

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.. 534 OF 2019

ANANT V. LOTLIKAR

...Petitioner

Versus

**STATE OF GOA, THR. CHIEF ...Respondents
SECRETARY AND 2 ORS.,**

Mr. Sahish Mahambrey, *Advocate for the petitioner.*

**Mr. V. Sardesai, *Additional Government Advocate for the
respondent No.1.***

Mr. Menino Pereira, *Advocate for the respondent No.3.*

CORAM: MANISH PITALE, J.

DATED: 27th September, 2021.

P.C.:

1. Heard learned Counsel for the rival parties.
2. A short point arises for consideration in this petition. It is contended on behalf of the petitioner that the impugned order dated 14/03/2019 passed by the respondent No.2 deserves to be set aside on the ground that the petitioner was not effectively heard by the respondent No.2 i.e. the Appellate Authority. It is the contention of the petitioner that he had filed an appeal before the respondent No.2, being aggrieved by an order passed by the respondent No.3-Authority rejecting his application for regularization of construction. Although, initially notice dated

28/12/2018 was issued fixing the date of hearing of the appeal as 14/01/2019, when the petitioner appeared before the respondent No.2 – Board i.e. Appellate Authority on the said date, he was informed that the hearing had been concluded on 11/01/2019 itself. The notice for the said date of hearing fixed for 11/01/2019 was according to the petitioner received in the evening of 14/01/2019. On this short ground, it is submitted that the impugned order may be set aside and the matter may be remitted to the respondent No.2 – Board for a fresh hearing.

3. In this petition, the respondent No.4 was added as a party, being the original complainant who had claimed that the petitioner had indulged in unauthorized construction. Notice has been served to the said respondent but he has chosen not to appear before this Court.

4. The respondent Nos.1 and 3 are already served. The respondent Nos.1 and 3 are represented through Counsel while none appears on behalf of the respondent No.2 -Appellate Board.

5. The learned Counsel appearing for the said respondents was unable to demonstrate before this Court that the notice subsequently issued advancing the date of hearing to 11/09/2019 was indeed served on the petitioner before the said date of hearing.

6. Therefore, it becomes apparent that the impugned order has been passed in the absence of the petitioner and that, it violates principles of natural justice.

7. On this basis, the impugned judgment deserves to be set aside and the petitioner deserves to be granted an opportunity to effectively place his case before the respondent no.2- Board for a decision on his appeal.

8. In view of the above, the Writ Petition is partly allowed. The impugned judgment and order passed by the respondent no.2 – Appellate Board is quashed and set aside. The matter is remitted back to the respondent no.2 for a fresh hearing on the appeal filed by the petitioner. The respondent No.2 shall consider the contentions of the petitioner on merits and dispose of the appeal in accordance with law.

9. Needless to say, contentions of the rival parties on merits are kept open. The petitioner shall place a copy of this order of this Court before the respondent No.2 – Board for further action in the matter.

MANISH PITALE, J.