

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.270 OF 2021

Mr. Vijay Harmalkar,
Son of Mahadev Harmalkar,
40 years of age
Indian National, Business,
H.no – 294/C/2, Sonar wada,
Verla, Canca
Bardez Goa.

... Petitioner

Versus

Village Panchayat of Verla Canca
Through its Secretary
Having office at Verla, Canca,
Bardez Goa.

...Respondent

**WITH
WRIT PETITION NO.271 OF 2021**

Mrs. Pratima Pilankar
Wife of Anil Pilankar
46 years of age
Indian national, Business
H.no – 346/E, Sonar wada,
Verla, Canca
Bardez Goa.

...Petitioner

Versus

Village Panchayat of Verla Canca
Through its Secretary
Having office at Verla, Canca,
Bardez Goa.

...Respondent

**WITH
WRIT PETITION NO.272 OF 2021**

Mrs. Prema Hari Bicholkar (deceased)
Wife of Hari Bicholkar

Represented through her legal representatives

i) Mr. Laxmikant Hari Bicholkar

Son of Hari Bicholkar

Age 50 years, Indian national

Married, Business

and his wife

ii) Mrs. Dipali Laxmikant Bicholkar

40 years of age, Married, Housewife,

Indian national

Both residents of House no.441,

Near Rashtroli Temple, Abbas wada

Canca, Bardez, Goa.

...Petitioners

Versus

Village Panchayat of Verla Canca

Through its Secretary

Having office at Verla, Canca,

Bardez Goa.

...Respondent

Mr. J. J. Mulgaonkar, *Advocate for the Petitioners.*

Mr. A. D. Bhobe, *Advocate for the Respondent.*

CORAM: M. S. SONAK, J

DATED: 28th July 2021

ORAL ORDER :

1. Heard Mr. J. Mulgaonkar, learned counsel for the Petitioner in all these petitions, and Mr. A. D. Bhobe learned counsel for Respondent -Panchayat.

2. Having regard to the commonality of the issues involved, it is only appropriate that all these petitions are disposed of by a common judgment and order.

3. In all these petitions the challenge is to the orders dated 11.02.2020 made by the Panchayat ordering the demolition of the Petitioners' structures. The Petitioners' appeals against the same were dismissed by the Additional Director of Panchayats on 24.02.2021. The Petitioners' revisions against the orders of the Additional Director were dismissed by the District Judge, Mapusa on 14.07.2021. Hence the present petitions.

4. Mr. Mulgaonkar learned counsel for the Petitioners submits that in Writ Petition Nos.270 of 2021 and 271 of 2021, the show-cause notice had indicated the survey number in which the alleged illegal structures was to be found as 102/27. He submits that however the demolition has been ordered in respect of structures in survey No.102/7. He submits that this constitutes a serious flaw in the impugned demolition orders because this implies that no show-cause notice was served on the Petitioners in respect of the structures in survey No.102/7.

5. Mr. Mulgaonkar submits that even otherwise the copies of the documents like resolution, inspection report etc., were never furnished to the Petitioners along with the show-cause notice. This deprives the Petitioners of reasonable opportunity. He relies on *Narayan Megha Gohil Vs Municipal Corporation of Greater Bombay*¹ and *Biecco Lawrie Ltd. & Anr vs State of West Bengal*² in

¹ (1994) 1 Mah LJ 587

² (2009) 10 SCC 32

support of the contention that non-furnish of relevant documents constitutes a breach of principles of natural justice.

6. Mr. Mulgaonkar finally contended that the structures are old existing structures and there is nothing illegal about them. He also submitted that the structures are away from the road widening area and will cause no obstructions as was alleged by the Panchayat.

7. Mr. Mulgaonkar submits that in Writ Petition No.272 of 2021, there may not be an error regards survey number but other contentions as aforesaid squarely apply. He submits that in this case the reply was filed but the demolition orders proceed on the basis that no such reply was filed. He submits that this is also a serious infirmity in the issuance of demolition orders.

8. For all the aforesaid reasons, Mr. Mulgaonkar submits that the impugned orders warrant interference.

9. Mr. Bhole learned counsel for the Panchayat submits that the structures which have been ordered to be demolished have come up along the highway which is sought to be widened, beautified, and provided with infrastructure amenities. He submits that there is a Public Interest Litigation pending in this Court where the progress along the stretch is being monitored. He submits that the structures are wholly unauthorized and without any permission from any authorities. He submits that such structures are put along the roadside for commercial purposes, again without any permission

from any authorities. He submits that several such structures have unauthorisedly mushroomed and if the same is allowed to continue, then, the completion of the public project will be very difficult. He submits that the Government agencies have already commenced the work at stretches where there are no similar illegal structures. He, therefore, submits that these are not cases where any indulgence can be shown to the Petitioners.

