

IN THE HIGH COURT OF BOMBAY AT GOA.**WRIT PETITION NO. 1034 OF 2019.**

- 1 Shri Sanjay Singhal, 50 years of age, Son of Nanagram Singhal, r/o Sardar Bazar, Mount Abu-Rajasthan, presently at Khobravado, Calangute Bardez, Goa.
 - 2 Shri Akhil Gupta, 52 years of age, Son of Mr. Shri Krishan Gupta, r/o Sardar Bazar, Mount Abu-Rajasthan, Presently at Khobravado, Calangute Bardez, Goa, Both represented through Power of Attorney Shri Priyam Singhal, 24 years of age, Son of Ajay Singhal, Resident of Villa L, Riva Villa, Candolim, Bardez, Goa.
- Petitioners.

Vs.

- 1 North Goa Planning & Development Authority, Through its Member Secretary, Archiodiocese Building, 1st Floor, Mala link road, Panaji.
- 2 Chairman, North Goa Planning & Development Authority, Archiodiocese Building, 1st Floor, Mala link road, Panaji.
- 3 Village Panchayat of Calangute, Through its Sarpanch/ Secretary, Calangute, Bardez, Goa.
- 4 Town & Country Planning Department, Through Town

Planner, Mapusa, Goa.

- 5 Shri Vassant D. Shirodkar,
Major of age, Office no. 202,
Bhawani Apartments, 2nd
floor, Behind Maruti Temple,
Mapusa, Bardez, Goa. Respondents.

Mr. A. D. Bhobe and Ms. K. Govekar, Advocates for the petitioners.

Mr. H. D. Naik, Advocate for the respondent nos.1 and 2.

Mr. P. Vernekar, Advocate for the respondent no.3.

Mr. M. Salkar, Government Advocate for the respondent no.4.

Mr. P. Talaulikar, Advocate for the respondent no.5.

**Coram:- M. S. SONAK &
SMT. M. S. JAWALKAR, JJ.
Date:- 29th January 2020.**

JUDGMENT (PER M. S. Sonak, J.)

Heard Mr. A. D. Bhobe, learned Counsel for the petitioners, Advocate for the petitioners, Mr. H. D. Naik, learned Counsel for the respondent nos.1 and 2, Mr. P. Vernekar, learned Counsel for the respondent no.3, Mr. M. Salkar, learned Government Advocate for the respondent no.4 and Mr. P. Talaulikar, learned Counsel for the respondent no.5.

2. Rule. Rule is made returnable forthwith with the consent and at the request of the learned Counsel for the parties.

3. The challenge in this petition is to the order dated 28.11.2017 which is made by the chairman of the North Goa Planning and Development Authority (NGPDA)- respondent no. 2 herein purporting to dispose of the show cause notice dated 13.10.2017 issued to the respondent no.5 on the basis of complaint

from the petitioners regards violation of approval/approved plan dated 1.7.2016 for development/construction in the property bearing survey nos.214/7-B of Village Calangute Goa (said property)

4. The petitioners lodged complaint to the construction /development being undertaken by the respondent no.5 in pursuance of approval/approved plan dated 1.7.2016 in the said property. On the basis of said complaint, Member Secretary of the NGPDA issued show cause notice dated 13.10.2017 to the respondent no.5.

5. The show cause notice, in the present case, it appears, has not been adjudicated by the NGPDA, which is body corporate as provided under Section 20(2) of the Goa Town and Country Planning Act (said Act). But the same appears to have been adjudicated upon and disposed of only by the Chairman of NGPDA - respondent no.2.

6. Mr. Bhobe, learned Counsel for the petitioners submits that the chairman of NGPDA - respondent no.2 lacks jurisdiction to adjudicate upon and dispose of show cause notice, which, according to him, was required to be adjudicated upon and disposed of by NGPDA itself, which is body corporate in terms of Section 20(2) of the said Act.

7. Mr. Bhobe, has also raised certain other issues without prejudice. He submits that there was no consent or settlement as

has been stated in the impugned order dated 28.11.2017. He also submits that construction in violation of approved plan or approval cannot be regularised on the basis of any alleged consent of the complainant. For all these reasons Mr. Bhobe, submits that the impugned order is liable to be set aside.

8. Mr. Naik and Ms. Talaulikar, the learned counsel for respondent nos.1, 2 and 5 defend the impugned order on the basis of reasoning reflected therein. They point out that there was indeed an amicable settlement as it reflected in the impugned order. They submit that there is no jurisdictional error in making of the impugned order, and, therefore, same ought not to be interfered with.

9. In terms of the said Act, when it comes to any planning area, approvals for development are required to be granted by a Planning and Development Authority as defined under Section 2(23) of the Act. So also if there are complaints of development taking place contrary to the approval/approved plan, it is for the concerned Planning and Development Authority to take action, which will include revocation or modification of permission of development as also issuance of directions to remove all unauthorised developments. This is quite clear from the provisions of Section 50 and 52 of the said Act.

