

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION No. 953 OF 2019

Mrs. Sofia Shabnam
wife of Mr. Mohammad Jehangir,
major in age, in business,
Indian National and resident of House No.1623,
Penha De Franca,
Bardez-Goa.

.... Petitioner

V e r s u s

Village Panchayat Salvador-Do-Mundo
represented by its Secretary,
Taluka of Bardez-Goa.

.....Respondent

Mr. Deepak Gaonkar, Advocate for the Petitioner.

Mr. Gaurish N. Agni, Advocate for the Respondent.

CORAM: M. S. SONAK, J

DATE: 7th July 2021

ORAL ORDER:

Heard Mr. Deepak Gaonkar, the learned Counsel for the petitioner, and Mr. Gaurish Agni, the learned Counsel for the Panchayat.

2. The challenge in this petition is to the order dated 30.08.2019 made by the District Judge, Mapusa acting as Revisional Authority under the provisions of the Goa Panchayat Raj Act, 1994 (said Act). The

petitioner instituted this revision to question the judgment and order dated 17.07.2017 made by the Additional Director of Panchayats, who had dismissed the petitioner's appeal against order/notice dated 15.12.2014 revoking the construction license issued to the petitioner.

3. The aforesaid means that the Panchayat, the Additional Collector, and the District Judge(Revisional Authority) have concluded that the construction license issued to the petitioner warranted revocation primarily because the allotment which the petitioner had claimed from the Comunidade of Serula was fraudulent and there was misrepresentation involved on the part of the Petitioner. Thus, the 3 Authorities have concurrently held that the revocation of the construction license was warranted in the facts and circumstances of the present case.

4. Mr. Gaonkar, the learned Counsel for the petitioner submitted that the show cause notice in the present case was issued by the Sarpanch of the Village Panchayat of Salvador Do Mundo but the revocation order has been issued by the Secretary. He submits that in terms of the provisions of the said Act as also the decision of this Court in ***Surekha Narayan Kokane v/s. Reena Raulo Pilerkar & Anr¹***, it is impermissible for the Sarpanch to issue any show-cause notice and this jurisdictional error cannot be corrected by the Secretary issuing the final order. He also refers to the provision of Section 47 of the Panchayat Raj Act, 1994, in support of his contention that only the Secretary has executive powers and therefore, even the show cause

1 Writ Petition No.107 of 2016 decided on 20.04.2016

notice had to be issued by the Secretary.

5. Mr. Gaonkar submits that in any case, there was no misrepresentation on the part of the petitioner. The petitioner had relied upon the allotment issued by the Comunidade and the allotment letter also refers to approval from the Appropriate Authority. He submits that merely because the entire matter is being investigated by the Police or merely because the Administrator of Comunidade wrote to the Panchayat stating no documents of such allotment are available in its records, the Panchayat could never have concluded that there was any misrepresentation or fraud on the part of the petitioner. He, therefore, submits that without prejudice to the jurisdictional issue raised by him, even on merits, the impugned revocation order dated 15.12.2014 is illegal and void.

6. Mr. Gaonkar submits that to date the allotment in favor of the petitioner has not been withdrawn. He submits that the Town & Country Planning Authorities have not issued any notice to withdraw the technical clearance. He submits that merely because conversion sanad may have been revoked, that can be no ground to revoke the construction license as well. He submits that all the Authorities have not considered the contentions raised by and on behalf of the petitioner. He, therefore, submits that the impugned orders warrant interference now that the petitioner has already completed the construction.

7. Mr. Agni, the learned Counsel for the Panchayat points out that the show cause notice was issued by the Sarpanch based on the resolution of the Panchayat. He points out that the revocation order was issued based on yet another resolution of the Panchayat. He submits that the impugned revocation order bears the signature of the Sarpanch as well as the Secretary. He submits that ultimately under the provisions of the said Act it is the Panchayat as a body that has been given the powers to grant or revoke permissions, licenses, etc. He submits that the Panchayat, as a body, acts through its resolutions. He submits that merely because some executive powers have been granted to the Secretary, no issues of jurisdiction or competence arise. In any case, he submits that in the present case, there is no infirmity whatsoever in the issuance of the impugned revocation order.

8. Mr. Agni submits that this is a case where the petitioner has secured fraudulent allotment from the Comunidade. This position is confirmed by the Administrator of Comunidade and the communication of the Administrator has not even been challenged by the petitioner. He submits that to the best of his knowledge the Planning Authorities have also initiated steps to invoke the technical clearance. He submits that even conversion sanad has been revoked and there is no challenge to such revocation. He submits that this is a clear case where the petitioner, by fraud, misrepresented that the allotment in his favor was genuine and prevailed upon the Panchayat to grant a construction license. Upon realization of the misrepresentation and fraud, the Panchayat was well

within its powers to revoke the construction license. He, therefore, submits that there is no merit in this petition and the same be dismissed.

9. The rival contentions now fall for my determination.

10. The record, in this case, bears out that the show-cause notice which was a precursor to the impugned revocation order dated 15.12.2014 was signed by the Sarpanch of the Panchayat but the same was backed by valid resolution passed by the Panchayat in its meeting held in accordance with the law. At no stage did the petitioner take any steps to challenge such resolution even though there are provisions under the Panchayat Raj Act to question such resolutions if any party is aggrieved by the same. The Petitioner, no doubt, did challenge the action based on such resolution, which might suffice. But the factum of the Panchayat passing such a resolution was never disputed.

11. The petitioner, was allowed to show cause and it is only consequent upon cause being shown by the petitioner and the consideration of such cause by the Panchayat as a body, yet another resolution was passed by the Panchayat resolving to issue the impugned revocation order dated 15.12.2014. This revocation order was signed by both, the Panchayat as well as its Secretary.

