

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO.858 OF 2019**

Ramesh Bucca Amonkar,  
Son of late Bucca Amonkar  
aged about 68 years, Married,  
r/o H. No. 347, Buticas,  
Navelim, Salcete, Goa.

.... Petitioner.

Versus

1. The Village Panchayat of Navelim,  
Represented by its Secretary/ Sarpanch,  
Navelim, Salcete, Goa.

2. Serolina Marcelina Francisca Luis E  
Rodrigues alias Mrs. Celina Rodrigues  
And her husband Mr. Pedro  
Francisco Rodrigues  
(Since both deceased)  
Through their legal heirs  
a. Mr. Kennedy Rodrigues,  
Aged about 43 years and his wife,

b. Mrs. Hemelda Rodrigues  
Aged about 34 years,  
Both resident of H. No 52,  
Comba, Margao-Goa.

c. Mrs. Melva Rodrigues e Gonsalves,  
Aged about 45 years and her husband,

d. Mr. Manuel A. Gonsalves,  
Aged about 64 years,  
Both resident of H. No 52,  
Comba, Margao-Goa.

e. Mrs. Mina Rodrigues e Gonsalves,  
Aged about 40 years and her husband,

f. Mr. Joao Carlos. Gonsalves alias  
John Gonsalves,  
Aged about 52 years,  
Both resident of H. No 52,  
Comba, Margao-Goa.

3. Mr. Umesh Narayan Falldessai,  
Son of Narayan Falldessai,  
Aged about 71 years, Married,  
retired, r/o H. No. 348, Buticas,  
Navelim, Salcete, Goa.

.... Respondents.

**Mr. J.A. Lobo**, *Advocate for the Petitioner.*

**Mr. C.A. Ferreira**, *Advocate for Respondents No.2(c) and 2(d).*

**Mr. Byron Rodrigues**, *Advocate dfor Respondents No.2(e) and 2(f).*

**Coram : M.S. Sonak, J.**

**Dated : 20<sup>th</sup> June, 2021.**

**ORAL ORDER:-**

Heard Mr. Lobo for the Petitioner, Mr. C.A. Ferreira for Respondents No.2(c) and 2(d) and Mr. Byron Rodrigues for Respondents No.2(e) and 2(f).

2. The challenge in this Petition is to the demolition order issued by the Panchayat dated 27/12/2013, the order of the

Additional Director of Panchayats dated 11/9/2017 and the order of the learned District Judge, South Goa at Margao dated 22/1/2019, upholding the order of demolition of the Petitioner's structure.

3. Mr. Lobo, the learned Counsel for the Petitioner submits that there is ample evidence on record to establish that the structure was existing since the year 1955 or thereabout. He submits that the Respondents/complainants, taking law in their own hands, pulled down the structure. He submits that the Petitioner, therefore, wrote a letter to the Panchayat, seeking permission to repair the structure or rather restore the structure to its original condition by, in no manner, extending the plinth area. Since there was no response from the Panchayat, the Petitioner undertook the repairs/restoration work. He submits that there was nothing illegal or unauthorized in the action of the Petitioner and the Respondents/complainants cannot be permitted to take undue advantage of their own highhanded and illegal action.

4. Mr. Lobo submits that the Panchayat has committed an error apparent on the face of the record in suggesting that the Petitioner has encroached upon an area in excess of the existing plinth. He submits that this is not at all a case of any encroachment, particularly since there is overwhelming evidence

to establish the existence of the structure since 1955 or thereabout. Mr. Lobo submits that having regard to the patently illegal approach on the part of the Panchayat, its demolition order warrants interference.

5. Finally, Mr. Lobo submits that the learned District Judge has approached the matter as if some revisional powers were being exercised. He submits that the learned District Judge should have in fact exercised appellate power and gone in all the issues which are required to be addressed in an appeal. Mr. Lobo submits that for all the aforesaid reasons, the impugned orders are liable to be set aside.

