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

**WRIT PETITION NO.389 OF 2022**

VINCENT FERNANDES, REP. THR.  
HIS POA, MELWIN FERNANDES ... Petitioner

*Versus*

THE VILLAGE PANCHAYAT  
OF ARPORA, REP. THR. ITS  
SECRETARY AND ANR. ... Respondents

Ms Barbara Andrade, Advocate *for the Petitioner.*

Mr Kewal Sawant, Advocate *for Respondent No.2.*

**CORAM: M.S. SONAK, J.**

**DATED: 24<sup>th</sup> March, 2023**

**P.C.:**

1. Heard Ms Barbara Andrade for the Petitioner and Mr Kewal Sawant for Respondent No.2.
2. The Petitioner challenges Judgment and Order dated 09.05.2022 made by the Ad Hoc District Judge-1 (FTC), Mapusa Goa, as a revisional authority under the Panchayat Raj Act, 1994 (said Act).
3. The operative portion of the impugned order reads as follows:-

*" The impugned Judgment and Order dated 14.08.2020 of the Ld. Additional Director in Case No.ADP-II/P.P.5/2017, is hereby quashed and set aside.*

*The Ld. Additional Director is directed to re-hear the matter after giving adequate opportunity to the parties to be*

*effectively heard and to thereafter, pass an appropriate Judgement and Order as per law, without being influenced by any finding herein rendered on the merits of the case.*

*The concerned clerk is directed to return the Records & Proceedings in Case No.ADP-II/P.P.5/2017, to the Ld. Additional Director of Panchayats, Panaji, along with a copy of this Judgement and Order, who shall proceed to dispose of the same as per law. In the mean time, the Resolution No.9(23) dated 14.12.2016, of the Respondent No.1 resolving to demolish the structures of the Applicant in survey no.28/16 of Village Arambol, Pernem, is hereby stayed till the disposal of the Petition on merits."*

4. Ms Andrade, learned Counsel for the Petitioner, submits that Respondent No.2's Advocate was given a hearing. Only after that did the Director dismiss the appeal against the demolition order made by the Panchayat. She points out that the Roznama, which bears the signature of Respondent No.2's Advocate, establishes that a necessary hearing was given to the Advocate. She points out that the entries in the Roznama are normally conclusive, and parties should not be permitted to question such entries by filing affidavits or by raising such issues before the appellate or revisional authorities. Finally, she submits that the Director of Panchayats has made a reasoned order. Because this order was handwritten in the Roznama, no doubts could be expressed about the authenticity of such an order. For all these reasons, she submits that the impugned order be set aside.

5. Mr Kewal Sawant, learned Counsel for Respondent No.2, defends the impugned order made by the revisional authority based on the reasonings reflected therein. He points out that pursuant to Respondent No.2's application, two sets of Roznamas came to be furnished. The first

set did not even contain the so-called handwritten order. He submits that the revisional authority correctly concluded that no opportunity for a hearing was granted to Respondent No.2 or his lawyer, and the order was prepared later, given the directions of the Lokayukta. He points out that incidentally, on 14.08.2020, even the Petitioner or his Advocate failed to remain present before the Director.

6. Mr Sawant further points out that the revisional authority has only remanded the matter to the Director for disposal of the appeal on merits after giving all parties an opportunity for an effective hearing. He submits that no prejudice will occasion the Petitioner if such a course of action were to be followed. He submits that Respondent No.2 would have no objection if some time-bound directions are issued to dispose of the appeal after hearing all concerned.

7. Ms Andrade pointed out that Respondent No.2 has been using the illegally constructed shops for commercial purposes despite restraint orders. She has even placed on record some photographs which, according to her, establish this position. Accordingly, Respondent No.2 was directed to file an affidavit explaining his version.

8. Such an affidavit has been filed by Respondent No.2, asserting that the two shops are not used for any commercial activity, as alleged. Mr Kewal Sawant pointed out that there is no electricity connection to these two shops, and Respondent No.2 does not use these two shops for commercial purposes. He stated that the two shops are sometimes used for storing paddy and coconuts from Respondent No.2's field and that this does not amount to a user for any commercial purposes.

9. Rival contentions now fall for my determination.

10. The revisional authority, in this case, has examined the record, which includes the two Roznamas that were furnished to Respondent No.2 in the context of the disposal of his appeal by the Director. Upon scrutinizing the record and the Roznamas, the revisional authority had concluded that no effective opportunity of hearing was granted to Respondent No.2 or his Advocate when his appeal was disposed of on 14.08.2020.

11. The first Roznama issued to Respondent No.2 does refer to the Advocate for Respondent No.2 being heard. However, this Roznama contains only the conclusion about the appeal being dismissed. The reasoned order of seven pages furnished along with the second Roznama is nowhere reflected in this first Roznama. The second Roznama refers to a handwritten order of seven pages. None of the orders seriously reflected consideration of the contention of the parties. Suppose, in these circumstances, the revisional authority has concluded that no opportunity for a hearing was given to the Advocate for Respondent No.2. Such a conclusion cannot be styled as a perverse conclusion. This conclusion has to be considered along with the directions issued by the Lokayukta for time-bound disposal of the appeal. Given such directions, Mr Sawant has argued that the appeal was disposed of in a hurry without a grant of hearing opportunity.

12. Ms Andrade is correct in her submission that the entries in the Roznama or the observations in the judicial or quasi-judicial orders regarding what has transpired cannot be lightly doubted or interfered

with. In such a case, the parties concerned must apply to the same authority and seek a correction. However, in the present case, the circumstances considered by the revisional authority are sufficient to conclude that no hearing or effective hearing was granted. Besides, the revisional authority has also examined the matter on merits and held that the impugned order suffers from the vice of non-application of mind.

13. The impugned order only grants all the parties concerned an effective opportunity for a hearing. Suppose the Petitioner is concerned with the delay in the disposal of the proceedings. In that case, suitable orders can be made to direct the Director of Panchayats to dispose of the remanded appeal within a time-bound schedule. However, no case is made out to interfere with the impugned order in the peculiar facts and circumstances of the present case.

14. Insofar as a breach of the restraint order is concerned, Respondent No.2 has filed an affidavit. The affidavit states that Respondent No.2 is not undertaking any commercial activities in the two shops, which are alleged to be illegal constructions. Respondent No.2 has explained that he and his wife sell agricultural produce outside the said shops. The shops are sometimes used for storing the seasonal paddy and coconuts from the field. However, the shops are not otherwise opened or used commercially.

15. Respondent No.2 is present in the Court and states that he is not using the two shops for commercial purposes and further undertakes that he will not use the two shops for commercial purposes until the disposal of the appeal and subject to the orders that will be made in the appeal.

Respondent No.2 further undertakes that no extensions or constructions on and around the shops will be made during the pendency of the appeal. These statements are accepted as undertakings to this Court.

16. For all the above reasons, this Petition is dismissed. The Additional Director is directed to dispose of the remanded appeal as expeditiously as possible and, in any case, within three months from today.

17. Parties and the learned Counsel for the parties to cooperate with the Additional Director for disposal of the appeal within three months from today.

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

**M.S. SONAK, J.**

JOSE  
FRANCISCO  
DSOUZA

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FRANCISCO DSOUZA  
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