12. Section 47 of the Panchayat Raj Act no doubt provides that notwithstanding anything contained in this Act and the rules framed

thereunder, the Secretary **shall also** exercise the powers on the following matters, namely:—

- (i) to issue the licences for construction, repairs, modification, alteration, so also occupancy certificate in pursuance of the resolution of the Panchayat;
- (ii) to initiate action for stopping and or demolishing an unauthorized structure//building constructed without the permission of the Panchayat after resolution is passed to that effect;
- (iii) to execute the resolution passed by the Panchayat body.”.]

13. The use of the expression “**also**” in Section 47 of the said Act makes it clear that the Secretary is not the exclusive repository of the executive powers specified under Section 47 of the said Act. The provision has only clarified that the Secretary is also entitled to exercise the powers on the matters which are specified under Section 47 of the said Act. This is a complete answer to the first contention raised by Mr. Gaonkar.

14. Besides, in such a case, the issue as to whether the decision of the Panchayat as a body, being communicated by its Secretary or its Sarpanch is hardly a very significant issue or an issue going to the root of jurisdiction. The said Act does not provide that the Secretary or the Sarpanch as the case may be, has to have reasons to believe or have to be personally satisfied before any show-cause notice is issued in such matters. Therefore, merely

because the decision of the Panchayat, requiring the Petitioner to show cause, was communicated by the Sarpanch and not the Secretary, is not some valid ground to question the action of the Panchayat.

15. Even the purpose of issuing a show-cause notice in such matters is to afford the noticee opportunity to show cause or offer an explanation of why the proposed action should not be taken. To insist that even such show-cause notice must be issued by the Secretary and not the Sarpanch is to award undue precedence to form over substance. Again, this is not a situation where the legal provision contemplates the personal satisfaction of either the Secretary or the Sarpanch before initiation of the action. The satisfaction has to be of the Panchayat as a body. There is not even any allegation that such satisfaction was absent when the Panchayat as a body first resolved to issue a show-cause notice to the Petitioner or when the Panchayat as a body resolved to revoke the construction license after considering the cause shown by the Petitioner.

16. There is no dispute that the final impugned revocation order has not been made or communicated either by the Sarpanch or the Secretary exclusively. The final impugned revocation order is signed by both, the Sarpanch and the Secretary. The final impugned revocation order dated 15.12.2014 merely communicates the decision of the Panchayat to revoke the construction license. The decision of the Panchayat is to be found in

the resolution of the Panchayat, which was arrived at, after considering the cause shown by the petitioner. Therefore, there is no legal infirmity in the impugned revocation order dated 15.12.2014 even based upon the hypertechnical contention now raised by the petitioner.

17. In ***Surekha Kokane*** (supra), there was no reference to the provisions of Section 47 of the said Act precisely because the contentions raised on the powers of the Secretary or Sarpanch were not gone into by this Court. From the perusal of paragraph 7 of the decision, it is apparent that this Court, in the peculiar facts of the said case, felt that rather than going into such issues, the Panchayat can be directed to issue a fresh show-cause notice to be signed by the Secretary on the strength of the resolution already made by the Panchayat. Therefore, the decision in ***Surekha Kokane*** is not at all an authority for the proposition that only the Secretary is competent to issue a show-cause notice or that the show cause notice issued by the Sarpanch renders the final decision or action, though communicated through the Secretary, legally infirm. Based on ***Surekha Kokane*** therefore, no relief is due to the petitioner in the present matter.

18. In this case, there is material on record in the form of clear communication by the Administrator disowning the allotment in favor of the petitioner. There is a material that even police authorities are investigating into the issue of allotment made or purported to have been made on behalf of this Comunidade. The petitioner, despite knowledge

of the Administrator's letter, had taken no action to question the same on the specious plea that till date the allotment in her favor has not been formally canceled. Though there is a formal cancellation of the conversion sanad, the petitioner has again not challenged the same on the ground that the conversion sanad was issued in favor of the Administrator and it is for the Administrator to challenge the same. Now, the conversion sanad is in respect of the plot on which the petitioner claims to have made the construction. Therefore, if the conversion sanad is revoked, the petitioner should have either challenged the same or will have to face the consequences of such cancellation. One of the consequences is the revocation of the construction license. Otherwise, the petitioner will claim a right to construct or maintain the construction on the agricultural property which is not even converted or which does not even have conversion sanad, a statutory pre-requisite for the non-agricultural user.

19. Since, the petitioner claims that he has received no notice from the Planning Authorities, there is no necessity to go into the issue as to whether the technical clearance issued by the Planning Authority survives or not. Based on all this material, however, the Panchayat was quite justified in concluding that its license was issued based on misrepresentation and fraud practiced by the petitioner. In any case, the petitioner has attempted to take advantage or benefit of such allotment which the Administrator has found to be totally fraudulent and even non-existent. The cancellation of the conversion sanad which cancellation has not even been challenged by the

Petitioner, is also a valid ground for revocation of the construction license. The action of the Panchayat was preceded by the compliance of principles of natural justice and fair play. There is no infirmity in the decision-making process or, for that matter, the final decision itself.

20. No less than three Authorities have deliberated upon the matter and it is not correct that the three Authorities have looked into the contentions of the petitioner only cursorily or summarily. The three authorities have duly considered the Petitioner's contentions and only thereafter rejected the same.

21. For all the aforesaid reasons, this petition is required to be dismissed and is hereby dismissed. There shall be no order as to costs.

M. S. SONAK, J.

msr.