

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1117 OF 2019

GURUDAS P. NAIK

...Petitioner

VS

STATE OF GOA, THR. CHIEF SECRETARY
(DELETED AS PER ORDER DTD. 15.6.2021) ... Respondents
AND ANR.

Mr. Sahish Mahambrey, Advocate *for the petitioner.*

Mr. Somnath B. Karpe with Mr. Abhishek Sawant,
Advocates *for respondent No.2.*

CORAM: MANISH PITALE, J

DATED: 15th December, 2021

ORAL ORDER:

1. The petitioner has challenged an order dated 21/10/2019 passed by the Appellate Authority dismissing the appeal and confirming a final notice of demolition of illegal structures issued by respondent No.2.
2. A perusal of the record shows that in the present case a show cause notice dated 04/10/2012 was issued to the petitioner alongwith a document of transgression, stating that the petitioner had undertaken illegal construction of one room and a shed in the property in question and by the said notice he was directed to stop

the work forthwith. Thereafter, show cause Notice dated 14/02/2013 was issued, again with a document of transgression, referring to the illegal room and shed, asking the petitioner to show cause as to why an order ought not to be passed against him under Section 269 (2) of the City of Panaji Corporation Act, 2002 (said Act, for short).

3. Thereafter, on 19/06/2013, final notice was issued by the Deputy Commissioner-I of the respondent–Corporation under Section 269(3) of the said Act, thereby directing the petitioner to demolish the illegal room and shed in front of existing house in the property in question, failing which the demolition would be carried out by the Corporation and the expenses incurred thereof would be recovered from the petitioner.

4. Aggrieved by the same, the petitioner filed an appeal before the Appellate Authority. As noted above, the appeal was dismissed on 21/10/2019, against which the present Writ Petition was filed.

5. On 18/12/2019, this Court issued notice in the present Writ Petition and granted ad-interim stay in favour of the petitioner, primarily for the reason that the order of the Appellate Authority placed on record did not disclose any reason for dismissing the

appeal and for vacating the interim order that was operating in favour of the petitioner.

6. The respondent No.2 appeared before this Court and filed reply to the Writ Petition, placing on record the detailed judgment and order passed by the Appellate Authority dismissing the appeal of the petitioner. It was submitted that the Appellate Authority had taken into consideration the material on record while reaching findings against the petitioner and dismissing the appeal.

7. In the present case, the reasoned judgment of the Appellate Authority being placed on record, the petitioner did not press the ground to the effect that the impugned order was not a reasoned order. Instead, it was contended that proper opportunity of hearing was not granted by the Appellate Authority while passing the impugned judgment.

8. Mr. S. Mahambrey, learned Counsel appearing for the petitioner invited attention of this Court to the documents on record and by placing emphasis on the survey plan as also receipts showing payment of taxes by the petitioner, submitted that the structures labelled as illegal by the respondent – Corporation, was not correct

and that therefore, the impugned order deserved to be interfered with.

9. On the other hand, Mr. Karpe, learned Counsel appearing for respondent No.2–Corporation submitted that the Appellate Authority had passed a reasoned order, which also demonstrated that proper opportunity of hearing was granted to all concerned parties, including the petitioner. It was submitted that the survey plan did not depict the illegal structures. It was further submitted that the material on record was properly taken into consideration by respondent No.2 while issuing final notice of demolition and further the Appellate Authority had also taken into consideration the material on record to pass a well reasoned order dismissing the appeal.

10. This Court has perused the material on record and heard the learned Counsel appearing for the rival parties.

11. The transgression documents placed on record alongwith the show cause notices dated 04/10/2012 and 14/02/2013 show that according to the respondent No.2–Corporation, there is an illegal room and shed constructed by the petitioner in the property in question. There is nothing to show that the petitioner at any point

of time challenged the documents of transgression or the findings in that regard of respondent No.2–Corporation while issuing the show cause notices.

12. A perusal of the survey plan placed on record does not indicate as to how the petitioner could claim that the said room and shed are regular structures depicted in the survey plan. The receipts of payment of house tax and other charges to the respondent No.2–Corporation also cannot be a ground to reach a finding that the room and shed in question are legal in nature. Merely because document dated 01/04/1996 was placed on record by the petitioner showing that fees for re-roofing of existing house was collected by the Municipal Authority, the room and shed in question could not be said to be regularised structures. The receipt particularly refers to re-roofing of existing house. There is no dispute about the fact that a house existed in the property in question, but the dispute is about the room and shed which the petitioner appears to have constructed, for which there is no material on record to indicate that these two structures could be said to be legal.

13. A perusal of the impugned judgment and order passed by the Appellate Authority shows that the rival parties were heard through their respective Counsel. The Authorities have referred to the

documentary material on record and it was found that the petitioner nowhere contested the transgression reports on record, which clearly stated that the room and shed in question were illegal structures. This Court is satisfied with the manner in which the Appellate Authority has exercised jurisdiction, which cannot be said to be suffering from either the vice of violating the principles of natural justice or that the order can be said to be an order without any reasons. The material on record is analysed in the proper perspective and the appeal has been dismissed on merits.

14. In view of the above, it is found that there is no merit in the present Writ Petition and accordingly, the Writ Petition is dismissed.

15. Needless to say, the interim order passed by this Court stands vacated.

MANISH PITALE, J.