

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.224 OF 2020**

Shri Janu Fotu Zalmi
Son of late Shri Fotu Zalmi
Aged 70 years, married, agriculturist,
Resident of H.No.K-13, Kalazir,
Querim, Ponda-Goa.

.... Petitioner

Versus

1. Shri Damodardas P. Kamat Dhakhankar,
Son of Shri Pandharinath Kamat Dhakankar,
Aged 60 years, retired, married,
Resident of H.No.5124, Murida,
Fatorda, Salcete-Goa.

2. The Sarpanch/Secretary,
Village Panchayat Querim,
Querim, Ponda-Goa.

....Respondents

Mr. Guru Shiroadkar and Mr. Sameer Khedekar, Advocates for
the Petitioner.

Mr. J.J. Mulgaonkar and Ms. Rupa Banaulikar, Advocates for the
Respondent No.1.

CORAM : - SMT. M.S. JAWALKAR, J.

Reserved on : 10th August 2021

Pronounced on : 30th August 2021

JUDGMENT :

Heard learned Counsel for the parties.

2. Present Writ Petition is filed challenging the judgment and order dated 24.09.1990, passed by the District Judge -2, Panaji sitting at Ponda in Civil Revision Application No.5/2019 and judgment and order dated 14.12.2018 passed by

the Additional Director of Panchayats-II, South Goa, Margao in Panchayat Appeal No.MAR-I/41/2017.

3. Rule. Rule made returnable forthwith. At the request and by consent of the parties the matter is taken up for final disposal at the stage of admission.

4. It is the case of petitioner that petitioner's father and family are in possession, cultivation and enjoyment of agricultural property known as "Babir Pir Thikan" surveyed as per Form no.III under Survey no.222/1 of village Querim of Ponda Taluka more than 80 years being its agricultural tenant and the name of father of the applicant is duly recorded in other rights column as holding house of the said property. There also exists a mundkarial house of the petitioner situated in the said property and the said house has been constructed by the ancestors of the petitioner with their own costs. Name of Shantadurga Devi and Shri Betal Devi is recorded as occupants in Form No.III of revenue records of Survey No.222/1 of Querim Village of Ponda Taluka. Name of respondent no.1 is not figuring in Form No.III of revenue record and survey records are promulgated except Survey No.222/1 of Querim Village. Part of the Survey No.222/1 was acquired for the road and LAO

had awarded 1/4th of total compensation to the petitioner which was also upheld in award dated 15.01.1996 which was confirmed by the High Court.

5. The petitioner filed an application before the Mamlatdar of Ponda for declaration as a tenant of the property surveyed under Survey No.222/1 of Querim Village of Ponda Taluka vide case no.TNC/13/1996. The application filed by the petitioner ascertaining his tenancy rights was dismissed by the Mamlatdar, Ponda by judgment and order dated 13.04.2011 as lease and rent was not proved. The petitioner carried out appeal against the said order before the Deputy Collector. The said tenancy appeal no.PON/TNC/APL/21/2011 came to be dismissed by the Deputy Collector vide order dated 30.10.2012. The petitioner also filed Tenancy Revision Application no.95/2015 before the District Judge - II, Panaji, against the judgment and order dated 30.10.2012 passed by the Deputy Collector and SDO, Ponda. The said tenancy revision application came to be dismissed on 04.12.2015. The petitioner challenged the said order by filing Writ Petition no.334/2016. Said Writ Petition came to be dismissed on 30.06.2016.

6. The mundkarial house being very old house and

having developed major cracks to the wall and in dilapidated condition the petitioner informed body of Panchayat and to the Committees of Shantadurga Devi and Betal Devi and it is claimed that by oral consent informed the petitioner to reconstruct the same which otherwise would have collapsed during the rainy season. Petitioner demolished one wall of the house, which had developed cracks but while repairing the side walls also developed big crack and, therefore, petitioner reconstructed the same within the plinth area by demolishing very old mud walls and completed the same.

7. Respondent no.1 filed complaint on 09.03.2010 to the Deputy Collector of Panchayat alleging illegal construction in the property surveyed under no.222/1, Querim. On 26.03.2010, the Deputy Director of Panchayats issued memorandum to the Block Development Officer, Ponda directing to verify the construction on the site and whether the said construction is having awarded permission and if not to submit the report. Block Development Officer submitted report dated 19.07.2010 to the Deputy Director of Panchayat along with panchanama dated 26.05.2010. Report of Block Development Officer does not show his presence while carrying out inspection. The inspection is conducted in his absence.

