

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.4 OF 2021
WITH
MISCELLANEOUS CIVIL APPLICATION NO.1386 OF 2021

PRABHU CONSTRUCTIONS, ... Petitioner.
REP. BY ITS PROP., VENKATESH
NARAYAN PRABHU MONI

VS

JITESH JIVAJI KAMAT AND 4 ORS. ... Respondents.

Mr. Shashikant Narayan Joshi with Ms. Archana Pai Bir, Advocates for the Petitioner.

Mr. Neelesh Takkekar, Advocate for Respondent No.1.

Mr. Sandesh D. Padiyar, Advocate for Respondent No.2.

Mr. Hanumant D. Naik, Advocate for Respondent No.3.

Mr. Geetesh Ramesh Shetye, Advocate for Respondent No.5.

Mr. Deep Shirodkar, Additional Government Advocate for the Respondent No. 6.

Coram: M.S. SONAK, J.

Date: 14th July 2021.

P.C.:

Heard Mr. S.N. Joshi who appears along with Ms. Archana Pai Bir for the Petitioner, Mr. Neelesh Takkekar appears for Respondent No.1, Mr. Sandesh Padiyar appears for Respondent No.2, Mr. Hanumant Naik appears for Respondent No.3 and Mr. Deep Shirodkar, learned Additional Government Advocate appears for the Real Estate Regulatory Authority (RERA), Respondent No.6 herein.

2. The Petitioner has instituted this petition seeking the following substantive relief:-

“a) Issue appropriate Directions to the Real Estate Regulatory Authority to call for Status Reports from the Chief Officer, Mapusa Municipal Council, North Goa Planning and Development Authority, Directorate of Fire and Emergency Services and grant a fresh opportunity of hearing to the Petitioners as regards the compliance of the Final Order dated 12th September 2019 and restoration of Occupancy to the first 4 Floors of the Building.”

3. The records indicate that the Petitioner, who is a Respondent before the RERA had applied to RERA to call for the status report regarding the building in question, from (i) The Chief Officer, Mapusa Municipal Council, (ii) Member Secretary, North Goa Planning and Development Authority, Rua-de-Ourem, Panaji-Goa, (iii) Chief Engineer, Electricity Department, 'Vidhyut Bhavan', Panaji-Goa, (iv) Director, Directorate of Fire & Emergency Services, Campal, Panaji-Goa. Mr. Joshi, the learned Counsel for the Petitioner submitted that these authorities, had pointed out certain alleged deficiencies in the building constructed by the Petitioner and on that basis, withheld or even revoked certain permissions, certificates, etc. Mr. Joshi submits that the Petitioner has rectified such deficiencies, but the authorities were not interested in inspecting the building to determine whether such deficiencies were indeed removed or not. Mr. Joshi submits that that is the reason why the Petitioner applied to the RERA to seek a status report from such authority, so that, the matter should be sorted out one way or the other.

4. Now the impugned order dismisses Petitioner's application, primarily holding that the RERA does not have the power or authority to seek such status reports from the authorities. According to me, in a

matter of this nature, the RERA ought not to have rushed to draw such a conclusion. But rather than decide on the nature of powers vested in RERE in this matter, by leaving open this issue for decision in an appropriate case, this petition can be disposed of particularly because of certain subsequent developments.

5. The subsequent developments concern the order made by the Division Bench of this Court on 28.06.2021 in Writ Petition No. 1156 of 2021 (F) instituted by the Petitioner herein, seeking substantial similar reliefs, as were applied for before the RERA.

6. The Division Bench of this Court on 28.06.2021 made the following order, which has the effect of substantially granting the Petitioner reliefs in terms of the application made by the Petitioner before the RERA.

