

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.50 OF 2022

SHRI M. ASHRAF NAGARWALA
(Since deceased represented
through legal heirs).

a. Zarina Nagarwala,
51 years of age,
Widow of Mr. Ashraf Nagarwala,

b. Shoeib Nagarwala,
28 years of age,
Son of Mr. Ashraf Nagarwala,

c. Mohamed Saif Nagarwala,
24 years of age,
Son of Ashraf Nagarwala,

d. Sana Banu Nagarwala,
30 years of age,
Daughter of Ashraf Nagarwala
All residents of Indraprastha
Building, Malbhat, Margao, Goa.

....Petitioners

Versus

1. The Margao Municipal Council
Through its Chief Officer,
Margao — Goa.

2. Shri Dilip Trimbak Alve,
Son of late Trimbak Alve,
Major of age, Resident of
Near Popular High School,
Comba, Margao - Goa.

3. Shri Narayan alias Ajit Trimbak Alve,
Major of age, Son of late Trimbak Alve,
Resident of Near Popular High School,
Comba, Margao - Goa.

....Respondents

**Mr A.D. Bhobe with Ms Annelise Fernandes, Advocates for
the Petitioners.**

Mr I. Santimano, Advocate for Respondent No.1.

**Mr Nitin Sardessai, Senior Advocate with Mr Gaurang
Panandiker, Advocate for Respondent Nos.2 & 3.**

CORAM: M. S. SONAK, J.

DATE : 4th MAY 2023

ORAL JUDGMENT :

1. Heard Mr Bhobe, who appears with Ms Annelise Fernandes for the petitioners, Mr I. Santimano for respondent no.1 and Mr Nitin Sardessai, learned Senior Advocate with Mr G. Panandiker for respondent nos.2 & 3.

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

3. The challenge in this petition is to the orders dated 12.05.2014 and 28.08.2020 made by the Chief Officer and the Revisional Authority, respectively, sealing the petitioners' tenanted premises.

4. Respondent nos.2 & 3 (landlords) filed complaints about some illegal construction being undertaken by the petitioners in the

tenanted premises. Acting on such complaints, Stop Work Orders were issued to the petitioners. However, the impugned orders state that the petitioners continued with the illegal construction despite such Stop Work Orders. Ultimately, by order dated 12.05.2014, the Chief Officer directed the sealing of the tenanted premises. The Chief Officer also eventually made a demolition order dated 20.10.2020.

5. The demolition order dated 20.10.2020 is appealed by the petitioners before the Municipal Appellate Tribunal vide Appeal No.14/2020. The same is pending, and the demolition is stayed pending disposal of the appeal.

6. The petitioners challenged the sealing order dated 12.05.2014 before the Secretary (Urban Development) – Revisional Authority. By order dated 28.08.2020, the Revisional Authority has dismissed the revision and upheld the sealing order.

7. Thus, the impugned orders proceeded on the basis that the petitioners were indeed undertaking illegal construction in the tenanted premises and persisted with such construction even though the Chief Officer issued Stop Work Orders.

8. In the above regard, reference can be usefully made to the documents of transgression dated 17.04.2014 and 09.05.2014, based

upon which action was initiated against the petitioners for demolition and sealing of the tenanted premises.

9. In the document of transgression dated 17.04.2014, the description of the transgression reads as follows:-

"DESCRIPTION OF TRANSGRESSION

The party has constructed illegally renovated internally existing shop No.14/482 by doing POP work, Furniture, Electrification, etc. situated at New Market Margao Goa."

10. In the document of transgression dated 09.05.2014, the description of the transgression reads as follows:-

"DESCRIPTION OF TRANSGRESSION

The party has constructed illegally carried on with the work after issu. of SCN dated 22/04/2014 the wall were plastered + finished plywood platform of ht appxmt – 15 cm resembling like a step all round three side wall. A P.O.P. false ceiling structure with GI bracing nearing completion is also noted, A Woddem/Plywood mezzanine floor is also noted above P.O.P. false ceiling, however it could not ascertain whether it is new or old."

11. The petitioners' case was that no illegal constructions were taken, and plastering and painting of walls or providing some plywood platform or P.O.P. false ceiling does not mean any construction. Mr Bhobe submitted that all these are standard carpentry and furnishing works which can hardly be styled as an undertaking of any illegal constructions.

12. Mr Bhobe submitted that the tenanted premises always had a wooden mezzanine i.e. "a wooden mala" for storage purposes. He states that the petitioners have not constructed any new mezzanine as alleged.

13. Mr Bhobe submitted that, in any case, the issue of demolition is being considered by the Municipal Appellate Tribunal. He, however, presents that there was no illegal construction, and nothing would eventually be required to be demolished. He, therefore, submits that the power of sealing the premises should not have been exercised. He offers that such exercise is grossly disproportionate even to the allegations made by respondents nos.2 & 3 in their complaints.

14. Mr Bhobe submits that there was no defiance of any Stop Work Orders. However, the furnishings may have continued because the petitioners bonafide believed that since there was no construction involved, the Stop Work Orders would not apply for completion of furnishing.

15. Mr Sardesai, the learned Senior Advocate for respondents nos.2 & 3, submitted that the transgression reports refer to a mezzanine. He offers that even the works of providing steps, false ceiling, etc., would mean construction, and such works could never have been undertaken without proper permissions from the Municipal Authorities. Further, he submits that the power to seal premises is

vested in the Chief Officer, and the power was correctly exercised given the petitioners' defiance of the Stop Work Orders. Mr Sardessai, therefore, submitted that the impugned orders should not be interfered with.

