

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.148 OF 2021

WITH

CIVIL APPLICATION NO. 17 OF 2021

IN

WRIT PETITION NO.148 OF 2021

WITH

CONTEMPT PETITION NO.1009 OF 2021 (F)

IN

WRIT PETITION NO.148 OF 2021

PRADIP BABURAO DESAI AND ANR.

... Petitioners/
Applicants.

VS

MAPUSA MUNICIPAL COUNCIL,
THR. THE CHIEF OFFICER,
MAPUSA AND 4 ORS.

... Respondents.

Mr. Chirag Shah, Advocate for the Petitioners / Applicants.

Mr. Devidas Pangam, Advocate General with Ms. Sapana Mordekar,
Additional Government Advocate for the State in WP No.148/2021.

Mr. Devidas Pangam, Advocate General with Ms. Ankita Kamat,
Additional Government Advocate for the State in CP No.1009/2021 (F).

Mr. Sandesh D. Padiyar with Mr. Pravinkumar Shirodkar, Advocates for
Respondent No.1.

Coram: M.S. SONAK &
SMT. M.S. JAWALKAR, JJ.

Date: 28th June 2021

P.C.:

Heard Mr. Chirag Shah for the Petitioners, Mr. Shirodkar and Mr.
Padiyar for the Mapusa Municipal Council.

2. The challenge in this petition was to the final notice dated 02.05.2018 issued by the Mapusa Municipal Council and the partial demolition in pursuance thereof.

3. We had issued rule in this petition and also granted protection to the Petitioner. Further demolitions were stayed.

4. Now, it is pointed out by Mr. Shirodkar that the Petitioner has alternate and efficacious remedy of instituting an appeal against the final notice / demolition order dated 02.05.2018 under the Municipalities Act.

5. Mr. Shah, the learned Counsel for the Petitioner on instructions states that such appeal will be instituted within four weeks from today. He even points out that no certified copy of the final notice has been issued. He points out that certain documents have also not been furnished to the Petitioner.

6. The appeal can as well be filed on the basis of the copy of the order dated 02.05.2018 in a similar manner in which the Petitioner had instituted the present petition. The appellate authority, cannot refuse to hear the appeal on the ground that certified copy has not been filed when, the Council has allegedly not issued the certified copy.

7. The Petitioner, can raise all grievances, including the grievance about the illegal demolition of the portion of the structure before the appellate authority.

8. Now that the matter was pending before this Court and even some interim orders were made by this Court, the learned Counsel for the Municipal Council agrees that the appeal if instituted by the Petitioner

within four weeks, can be disposed of on merits without going into the issue of limitation. This statement is accepted. Even otherwise, we feel that the Petitioner was pursuing this matter before this Court and therefore there is sufficient cause for condonation of delay should the appeal be indeed instituted within four weeks from today.

9. Accordingly, this petition is disposed of by giving liberty to the Petitioner to institute the appeal as aforesaid within four weeks from today. If the appeal is indeed instituted within four weeks from today, the appellate authority to dispose of the said appeal on merits. All contentions of all parties are left open to be decided in such appeal.

10. The interim orders made by this Court staying further demolition in pursuance of the final notice / demolition order to operate until the disposal of the appeal by the appellate authority.

11. The petition is disposed of in the aforesaid terms. There shall be no order as to costs. All concerned to act based on authenticated copy of this order.

12. The civil miscellaneous applications made from time to time in this matter do not survive the disposal of the main petition and such miscellaneous applications are also disposed of. No case for initiating of any contempt proceedings is made out and therefore the contempt proceedings are also disposed of.

SMT. M.S. JAWALKAR, J.

jfd/-

M.S. SONAK, J.