

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.223 OF 2020

Shantaram Navso Petkar

Through LR Navnath Shntaram Petkar ... Petitioner

Versus

State of Goa & Ors. ... Respondents

Ms. Asha A. Desai, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Ms. Sapna Mordekar,
Additional Government Advocate for Respondent Nos. 1 to 3.

Mr. S. Saudagar, Advocate for Respondent No.4.

**Coram:- M. S. SONAK &
SMT. BHARATI H. DANGRE, JJ.**

Date:- 18th January, 2021

P.C.

Heard Ms. A. Desai, learned counsel for the Petitioner.
Mr. D. Pangam, learned Advocate General appears along with Ms. S. Mordekar, learned Additional Government Advocate for Respondent Nos. 1 to 3. Mr. S. Saudagar, learned counsel appears for Respondent No.4.

2. Respondent No.5 is duly served. Ms. A. Desai states that affidavit of service will be filed in the course of the day.

3. By our order dated 18th December, 2020, we had made it clear that this petition will be disposed of finally at the stage of

admission.

4. The petition seeks expeditious disposal of Panchayat Appeal No. ADP-II/P.A.112/2015 pending before the Additional Director of Panchayats since the year 2015.

5. The Panchayat in this case has issued show cause notice dated 23rd September, 2015 to the Respondent No.5 to show cause as to why the order of demolition should not be made based on the complaint of the Petitioner. The Respondent No.5 instead of showing cause appealed to the Additional Director of Panchayats challenging the show cause notice itself.

6. The Additional Director of Panchayats way back on 1st October, 2015, granted ex-parte stay. The order, as transcribed in the Roznama reads as follows.

“Heard Adv. for appellant who argued for grant of ex-parte stay of the impugned show cause Notice bearing No. VP/PA/Notice/2015-16/999 dated 23.09.2015 issued by the respondent Panchayat.

I have gone through the pleadings of the appellant in the Appeal Memo, documents on record and also considered the arguments put forth by the Ld. Adv. for the appellant. Considering the facts and circumstance of the case, the impugned show cause Notice dated 23.09.2015 is hereby stayed ex-parte till the final disposal of hearing.

Issue notices fixing the matter for hearing on 29.10.2015 at 3.00 p.m.”

7. As is evident the aforesaid order contain no reason as to why the appeal was being entertained against mere show cause notice. Even though the appeal may be maintainable, at least some reasons to be stated as to why same was being entertained at that stage. Moreover, there were absolutely no reasons as to why the ex-parte stay has been granted. In such matters, the reasons have to be stated even though the reasons may be in brief.

8. As if the aforesaid was not enough, we are quite surprised as to why the matter is pending since 2015. Ms. Desai points out that the Respondent No.5 taking undue advantage of ex-parte stay order has proceeded to complete the illegal construction. Normally, when such stay orders are granted the Authorities should also put the parties seeking such interim relief to terms. Based upon such ex-parte stay order, the parties cannot be permitted to proceed with the construction unless extremely a clear case is made out.

9. Now, it is pointed out that the Petitioner's application for intervention was allowed by the Additional Director of Panchayats by order dated 03.01.2018. This order has been challenged by the Respondent No.5 before the Additional District Judge, Mapusa, by instituting Civil Revision Application No.6/2018. In this case, the Revisional Authority has called for record and proceedings and therefore, the Additional Director of Panchayats is unable to proceed

with the disposal of this appeal.

10. The Revisional Authority has not granted any stay on the proceedings. Therefore, a xerox set of the records could have been called instead of calling for original record and proceedings. In fact, in the matter of this nature, the Respondent No.5 should have produced all the necessary copies of the record.

11. In any case, we request the Revisional Court to immediately return the records to the Additional Director of Panchayats by placing on record a xerox set, if it so requires. The Revisional Authority should also endeavour to dispose of the revision application as expeditiously as possible and in any case within six weeks from today.

12. The Revisional Authority should forthwith return the records of the Additional Director of the Panchayats and since there is no stay on the proceedings, the Additional Director of Panchayats should dispose of the appeal on its own merits and in accordance with law as expeditiously as possible and in any case within two months from today.

13. We make it clear that we have not gone into the merits and demerits of the matter and therefore, it will be for the Additional Director of Panchayats to dispose of the appeal on its own merits and in

accordance with law.

14. Ms. Desai states that the authenticated copy of this order will be filed before the Additional Director of Panchayats as well as the Revisional Authority within six weeks itself.

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

16. All concerned to act on the basis of the authenticated copy of this order.

SMT. BHARATI H. DANGRE, J.

M. S. SONAK, J.

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