

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1196 of 2018**

Mr. Shrivallabh P. Pai Fondekar
aged 59 years
Indian National, resident of
D-5, J. F. Correia Complex
Near Multipurpose High School
Borda, Margao-Goa.

... Petitioner

Versus.

1. The Dy. Town Planner,
Town & Country Planning Department
Government of Goa,
having office at Ocea Complex
Margao-Goa.
2. Ms. Mangala Pednekar
of major age, Indian National
resident of House No. 24
Gaundaulim Village
Milagres Baretto, Colva
Salcete-Goa.

... Respondents.

Mr. Vishnuparasad A. Lawande alongwith Mr. P. Redkar, Advocate
for the Petitioner.

Mr. Pravin Faldessai, Additional Government Advocate for the
Respondent No. 1.

Mr. K. Poulekar, Advocate holding for Ms. M. C. Collasso, Advocate
for Respondent No. 2.

**Coram : M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Date : 26th September 2019.

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

Heard Mr. Lawande, learned Counsel for the Petitioner, Mr. Pravin Faldessai, learned Additional Government Advocate for Respondent No. 1.

2. The record indicates that Ms. Collasso appears for Respondent No. 2, however, on behalf of Ms. Collasso, Mr. K. Poulekar today appears and states that Ms. Collasso has already given a notice to Respondent No. 2 that she intends to withdraw her appearance.

3. The record indicates that Respondent No. 2 has been served and this matter was adjourned from time to time for effective appearance by Respondent No. 2. Mr. Lawande, learned Counsel for the Petitioner points out that Respondent No.2 was impleaded as a party in this petition because one of the conditions on account of which the impugned order of revocation of Technical Clearance was passed that the Petitioner had constructed a gate which allegedly blocked the access relating to the existing residential house of Respondent No. 2 and that this was an alleged violation of condition

no. 14 of the terms.

4. According to us, no purpose will be served by issuing any fresh notice to Respondent No. 2 since, the record indicates that at least, *prima facie*, that the disputes between the Petitioner and Respondent No. 2 have been amicably settled. In any case, Mr. Lawande, learned Counsel for the Petitioner places on record the communication dated 23.09.2019 by which, notice has been served upon Respondent No. 2, informing her that the matter is fixed for hearing on 26.09.2019 at 10:30am, and that the matter will be disposed of on the same date. According to us, this is sufficient notice to Respondent No. 2.

5. Mr. Lawande now points out that the dispute with the Respondent No. 2 has already been settled, as is evident from the Consent Terms placed on record by the Petitioner alongwith affidavit in rejoinder. The Consent Terms appear to have been filed in Mundkarial Case No. 4/2019/III before the Mamlatdar of Salcete Taluka at Margao. The Consent Terms at least, *prima facie*, indicate that the disputes between the Petitioner and Respondent No. 2 have been settled, as recorded in the Consent Terms dated 17.06.2019.

6. The challenge in this petition is to the order dated 27.11.2018 by which the Respondent No. 1 has revoked the

Technical Clearance order dated 10.08.2018 issued for construction of residential house, swimming pool and compound wall, in favour of the Petitioner.

7. The reasons for such revocation, as set out in the impugned order, read as follows:

- “1. The construction of residential house is already undertaken at plot under reference, whereas as per applications submitted by you was stated that it is proposed construction, while it should have been an application for regularisation of residential house.*
- 2. A metallic structure has been constructed in the plot which is not shown in the plans submitted for issue of Technical Clearance.*
- 3. Existing Nallah in the property is not shown on the site plan submitted for Technical Clearance.*
- 4. A gate has been constructed which blocks the access to existing residential house which violates the condition no. 14.”*

8. According to us, the impugned order dated 27.11.2018 will have to be revisited, in view of the Consent Terms placed on record by the Petitioner. It is the case of the Petitioner that the reason no. 4 as aforesaid will cease to apply, now that the disputes between the Respondent No. 2 have been amicably settled.

9. The second reason refers to a metallic structure being constructed in the suit plot, which was not shown in the plan submitted for issue of technical clearance. Mr. Lawande points out that there is no metallic construction as such and the reference to the metallic constructin is nothing but reference to two cargo shipping containers which are stacked over one another for a temporary period. Mr. Lawande, on the basis of the instructions from the Petitioner, states that these containers will be shifted from the suit property to which the Technical Clearance pertains within a period of two months from today. He points out that the statement regarding shifting of these containers is also made in para 10 of the affidavit in rejoinder filed on behalf of the Petitioner.

10. There is some controversy with regard to reasons no. 1 and 3 as well. However, since we are directing the Respondent No. 1 to revisit the issue of withdrawal of clearance on the aforesaid grounds, it is only appropriate that the Respondent No. 1 or its officials inspect the site and reconsider the entire issue of revocation or otherwise of the Technical Clearance, afresh without being influenced by the impugned order.

11. At this stage, we make it clear that we have not quashed the impugned order. But we are only directing that the issue as to whether the Technical Clearance dated 10.08.2018 should be

revoked or not be revisited or be reconsidered, taking into account the changed circumstances and without being influenced by the impugned order dated 27.11.2018. Before there is any revisit or reconsideration, it will be open to the Respondent No. 1 to insist that the Petitioner shifts the metallic containers which are located in the suit property to which Technical Clearance dated 10.08.2018 pertains. If Respondent No. 1 is of the opinion that any further compliances are required, they are at liberty to insist upon such compliances, no doubt subject to the right of the Petitioner to challenge the same in case, the Petitioner is not agreeable for such compliances.

12. The aforesaid exercise of revisit of Technical Clearance should be completed by the Respondent No. 1 as expeditiously as possible and, in any case, within a period of two months from today.

13. The Petition is disposed of with the aforesaid directions. There shall be no order as to costs.

14. All concerned to act on the basis of authenticated copy of this order.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

msr.