10. Section 2 (23) of the said Act defines "Planning and Development Authority" mean any Planning and Development

Authority constituted under the said Act.

11. Section 20 of the said Act refers to the Constitution of Planning and Development Authority and the same, reads as follows:-

- (1) As soon as may be, after the declaration of the planning area, the Government, in consultation with the Board, may, by notification, constitute in respect of that area an authority to be called the "Planning and Development Authority" of that area for the purpose of performing the functions assigned to Planning and Development Authorities under this Act.*
- (2) Every Planning and Development Authority constituted under sub-section (1) shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power to acquire, hold and dispose of property both movable and immovable, and to contract, and shall by the said name sue and be sued.**
- (3) Every Planning and Development Authority constituted under sub-section (1) shall consist of the following members, namely:—*
 - (i) a Chairman to be appointed by the Government;*
 - (ii) a Town Planning Officer to be appointed by the Government in consultation with the Chief Town Planner who shall be the Member Secretary of the Planning and Development Authority;*
 - 9[(iia) All the Members of Legislative Assembly representing a planning area;]*
 - (iii) representatives of local authorities, to be composed as follows:—*
 - (a) in the case of a planning area in which only one local authority has jurisdiction, a representative nominated by that local authority from among its members and the Chief Executive Officer of that local authority;*
 - (b) in the case of a planning area in which two or more local authorities have jurisdiction, representatives of such local authorities as the Government may consider necessary to be represented, 10[];*
 - (iv) such number of other members, not exceeding 11[five], appointed by the Government, who, in*

the opinion of the Government, have special knowledge of, or practical experience in, matters relating to town and country planning, architecture, engineering, transport, industry, commerce and agriculture.

- (4) The Government may, if it thinks fit, appoint one of the members of the Planning and Development Authority as its Vice-Chairman.*
- (5) The Government may, in consultation with the Board, appoint any local authority as the Planning and Development Authority for the area comprised within the local limits of the jurisdiction of such local authority and for such other contiguous or adjacent area or areas as the Government may declare as a planning area under section 18.*
- (6) Where a local authority is appointed as a Planning and Development Authority under sub-section (5), the provisions of sub-section (3) of this section and sections 21, 23 and 25 shall not apply, and the provisions of the Act by which such local authority is constituted shall continue to apply to it in respect of matters covered by the aforesaid sections.*
- (7) A local authority appointed as a Planning and Development Authority under sub-section (5) shall, for the purpose of performing the functions of a Planning and Development Authority under this Act, constitute a Planning Committee consisting of the following members, namely:—*
 - (i) a Chairman;*
 - (ii) the Town Planning Officer, who shall be the Member Secretary to the Committee; and*
 - (iii) five other members, two of whom shall be appointed by the Government in consultation with the Board.*
- (8) Every Planning Committee constituted by a local authority under sub-section (7) shall have the same status and powers of a Standing Committee appointed by the local authority by the Act under which such local authority is constituted and the terms and conditions of the members of the Committee shall be such as may be prescribed.*

(Emphasis supplied)

12. Sub-section 2 of Section 20 of the said Act as noted above,

is very clear in that, every Planning and Development Authority constituted under sub-section (1) shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power to acquire, hold and dispose of property both movable and immovable, and to contract, and shall by the said name sue and be sued.

13. Sub Section 3 of Section 20 of the said Act provides every Planning and Development Authority constituted under sub-section (1) shall consist of several members, of which, a Chairman is also constituent part. However, there is no provision shown to us under the said Act, which, empowers only chairman, discharge the function which are otherwise required to be discharged by the Planning and Development Authority, as a body corporate. In the absence of any such provision, it is obvious that the impugned order, which has been made only by the chairman of the NGPDA is without jurisdiction and is required to be set aside on the said ground alone.

14. In this case, show cause notice was correctly issued by the NGPDA through its member secretary. Accordingly, show cause notice was required to be disposed of by NGPDA itself, as body corporate. Same could not have been disposed of by the Chairman purporting to act on behalf of the NGPDA. On this short ground the impugned order is required to be set aside and is hereby set aside without going into other contentions raised by Mr. Bhobe and

refuted by the learned counsel for the respondent nos.1, 2 and 5.

15. Consequent of setting aside the impugned order, we now direct the NGPDA to consider and dispose of its show cause notice dated 13.10.2017 on its own merits and in accordance with law. Needless to add that NGPDA will have to afford an opportunity of hearing both the petitioners and the respondent no.5 and thereafter dispose of the show cause notice on its own merits and in accordance with law.

16. All the contentions of all parties on merits are kept open to be adjudicated upon by the NGPDA. Considering that the show cause notice was issued way back on 13.10.2017, we now direct NGPDA to dispose of the same within three months from today. The learned Counsel for the petitioners and the respondent no.5 assure this court that they will co-operate in the matter of disposal of the show cause notice and not seek unnecessary adjournments, particularly because several persona have to attend the meetings of NGPDA.

17. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

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

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.