7. The order dated 28.06.2021 made in Writ Petition No.1156 of 2021 (F) reads as follows:-

“Heard Mr. S. N. Joshi with Ms. Snehal Rawool, learned Advocates for the Petitioner, Mr. S.D. Padiyar, learned Advocate for respondent No.1, Mr. H.D. Naik, learned Advocate for respondent No.2, Mr. D. J. Pangam, learned Advocate General with Ms. Maria Correia, learned Addl. Government Advocate for respondents No.3 & 4 and Mr. A.D. Bhobe, learned Advocate for Intervenors.

2. This is not a case where the Statutory Authorities can be faulted in any manner. However, Mr. Joshi, learned Counsel points out several of the deficiencies pointed out by the Statutory Authorities have been rectified by the petitioner. He points out that if there are any further deficiencies, the petitioner is willing to rectify the same. He, however, submits that for this purpose the Statutory Authorities

are required to inspect the building and point out the petitioner such deficiencies so that the same could be rectified.

3. With respect to the aforesaid submission, we direct the Authorities of Mapusa Municipal Council, North Goa Planning and Development Authority and Directorate of Fire and Emergency Services to inspect the petitioner's site within a period of six weeks from today and certify whether there are any deficiencies in the construction put up by the petitioner comprising the Ground plus Five floors. The Authorities should then furnish the petitioner with the list of deficiencies, if any. Mr. Joshi, learned Counsel states that the petitioner will then rectify the deficiencies, if any and once again apply to the Authorities for fresh inspection to ascertain whether such deficiencies are indeed rectified.

4. The Authorities to give notice of inspection to the petitioner, so that, the petitioner can remain present during the course of the inspection. However, the petitioner, should make it convenient to attend the inspection and not to seek any postponement.

5. Further, it is clarified that this order has nothing to do with the right of the Municipal Council to hold independent inspection, in case, the Council is in receipt of any complaints regards the construction put up by the petitioner. Obviously, the petitioner cannot obstruct the Council's Officer from holding such inspection.

6. With the aforesaid orders this petition is disposed of. All contentions and rights of all the parties are expressly kept open since we have not adjudicated the issues on merit.

7. The Intervenors' application is also disposed of, since, even the Intervenors wanted that the Authorities should inspect the premises so that the petitioner is in position to hand over the possession of the premises which he has agreed to sell to them at the earliest.

8. The Intervenors confirmed that they are not occupying the premises which are agreed to be sold by the petitioner. This statement on behalf of the Intervenors is accepted.

9. The petition is disposed of in the aforesaid terms.”

8. Since, the subsequent development as aforesaid has granted the Petitioner the relief, which he had applied for before the RERA, there is no need to let this petition remain pending any further. The legal position concerning the powers vested in RERA to make orders to call for status reports from authorities is not gone into in this petition and the same is kept expressly open. According to me, the RERA, in a matter of this nature, ought not to have rushed to the conclusion that is now reflected in the order dated 04.01.2021. The contention could certainly have been gone into in an appropriate case and after bestowing further consideration, not only to the provisions of the Act, but also precedents on the subject.

9. Besides, it is pointed out that the impugned order dated 04.01.2021 has been made only by one of the members of the RERA when in fact, in terms of section 21 of the said Act, the authority of the RERA is to consist of a chairperson and not less than two whole term members being kept by the appropriate authority. Mr. Takkekar pointed out that regulations have been made, which envisage the delegation of even adjudicatory powers by the chairperson to any member. He however fairly pointed out that these regulations entered into force on 08.04.2021 and the order impugned in this case was made by only a single member on 04.01.2021. Again, this larger issue need not be gone into in this matter, but this is also yet another reason as to why the view taken in the impugned order may not be taken as approved by this Court for the present. The issue as to the nature of powers vested in the RERA is

therefore kept open to be decided in an appropriate case by RERA itself as also this Court.

10. The petition is therefore disposed of. The interim order, if any, is hereby vacated.

11. No other issue arose in this petition and therefore, this petition is now disposed of in the aforesaid terms.

12. Miscellaneous Civil Application No.1386 of 2021 (F) does not survive and hence the same is disposed of.

13. All concerned to act based on authenticated copy of this order.

M.S. SONAK, J.

jfd/-