10. Mr. Bhole submits that all contentions which are now sought to be raised by Mr. Mulgaonkar have been considered by the Additional Director of Panchayats and the District Court. He submits that there was a typographical error in mentioning survey number in the show-cause notice but this has caused no prejudice whatsoever to the Petitioners because it is not their case that there is no structure in the survey number now stated in the demolition orders or that they have any permissions or legal authorities to put up the structures in the said survey number. He submits that there is no obligation to provide copies of the resolution of the Panchayat under which the show-cause notice was issued. He submits that opportunity was granted to the Petitioners to produce the permissions, licenses, etc., if any, to show that the structures are indeed legal and authorized. He submits that from the position at the site, the contention, that these are some old existing structures is easily belied. He submits that the replies filed to the show-cause notice in all three cases were identical. He submits that the

structures are in road widening areas and no permissions can ever be granted for such structures.

11. For all these reasons, Mr. Bhobe submits that these petitions may be dismissed.

12. The rival contentions now fall for my determination.

13. The contention-based upon the incorrect mentioning of survey number in the show-cause notice has been considered in some detail by the Additional Director of Panchayats and the District Court. There is no perversity in the reasoning adopted by the two authorities concurrently. Even otherwise, on account of a typographical error in the show-cause notice referring to survey No.102/27 instead of 102/7, has not caused any prejudice whatsoever to the Petitioners. Based upon such a typographical error, there is no case made out to interfere with the demolition orders.

14. In this case, there is absolutely no material to hold that the Petitioners were in any manner misled on account of a slight typographical error in the show-cause notice. The Petitioners filed a detailed response and from the response, it cannot be said that any prejudice was caused to the Petitioners. Even before the Additional Director of Panchayats or the District Court, the Petitioners produced no evidence whatsoever nature that their structures in survey No.102/7 were in any manner legal or authorized.

15. The contention that these are old structures is vague and belied by the record. These structures have been put up along the roadside for commercial purposes without any permission from any authorities. Such structures, which are wholly illegal and unauthorized cannot claim any immunity now that the State agencies are widening and beautifying the entire road stretch.

16. There is also no merit in the contention about the violation of principles of natural justice. Full opportunity was granted to the Petitioners and full opportunity has been availed of by the Petitioners. There can be nothing like the mere technical breach of principles of natural justice. At least some prejudice has to be demonstrated by the Petitioners. The Petitioners have demonstrated no prejudice whatsoever. All that they were required to produce was some authority in support of their structures, which, despite the opportunity, the Petitioners have failed to produce. The Petitioners, therefore, cannot complain of any violation of principles of natural justice.

17. In *Narayan Gohil* (supra), this Court has held that Section 351 of the Bombay Municipal Corporation Act prescribes giving of notice in writing and the opportunity of hearing to the affected party before any action is taken against unauthorized construction. In the present case, the show-cause notice was issued to the Petitioners and the Petitioners have filed a detailed response. It is only on consideration of the detailed response the demolition orders came

to be made. Therefore, the decision in *Narayan Gohil* (supra) can be of no assistance to the Petitioners.

18. *Biecco Lawrie Ltd.* (supra) is concerned with the inquiry in departmental proceedings. In that context, the observations have been made about furnish of adverse material to the employee before any adverse action is taken. Such an issue is not at all relevant in the present case. In this case, the show-cause notice was issued to the Petitioners and the Petitioners have filed a detailed response. Despite the opportunity, the Petitioners failed to produce any documents to establish the legality of their structures. The decision in *Biecco Lawrie Ltd.* (supra) can also be of no assistance to the Petitioners.

19. In Writ Petition No.272 of 2021, the demolition order only records that the reply of the Petitioner has not reached the office of the Panchayat. This is suggestive of the fact that the reply was not filed well within the prescribed period. Be that as it may, if the reply of the Petitioners in Writ Petition No.272 of 2021 is perused then, it is virtually a verbatim copy of the reply in the remaining two writ petitions. Such replies have been considered in detail by the Panchayat. Therefore, even in Writ Petition No.272 of 2021, it cannot be said that there is any breach of principles of natural justice and fair play. Besides all contentions of the Petitioner in Writ Petition No.272 of 2021 have also been considered by the Additional Director of Panchayats and District Court.

20. This is a case where illegal structures have mushroomed in open space and road widening areas. As a result of such structures, the public project of widening and beautifying highways is being obstructed. Mr. Bhobe pointed out that the work has started in areas that are free of encroachment but such work is hampered to some extent because of illegal structures that have mushroomed. The Panchayat, in this case, was justified in taking action and issuing demolition orders.

21. There is no illegality in the orders concurrently made by the Panchayat, Additional Director of Panchayats and District Court. Accordingly, there is no merit in these petitions which are liable to be dismissed and are hereby dismissed.

22. Mr. Mulgaonkar prayed for a stay on the enforcement of the demolition orders. Normally such a prayer could have been considered for a reasonable period. However, Mr. Bhobe pointed out that any stay would further hamper the completion of the public project which is already underway. Accordingly, the prayer for stay is not considered.

M. S. SONAK, J.