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**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 35 OF 2020**

Wilson J. Braganza, major in age, r/o H.  
No. 422, Aviso, Dona Paula, Ilhas,  
Tiswadi-Goa, through his duly constituted  
attorney Mr. John Baptist Braganza. ... PETITIONER

Versus

1. State of Goa, through the Chief  
Secretary, having office at  
Secretariat, Porvorim, Goa.
2. The Member Secretary, Goa Coastal  
Zone Management Authority,  
Department of Science, Technology  
& Environment, Pundalik Nagar,  
Porvorim, Goa.
3. The Deputy Collector & Sub  
Divisional Officer, Tiswadi, Tiswadi,  
Panaji, Goa.
4. Carlos Cabral, r/o 474, Dr. Jack  
Sequeira Road, Dona Paula Road,  
Tiswadi, Goa. ... RESPONDENTS

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Mr. V.R. Tamba with Mr. Vibhav R. Amonkar and Mr.  
Paresh Sawant, Advocates for the Petitioner.

Mr. Prashil Arolkar, Additional Government Advocate for  
Respondent Nos. 1, 2 and 3.

Ms. Parinda P. Kanekar, Advocate for Respondent No. 4.

**CORAM: B.P. DESHPANDE, J.**

**DATED: 5<sup>th</sup> OCTOBER 2023**

**ORAL JUDGMENT:**

1. Heard learned Counsel Mr. Tamba who appears along with Mr. Vibhav Amonkar and Mr. Paresh Sawant for the Petitioner, learned Additional Government Advocate Mr. Prashil Arolkar appearing for Respondent Nos. 1, 2 and 3 and Ms. Parinda Kanekar appearing for Respondent No. 4.

2. Rule. Rule is made returnable forthwith. Heard the learned Counsel for the respective parties finally at the stage of admission itself.

3. The Petitioner is challenging the decision of Respondent No. 2/GCZMA dated 18.12.2019 which was taken in its 211<sup>th</sup> meeting directing/holding that the NOC issued in favour of the Petitioner be revoked and to demolish the construction and to restore the land to its original condition.

4. Mr. Tamba, learned Counsel for the Petitioner would submit that on the basis of the complaint lodged by Respondent No. 4, proceedings were initiated by the GCZMA (Authority). The

parties were called upon to submit their arguments/documents in its meeting held on 11.06.2019. Accordingly, the Petitioner as well as Respondent No. 4 remained present and presented their respective pleadings as well as arguments. However, no final decision was taken in the 204<sup>th</sup> meeting of the GCZMA. In that meeting, it was observed that the Petitioner by taking advantage of the structure shown in the survey records, which was demolished for road widening, erected a new structure and tried to show it as an old one.

5. Mr. Tamba would then submit that thereafter the constitution of the Authority changed since the Member Secretary and Secretary (Environment) were replaced due to the transfer of the said Officers in different Departments. The newly constituted Authority with these two Members then convened a meeting of the Authority and took up the issue regarding the illegal construction carried out by the Petitioner in its 211<sup>th</sup> meeting held on 24.08.2019. Mr. Tamba would submit that neither the Petitioner nor Respondent No. 4 was called upon for a personal hearing before the Authority on 24.08.2019 and the decision was taken behind the back of the Petitioner to revoke the NOC and to demolish the said structure.

6. Mr. Tamba would submit that such action on the part of the Authority is clearly in violation of principles of natural justice as well as the order passed by this Court in Writ Petition No. 1043 of 2018 decided on 08.04.2019 which was filed by Respondent No. 4 [**Carlos Cabral Vs. State of Goa & Others**]. He also placed reliance on the decision dated 15.02.2019 passed in Writ Petition No. 817 of 2018 in the case of **Antonio Fernandes Vs. State of Goa & Others**. Mr. Tamba would submit that the said decision in the case of **Antonio Fernandes** (supra) is on similar grounds and apply to the matter in hand.

7. Mr. Arolkar, learned Additional Government Advocate appearing for Respondent Nos. 1, 2 and 3 raised an objection with regard to the maintainability of the present Petition stating that this Court should not entertain the same as the matter pertains to the jurisdiction of the NGT. A similar objection is raised on behalf of Respondent No. 4.

8. Mr. Arolkar though admits that the constitution of the Authority had changed between the 204<sup>th</sup> meeting and 211<sup>th</sup> meeting of the Authority, he would submit that as far as merits are concerned, the initial decision was taken by the Authority in

its 204<sup>th</sup> meeting. However, the final decision was taken in its 211<sup>th</sup> meeting. He would submit that the Authority has complied with the orders passed by this Court in Writ Petition No. 1043 of 2018 by giving an opportunity to the Petitioner and Respondent No. 4 to put up their submissions. He submits that the decision was taken in its 204<sup>th</sup> meeting and only the formality remained which was completed in its 211<sup>th</sup> meeting. According to him, the Authority has complied with the principles of natural justice and no interference is warranted.

