

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.210 OF 2021

MR. LAXMAN C. NAIK GOVEKAR
& ORS.

... PETITIONERS

Versus

VILLAGE PANCHAYAT MERCES
& ORS.

.... RESPONDENTS

Mr. J. Godinho, Advocate for the Petitioners.

CORAM: M. S. SONAK, J.

DATE : 26th AUGUST 2022

ORDER :

1. Heard Mr. J. Godinho for the petitioners.
2. The challenge in this petition is to the order dated 24.10.2019, by which the Director of Panchayats has dismissed the petitioners' application dated 09.08.2019 objecting to the maintainability of the appeal instituted by respondent nos.2(a) to 2(e) questioning the construction licence granted by the Panchayat to the petitioners.
3. Mr Godinho submits that under the Scheme of Section 66, including under Section 66(7), an appeal is maintainable to the

Director only if the Panchayat refuses a licence to an applicant. He submits that such an appeal is maintainable by the applicant, who has suffered such refusal. Mr Godinho submits that no appeal is maintainable by a stranger or even a neighbour against an order of grant of construction licence by the Panchayat. He, therefore, submits that the Director should not have dismissed the application objecting to the maintainability of the appeal. Mr. Godinho relies on *Indira Memorial Public School V/s. State, th. Local Bodies Deptt. & Ors.*¹ decided by the High Court of Jammu and Kashmir on 08.06.2007 in support of his contention.

4. Mr Godinho relies on *Northern Plastics Ltd. V/s. Hindustan Photo Films Mfg. Co. Ltd. & Ors.*² to submit that an appeal is a creature of statute. Therefore, unless a provision for an appeal is expressly made, there is no question of entertainment of an appeal.

5. The Director, in the impugned order, has dismissed the petitioners' preliminary objection by observing as follows, after quoting the provisions of Section 66(7):

"If one carefully peruses sub-section 7 of section 66, it can be understood that the scope of it is very

1 OWP-5762/2007

2 1997 4 SCC 452

wide. The section shall be construed as any person who is aggrieved by the issuance of an order by the Village Panchayat under any of the provisions of section 66. This Court is very hesitant to interpret a legislative act in a manner contrary to its express language, unless it is clear that a drafting error or omission has circumvented legislative intent.

Further to avoid multiplicity of proceedings and in interest of justice, it would be appropriate in my considered opinion to dismiss the application raising the preliminary objections filed by the Respondent.

In view of above, the application dated 9/8/2019 raising preliminary objections filed by the Respondent is hereby dismissed.

However the contentions of the parties are left open in the appeal."

6. Section 66 of the Panchayat Raj Act reads as follows:

"66. Regulation of the erection of buildings.—

(1) Subject to such rules as may be prescribed, no person shall erect any building or alter or add to any existing building or reconstruct any building without the written permission of the Panchayat. The permission may be granted on payment of such fees as may be prescribed.

Provided that alteration of a building which consists of a single dwelling unit constructed or in existence before the commencement of this Act shall be permitted to the extent of replacement of tiles roofing with the R.C.C. slab roofing upon production of certificate of stability of such building issued by the Registered Structural Engineer.

(2) If a Panchayat does not, within thirty days from the date of receipt of application, determine whether such permission should be given or not and communicate its decision to the applicant, the applicant may file an appeal within thirty days from the date of expiry of aforesaid period, to the Deputy Director who shall dispose of the same within thirty days from the date of filings of such appeal. If the Deputy Director fails to dispose of the appeal within thirty days, such permission shall be deemed to have been given and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or bye-laws made under this Act.]

(3) Whenever any building is erected, added to or reconstructed without such permission or in any manner contrary to the rules prescribed under subsection (1) or any conditions imposed by the permission granted, the Panchayat may,—

(a) direct that the building, alteration or addition be stopped; or

(b) by written notice require within a reasonable period to be specified therein, such building alteration or addition to be altered or demolished.

(4) In the event of non-compliance with terms of any notice under clause (b) of subsection (3) within the period specified in the notice, it shall be lawful for the Panchayat to take such action as may be necessary for the completion of the act thereby required to be done, and all the expenses therein incurred by the Panchayat shall be paid by the person or persons upon whom the notice was served and shall be recoverable as if it were a tax imposed under this Act.

