

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.420 OF 2021

DR. ULHAS GOPAL NACHINOLKAR ... Petitioner.

Versus

STATE OF GOA, THR. ITS
CHIEF SECRETARY AND ANR. ... Respondents.

Mr. Vibhav Amonkar, Advocate *for the Petitioner.*

Mr. Nehal Vernekar, Additional Government Advocate *for Respondent No.1.*

Mr. Vinoj Daniel, Advocate *for Respondent No.2.*

CORAM: REVATI MOHITE DERE &
M.S. JAWALKAR, JJ.

DATED: 8th December 2021

ORAL ORDER:

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith at the request and with the consent of the parties and is taken up for final disposal.
3. By this petition, the Petitioner presses for relief as sought for in prayer clause (b) of the petition, which is in the alternative.
4. The said prayer clause (b) reads as under:-

“b) Grant a Writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondent No.2 to decide the Petitioner's application dated 22.09.2021 and 05.11.2021 for renewal of the Construction License;”

5. Learned Counsel for the Petitioner submits that the Respondent No.2 i.e. Village Panchayat of Santa Cruz had issued a construction licence to the Petitioner on 30.11.2018 and that the said construction licence was valid for a period of three years from the date of issue i.e. 30.11.2021. He submitted that the said licence itself provided for a clause for renewal subject to the fact, that the same had to be applied for, within the period of validity of the said licence. Learned Counsel for the Petitioner submits that as the Petitioner could not complete the entire construction on or before 30.11.2021 due to Covid-19 pandemic, as the construction activity had come to a standstill, he applied for renewal of the construction licence by letter dated 22.09.2021 as mandated by the construction licence which was issued on 30.11.2018.

6. Learned Counsel for the Petitioner submits that presently 80% of the construction in respect of Block L and M is complete and that the Petitioner requires around six months to one year to complete the total construction activity. The grievance of the learned Counsel for the Petitioner is that the Respondent No.2 has not decided the said application seeking renewal of the construction licence filed by the Petitioner till date. According to the learned Counsel for the Petitioner, the order dated 28.09.2021 passed by this Court in Suo Motu Writ Petition No.2/2007 alongwith all connected matters covers only licences for new constructions and not pending constructions. He submits that if the licence is not renewed, the Petitioner will incur liability and implications under the RERA, for delay in handing over the possession of flats. He submits that if the construction is further delayed, it will affect the rights of the purchasers

who have purchased the residential units in the Petitioner's project. He submits that in the facts, the Respondent No.2 be directed to decide the Petitioner's application seeking renewal of the construction licence.

7. Learned Counsel appearing for the Respondent No.2 states that if a direction is given, they will decide the application.

8. Perused the papers, in particular the order dated 28.09.2021 passed in Suo Motu Writ Petition No.2/2007 along with all connected matters. This Court was concerned about the non setting up of MRF in the Village Panchayats to collect waste. This Court having considered that MRF facilities were not set up in the Village Panchayats observed in paragraph 8 as under:-

“8. Having regard to the fact that for all this while, these panchayats have not even bothered to set up an MRF, we direct that until the MRF is actually set up in these villages, these panchayats, will not issue any licences for construction from today itself. Such an order is necessary because the Panchayats, on one hand, continue to issue construction licences and on the other hand, make no provision whatsoever for collection, storage, and treatment of waste that is invariably generated. The Director to ensure strict compliance with these directions as well. If any of these panchayats, issue any construction licences before the MRFs are constructed and made functional, it will be the responsibility of the Director to take strict action against such panchayats and their office bearers. Further, the Director should point out to this Court any breach of these directions, so that this Court can consider whether such panchayat can be visited with our contempt jurisdiction.”

9. The direction to the Village Panchayats was not to issue any licences for construction from the date of the order i.e. 28.09.2021. As far as the present petition is concerned, the Petitioner has already completed 80% of

the construction work. The construction licence was granted to the Petitioner for a period of three years from 30.11.2018 till 30.11.2021. As noted above, the said licence itself provided for a clause for renewal subject to the condition that the Petitioner applied for renewal of the licence within the period of validity of the said licence. It is not in dispute that the Petitioner had applied for renewal of the licence in terms of the conditions set out in the construction licence dated 30.11.2018. The Respondent No.2 has not decided the said renewal application till date and hence, the Petitioner is constrained to approach this Court.

10. In our order dated 28.09.2021, it is stated that licences should not be issued for construction from the date of order. In the facts, the present project is 80% complete and balance of 20% is left to be constructed. The petition concerns only renewal of construction licence which was already granted by the Village Panchayat on 30.11.2018.

11. Considering the aforesaid, having regard to the facts, we direct the Respondent No.2 to decide the Petitioner's applications dated 22.09.2021 and 05.11.2021 seeking renewal of the the construction licence, as expeditiously as possible and in any event within one week from the date of uploading of this order.

12. Rule is made absolute in terms of prayer clause (b).

13. Petition is disposed of.

14. All parties to act on the authenticated copy of this order.

M.S. JAWALKAR, J.

REVATI MOHITE DERE, J.