16. Mr I. Santimano also defended the impugned orders based on the reasonings reflected therein.

17. The rival contentions now fall for determination.

18. At the outset, the relevant contents of the documents of transgression were transcribed above to give an idea of the nature of the alleged transgression.

19. The first document described the transgression as illegal renovation internally of the tenanted premises by doing P.O.P. Work, furniture, electrification, etc. At least, *prima facie*, the transgression does not refer to any new construction but refers to P.O.P. work, furniture, electrification, etc.

20. The second document of transgression refers to illegally carrying on with works after the issue of show cause notice dated 22.04.2014. But the works described are plastering of the wall, a finished plywood platform of height approximately 15 cm resembling a step all around three side walls, a P.O.P. false ceiling structure with

GI bracing nearing completion, which is noted. A wooden plywood mezzanine is also noted above P.O.P. false ceiling. However, the document comments that whether it is new or old could not be ascertained.

21. The second transgression report refers to a wooden mezzanine floor and a step all around the three side walls. The issue as to whether this amounts to construction or not will no doubt be examined by the Appellate Authority. However, as pointed out by Mr Sardesai, at least this document of transgression refers to certain works like a wooden mezzanine floor. At this stage, it will have to be believed that such works continue despite the show cause notice dated 22.04.2014.

22. However, even after accepting the documents of transgression at their face value, the question is whether the harsh order of sealing the tenanted premises depriving the petitioners of their right to undertake their business activities through the tenanted premises was warranted.

23. In my judgment, considering the nature of the transgressions, the sealing order appears to be harsh and disproportionate. Under the Municipalities Act's provisions, the Chief Officer undoubtedly has the power to order sealing. However, having power is one thing, and reasonably exercising the same is quite another. The reasonable exercise of such power includes the exercise of power regarding the doctrine of proportionality.

24. Most transgressions, at least *prima facie*, refer to works of furniture, electrification or some P.O.P. work. Mr Bhobe's contention that the petitioners bona fide believed that the Stop Work Order would not apply to them because they were not undertaking any construction work cannot be lightly brushed aside.

25. Mr Bhobe has also placed on record some photographs of which copies are supplied to the learned Counsel for the respondents. Although it is not for this Court, at this stage, to go into such issues, even the photographs by and far corroborate the two documents of transgressions issued by the Municipal Authorities.

26. Therefore, a case is made out to interfere with the impugned orders of sealing the premises. Mr Sardesai, however, submits that if desealing is ordered, it is likely that the petitioners will once again undertake illegal construction given their propensity to do so in the past.

27. Mr Bhobe, while denying that the petitioners undertook any construction activities, based on instructions from the petitioner that the petitioners would file an undertaking not to undertake any illegal constructions in the tenanted premises, he submitted that this could be made one of the conditions for desealing of the tenanted premises.

28. Mr Sardesai also requested that this Court order the expedition of Municipal Appeal No.14/2020. He pointed out that the appeal was posted for final arguments on 27.06.2023.

29. The apprehensions raised by Mr Sardesai and the request made by him need to be addressed. Such apprehension could be substantially addressed by requiring the petitioners to file an undertaking. Mr Bhobe learned Counsel for the petitioners states that necessary undertaking will positively be filed before the actual desecrating takes place.

30. Further, the apprehensions of the respondent nos.2 and 3 can be addressed by requiring the Chief Officer or any other Officer deputed by him to visit the tenanted premises at the time of desecrating and to draw out a sort of a panchanama about the status quo. The panchanama is to be accompanied by photographs. The panchanama is to be drawn in the presence of representatives of the petitioners and respondents nos.2 & 3. This panchanama must indicate the status quo so that the petitioners do not indulge in illegal constructions under the garb of recommencing operations.

31. The representatives of the petitioners and respondent nos.2 & 3 are to appear before the Chief Officer of Margao Municipal Council on 08.05.2023 at 11.30 am. The Chief Officer or any Officer deputed

by him should then proceed to the tenanted premises, desealing the tenanted premises and draw out a panchanama as directed above.

32. Further, directions can always be issued to the Appellate Authority to expeditiously dispose of Municipal Appeal No.14/2020. Such disposal will benefit the petitioners and the respondents nos.2 & 3.

33. Accordingly, this petition is disposed of by making the following order:-

(a) The impugned orders dated 12.05.2014 and 28.08.2020 are hereby set aside.

(b) The above relief is subject to the petitioners filing an undertaking in this Court that they will not undertake any illegal constructions in the tenanted premises. This means they will not alter the status quo that would be recorded by the Chief Officer or his deputed Official at the time of actual desealing.

(c) The Municipal Appellate Tribunal is directed to dispose of Municipal Appeal No.14/2020 as expeditiously as possible and, in any case, within three months from today.

34. It is clarified that this Court has not examined the rival contentions. Therefore, the observations, if any, in this order are only in the context of the challenge to the sealing orders. Accordingly, such observations should not be considered when deciding Municipal Appeal No.14/2020. The appeal is to be decided based on its own merits and in accord with law.

35. All parties' contentions are expressly kept open for consideration by the Municipal Appellate Tribunal.

36. All concerned to act on an authenticated copy of this order.

M. S. SONAK, J.

NITI K
HALDANKAR

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