**9.** The rival contentions fall for determination of this Court.

**10.** As far as the objection to the maintainability of the present Petition is concerned, it is well settled that when there is a challenge with regard to violation of principles of natural justice by the concerned Authority, this Court is very much entitled to consider such aspects without going into the merits of the matter. The main ground which has been raised in the present Petition is violation of directions of this Court in the earlier Petition [Writ Petition No. 1043 of 2018] as well as violation of principles of natural justice i.e. deciding the matter without giving proper opportunity to the Petitioner to represent his case before the Authority.

**11.** Under Article 226 of the Constitution of India, this Court is very much entitled to look into such aspects and decide the same. Therefore, the objections raised to the maintainability of the present Petition on the ground that the dispute raised in the present matter pertains to the jurisdiction of the NGT, needs to be rejected.

**12.** There is no dispute that a complaint was lodged by Respondent No. 4 against the construction carried out by the Petitioner in his own property. Since Respondent No. 2/Authority failed to take any action against such a complaint, Respondent No. 4 approached this Court by filing Writ Petition No. 1043 of 2018. During the course of hearing of the said Petition, a statement was made by the learned Advocate General appearing for the GCZMA that show cause notice has been issued and the Authority after hearing the respective parties, would pass appropriate orders. The observations of this Court in its order dated 08.04.2019 reads thus:

*“Learned Counsel appearing for the Corporation City of Panaji and the learned Advocate General appearing for the Goa Coastal Zone Management Authority state that their respective clients have already issued notices to the Respondent no.5. Respondent no.3 has issued stop work*

*order/show cause notice dated 8.11.2018 where as respondent no.2 has issued notice for site inspection dated 21.2.2019 to the Respondent no.5.*

*2. The learned Counsel for the Petitioner states that respondent no.2 has already carried out site inspection pursuant to the notice dated 21.2.2019. Matter is now pending before the said Authority. The learned Advocate General states that parties would be heard before taking any further action pursuant to the site inspection carried out by the respondent no.2 and after hearing both the parties, an appropriate order would be passed. Statement is accepted. Respondent nos.2 and 3 are accordingly directed to dispose of notices issued by them after hearing the petitioner as well as respondent no.5 within eight weeks from today in accordance with law and after complying with the principles of natural justice and shall communicate the order to both the parties within one week from the date of passing of such order.*

*3. Respondent no.5 shall not carry out any further construction without obtaining further sanction from the Authorities. It is made clear that if any of the Authority passes any order, the petitioner or respondent no.5 if aggrieved by such order would be at liberty to file appropriate proceedings. It is made clear that this Court has not expressed any views on*

*the merit of the matter. All contentions of the parties are kept open.*

*4. Petitioners as well as respondent no.5 shall appear before the Authority on the date of such meeting and shall not seek any unnecessary adjournment.*

*5. Writ Petition is accordingly disposed of. No order as to costs.*

*6. Parties to act on the basis of the authenticated copy of this Order.”*

**13.** A perusal of the above observations clearly goes to show that there were specific directions from this Court to Respondent No. 2 to grant a personal hearing to the Petitioner and Respondent No. 4 before taking any decision in the said matter. These directions were passed on the statement made by the learned Advocate General on behalf of the Authority. Thus, the Authority was duty bound to give opportunity to the Petitioner and Respondent No. 4 before taking a final decision in the matter.

**14.** Minutes of the 204<sup>th</sup> meeting of the Authority are produced by the Petitioner, which are at Exhibit-F. The complaint filed by Respondent No. 4 was taken up in the said meeting under the

caption “Case No. 1.2”. On that day, Respondent No. 4 was present in person whereas the Petitioner was represented by his Advocate. The Authority took up the matter for discussion. The Petitioner also filed written submissions and thereafter, the Authority considered it which is reflected on page 80 of the paper book reads thus:

*“Decision: The authority noted that the respondent while applying to GCZMA for permission relied on documents of the year 1974 issued by Town & Country planning (construction license) pertaining to structure C as per approved plan of GCZMA. However using this permission reconstruction is carried out of structure B legality of structure B is not proved. Respondent claims that there is typo error which is not accepted. The survey plan doesn't indicate the existence of structure “B” but new structure “C” did exist which apparently had been demolished on account of road widening. The Authority was of the opinion that by taking advantage of the existence of the structure reflecting in the survey plan which structure had been demolished and also by misrepresenting facts in respect of the approval given to the respondent way back in the year 1974, has played a fraud on the Authority which by no stretch of imagination be allowed to be pardoned.”*

**15.** From the perusal of the above decision taken by the Authority, it appears that these are only the observations and not the final decision. There is no mention of the revocation of the license/NOC or demolition of the said structure on the basis of such observations. Thus, the contentions of Mr. Arolkar that the final decision was taken in its 204<sup>th</sup> meeting cannot be accepted.

**16.** It is again an admitted fact that the composition of the Authority changed and a new Member Secretary and the Secretary of the Department of Environment joined the Authority which consists of a total of 13 Members. The minutes of the 211<sup>th</sup> meeting are also placed on record by the Petitioner as well as the Respondents along with their reply affidavits.

