

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 134 OF 2022

Prajapita Brahma Kumaris Ishwariya Vishwa
Vidyalaya Thr. Const. Attorney, BK ... Petitioners
Sdhakuntala & anr.

Versus

State of Goa, Thr. Its Chief Secretary & 3 Ors. ... Respondents

Mr. Ravi Anand, Advocate with *Mr. N. Vhatkar, Advocate for the
Petitioners.*

Ms. Sulekha Kamat, Additional Government Advocate for the
Respondent nos. 1 and 3.

Mr. Pranav Vaze, Advocate for the *Respondent no.2.*

CORAM. G. S. KULKARNI, J

DATED: 6 October 2022

ORAL JUDGMENT

1. Rule, made returnable forthwith. Learned Counsel appearing for the respondents, waives service. By consent heard finally.

2. The genesis of the present proceedings is a complaint dated 18 August 2010 filed by respondent no. 4-Mr. Assis Fernandes. His complaint is of illegal construction undertaken by the petitioners, who are the occupants of the adjoining plot of land. In pursuance of

such complaint a show cause notice was issued to the petitioners, which came to be decided and ultimately a demolition order dated 18 August 2010 came to be passed after following the procedure. The said order of demolition was carried in appeal by the petitioners by approaching the Directorate of Panchayat, Panjim, under Section 66(7) of the Goa Panchayat Raj Act. This appeal came to be allowed by judgment and order dated 29 February 2016, whereby the demolition order dated 18 August 2010 was quashed and set aside, on the primary ground that the notice of demolition which was issued by the Village Panchayat was issued in favour of the petitioner no.1 who was the occupant and not the owner who is petitioner no.2- World Renewal Spiritual Trust. The relevant observations in that regard as contained in the said order are required to be noted which read thus:

“ The Respondent Panchayat issued demolition Order dtd. 18/8/2010 to demolish the said structure within 7 days as the reply of the Appellant was unsatisfactory. The Appellant submitted that the impugned Order of the Respondent is arbitrary, illegal and there are no reasons given in the said order. It is settled law that the Order has to be reasoned Order. In the absence of any reason there is total non application of mind and hence the same is liable

to be set aside.

The said house and the plot belongs to world renewal spiritual trust, however no notice has been given to the trust. The said trust is the owner of the property and the house is in their name. Therefore the notice was required to be given to the said trust and not to the Appellant. The Appellant is running the Spiritual Centre and the Panchayat has not considered the true fact and therefore has no jurisdiction to take any decision against the Appellant.

*In view of above, I am of the opinion that the Respondent no. 1 i.e Village Panchayat failed to follow the procedure, laid down, hence the matter is required to be remanded back to the Respondent, Panchayat to follow the procedure laid down in the Act afresh,
Appeal is allowed.*

Demolition Order dtd. 18/8/2010, is quashed and set aside.

Matter is remanded back to the Respondent Panchayat to decide afresh.

Pronounced in the Open Court.

No Order as to Costs."

3. The issue was thus remanded to the Village Panchayat for a fresh decision to be taken. Respondent no.4-Mr. Assis Fernandes, being aggrieved by such order passed by the Additional Director, approached the Court of learned District Judge, South Goa, at Margao, in Civil Revision Application no. 36 of 2016. The said

revision application came to be decided by the learned District Judge by the impugned judgment and order dated 2 November 2016, whereby the order passed by the Additional Director remanding the matter to the Village Panchayat dated 29 February 2016 came to be set aside by allowing revision petition. Consequently, the learned District Judge directed that the demolition notice issued by the Panchayat dated 18 August 2010 stands confirmed. The consequence of such order is that the construction as alleged by respondent no.4 to be illegal would now be demolished. However, in the meantime, there are subsequent developments, the owner has filed a regularization application which is now stated to be pending adjudication before the Hon'ble Minister.

4. Be that as it may, it appears from the orders passed by the Additional Director, as also the subsequent orders passed by the learned District Judge, the issue which has arisen is as to whether the demolition notice was addressed to the correct party. The contention of the petitioner on oath before this Court, as also its contention before the Additional Director, was to the effect that the notice ought to have been issued to petitioner no.2-World Renewal Spiritual Trust, who is the legal owner of the property and that petitioner no.1-Prajapita Brahma Kumaris Ishwariya Vishwa, is merely the occupant

of the property. The contention as urged on behalf of the petitioners is that thus the notice in question could not have been issued to petitioner no.1–Prajapita Brahma Kumaris Ishwariya Vishwa and it ought to have been issued to petitioner no.2–World Renewal Spiritual Trust.

5. In my opinion, the learned District Judge considered that the petitioner no.1– Prajapita Brahma Kumaris Ishwariya Vishwa is the owner of the property which was in fact an inadvertent error in the written reply which was filed to the show cause notice in which it was stated that the petitioner no.1– Prajapita Brahma Kumaris Ishwariya Vishwa is the owner. Merely because the reply stated that the petitioner no.1 is the owner, would not suffice, unless it was verified that there were documents to support such statement and only on verification of such documents, a positive finding in that regard could have been recorded. The petitioners have contended that it was a bonafide mistake and merely considering as to what was stated in the reply to the show cause notice, it could not bring about a legal situation, that ownership of the property which otherwise was of petitioner no.2–World Renewal Spiritual Trust, could become that of petitioner no.1.

6. In these circumstances, it would have been appropriate for the Additional Director to remand the matter back to the Village Panchayat for verification of the original title deeds and accordingly take further action if any illegal construction was undertaken as complained by respondent no.4–Mr. Assis Fernandes. In this view of the matter, in my opinion, the impugned order is required to be interfered.

7. After the proceedings were heard for sometime on the issues as discussed above, learned Counsel for the respondent no.2 fairly states that a fresh and appropriate show cause notice can be issued on the complaint as made by respondent no.4–Mr. Assis Fernandes and the proper procedure in law can be followed to arrive at an appropriate decision.

8. Mr. Assis Fernandes, respondent no.4, who is present in the Court in person, also would not have any objection for such course of action. However, his contention is that an early decision be taken as the proceedings are pending for sometime from the year 2010.

9. In the above circumstances, the impugned order dated 2 November 2016 passed by the learned District Judge, is set aside. The

order passed by the additional Director dated 29 February 2016, stand confirmed. The respondent no.2 is accordingly directed to reconsider the complaint as made by respondent no.4 by issuing an appropriate show cause notice and after receiving a reply on the show cause notice, and on being satisfied as to who is the owner of the complained structure a decision on the same be taken in the manner known to law.

10. Let such procedure be completed as expeditiously as possible and within a period of three months from the day a copy of this order is uploaded. All contentions of the parties and more particularly that of respondent no.4-Assis Fernandes and the petitioners, are expressly kept open.

11. It is clarified that the regularization proceedings are independent proceedings and the observations made above are only in the context of the present Petition which pertains to the issuance of the demolition order.

12. Rule is made absolute in the above terms. No costs.

G. S. KULKARNI, J