8. The Deputy Director of Panchayat issued show cause notice to the Village Panchayat, Querim, to take action against alleged illegal construction of the petitioner or show cause as to why the Deputy Director of Panchayat should not assume powers of Panchayat under Section 66(5) of Goa Panchayat Raj Act to take action against the illegal construction. It is alleged that there is no complaint filed to the Panchayat by the respondent no.1. The said powers under Section 66(5) invoked by the Deputy Director of Panchayat directing to issue notice to the Panchayat without hearing the petitioner. It is alleged that in reply the petitioner informed to the Village Panchayat that with their consent he has constructed the mundkarial house which was in dilapidated condition and for the safety of the family.

9. Respondent no.1 complainant filed rejoinder before the Deputy Director of Panchayat. The petitioner filed his written arguments.

10. The Deputy Director of Panchayat was pleased to direct the Village Panchayat, Querim, permission was granted to petitioner to apply for regularisation of the construction of

the said house in the property under Survey No.222/1 of village Querim within the period of 90 days from the date of the order and failing which the Village Panchayat Secretary was directed to take appropriate steps as per the Goa Panchayat Raj Act to resolve the issue. The respondent no.1 aggrieved by the said order of Deputy Director of Panchayat preferred an appeal before the Additional Director of Panchayat, South Goa vide appeal no.MAR-1/41/2017.

11. The Additional Director of Panchayat vide order dated 14.12.2018 allowed the appeal filed by the respondent no.1 and quashed and set aside the judgment and order passed by the Deputy Director of Panchayat and further directed to demolish the illegal construction within a period of 60 days from the date of the order.

12. Petitioner preferred revision against the said order vide Civil Revision Application no.5/2019 before the District Judge, Panaji. The said revision is dismissed.

13. Being aggrieved by the said order of dismissal the petitioner preferred this Writ Petition mainly on the ground that learned Deputy Director assumed power by committing

procedural illegality and in violation of Section 66(5) in initiating the action under sub-section 3 and 4 of Section 66 in absence of any complaint against the illegal construction to the Panchayat. It is further contended that the action taken by the Block Development Officer and referring the case to the Deputy Director of Panchayat in absence of any complaint against the illegal construction made to the Block Development Officer is illegal. The Deputy Director of Panchayat committed an illegality in directing the Block Development Officer to verify the construction on the site and to submit the report when receiving any complaint against the Panchayat for not taking action.

14. It is further submitted that the order of Additional Director of Panchayat is contrary to the observation made for regularisation of illegal construction made by the Hon'ble Apex Court in the case of **Sayyed Muzafir Ali V/s. Municipal Corporation of Delhi** reported in **1995 (SUPPL 4) SCC 426** and thereby committed illegality in setting aside the order of Deputy Director of Panchayat for regularisation. The order of the learned Additional District Judge rejecting the application is arbitrary and perverse and resulted in gross injustice.

15. To support his contention, learned Counsel for the petitioner relied on following cases:

(i) Shri Mithun M. Naik V/s. Village Panchayat of Kundaim & Anr., 2016 (2) Goa L.R. 1 (Bom)(PB),

(ii) Smt. Maria Quiteria Rodrigues alias Maria Rodrigues & Ors. V/s. Village Panchayat of Assagao & Ors., 2018 (2) Goa L.R. 556 (Bom)(PB),

(iii) Mrs. Conceicao Da Costa alias Vonceicao Gomes & Ors. V/s. Mrs. Maria De Sa & Ors., 2018 (2) Goa L.R. 238 (Bom) (PB),

(iv) Syed Muzaffar Ali V/s. Municipal Corporation of Delhi, 1995 SCC (Supp.4) 426.

16. As against this, learned Counsel for the respondent Shri Mulgaonkar submitted that there is no ownership dispute. Tenancy dispute is also concluded up to the High Court. The petitioner can claim regularisation only when there is irregularities committed in his property. The receipt of Shantadurga Devi is already produced in tenancy proceedings. Building regulation of 2010 will apply in the matter. The learned Counsel for the respondent prays for dismissal of petition. The learned Counsel also placed on record certified copy of complaint lodged by complainant to Village Panchayat of Querim dated 03.02.2010 and copies of the same are submitted to other authorities including Assistant Director of

Panchayat, Deputy Collector of BDO Ponda, Mamlatdar of Ponda. It is marked as Exhibit 'X' for the sake of convenience.