(5) Where the Panchayat fails to demolish the building which is erected, added to or reconstructed without the permission of the Panchayat, or in any manner contrary to the rules made under the Act or any conditions imposed in the permission, within a month from the date of the knowledge, the Deputy Director shall assume the powers of the Panchayat under sub-sections (3), (4) and (5) and take such steps as may be necessary for the demolition of such building.

(6) Notwithstanding anything contained in the foregoing provisions, the Block Development Officer concerned may, by notice addressed to the person responsible, stop any construction which is being constructed in violation of the provisions of the Act or rules or bye-laws made thereunder and refer the case to the Deputy Director of Panchayat. On receipt of the notice, such person shall forthwith stop the same.

(7) An appeal shall lie to the Director, within a period of thirty days from any order of direction or notice issued under any of the provisions of this section and the decision of the Director on such appeal shall be final."

(Emphasis supplied)

7. In this case, the Respondents nos.2(a) to 2(e) have instituted an appeal under Section 66(7) of the Panchayat Raj Act. This provision provides that an appeal shall lie to the Director within thirty days "*from **any order** of direction or notice issued under **any of the provisions** of this Section and the decision of the Director on such appeal shall be final*".

8. The expressions "*any order*" and "*under any of the provisions of this Section*" indicate that an order granting or refusing a licence under Section 66 of the Panchayat Raj Act is appealable to the Director, and the decision of the Director on such appeal shall be final.

9. Mr Godinho concedes that an appeal shall lie against an order made by the Panchayat under Section 66 refusing a licence to the applicant. If this is so, considering the expressions used in Section 66(7) of the Panchayat Raj Act, an appeal will also lie where a licence is granted under Section 66 of the Panchayat Raj Act to any person.

10. At least Section 66(7) of the Panchayat Raj Act does not provide that an appeal shall lie only at the behest of an applicant who the Panchayat has refused a licence. So also, the section does not at least expressly bar an appeal at the behest of a person aggrieved by the grant of a license by the Panchayat. Accordingly, it will not be appropriate to read into Section 66(7) some words of restriction and, based thereon, hold that an appeal will not lie against an order granting a licence under Section 66, where an aggrieved person institutes such appeal. Neither the text nor the context supports such a construction.

11. In this case, the appeal was instituted by the neighbours, who claim to be aggrieved by the grant of licence for construction in favour of the petitioners. If a construction licence is granted in breach of building rules and regulations, a neighbour can feel aggrieved by the same. For example, suppose a licence is granted in violation of the rules and regulations that provide for setbacks or height restrictions. In that case, a neighbour can indeed be regarded as aggrieved. This is because such provisions relating to setbacks, height restrictions, etc., apart from being in the public interest, planning, etc., are also in a neighbour's interest. Therefore, in the absence of any express or implied restrictions in Section 66(7) of the Panchayat Raj Act, it would not be appropriate to read any such restrictions into the said section.

12. In *Northern Plastics Ltd.* (supra), in paragraph 8, the Hon'ble Supreme Court has held that the appeal is a creature of statute. Accordingly, the right to appeal has to be exercised by persons permitted by the statute to prefer appeals subject to the conditions for filing such appeals. In the context of the provisions of Section 129(A) of the Customs Act, the Hon'ble Supreme Court held that the Union of India could not be regarded as a "*person aggrieved*", thereby entitling it to maintain an appeal. This conclusion was upon consideration of the Scheme of the provisions in Section 129(A) of the Customs Act. The Scheme of

the said provision is not comparable to the Scheme in section 66 of the Panchayat Raj Act.

13. In Northern Plastic Ltd., however, the Hon'ble Supreme Court also considered its earlier decision in the case of *K. Ramdas Shenoy V/s. Chief Officers, Town Municipal Council, Udipi*³. In that case, a resident in a locality wherein a cinema building was being constructed contrary to the binding Town Planning Scheme was held to be entitled to challenge the said building construction. The Court held that the statutory Scheme was for the benefit of persons residing in the locality. Under the said Scheme, the Municipal authorities owed a public duty and obligation under the statute to see that the residential area is not spoiled by unauthorised construction. Under these circumstances, it was held that the aggrieved party had sufficient locus standi under Article 226 of the Constitution of India to move the High Court against the violation of the statutory Scheme by the municipal authorities.

