

IN THE HIGH COURT OF BOMBAY AT GOA

WP No. 431 of 2019

1. Mrs. Suzan Pinto,
2. Mr. Joseph Pinto,
Husband of Suzan Pinto,
Both R/O H. No. 39, Laymati,
Davorlim, Salcete, Goa. Petitioners

V e r s u s

1. Mr. Michael Pinto,
Major of age,
R/o H. No. 507,
Calcondem, Margao-Goa,
Presently residing at
Michbern Villa,
House No.908,
Lane 2, Vidya Nagar Colony,
Aquem Alto, Margao,
Salcete-Goa- 403601.
2. Chief Officer,
Margao Municipal Council,
Margao – Goa. Respondents

Mr. S. D. Padiyar, Advocate for the Petitioners.
Mr. C. Padgaonkar, Advocate for the Respondent no.1.
Mr. C. A. Coutinho, Advocate for the Respondent no.2.

CORAM: DAMA SESHADRI NAIDU, J.
Date: 8th March 2021.

ORDER:

The Petitioner and the first respondent are relatives. They have civil disputes between them. Those disputes concern certain immovable properties. In August 2016, the petitioner complained to the second respondent-Municipality that the first respondent had been indulging in illegal construction. Acting on that complaint, the next month, the

Municipality issued a show-cause notice to the first respondent. That show-cause notice also contained a direction to stop work.

2. But, once again, in in September 2016, the petitioner complained to the Municipality that despite the earlier show cause notice, the first respondent had been unrelenting. The petitioner specifically alleged that the first respondent started a second construction at some other place on the same property. Then this has led to a second show-cause notice, dated 29/9/2016.

3. On 23/3/2017, the first respondent gave a common reply, it seems, to both show cause notices. Eventually, the Chief Officer of the second respondent-Municipality passed an order, termed final notice, on 30/6/2017, directing the first respondent to demolish the structures in 15 days. Aggrieved, the first respondent challenged that order before the Municipal Appellate Tribunal. As the Tribunal could not take up the appeal for reasons not germane here, the matter was placed before the District Court, which is empowered to exercise the powers of the Municipal Appellate Tribunal under certain circumstances. That has not been in dispute.

4. Finally, through its order, dated 9/1/2019, the District Court set aside the Chief Officer's order, dated 30/6/2017, and remanded the matter for fresh consideration. Then, it was the petitioner's turn to be aggrieved; so he has filed this Writ Petition.

5. Shri Padiyar, the learned counsel for the petitioner, has submitted that the impugned order is perverse. According to him, the District Court required the Municipal authorities to verify the title as if it were a civil court before it could act on any complaint against an illegal construction. According to him, the District Court has erred, while exercising its appellate powers, in holding that the complainant must have the *locus* or standing to maintain a complaint against an illegal construction. To elaborate, Shri Padiyar has also pointed out that the first respondent did admit that he did not have the necessary permissions. Faced with that

admission, the Chief Officer has not been tasked with providing specific reasons why the structures should not be demolished. According to Shri Padiyar, the District Court's observations that it is probably a case of regularization rather than illegal construction. That observation, according to Shri Padiyar, is gratuitous and uncalled for. He stresses that it is not the first respondent's case that he has applied for regularization at any point. In the end, the learned counsel has submitted that even if the first respondent has taken advantage of section 184 (6) and (7) of the Goa Municipalities Act, still the structures raised under the deemed permission must not be illegal.

6. In the end, the learned counsel has submitted that the order the Chief Officer passed under section 184 (8) is a mere administrative order, and it requires no elaboration. To support his contentions, he has relied on (i) *Sopan Maruti Thopte v. Pune Municipal Corporation*, 1996 AIR (Bom) 304; (ii) *Cantonment Board v. Mohanlal*, (1996) 2 SCC 23.

7. Shri C. Pagaonkar, the learned counsel for the first respondent, has submitted that the show-cause notice was issued by one authority and that authority himself received the reply. But, eventually, some other authority passed the impugned order of demolition. According to the learned counsel, the practice the officials adopted infarcts the principles of natural justice. To elaborate, Shri Padgaonkar has submitted that the authority that has heard alone must decide.

