

Suchitra

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.1103 OF 2019**

GOPAL KRISHNA BHONGLE ...PETTIONER
Versus
STATE OF GOA, THR. CHIEF ...RESPONDENTS
SECRETARY (DELETED AS
PER ORDER DTD. 15.6.2021)
AND 3 ORS.

**WITH
WRIT PETITION NO.1110 OF 2019**

GAFFAR KHAN NASSANGATTI ... PETITIONER
Versus
STATE OF GOA, THR. CHIEF
SECRETARY (DELETED AS PER
ORDER DTD. 15.6.2021) AND 3 ORS. ... RESPONDENTS

**WITH
WRIT PETITION NO.1109 OF 2019**

GEETA VASANT BHANDARI ... PETITIONER
Versus
STATE OF GOA, THR. CHIEF
SECRETARY (DELETED AS PER
ORDER DTD. 15.6.2021) AND 3 ORS. ... RESPONDENTS

**WITH
WRIT PETITION NO.1114 OF 2019**

NABI SAAB ATTAR (DEC)
THR. HIS LRS. ... PETITIONER

Versus

STATE OF GOA, THR. CHIEF
SECRETARY (DELETED AS PER
ORDER DTD. 15.6.2021) AND 3 ORS. ... RESPONDENTS

Mr. Sahish Mahambrey, Advocate for the Petitioners.

Mr. S. Karpe, Mr. A. Sawant and Mr. A. S. Shirodkar
Advocates for Respondent No.2.

Mr. S. Padiyar, Advocate for the Respondents No.3 and 4.

CORAM: M. S. SONAK J.

DATED: 27th July 2021

P.C.:

1. Heard Mr. Sahish Mahambrey for the petitioners in all these cases. Mr. S. Karpe appears for the City of Corporation of Panaji (CCP) and Mr. S. Padiyar for respondents no.3 and 4 – original complainants.

2. In all these petitions, the first ground raised was that the Hon'ble Minister, who is the appellate authority under the provisions of the Goa Municipalities Act, 1968 (said Act) had not made a reasoned order but had dismissed the appeals by a single line order.

3. Later on, it turned out that the single line order was only the intimation given to the petitioners. The Hon'ble

Minister has made a detailed speaking order in each of these cases which were placed on record. Thereafter, leave was also granted to the petitioners to amend the petitions to raise grounds in the context of the detailed speaking order.

4. Another ground raised in these petitions was that the Hon'ble Minister had not heard the petitioners or their counsel before the appeals came to be dismissed. The CCP, has placed on record the Roznama from which, it is apparent that the opportunity of hearing was not only offered but was availed by the petitioners.

5. Mr. Mahambrey, accepted that this ground was incorrectly raised and did not press this ground at the stage of final disposal of these petitions.

6. Mr. Mahambrey however, submitted that the Commissioner of CCP, before making the impugned demolition orders, did not offer any opportunity of hearing. He submits that on this short ground the demolition orders were required to be set aside.

7. In this case, a show cause notice was issued to the petitioners along with a document of transgression. The

petitioners, only contended that the structures referred to in the document of transgression were old structures which were put in with the consent of their landlords. Though, the petitioners claim to have the documents, no such documents were produced.

8. Upon consideration of the response of the petitioners, the demolition orders came to be passed. According to me, having regard to the defence coupled with the absence of any documents whatsoever to even *prima facie* support such defence, the demolition orders were not required to be interfered with on the ground that some personal hearing may not have been given by the Commissioner to the petitioners.

9. The Hon'ble Minister, who heard the appeals once again, offered opportunities to the petitioners to produce some documentary evidence in support of their defence. Despite such opportunities, no documents were forthcoming and therefore, the Hon'ble Minister, dismissed the appeals.

10. The reasoning of the Hon'ble Minister is to be found in paragraph 5, 6 and 7 which read as follows:

“5. The Respondent No. 2 and 3 filed their say supporting the stand taken by Respondent No.1. During the proceeding of the case no party had produced the

documents of ownership in which the suit structure stands, although it is not relevant. While the Appellant claimed that the house was constructed by his ancestors with the consent of the landlord. Still, no such consent was put forth for consideration.

6. The appellant claimed that the suit structure is surveyed in the survey record of the Land Survey Department. However no such evidence is brought on record in support of his claim. As regards to the contention of the Appellant that the said structure was constructed around 40 years ago by his ancestral, the Respondent No.1 has rightly pointed that the appellant has not substantiated his stand with any documentary proof, such as permission, approval or license of construction from the Respondent No.1 which is mandatory for any construction activity.

7. It is also the case of the Appellant that he was not present at the inspection at the time of drawing the Transgression Report. In reply the Respondent No. 1 argued that the inspection undertaken under provision of section 269 of the Act does not provide for the Appellant or the complainant to be present. The inspection can be suo moto taken by the Respondent No.1 under provision of the Act, especially when there is an illegal construction.

The Hon'ble Supreme Court in case of Punjab State Electricity Board and anr. V/s Aswani Kumar (2010) 7 SCC 569 has held:

“The inspection report is a document prepared in exercise of its official duties by the officers of the Corporation. Once an act is done in accordance with law, the presumption is in

favour of such act or document and not against the same. Thus, there was specific onus upon the consumer to rebut by leading proper and cogent evidence that the report prepared by the officers was not correct.”

The Transgression Report prepared by the Municipal Engineer is presumed to be true under the Indian Evidence Act. The report could not be straightway disbelieved unless and until there was definite and cogent material produced on record by the Appellant to arrive at such finding. The Appellant has not produced any such evidence to refute the contents of transgression Report prepared by the official of the Respondent No. 01.

In view of the above findings, the issues raised in the appeal are void of merit and therefore there is no other alternative but to reject the appeal and hence the order.”

11. The petitioners claimed that they had put up these structures with the consent of the landlords. Mr. Padiyar points out that the respondents no.3 and 4 are the landlords and no consent was ever granted. He points out that it is the respondents no.3 and 4 who in fact complained to the Corporation about the unauthorized constructions.

12. Having regard to the aforesaid circumstances which are common in all these cases, it will not be appropriate to interfere with the orders made by the Hon'ble Minister in these

matters. The Hon'ble Minister, has considered all the contentions of the petitioners and even complied with the principles of natural justice and fair play. There is no perversity pointed out in the findings or reasoning adopted by the Hon'ble Minister.

13. For all the aforesaid reasons these petitions are liable to be dismissed and are hereby dismissed.

14. At this stage, Mr. Mahambrey, on behalf of the petitioners seeks some indulgence. He submits that on account of the pandemic situation the demolition orders may not be enforced for a period of at least six months. He states that within two weeks from today the petitioners, who are presently the occupying the structures, will file undertakings that they will, on their own, vacate the said structures and even demolish them. He states that the undertakings will make it clear that the petitioners will not part with possession of the structures in favour of any third party.

15. Mr. Mahambrey, the learned counsel for the petitioners states that the undertakings will also give the names of the persons who are residing in the said structures along with the petitioners.

16. The copies of such undertakings to be furnished to Mr. Karpe, the learned counsel for the CCP and Mr. Padiyar, the learned counsel for respondents no.3 and 4 within one week from today. Subject to such undertakings being filed within two weeks from today, the CCP is directed not to enforce its demolition orders which have now been upheld, for a period of six months from today. However, if no such undertakings are filed, then, the CCP, can proceed with the demolition in pursuance of its demolition orders.

17. These petitions are disposed of in the aforesaid terms. There shall be no order as to costs.

M. S. SONAK, J.