undertake to fully comply with the Order of the Hon'ble Supreme Court passed on 10/08/2018 and thereby demolish the disputed structures positively within a period of 45 days.

8. I say that the Village Panchayat of Calangute has been accordingly informed vide my communication dated 25.02.2019 about the demolition of the disputed structures.”

8. Mr. Takkekar, learned Counsel for the Respondent No.8, also invites the attention of this Court to the affidavit of Respondent No.8 filed on 01.02.2019. Paragraph 41 of the said affidavit reads thus:

“41. The Respondent herein submits that pursuant to the interi, directions passed by this Hon'ble Court vide its Order dated 28/01/2019, the officials from the Electricity Department and PWD have carried out disconnection of the electricity meter and water connection, as a result of which there is no power and water supply to the disputed structures. Further the Respondent herein

vide its communication dated 31/01/2019 has communicated to the Respondent Panchayat that the disputed structures are not being operated and the same are completely closed. The said communication is hereto annexed and marked as ANNEXURE – P to the present reply. The Respondent is also attaching the photographs of the portion of disputed structure which was partially erased after the expiry of the period granted by the Hon'ble Supreme Court in terms of its order dated 10/08/2018.”

9. Mr. Takkekar, learned Counsel for the Respondent No.8, on the basis of instructions from the Respondent No.8 makes a positive statement that the demolition process has already commenced and further that no activities are being carried out through the disputed structures. He states that this position has already been made clear in para 41 of the aforesaid affidavit dated 01.02.2019, and the same position now continues and will continue until completion of the demolition of the disputed structure.

10. We accept the statements in the affidavit dated 27.02.2019 as undertaking is given to this Court. At the same time, we make it clear, that this order should not be construed as grant of any extension of time by this Court to complete the demolition

process. There are already orders of the Hon'ble Apex Court holding the field with regard to the timeline for demolitions and therefore, it is not even our intention to grant any extension of time. The demolitions must continue on a day-to-day basis, and should be completed as expeditiously as possible. The Panchayat must ensure that the demolitions are completed as directed by them in the first instance, and is conformed right upto the stage of the Hon'ble Apex Court.

11. According to us, the reliefs applied for in the present petition, stand substantially worked out with the aforesaid development, and in particular, with the undertakings now furnished by the Respondent No.8 in the aforesaid affidavits. The undertakings are accepted as undertakings given to this Court.

12. Accordingly, we dispose of the present petition. However, we direct both the Panchayat as well as the Respondent No.8 to file a compliance report in this Court on 08.04.2019.

Prithviraj K. Chavan, J.

M.S.Sonak, J.

Dv*