6. Mr. Ferreira and Mr. Rodrigues defend the impugned orders based on the reasoning reflected therein. They submit that this is a case where a new structure was put up by the Petitioner, without bothering to seek any permission from any authorities. They submit that in these circumstances, the demolition order was rightly issued by the Panchayat and the same was rightly and concurrently upheld by the Additional Director of Panchayats and the learned District Judge.

7. Rival contentions now fall for my determination.

8. Even if all the contentions of Mr. Lobo, particularly, all his versions of facts are accepted as correct, it is clear that after the so-called alleged demolition of the existing structure by the Respondents/complainants, the Petitioner did not wait for the response of any permission to either repair or restore the structure to its original condition. The Petitioner proceeded on the basis that it is sufficient to simply intimate the Panchayat that he wishes to repair or restore the structure and thereafter, proceeded with such repairs and restoration works. There is no provision under the Goa Panchayat Raj Act, 1994 (said Act) for some deemed permission where the Panchayat fails to take any action on a pending application.

9. Besides, in this case, if the version of the Petitioner that the entire structure was highhandedly demolished is to be accepted, then, it is not a case of simple repairs. The Petitioner then was duty-bound to apply for proper permission and thereafter to await for such proper permission before the Petitioner could put up the structure, which is now ordered to be demolished.

10. No doubt, it is open for the Petitioner to take out appropriate proceedings before the Civil Court or other competent Courts, to complain about the alleged highhandedness on the part of the Respondents/complainants. But, merely

because the Respondents/complainants are alleged to have acted in a highhanded manner by taking law in their own hands, that cannot be an excuse for the Petitioner to act likewise and proceed to put up a structure in the guise of either repairs or restoration, without even awaiting for any permission from the Panchayat or any other competent authorities.

11. Since, there was a reference to photographs in the order made by the Additional Director of Panchayats, as well as the District Court, directions were issued to the parties to place them on record. Both the parties have placed the photographs on record. From the perusal of the photographs, at least prima facie, an impression created is that there was an old mud house at the site and now, the Petitioner has put up a new structure by use of laterite stones, cement, etc. All this was done without there being any permission from either the Panchayat or planning authorities. The Petitioner is only justifying his action stating that he had written a letter to the Panchayat informing that he was undertaking repairs. This is hardly any justification in law. At least prima facie, finally, the structure does not appear to be a product of simple repairs or restoration as was sought to be projected.

12. If the Panchayat has made reference to encroachment, that may or may not be correct. That is basically a matter for the Civil

Court to decide. But, the point remains that even for putting up a structure within the plinth area, there is no permission from any authorities, including the Panchayat. Therefore, even if Mr. Lobo's contention that the plinth has not been exceeded is to be accepted, still, the construction, now put up, cannot be regarded as legal or authorised, at least from the perspective of the said Act.

13. In this case, the Petitioner questioned the order of the Additional Director of Panchayats by filing a revision under Section 201B of the said Act, which is entitled '*Revision*'. Therefore, it is futile for the Petitioner to now contend that what the law contemplated, was in fact an appeal and, therefore the learned District Judge erred in exercising the revisional jurisdiction.

14. In any case, the Additional Director of Panchayats, as well as the revisional authority i.e. the learned District Judge, have recorded concurrent findings of fact and such findings cannot be said to be perverse.

15. For all the aforesaid reasons, this Petition is liable to be dismissed and is, hereby, dismissed. However, it is made clear that nothing in this order or, for that matter, the orders made under the said Act should affect the Petitioner or the Respondents in the

WP-858/2019 dt 20/7/2021

prosecution of their civil remedies before the competent Courts. The observations and findings are only in the context of the illegality of the structure under the provisions of the Goa Panchayat Raj Act and the Rules made thereunder.

***M.S. Sonak, J.***

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL  
Date: 2021.07.20 17:43:49 +05'30'