

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.152 OF 2021

NETRA SANDEEP MAHALE ... Petitioner.

VS

THE PRESIDENT,
SHRI SHANTADURGA DEVASTHAN,
MARCELA AND ANR. ... Respondents.

Mr. Vibhav Rajiv Amonkar, Advocate under Legal Aid Scheme for the Petitioner.

Mr. Yogesh Nadkarni, Advocate for Respondent No.1.

Mr. Sagar Dhargalkar, Additional Government Advocate for Respondent No.2.

Coram: M.S. SONAK, J.

Date: 7th July, 2021

P.C.:

Heard Mr. Vibhav Amonkar, learned Counsel under Legal Aid Scheme who appears on behalf of the Petitioner, Mr. Nadkarni, learned Counsel for Respondent No.1 and Mr. Sagar Dhargalkar, Additional Government Advocate for Respondent No.2-Panchayat.

2. The challenge in this petition is to the orders dated 28.06.2016, 04.12.2018 and 30.07.2019 made by the authorities under the provisions of the Panchayat Raj Act, 1994 (said Act) ordering demolition of the structure put up by the Petitioner in the property of Respondent No.1 on the ground that the same was illegal and unauthorized.

3. Mr. Amonkar, the learned Counsel for the Petitioner submits that the structure was in fact an outhouse attached to House No.110 in the limits of Respondent No.2 Panchayat. He submitted that both the main house as well as the outhouse were existing since last 50 to 55 years i.e. much before the coming into force of the said Act. He submits that only repairs were undertaken to the outhouse, in which the Petitioner has been residing along with her family. He submits that regularization applications have already been made and pending consideration of the same before the appropriate authorities, no demolition could have been ordered or at least ought to be executed. He further submits that the impugned orders are liable to be set aside on these grounds.

4. Mr. Nadkarni, the learned Counsel for Respondent No.1 points out that House No.110 is at a distance of almost 100 meters away from the illegal and unauthorized structure put up by the Petitioner. He submits that there is absolutely no nexus between the new structure now put up by the Petitioner and House No.110. He submits that this is a clear attempt to pass off House No.110 as having some nexus with the illegal and unauthorized structure. He submits that the three authorities, have concurrently rejected such a plea and there is no perversity to warrant any interference with the findings of fact recorded by the three authorities. He, therefore, submits that this petition may be dismissed.

5. Mr. Dhargalkar, learned Counsel for the Panchayat states that the Panchayat, is bound by the orders made by the authorities under the Panchayat Raj Act and will comply with the same, if such orders are upheld.

6. This matter was adjourned from time to time to enable the Respondent No.1 to consider whether some settlement is possible. Mr. Nadkarni, has however on instructions submitted that this is a case of illegal and unauthorized construction put up in Devasthan property. He points out that several other constructions have come up and the Devasthan Committee is making all efforts to restore the Devasthan properties to the Devasthan. He submits that any indulgence in a case of this nature, will, have a cascading effect. Therefore, on behalf of the Devasthan Committee, inability was expressed to extend any indulgence to the Petitioner.

7. Having considered the rival contentions and perused the material on record, in my opinion, there is no case made out to interfere with the impugned orders. All the three authorities have concurrently held that there is no material whatsoever to suggest that this was some existing structure which was only repaired by the Petitioner. All the three authorities have also held that there is no nexus between House No.110 and this structure. Even the Petitioner, has not placed any material in support of her contention that this was merely an outhouse and therefore, may not have been numbered separately, but that it was also an existing structure which was merely repaired. The fact findings recorded by the three authorities suffer from no perversity so as to warrant any interference in the exercise of extraordinary jurisdiction.

8. Besides, this is also not a case where the Petitioner, at the very outset, accepted that some illegal structure had been put up by her and then applied for regularization, assuming that such regularization is

indeed present in such cases. This is a matter where the Petitioner, contested the notices. This is a matter where the Panchayat failed to take action and therefore, the Deputy Director had to step in and make the demolition order. Thereafter, the Petitioner appealed to the Director and finally also urged that the two orders be revised by the District Judge at Ponda.

9. Mr. Nadkarni pointed out that there is no question of regularization of such structures particularly in the absence of any consent from the owner i.e. Respondent No.1. Mr. Nadkarni submitted that this is not a matter wherein the Devasthan Committee can or is willing to give such consents.

10. Having regard to all the aforesaid circumstances, in my opinion, no case is made out to interfere with the impugned orders. This petition is therefore required to be dismissed and is hereby dismissed.

11. At this stage, this Court inquired from Mr. Amonkar whether the Petitioner is willing to give an undertaking to this Court that she will demolish the illegal structure and hand over the site to the Respondent No.1 on her own, in case, she is to be granted substantial time to undertake this exercise. This query was posed, having regard to the submission made by Mr. Amonkar, that the Petitioner has no other place of residence and even her financial means are quite limited. This query was posed also having regard to the current Covid-19 pandemic situation. Mr. Amonkar quite correctly applied for some time to seek instructions from the Petitioner. The matter was accordingly taken up today.

12. Mr. Amonkar, on instructions submits that the Petitioner is willing to give the necessary undertaking, after she was explained in some detail, not only the consequences of suffering an adverse order but also, the consequences of disobedience of an undertaking, if furnished. Mr. Amonkar has now reported that the Petitioner is willing to give such undertaking but has made a request that she should be permitted to once again approach the Respondent No.1 with a plea that her case be considered sympathetically.

13. Therefore, though this petition is being dismissed, it is directed that the demolition order should not be executed upto 01.04.2022, provided, the Petitioner, within four weeks from today, files an undertaking before this Court, that, only she and her family members are presently residing in the suit structure and that she will not transfer, alienate, part with possession or otherwise create any third party right in the suit structure and further that on or before 01.04.2022, she will at her own expense, demolish the structure and restore the site to the Respondent No.1. The demolition shall be deferred upto 01.04.2022, only if such undertaking is filed by the Petitioner within four weeks from today in this Court.

14. Before filing such undertaking, a copy of the same will have to be furnished to the learned Counsel for the Respondents. The learned Counsel for the Respondents will have the liberty to apply to this Court, in case the undertaking is not in the aforesaid terms, or if there is any attempt thereof to wriggle out and at the same time avoid the consequences of the impugned orders.

15. If no such undertaking is filed within four weeks from today, then, the Panchayat and other authorities can proceed with the demolition in terms of the impugned orders.

16. Nothing in this order can obviously come in the way of the Petitioner petitioning the Respondent No.1 i.e. Devasthan Committee from taking a favourable view in the matter.

17. The petition is disposed of in the aforesaid terms. There shall be no order as to costs.

18. The efforts put in by Mr. Vibhav Amonkar who appears on behalf of the Petitioner under the Legal Aid Scheme are appreciated.

M.S. SONAK, J.

jfd/-