17. To support his contentions, learned Counsel has placed reliance on the following judgments :

(i) Shri Chandrakant Rupo Gaude V/s. Village Panchayat of Marcaim & Ors. in Writ Petition No.812 of 2011,

(ii) Mr. Sandesh B. Naik V/s. Mormugao Municipal Council & Anr. in Writ Petitions No.463 & 464 of 2016,

(iii) Shalini Shyam Shetty & Anr. V/s. Rajendra Shankar Patil in Civil Appeal No.5896 of 2010,

(iv) Down Mangor Valley V/s. Mormugao Municipal Council, AIR 2002 Bom 258,

(v) Mr. Nazar da Silva & anr. V/s. State of Goa & Ors. in Writ Petition No.90/2000.

18. I have heard both the parties at length. Perused record and relevant provisions of law. I have also considered citations relied on by the parties.

Section 66(5) of Panchayat Raj Act reads as under :

Regulation of the erection of buildings - (5) Where the Panchayat fails to demolish the building which is erected, added to or reconstructed without the permission of the Panchayat, or in any manner contrary to the rules made under the Act or any conditions imposed in the permission, within a month from the date of the knowledge, the Deputy Director shall assume the powers of the Panchayat under sub-sections (3), (4) and (5) and take such steps as may be necessary for the demolition of such building.

19. The learned Counsel for the petitioner heavily relied on this provision and contended that the Deputy Director shall assume the powers only on failure of Panchayat to take action. It is further contention that there was no complaint before the Deputy Director reporting that Panchayat is not taking any action. However, on production of certified copy of complaint dated 23.02.2010, it is apparent that before filing complaint to Deputy Director the complainant moved an application for taking action to village Panchayat of Querim against the petitioner herein. Copies of the same supplied to concerned authorities. As such, the ground for procedural illegalities raised by petitioner is having no substance. Even on perusal of order filed by Deputy Director he had first directed Block Development Officer to inspect and report. After receipt of report from Block Development Officer further directions to the Panchayat to initiate action were issued. Hence, I do not see any irregularity or illegality in procedure, committed by Deputy Director.

20. So far as his tenancy rights are concerned, they are finally concluded in Writ Petition No.334 of 2016. However, it appears that the Deputy Director of Panchayats in

DDTN/Querim/Ponda/120/2010 granted liberty to file application for regularisation within 90 days. The construction of house in the property surveyed under survey no.222/1. It appears that in view of interim relief the applicant continued to remain in the said house. The learned Additional Director of Panchayat vide his order dated 14.12.2018 set aside the order passed by the Deputy Director of Panchayat. So far as it granted permission to apply for regularisation and further directed to demolish the illegal construction. The said order is under challenge before the District Judge - 2 Panaji in Civil Revision Application no.5/2020.

21. The Additional Director in his judgment recorded that "no documents have been placed on record to substantiate the fact that he was in occupation of structure by placing house tax receipts, water bills, electricity bills, NOC of the landlord, etc.". This observation is totally perverse as the applicant herein placed on record before the Deputy Director the receipts of electricity bills showing connection from 27.08.1987 which apparently shows that house was constructed prior to 1987. He has also placed on record water connection in his name, house tax receipts. The learned Deputy Director of Panchayat taking into consideration the possession since long though declared as

construction is illegal however granted opportunity in the interest of justice to get the structure regularised. Even in the judgment of District Judge - 2 Panaji, the learned Judge has observed that there are water bills, electricity bills, house tax receipts, however further held they do not go to show that his possession over the suit structure is legal one.

22. So far as citation relied on **Shri Mithun M. Naik** (supra) and **Smt. Maria Quiteria Rodrigues** (supra), are concerned, there was duly issued NOC by the authority. Here, the petitioner is claiming oral NOC. In my considered opinion, these citations are not applicable in the present set of facts.

