

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 601 OF 2019.

RADHABAI PARSEKAR AND ANR., ...Petitioners.
VS
THE CHAPEL NOSSA SENHORA DO
LIVRAMENTO @ CHAPEL OF OUR
LADY OF LIVRAMENTO AND 2 ORS., ...Respondents.

Mr. J. J. Mulgaonkar and Ms. R. Banaulikar, Advocates for the petitioners.

Mr. S. D. Padiyar and Mr. P. Shirodkar, Advocates for the respondent no. 2.

CORAM: SANDEEP K. SHINDE, J.
DATE: 11th July, 2022.

P.C.:

1. In Regular Civil Suit no.171/2016/D, instituted by the respondent no.1 seeking a decree of prohibitory and mandatory injunction, the learned Trial Court vide order dated 16.8.2016, enjoined the petitioners from carrying out any construction, reconstruction and/or extension to the suit structure or from demolishing the structure or any part thereof until the final disposal of the suit. As also the petitioners and original defendant no.3- Guilhermina D'Cunha were directed by temporary injunction to remove the construction material dumped in the suit property and

restore the suit property to its original state.

2. In an appeal, being Misc. Civil Appeal No. 107 of 2016, preferred by the aggrieved defendant nos.1 and 2, order of the trial Court was maintained.

3. The correctness and legality of these orders are questioned in this Writ Petition.

4. Mr. Mulgaonkar, learned Counsel for the petitioners would, rely on the, No objection certificate for house repairs, issued by the Municipal Council to contend that petitioners were simply carrying out repairs to make the house habitable and not building operations, within the meaning of Section 2(5) of the Goa Daman and Diu Town and Country Planning Act, 1974(“the Act of 1974” for short). To verify this fact, respondent no.2 was directed to inspect the suit construction and report accordingly.

5. Mr. S. D. Padiyar, learned Counsel for the respondent no. 2 – Mapusa Municipal Council has placed on record, report of site inspection dated 8.7.2022. It is taken on record and marked “X” for identification.

6. Paragraphs 2 and 3 of the report read as under:-

“During the course of site inspection, it is noticed that the Respondents Petitioners have undertaken Reconstruction of the existing residential house consisting of two separate units having total area admeasuring $9.50 \times 9.00 = 85.50 \text{ m}^2$ in the property bearing Chalta No.70, 71 & 72 of P.T. Sheet No.122 of Mapusa. The Respondents have constructed the R.C.C. flat slab over 13 nos of R.C.C Columns by removing the original Manglore tiled roof at the original ridge level of the house in complete violation of the NOC for house repairs issued by the Mapusa Municipal Council vide No MMC/ENGG/3697/2016 dtd. 29 04/2016.

The portion of walls in between illegally casted ROC slab bottom and original caves level of the said house was found open and presently found covered with plastic which the petitioner intends to raise with laterite masonarny. The details of the same is depicted in the annexed sketch and attached photographs.”

7. Thus, apparently, the report indicates petitioners carried out building operations without authority and/or permissions.

8. In that view of the matter, petition deserves no consideration. However, in case the petitioners apply for development permission under Section 44 of the said Act, the authority under the said Act shall consider the application in accordance with law, after hearing the interested parties, provided application is moved as required under the Act/Rules within two weeks from the date on which order is uploaded

on the High Court website.

9. Needless to say that authority under the Act shall grant or refuse the permission in accordance with law without being influenced by the orders passed by the trial Court, District Court and this Court. Authority and shall endeavour to dispose of the application preferably within 60 days from the date on which application is moved.

10. For all these reasons, no interference in the impugned order is called for, in extra ordinary jurisdiction of the Court. Petition is dismissed.

SANDEEP K. SHINDE,J.

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