14. Undoubtedly, the concept of locus standi of an aggrieved party under Article 226 of the Constitution is much broader than a statutory right of an appeal given under a statutory scheme before a statutory authority created by that very statute. However,

3 (1974) 2 SCC 506

in this case, there is no express or implied restriction in Section 66 or, for that matter, Section 66(7) that restricts the right of an appeal only to an applicant whose application for a construction licence has been rejected by the Panchayat.

15. As noted earlier, Section 66(7) provides an appeal against "*any order*" issued by the Panchayat under "**any of the provisions of section 66.**" These are words of amplitude. There is no reason to cut down these words of amplitude when the Legislature has not chosen to restrict the right to appeal only to applicants whose applications for a licence may have been rejected by the Panchayat.

16. In *Indira Memorial Public School* (supra), the Jammu and Kashmir High Court was not concerned with provisions that are *pari materia* to the provisions in Section 66 of the Panchayat Raj Act. Therefore, some of the observations in this decision will have to be construed in the context of the statutory provisions the Court was dealing with. Thus, the said decision is of no assistance in deciding the issue now raised in this petition.

17. In *Fatima w/o Caetano Joao V/s. Village Panchayat of Mercedes & Anr.*⁴, the issue involved was whether a suit is

⁴ 2001 (2) ALLMR 680

maintainable by the neighbours complaining about building rules and regulations violations. A Learned Single Judge of our Court in *Smt. Margarl Fernandes V/s. Antonio Joaquim Fernandes*⁵ had taken the view that the requirement of keeping setbacks was for the benefit of the owner of the building and not for the benefit of the owner of the adjoining land, and, therefore, no suit was maintainable at the behest of the neighbour. In short, it was held that the neighbour is not an aggrieved person. The issue before the Division Bench was whether this view was correct.

18. The Division Bench in *Fatima w/o. Caetano Joao* (supra) overruled the Single Judge's decision by an exhaustive review of the legal position and precedents on the subject. As a result, the Division Bench held that the building regulations, including regulations providing for setbacks, height restrictions, etc., are equally for the benefit of the neighbours or the persons residing in the locality and, therefore, a suit at their behest was clearly maintainable.

19. In *Village Panchayat, Calangute V/s. Additional Director of Panchayat-II & Ors.*⁶, the Hon'ble Supreme Court reversed the Bombay High Court holding that even a Village

⁵ (1991) 2 Goa Law Times 222

⁶ (2012) 7 SCC 550

Panchayat had a locus standi to file a Writ Petition against an order of appellate authority directing the Panchayat to grant a licence. Thus even a Panchayat was given locus standi to question a decision of an appellate authority requiring it to grant a license.

20. Although the decisions referred to above are mainly in the context of locus standi to institute a petition under Article 226 of the Constitution of India, they have a bearing on understanding the concept of locus standi in such matters. Besides, having regard to the provisions of Section 66(7) and the expressions used therein, it will not be appropriate to deny the person aggrieved of the grant of licence by the Panchayat under Section 66 of the Panchayat Raj Act a right to institute an appeal before the Director.

21. Just as no specific provision has been made to confer a right of appeal upon a person, who has been denied a licence, so also the Legislature did not have to make a specific provision in Section 66 empowering a person who is aggrieved by grant of licence under Section 66 to institute an appeal under Section 66(7) of the Panchayat Raj Act. If the Legislature wished to restrict the right of filing an appeal only to a person whose application seeking a licence under Section 66 was rejected by the Panchayat, then the Legislature would have said so. Instead, the

Legislature has chosen to employ words of amplitude referred to above.

22. Mr Godinho submitted that if any party was aggrieved by the grant of construction licence by the Panchayat, then the only remedy to such party was instituting a petition under Article 226 of the Constitution of India. In the absence of any restrictions in Section 66(7), there is no point in denying a person who is aggrieved by the grant of licence under Section 66 a right to question the grant by instituting an appeal before the Director. The decision of the Director has conferred a statutory finality. This only means that there will be no further appeal against the decision of the Director. Such finality does not preclude a petition under Article 226 or 227 of the Constitution of India. Therefore there is no point in restricting the alternate remedy only to persons who the Panchayat has denied licenses in the absence of any express or implied restrictions in the statute or the statutory Scheme.

23. For all the above reasons, the challenge in this petition must fail and is hereby rejected.

24. The petition is dismissed. However, there shall be no order for costs.

NITI K
HALDANKAR

Digitally signed by NITI K
HALDANKAR
Date: 2022.08.29
10:16:39 +05'30'

M. S. SONAK, J.