

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.137 OF 2023

MR MANGALDAS PUTTU NAIK,
Aged 67 years, s/o Putu Naik, Indian
National, Married, Residing at H.No.95,
Shobha Bungalow, Altinho, Panaji- Goa. ... Petitioner

Versus

- 1 STATE OF GOA THR. THE CHIEF
SECRETARY
having office at Secretariat, Porvorim, Goa.
- 2 NORTH GOA PLANNING AND
DEVELOPMENT AUTHORITY,
Archdiocese Bldg, 1st floor, Mala Link Road,
Panaji-Goa.
- 3 THE COMMISSIONER
Corporation of the City of Panaji,
Panaji- Goa. ... Respondents

Mr Shivan Desai with Mr Nathan Savio Vas, Advocates for the
Petitioner.

Mr Devidas Pangam, Advocate General, with Mr Shubham Sinai
Priolkar, Additional Government Advocate for Respondent No.1.

Mr H.D. Naik, Advocate for Respondent No.2.

Mr P.A. Kamat, Advocate for Respondent No.3.

**CORAM: M. S. SONAK &
VALMIKI SA MENEZES, JJ.**

DATED: 6th MARCH, 2023.

ORAL JUDGMENT: (Per M.S. Sonak,J)

1. Heard Mr Shivan Desai, learned Counsel for the Petitioner, Mr Devidas Pangam, learned Advocate General along with Mr Shubham Sinai Priolkar, learned Additional Government Advocate for respondent No.1, Mr H.D. Naik, learned Counsel for respondent No.2(NGPDA) and Mr P.A. Kamat, learned Counsel for respondent No.3(CCP).
2. Rule. The rule is made returnable immediately at the request and with the consent of the learned Counsel for the parties.
3. The challenge in this petition is to the communications dated 26/04/2018 and 25/04/2018 issued by the NGPDA through its Member Secretary. The first communication rejects the Petitioner's application dated 23/01/2018 for constructing a hotel building and the compound wall. Instead, this communication relies upon the second order/communication dated 25/04/2018. The order/communication dated 25/04/2018 revokes the permission dated 19/01/2016 issued to M/s C.M. Construction regarding the construction of the residential bungalow.
4. As against the impugned orders/communications, the Petitioner has an alternate remedy before the Goa Town and Country Planning Board. This is more so because Mr Desai submits that communication dated 26/04/2018 was served upon the Petitioner only on 06/12/2022 and not earlier. This position of delayed communication is not contested. No explanation was also forthcoming for this delay.
5. However, Mr Desai submits that both the impugned

communications/orders were not preceded by even minimum compliance with principles of natural justice and fair play. He points out that both communications/orders visit the Petitioner with serious civil consequences. Therefore the NGPDA should have heard the Petitioner before making the impugned orders/communications. Mr Desai further points out that the reason for the rejection of the permission might conflict with the decree made by the IInd Ad-Hoc Additional District Judge – Panaji in Civil Suit No.178/2004(New)/Regular Civil Suit No.100/2000/A(Old) instituted by M/s C.M. Construction. He submits that if an opportunity for a hearing were to have been granted, then all these matters could have been placed before the NGPDA.

6. Mr Naik, learned Counsel for NGPDA, does not dispute that no opportunity of hearing was granted to the Petitioner or, for that matter, M/s C.M. Construction.

7. In our judgment, principles of natural justice were required to have been complied with considering the civil consequences qua the Petitioner. One of the exceptions to the principle that this Court would not ordinarily entertain a petition under Articles 226 and 227 of the Constitution if the Petitioner has an alternate and efficacious remedy is when the impugned order is made in violation of the principles of natural justice and fair play. In this case, there is no dispute that the impugned orders/communications violated the principles of natural justice and fair play.

8. Therefore, without going into the merits of the matter or the rival contentions on the subject, we set aside the impugned orders/

communications dated 26/04/2018 and 25/04/2018 only on the ground of failure of natural justice.

9. The NGPDA is now directed to afford an opportunity of hearing to the Petitioner and The Executive Engineer, Works Division No.II(Roads-North), Public Works Dept., Panaji, and decide the issue of revocation and the grant of permissions as per the law and on their own merits. This exercise should be completed within three months from today.

10. The rule is made absolute in the above terms. There shall be no order as to costs.

11. All concerned are to act based on an authenticated copy of this order.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.

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BHOIR

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