23. Learned Counsel also relied on **Mrs. Conceicao Da Costa** (supra) in support of his contention that repair work carried out by him on existing structure does not amount to reconstruction. Repair works do not fall within the ambit of Section 66 of the Act. This Court confirmed the order passed by the District Judge setting aside the order of demolition issued by the Panchayat and quashed and set aside judgment of Additional Director of Panchayats on the ground that the respondent therein had only carried out the repairs to the cowshed within the plinth area. Such renovation did not

amount to reconstruction and, therefore, no question of obtaining permission in terms of Section 66(1) of the Act nor any necessity arose for seeking its regularisation.

24. As record shows, the electricity connection is issued in the year 1987, certainly the house was existing prior to that or at least since 1987. Whatever construction is carried out which is under challenge is renovation or repair works. Now question further will arise whether the said construction is within plinth area of existing structure or excess to it. The Additional Director has not considered this fact that there was structure existing prior to 1987. In the absence of any document showing that it was constructed with due permission of the Authorities it would be the illegal/unauthorised construction only.

25. In view of this finding that the construction is illegal or unauthorised, there is no need to discuss citation relied on by the Counsel for respondent no.1 as they are in support of his contention that the structure is assessed to house tax does not tantamount to structure being authorised specifically when there is no licence for construction shown or produced on record.

26. As such, in my considered opinion, the order passed by the Deputy Director of Panchayat to the extent granting liberty to the applicant to apply for regularisation was fit and proper. The Additional Director of Panchayats without taking into account and observing contrary to the facts on record that “there are no documents to substantiate that the applicant was in occupation of the structure by placing house tax, water bills, electricity bills, etc.”, is completely perverse.

27. It is now well settled fact that the structure assessed to tax does not tantamount to the structure being authorised. Admittedly there is no licence for construction shown or produced on record. Though there is a permission from the Trust Shantadurga Devi and Betal Devi, there is also ambiguity about the ownership of the land. It appears that while granting compensation the petitioner was allotted a share in compensation of the acquired land.

28. On perusal of judgment of this Court in Writ Petition No.334 of 2016, in respect of tenancy matter, the claim of the petitioner herein was rejected as he was claiming tenancy of the entire Survey No.222/1 and the application was never

amended by claiming at least part of tenancy. On this ground, the petition came to be rejected, but at this stage, there cannot be any declaration in respect of part of the tenancy. Admittedly, complainant is holding half of the land out of Survey No.222/1 which is concluded in tenancy application as well as in Land Acquisition proceedings. The learned Additional District Judge in Land Acquisition Case No.70/1993 held that since the respondent no.2 Devasthan did not contest the matter and the respondent no.1 is in possession and enjoyment of the various fruit bearing trees standing in half of the acquired land, that the applicant was entitled to only $1/4^{\text{th}}$ of the compensation. Besides, another $1/4^{\text{th}}$ of the compensation goes to respondents no.2 Devasthan as the applicant himself admits that the other half is allotted to some Pujari (temple priest). However, half of the land of Survey No.222/1 was, and is still in ownership of Devasthan and some portion the applicant and his predecessor appear to have been in possession since last more than 30 to 40 years. As such, the house built in that land was very much existing in view of the documents placed on record. This aspect is properly considered by the Deputy Director of Panchayat and granted permission to file application for regularisation of the same.

29. I see no reason not to grant such permission to the petitioner. Be that as it may, even if construction is at present treated as illegal the petitioner is residing since more than 30 years.

30. In such circumstances, the order passed by the Additional Director of Panchayats and District Judge - 2 is required to be modified to the extent to grant permission to the petitioner to apply for regularisation. If such application is made within 90 days, the competent authority may decide it on its own merits and, in accordance with law.

31. Hence, I pass the following order :

O R D E R

(i) Petition is partly allowed.

(ii) The judgment and order dated 24.09.2019, passed by the District Judge - 2 in Civil Revision Application No.5/2019 and that dated 14.12.2018 passed by the Additional Director of Panchayats in P.A. No.MAR-I/41/2017 are quashed and set aside.

(iii) Applicant is permitted to file application for regularisation of the structure erected in the property under Survey No.222/1 of village

Querim, Ponda, within 90 days from the date of this order failing which The Sarpanch/Secretary of Village Panchayat Querim, Ponda - respondent no.2 to act as per order of Deputy Director of Panchayat dated 28.04.2017.

SMT. M.S. JAWALKAR, J.

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NITI K

HALDANKAR

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