

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO. 284 OF 2017
WITH
MISC. CIVIL APPLICATION NO. 2310 OF 2022 (F)
IN
WRIT PETITION NO. 284 OF 2017**

VASSUDEV LIMO MADKAIKAR
& ANR., ... PETITIONERS
VS
STATE OF GOA, THR. ITS CHIEF
SECRETARY & 4 ORS., ... RESPONDENTS

Mr Rohit Bras De Sa, Advocate for the Petitioners.

Mr Arun Talaulikar, Additional Government Advocate for
Respondent Nos. 1, 2 and 3.

Mr Eeshan Usapkar, Advocate for Respondent No. 5.

**CORAM: M. S. SONAK &
VALMIKI SA MENEZES, JJ.**
DATED: 25th APRIL 2023

ORAL ORDER:

1. Heard Mr Rohit Bras De Sa for the petitioners, Mr Talaulikar for respondent nos. 1, 2 and 3 and Mr Eeshan Usapkar for respondent no. 5.
2. Mr De Sa states that a fresh notice dated 24.04.2023 was served upon the Panchayat. He produced the acknowledgment of the Panchayat upon such notice.
3. The petitioners, by instituting the present Petition, question the repair permissions issued to respondent no. 5. Mr

De Sa pointed out that the complaint is not much regarding the repair permissions, but the complaint is that respondent no. 5 in the guise of permissions has completely demolished the old structure and has put up a new construction. Mr De Sa submits that to put such a new construction, proper permissions, not only from the Panchayat were necessary, but permissions from the Planning authorities were also necessary. Accordingly, he submits that the Planning authorities and the Panchayat must look into the petitioners' complaint and if violations are established, take necessary action in accordance with law.

4. Mr Usapkar for respondent no. 5 disputes the above contentions. He submits that the repairs have been carried out in terms of the permissions issued by the authorities. He further states that petitioner no. 2 is the brother of respondent no. 5 and despite offers from respondent no. 5 about petitioner no. 2 being free to use the house in question, the petitioners are bent upon making a complaint against respondent no. 5.

5. In this case, the main issue is whether, respondent no. 5 has acceded to the terms of the repair permissions and, under the guise of repair permissions carried out a new construction as alleged by the petitioners.

6. According to us, the Director of Panchayats has not appreciated the material placed by the parties on record in its

proper perspective. The Director of Panchayat has focused or rather over focused on civil disputes between the parties or the relationship between the parties. These were not the issues that the Director of Panchayat was required to be gone into. The Director was required to focus on whether the permissions obtained by respondent no. 5 were acceded to by respondent no. 5 and/or whether respondent no. 5 had adhered to the terms and conditions of the permissions granted to him. Accordingly, the Director's order dated 08.11.2016 is set aside.

7. Considering the material placed by the parties on record, we think that the Deputy Town Planner, Panaji and Village Panchayat of Carambolim should hold a site inspection at the earliest. Based on the site inspection, the Deputy Town Planner and the Village Panchayat of Carambolim should consider initiating further action. Accordingly, we direct the Deputy Town Planner and the Panchayat to hold a site inspection within four weeks from today. Based upon the site inspection report if any further action is warranted, such action must be initiated and completed within three months from the date of such site inspection.

8. If any adverse orders are proposed to be made then the Deputy Town Planner and the Panchayat must comply with principles of natural justice and fair play. In fact, in the peculiar

facts and circumstances of the present case, it would be appropriate if the Deputy Town Planner and the Panchayat offers an opportunity of hearing to the petitioners as well as to respondent no. 5. The decision of the Deputy Town Planner and the Panchayat must be communicated to the petitioners and respondent no. 5 within the outer time limit of four months from today.

9. All contentions of all parties are left open to be considered by the Deputy Town Planner and the Panchayat in the first instance.

10. The Petition is disposed of in the above terms.

11. Miscellaneous Civil Application No. 2310 of 2022 (F) does not survive and is disposed of.

12. The petitioners to file an authenticated copy of this order before the Deputy Town Planner, Panaji and the Village Panchayat of Carambolim at the earliest.

13. All concerned to act on the authenticated copy of the order.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.