

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.559 OF 2014

Shri Harish S. Naik,
C/o Manohar Sada Naik,
Age 63 years,
r/o H.No.402, St. Inez Alto,
Dr. Gama Pinto Road,
Panaji Goa.

... Petitioner

Versus

1. Corporation of City of Panaji
through its Commissioner,
having office at Panaji Goa.
2. North Goa Planning and
Development Authority,
Through its Member Secretary,
having office at
Mala, Panaji Goa.
3. State of Goa,
Through Chief Secretary,
Secretariat, Porvorim,
Bardez Goa.
4. Shri Gurudas Tari,
major in age,
Residing at H.No.212,
Near Police Quarters,
Altinho, Panaji Goa.
5. Kamal Karapurkar
major in age,
Residing at H.No.211,
Near Police Quarters,

Altinho, Panaji Goa.
 5(a) Mr. Govind Usapkar,
 major in age,
 r/o H.No.211,
 Near Police Quarters,
 Altinho, Panaji Goa.

5(b) Mr. Sanjay Usapkar,
 major in age,
 r/o H.No.211,
 Near Police Quarters,
 Altinho, Panaji Goa.

... Respondents

Mr. Pranay A. Kamat, Advocate for the Petitioner.

Mr. A. D. Bhobe, Advocate for Respondent No.1.

Mr. H. D. Naik, Advocate for Respondent No.2.

Mr. S. P. Munj, Additional Government Advocate for Respondent No.3.

Mr. R. Menezes, Advocate for Respondent Nos. 4 and 5(a) and 5(b).

**Coram:- M. S. SONAK &
 SMT. M. S. JAWALKAR, JJ.**

Date : 5th April 2021

Oral Judgment (Per M. S. Sonak, J)

Heard Mr. Pranay A. Kamat, learned counsel for the
 Petitioner, Mr. A. D. Bhobe, learned counsel for Respondent No.1,
 Mr. H. D. Naik, learned counsel for Respondent No.2, Mr. S. P. Munj,
 learned Additional Government Advocate for Respondent No.3 and Mr.
 R. Menezes, learned counsel for Respondent Nos. 4, 5(a) and 5(b).

2. The Petitioner seeks enforcement of the final notices dated 28th February 2012 which are to be found at pages 15 and 16 of the paper book and which concern unauthorized structures put up by Respondent Nos.4 and legal representatives of Respondent No.5 i.e. Respondent Nos.5(a) and 5(b).

3. As of today, there is nothing to suggest that the final notices dated 28th February 2012 have not attained finality. Mr. Bhobe, learned counsel for the Corporation, submits that these notices have in fact attained finality.

4. Accordingly, we see no good ground to postpone the implementation of the final notices which remained to be implemented since the year 2012. We direct the Respondent No.1 to implement these final notices within a period of six weeks from today at the latest. Further, we direct the Deputy Collector or Public Works Department to render all assistance to the Respondent No.1 to carry out the demolition without putting forward the excuses like non availability of contract or technical staff. We refuse to accept that the Department like PWD has no staff to carry out the works of this nature.

5. Mr. Munj, learned Additional Government Advocate submits that it is not as if no technical staff is available with the Public Works Department but since the contract with the demolition squad has

ended, there is no demolition squad available. He submits that the process for issuing a fresh contract to the demolition squad is on. If this is so, it is clear that the PWD has sufficient technical staff to carry out this demolition. Just because the contract with the demolition squad has expired, this does not mean that the Deputy Collector or PWD cannot shirk its responsibilities.

6. Mr. Menezes submits that the Respondent No.5 has applied for regularisation. There are no details on this aspect before us. Mr. H. D. Naik, learned counsel for Respondent No.2 points out that the application for regularisation was already rejected by the concerned Authorities earlier. Mr. Menezes points out that earlier application was under general law and now the application has been made in special law. According to us, the Respondents cannot frustrate the final orders made in the year 2012 in this matter.

7. In any case, quite recently the Hon'ble Supreme Court while dismissing the Petition(s) for Special Leave to Appeal (C) No.4135/2021 in the context of a demolition order which was made in the year 2001 but remained to be executed, made the following observations.

“Heard learned counsel for the petitioner.

The violation of municipal regulations on construction must be met with an iron fist. That deviation from the regularisation by compounding is only an exception. Only deviations that are bonafide or when the benefit of demolition would be less compared to the disadvantage

suffered, can the exception be applied. We do not find any ground to interfere. The demolition was ordered in the year 2001. Till this day, the same is being prolonged. Hence, we decline to interfere with the judgment and order of the High Court. The Special Leave Petition stands dismissed.

Pending application(s), if any, stands disposed of accordingly.”

8. For all the aforesaid reasons, we make the rule absolute in this petition and direct the Respondent No.1 to implement/execute its final notices dated 28th February 2012. Further, we direct the State of Goa through the Deputy Collector and PWD to render all assistance to the Respondent No.1 to implement the aforesaid final notices latest within a period of six weeks from today. Necessary compliance reports will have to be filed by the Respondent No.1 as also the Chief Engineer of the PWD and Deputy Collector before this Court by 28th June 2021.

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

SMT. M.S. JAWALKAR, J.

M.S. SONAK, J.

at*

TARI AMRUT
NAGESH

Digitally signed by TARI AMRUT
DN: cn=TARI AMRUT, o=TARI AMRUT, email=tari.amrut@tariraj.org, c=IN