

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 1063 OF 2018
IN
WRIT PETITION NO. 1069 OF 2018
AND
MISC. CIVIL APPLICATION NO. 1064 OF 2018
IN
WRIT PETITION NO. 991 OF 2018

Sheila Dhody		Applicant
Versus		
State of Goa, Thr. its Chief Secretary & 2 Others		Respondents

Mr. Shivan Desai, Advocate for the Applicant.

Mr. Sagar Dhargalkar, Additional Government Advocate for the Respondent Nos. 1 and 2 in MCA No. 1063/2018.

Mr. Aamir Jamadar, Additional Government Advocate for the Respondent Nos. 1 and 2 in MCA No. 1064/2018.

CORAM:- C. V. BHADANG, J.

RESERVED ON: 24th JANUARY, 2019

PRONOUNCED ON: 28th JANUARY, 2019

ORDER:

Both these applications are between the same parties and involve identical issues and are being disposed of by this common order.

2. The applicant is the owner of a boutique hotel under the name and style as "Casa Vagator" situated at Vagator, Anjuna. Incidentally, the petitioner is also the owner of four other boutique hotels namely "Casa Britona", "Casa Baga",

“Casa Anjuna” and “Casa Colvale”.

The respondent no. 3 filed separate complaints before the respondent no. 2, in respect of five structures as aforesaid, claiming that they are illegal and unauthorised, being constructed without the permission of the respondent no. 2 and are in breach of Coastal Regulation Zone (CRZ) notification.

3. The respondent no. 2 issued orders dated 24.08.2018 and 20.09.2018, for demolition of the structures, which were challenged by the applicant before this Court in Writ Petition Nos. 991/2018 and 1069/2018. This Court declined to entertain the petitions in view of the availability of an alternate remedy to the petitioner to approach the NGT. This Court also extended interim relief for a period of six week from 01.12.2018.

4. The applicant has filed these applications on 21.12.2018 for the following reliefs:

a) That the Hon'ble Court may be pleased to issue necessary clarification/pass appropriate orders permitting the applicant to avail of the alternate remedy within the time stipulated by this Hon'ble Court and/or modify the judgment and order dated 01/12/2018, if this Hon'ble Court deems it fit and necessary.

b) Grant extension of ad interim relief by a further

period of 2 weeks.

c) Pass any other order this Court deems fit.

5. I have heard Mr. Desai, the learned Counsel for the applicant, Mr. Dhargalkar, the learned Additional Government Advocate for respondent nos. 1 and 2 in MCA No. 1063/2018 and Mr. Jamadar, the learned Additional Government Advocate for respondent nos. 1 and 2 in MCA No. 1063/2018. With the assistance of the learned Counsel for the parties, I have gone through the record.

6. It is submitted by Mr. Desai, the learned Counsel for the applicant that this Court can in an appropriate case extend the time for taking recourse to the appropriate remedy. Reliance is placed on behalf of the applicant on the decision of the Supreme Court in the case of **Danda Rajeshwari Vs. Bodavula Hanumayamma & Others (1996) 6 SCC 199**, in order to submit that this Court while relegating the party to the alternate remedy, can direct or permit the party to avail of the remedy within the specific period.

Reliance is also placed on behalf of the applicant on the decision of the Supreme Court in the case of **Pala Jhangola Vikas Samiti & Another Vs. Custodian General of Evacuee Property & Others (2008) 3 SCC 358** and on the decision of

this Court in the case of **Madhav Atmaram Sahakari Vs. Aselmo Furtado & Others 2018(1) ALL MR 120.**

7. It is submitted that this Court had granted interim relief, however, subsequently, declined to entertain the petition on account of availability of an alternate remedy. It is submitted that in the meantime, the limitation for approaching the NGT has expired and the applicant cannot be left remedyless. It is therefore, submitted that this Court may permit the applicant to avail of the appropriate remedy, within the time stipulated by this Court.

8. The learned Additional Government Advocates for the respondent nos. 1 and 2 have submitted that this Court may pass appropriate order as may be deemed fit.

9. I have given my anxious consideration to the rival circumstances and the submissions made.

10. This Court while dealing with a similar issue in Miscellaneous Civil Application No. 28/2019 in Writ Petition No. 915/2018 (**Sylvester D'Souza Vs. Goa Coastal Zone Management Authority & 5 Others**), has today passed a

detailed order holding that such liberty or extension of time cannot be granted. Although, there may be minor variations, on facts as obtaining in Miscellaneous Civil Application No. 28/2019 in Writ Petition No. 915/2018, however, the same in my considered view, would not be sufficient, to take a different view in the present applications. Thus, for the reasons mentioned in the order dated 28.01.2019, passed in Miscellaneous Civil Application No. 28/2019 in Writ Petition No. 915/2018, the present applications are dismissed, with no order as to costs.

11. At this stage, Mr. Desai, the learned Counsel for the applicant submitted that the applicant cannot be left remediless and shall explore the appropriate remedy, which he intends to take recourse to and in that view of the matter, the ad-interim relief may be continued for a further period of three weeks.

12. I have considered the submissions made and I find that the interim protection can be granted for a limited period of three weeks from today. It is made clear that no further extension shall be granted.

C.V. BHADANG, J.