**17.** The complaint filed by Respondent No. 4 was again taken up in its 211<sup>th</sup> meeting under the caption “Case No. 1.9”. The title of the said extract shows as under:-

*“To discuss and decide on a complaint by Mr. Nelson Francisco Cabral for illegal construction in Chalta No. 3 of P.T. Sheet 165 of City Survey Panaji.”*

**18.** The above caption itself shows that the Authority in its 211<sup>th</sup> meeting considered to discuss and decide the complaint afresh.

Admittedly, neither the Petitioner nor Respondent No. 4 was called upon before the Authority to submit their respective pleadings. Thus, it is clear that the newly constituted Authority failed to adhere to its own undertaking given to this Court in Writ Petition No. 1043 of 2018 decided on 08.04.2019.

19. Similarly, the matter was discussed in detail in the Authority's 211<sup>th</sup> meeting which is clear from the minutes and thereafter the decision was taken which reads thus:

*“Authority perused the documents submitted by both the parties and decided to revoke GCZMA NOC issued to Mr. Wilson Braganza and whatever construction is carried out should be demolished by him and land is to be restored to its original conditions.”*

20. In **Antonio Fernandes** (supra), similar contentions were raised against GCZMA as there were directions issued by the NGT to decide the matter by giving an opportunity to the concerned parties. In that matter, in the 158<sup>th</sup> meeting of the Board, the Authority considered the complaint and even heard the parties. However, no decision was taken during that meeting. Thereafter, the composition of the Board changed as the Chairman himself was replaced by another Officer. In a subsequent meeting of the Board (177<sup>th</sup> meeting) new Chairman presided over the meeting.

However, the decision was taken without hearing the parties. On this aspect, this Court after considering the decision in the case of **Gullapalli Nageswara Rao & Others Vs. Andhra Pradesh State Road Transport Corporation, AIR 1959 SC 308** and **Rasid Javed Vs. State of U.P., 2010 7 SCC 781** observed in paragraph 12 as under:-

*“12. In the present case it is undisputed and it is a matter of record that the constitution of the second respondent when it decided the matter on 26/6/2018 had undergone a change than the constitution of the authority on 26/9/2017 when the personal hearing was granted. In as much as in the interregnum, the Chairman of the authority was changed. When the personal hearing was granted, Mr. Daulat Hawaldar was the Chairman, while the Committee which decided the matter had Mr. Rajiv Jha as the Chairman as also the Member Secretary. This in my view would clearly be in breach of principles of natural justice, when there was a specific direction by the NGT to grant personal hearing. Thus in my considered view in a case where either the GCZMA decides to grant personal hearing to the parties, (depending upon facts and circumstances of each case) and/or where there is a specific direction by a competent court/Tribunal to decide the matter after affording an opportunity of personal hearing to the parties, it would be necessary that the authority*

*which hears ought to decide the same without change of its Constitution.”*

**21.** The matter in hand is exactly similar to the one decided in the case of **Antonio Fernandes** (supra). In this case also, composition of Authority changed after the parties were heard, but without deciding it. It was necessary that the Authority which hears ought to decide the same without any change of its constitution.

**22.** There is no material to take any different view that has been expressed by the learned Single Judge in the case of **Antonio Fernandes** (supra) which is based on the decision of the Apex Court on similar grounds. On this ground itself, the Petition needs to be allowed.

**23.** The question with regard to the other grounds or merits on which the Petition is filed, need not be gone into for the simple reason that it is for the GCZMA to take the appropriate decision since it is clear that there is a violation of principles of nature justice and also violation of directions of this Court in the earlier Petition. Thus, the impugned order needs to be quashed and set aside. The matter needs to be remanded to the Authority with

specific directions to give an opportunity of personal hearing to the Petitioner and Respondent No. 4 and only thereafter, to take a decision on the complaint filed by Respondent No. 4 on merits and thereafter, to intimate the parties accordingly.

24. Mr. Arolkar, at this stage, submits that the GCZMA will grant an opportunity of a personal hearing to the parties and shall decide the matter on merits within a period of two months from today.

25. Hence, the following order is passed:

**O R D E R**

(a) The impugned order is hereby quashed and set aside.

(b) The matter is remanded to the GCZMA to decide the complaint of Respondent No. 4 afresh, by giving an opportunity of personal hearing to the Petitioner and Respondent No. 4, within a period of two months from today.

(c) Mr. Arolkar shall intimate the Authority about the decision and shall furnish an authenticated copy of this order before the Authority.

(d) The Authority will now intimate in writing the next date for personal hearing to the Petitioner and Respondent No. 4 respectively.

(e) Since there was an earlier order directing the Petitioner not to carry out further construction, the same shall remain in operation till the decision of the GCZMA.

(f) Rule is made absolute in the above terms. No order as to costs.

**26.** The Petition stands disposed of in the above terms.

**B.P. DESHPANDE, J.**

VAIGANKAR  
ESHA SAINATH

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VAIGANKAR ESHA SAINATH  
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