8. The learned counsel has also contended that the order passed by the Chief Officer is cryptic and devoid of any reasons. That is, the authority has failed to given adequate opportunity to the first respondent; not even has he been permitted to file any written arguments. Shri Padgaonkar has stressed that the District Court has noted the fact that the structures have been existing and any repairs done only require regularization. So, he supports the impugned order and asserts that the District Court remanded the matter to the primary authority for a limited purpose: to give to the respondent adequate opportunity.

9. Shri C. A. Coutinho, on the other hand, representing the second respondent-Municipality, submits that the authority concerned has adhered to the statutory scheme and passed the order. Therefore, the District Court ought not to have interfered with it.

10. Heard Shri Padiyar, the learned counsel for the petitioners; Shri Padgaonkar, the learned counsel for the first respondent; and Shri Coutinho, the learned counsel for the second respondent-municipality.

11. Indeed, I concur with the District Court's conclusion but not with the reasoning.

12. First, as to any illegal structure, any person can complain to the civic authority. The question of *locus* or standing does not arise once the structure is found illegal; that is, if it has been raised without the requisite permission from, say, the Municipal authorities.

13. Second, in cases of illegal construction, the question of title need not be gone into. A person may have been constructing on his own property, and a neighbor may have no concern on the question of title to the property. Yet he has every right to complain to the authorities about any illegality being committed by the other person. Thus, neither standing nor title is germane to the adjudication before any civic authority about an illegal construction.

14. Third, the District Court has also found fault with the Chief Officer's passing one common order on two show-cause notices. I am afraid even this observation is onerous. Incidentally, the very first respondent has given a common reply to both the show-cause notices. And it may be not be an unusual practice even for this Court to pass common orders or judgments, in matters of similar nature, especially involving the same parties. The District Court's objection on that point is hyper-technical, if ever sustainable.

15. Fourth, the District Court, I reckon, is also wrong in jumping to a conclusion that "probably this case could be a cause of regularization and not illegal construction." According to it, constructions which did not

change the nature of the structure, which do not change the plinth area, and which do not affect the public at large can definitely be regularized. But that is beside the point. Here, the first respondent has not even applied for regulations, nor has he pleaded to that effect. It is nobody's case, so to say.

16. Fifth and final, the District Court has observed that the first respondent has not been given an opportunity to advance his arguments. According to it, the Chief Officer did not fix the matter even for filing written arguments. But again, that observation is off the target. In this context, we may refer to Section 184 (8), which reads thus:

184. Notice of construction of building— (1) The expression “to construct a building” throughout this Chapter includes—

...

(6) If the Chief Officer fails to issue an order under clause (c) or (d) of sub-section (4) within the period prescribed in that sub-section, the person giving notice under subsection (2) shall, after the expiry of the said period, be entitled to proceed with the work in respect of which such notice has been given under sub-section (2), in the manner specified in such notice, provided that such manner is not inconsistent with any provision of this Act or any rule or bye-law for the time being in force thereunder.

(7) No person who becomes entitled under sub-section (4), (5) or (6) to proceed with any intended work of which notice is required by sub-section (2), shall commence such work after the expiry of the period of one year from the date on which he first became entitled so to proceed therewith, unless he shall have again become so entitled by a fresh compliance with the provisions of sub-sections (2) to (6).

(8) If any person begins any construction of a building of which notice is required to be given under sub-section (2)—

(i) without the permission of the Chief Officer under sub-section (4) or of the Council under sub-section (5), save as otherwise provided under sub-section (6); or

(ii) having received permission under clause (a) of sub-section (4), contrary to the plans and information furnished under sub-sections (2) and (3); or

(iii) having received permission under clause (b) of sub-section (4), contrary to the conditions imposed under that clause or contrary to the plans and information submitted under sub-

sections (2) and (3) in so far as such plans and information are not modified by such conditions; or
 (iv) contrary to the provisions of sub-section (6), when construction is begun under that sub-section, the Chief Officer may, by a written notice, require such person to stop such construction and to alter or demolish any construction already made as specified in the notice. If, within fifteen days from the service of such notice for demolishing any such construction, the work of demolishing it is not commenced, the Chief Officer may cause such work to be done and the expenses incurred therefor shall be recoverable from the person concerned in the same manner as an amount due on account of a property tax.”

