

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.109 OF 2022

Mr. Roque Menezes,
Age : 53 years,
r/o. Vittozem Piedade,
Diwar, Ilhas Goa, 403403.

....Petitioner

Versus

1. Ramesh Volvoikar,
r/o. H.No.814, Devagi,
Chodan, Madel, Tiswadi-Goa.

2. Village Panchayat of
Chodan – Madel,
Tiswadi – Goa,
through its Secretary.

....Respondents

Mr Prasheen Lotlikar, Advocate for the Petitioner.

**Mr Gaurish Agni with Mr Kishan Kavlekar, Advocates for
Respondent no.1.**

CORAM: M. S. SONAK, J.

DATE : 21st MARCH 2023

ORAL JUDGMENT :

1. Heard Mr P. Lotlikar for the petitioner and Mr Gaurish Agni for respondent no.1. Respondent no.2 is duly served in this matter.

2. Rule. The rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.

3. Though the petitioner has an alternate remedy under the Panchayat Raj Act, in the peculiar facts of the present case, it is apparent that the impugned order dated 27.07.2021 at page 53 of the paper book is without jurisdiction and further made in violation of principles of natural justice. Therefore, in the peculiar circumstances of the present case, it would not be appropriate to relegate the petitioner to avail of the alternate remedy under the Panchayat Raj Act.

4. The petitioner filed the complaint on 24.04.2021, alleging that respondent no.1 was undertaking illegal construction in the property surveyed under no.90/9 of Chorao, Tiswadi Goa. Based on this complaint, the Sarpanch issued an order under Section 64-I(j) of the Panchayat Raj Act directing respondent no.1 to stop the ongoing construction and to submit documents like construction licences, etc.

5. The petitioner contends that despite the stop work order, respondent no.1 continued with the construction and, therefore, the petitioner was constrained to institute Writ Petition No.1248/2021(F) before this Court.

6. A Division Bench of this Court disposed of the above petition by judgment and order dated 01.07.2021. The judgment and order, *among other things*, directed respondent no.1 not to undertake any further construction and to maintain the status quo. The Panchayat

was directed to issue a show cause notice to the first respondent since the inspection had already concluded. After affording an opportunity of hearing to both, the present petitioner and respondent no.1, the Panchayat was directed to dispose of such show cause notice. Further, respondent no.1 was protected by observing that if the Panchayat issues a demolition order, the same was not to be implemented for two weeks so that the first respondent could avail the remedies under the Panchayat Raj Act. The status quo was directed to operate in the meanwhile.

7. In compliance with the directions of this Court and based upon the material before the Panchayat, the Panchayat issued a show cause notice dated 10.07.2021 to the first respondent. However, from the perusal of the same on page 49 of the paper book, it is apparent that the Panchayat had only issued a show cause notice under Section 66(3).

8. The first respondent also construed the document on page 49 dated 10.07.2021 as a show cause notice and filed a detailed response in which some issue was raised about construction coming up in property surveyed under no.90/8 and not 90/9. Surprisingly, however, the first respondent instituted an appeal before the Additional Director of Panchayats to challenge the show cause notice dated 10.07.2021 by styling this show cause notice as a demolition order.

9. The Additional Director, without any application of mind and perhaps not even bothering to read the show cause notice dated 10.07.2021, proceeded to grant an ex-parte order setting the show cause notice dated 10.07.2021. The Additional Director of Panchayats did not even bother to see whether the necessary party, the petitioner herein, was impleaded to these proceedings. The Additional Director did not even bother to consider the orders made by the Division Bench of this Court. The Additional Director of Panchayats did not even bother to assess the impact of such an ex-parte stay on the ongoing construction despite a status quo order granted by this Court. Therefore, the order made by the Additional Director is ex-facie without jurisdiction, without application of mind and in breach of settled principles of natural justice and fair play. This is why this petition was entertained without relegating the petitioner to the alternate remedy.

10. In several cases, this Court has noticed that parties file appeals against show cause notices and obtain an ex-parte stay order. It is not as if the appeals against show cause notice are not maintainable. However, the appellants must demonstrate that the show cause notice is expressly without jurisdiction. In any case, the Director or the Additional Director of Panchayats should never ordinarily stay the show cause notices, thereby frustrating the Panchayats who only comply with principles of natural justice and fair play before any precipitative action is taken against the alleged wrong doors. Further,

even if an exceptional case is made for entertaining such appeals, the Directors and the Additional Directors of Panchayats should not grant ex-parte stay without putting the appellant to terms regarding proceedings with the construction activities, which may be a subject matter of such show cause notice. Invariably, in such cases, such ex-parte orders are obtained based upon which constructions are completed, and after all, this situation of fait accompli attempted to be created.

11. For all the above reasons, the impugned order dated 27.07.2021 on page 53 of the paper book is quashed and set aside.

12. Respondent no.1 may consider whether the appeal before the Director, which is only against a show cause notice, should be pursued. However, based upon the pendency of this appeal, the Panchayat should not hold its hands for deciding the show cause notice dated 10.07.2021. Therefore, the show cause notice must be disposed of according to the law as expeditiously as possible and within six weeks from today.

13. Respondent no.1 has *prima facie* abused the process and must pay costs to the petitioners. These costs are quantified at ₹10,000/- payable by respondent no.1 within four weeks from today. Further, in terms of the earlier directions, respondent no.1 must maintain the absolute status quo regarding the impugned construction.

14. The costs must be deposited in this Court within four weeks from today with due intimation to the petitioner. Upon deposit, the petitioner will be at liberty to withdraw such costs.

15. The rule is made absolute in the above terms. All concerned are to act on an authenticated copy of this order.

16. A copy of this order is to be placed before the Director of Panchayats so that the Director can take cognizance of the observations in this order and also circulate this order to the Additional Director of Panchayats for necessary action.

M. S. SONAK, J.

NITI K
HALDANKAR

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NITI K HALDANKAR
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