17. A Division Bench of this Court in *Sopan Maruti Thopte* has observed that where erection of a new building is without sanction, it would be unauthorized. In such a case, “a show cause notice along with a statement in writing” would be sufficient compliance of the Act and principles of natural justice. Personal hearing under section 351(1) does not have to be given in every case before demolishing the premises.

18. The facts of *Mohanlal* reveal that the appellant issued a notice to the respondent for demolition of an illegal structure. The 1st respondent received the notice, but he carried out further construction. The appellant, then, issued a second notice, specifying a date for demolition. So, under the threat of demolition, the 1st respondent replied. After examining the reply, the appellant’s area committee resolved to give 15 days to the 1st respondent to comply with its final order or notice. Calling this action in question, the respondent filed a writ petition before the High Court. A Division Bench has held that “principles of natural justice require that necessary notice and opportunity of hearing be given and after consideration of the representation speaking order is required to be passed”. According to it, as the appellant has not passed a speaking order, its proposed action is bad in law.

19. As is the case here, in *Mohanlal*, too, the respondent took a plea that he went ahead with the construction *bona fide* and that he would not

demolish it. Instead, he requested the authority to reconsider the matter and withdraw the notice. In other words, he admitted that he had carried on illegal construction without compliance with law. So the question is whether inquiry in that behalf is required to be conducted. In this factual backdrop, the Supreme Court has held that the High Court was not right in its conclusion that an independent enquiry requires to be held after the notice was issued and the reply thereof was given by the respondent. According to the Apex Court, put on notice, the respondent replied. Then, the Board considered the representation and was not inclined to accede to the respondent's request. "Accordingly, the resolution passed by the Cantonment Board cannot be faulted as violative of the principles of natural justice."

20. So, as held by this Court in *Sopan Maruti Thopte* and the Supreme Court in *Mohanlal*, the District Court's finding on the primary authority's violating the principles of natural justice, too, fails.

21. Here, if we look at the record, the first respondent's common reply to both the show-cause notices is cryptic and leaves much to be desired. That reply has not spelt out any justification for the first respondent's carrying on the illegal construction. The reply is rather dismissive. But in the appeal filed, initially, before the Municipal Appellate Tribunal and, later, before the District Court, the first respondent has spelt out the grounds of justification.

22. First, he has pleaded that the structures have been preexisting. Second, he has contended that he obtained permission, but could not complete the construction on time. Third, the first respondent has, perhaps in the alternative, contended that he had applied to the Municipal authorities for permission to carry out the defects, but they did not respond. Then, he took advantage of the deeming provision under section 184 (6) and (7) and went ahead with the construction.

23. These are the aspects that were unavailable for the Chief Officer passed the final order. Therefore, we cannot blame the Chief Officer for the order he had passed based on the material on record. Nevertheless, it is a question of demolition and the position may be irreversible unless there is adjudication based on what was brought on record later. So, in the light of the grounds the first respondent has raised in the appeal, I reckon it is a matter that requires re-consideration at the primary level.

24. For the above reasons, I am disinclined to interfere with the District Court's remanding the matter to the Chief Officer. But the observations the District Court made in justification of that remand stand nullified, as I have already explained.

25. The Writ Petition is disposed of. No order as to costs.

26. The petitioner's counsel, however, wants the Court to fix a time frame for the Chief Officer to dispose of the proceedings. The learned counsel for the municipality assures the Court that the authority will hear and dispose of the matter in three months.

It is open for the parties to file any pleadings or documents before the Chief Officer, to enable him to adjudicate the issue.

DAMA SESHADRI NAIDU, J.

AP/-

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