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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.623 OF 2016

Shri Gopal V. Bholnekar
S/o Vithal Bholnekar, major in age,
Indian National, r/o H. No.82,
Katta Balli, Cuncolium, Goa.

... Petitioner

Versus

- 1) The Chief Officer,
Canacona Municipal Council,
having its office at Canacona
Municipal Council, Canacona,
Goa.
- 2) Shri Ulhas Vithal Bholnekar
s/o Vithal Bholnekar, major in
age, Indian National,
r/o. H.No174/A, Palolem,
Canacona-Goa
- 2a) Smt Meena Ulhas Bholnekar,
W/o late Shri Ulhas Vithal
Bholnekar, major in age,
Indian National,
- 2b) Miss Nikita Ulhas Bholnekar,
D/o late Shri Ulhas Vithal
Bholnekar, major in age,
Indian National,
- 2c) Miss Namita Ulhas Bholnekar,
D/o late Shri Ulhas Vithal
Bholnekar, minor in age,
Indian National,

} Since deceased.

All the above are resident of H.No P-23, Near Samarth Gad, Housing Board, Dhavarlim, Salcette, Goa.

... Respondents

Mr Vishnuprasad A. Lawande with Mr Parimal Redkar, Advocates for the Petitioner.

Mr Sudesh Usgaonkar, Advocate for Respondent No.1.

Mr Parikshit Sawant, Advocate for LRs of respondent No.2.

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

DATED : 26.04.2023

ORAL JUDGMENT: (Per. Valmiki Sa Menezes, J.)

1. This petition filed under Article 226 of the Constitution of India seeks the following relief:-

a) For a writ of certiorari to quash and set aside the order dated 20.08.2015 passed by respondent no.1 in case no.CMC/TECH.SEC/2014-15/2506 and further writ of mandamus to direct respondent no.1 to demolish the illegal structure complained on, to revoke NOCs issued in respect of cowshed bearing H. No.10/168 and house bearing No.174/A, to revoke NOC dated 22.04.2004 in respect of the release of water and NOC dated 24.09.2008 for release of electricity connection dated 30.04.2003, to issue directions to reassess the tax assessment made in favour of respondent no.2 with respect to H.No. 10/168 and 10/170B and to restrain the respondents from carrying out business activities in the illegal structures bearing house no.10/168 and house no.10/174-A.

b) The petitioner also seeks directions for the initiation of disciplinary action against respondent no.1 for abusing and misusing powers vested in him under the Goa Municipalities Act, 1968.

2. The facts as stated in the petition, which are necessary for the disposal of this petition are as under:-

a) Pursuant to information received under the Right to Information Act, by the petitioner from, respondent no.1- Municipal Council, the petitioner filed a complaint dated 22.11.2022 with respondent no.1, alleging therein that respondent no.2 had carried out certain illegal constructions under the guise of a repair licence issued by the respondent no.1. The complaint dated 22.11.2011 alleges that the petitioner is a co-owner of property admeasuring 2200sq.mts of land surveyed under Survey No.136/1 and of land admeasuring 6000 sq. mts under Survey No.134/4 of Village Nagorcem-Palolem, Canacona Taluka. It is the petitioner's allegation that the petitioner and the deceased respondent no.2 reside in their ancestral house bearing no.10/174-A situated in Survey No.134/4. The contents of the complaint further alleged that the deceased respondent no.2, without any development permissions or construction licences from respondent no.1 or obtaining an occupancy certificate as required under

the Goa Municipalities Act, 1968, constructed illegal structures to the North-Western side of the original house and was illegally allotted house numbers for these structures by the respondent no.1.

It was further alleged that a cowshed standing on the property under Survey No.136/1 under house no.10/168, was unlawfully converted by the deceased respondent no.2 by extending the same and converting it into a habitable area, then occupied by the said respondent No. 2, beyond its original area of 20sq.mts; that for the same illegally extended cowshed, the respondent no.2 has installed electricity and water connection by deliberately misrepresenting before respondent no.1 that he was the sole owner of the property. The complaint requested that respondent no.1 immediately revoke the NOC dated 22.04.2004 issued by respondent no.1 for obtaining electricity and water connection, as the same was granted to an illegal structure; consequently, to revoke NOC dated 22.04.2004 in respect of water and electricity connection and to demolish the illegal structures.

b) On this complaint, respondent no.1-Municipal Council, through its Municipal Engineer carried out an inspection of the site and drew up a document of transgression dated 10.01.2012 in which illegal structures

with dimensions as specified in the Transgression Report were recorded. The Transgression Report records that the construction was made of permanent material such as laterite stone masonry and an RCC framed structure having ground + one floor with an RCC roof slab. The Transgression Report also specifies the height of the ground + one structure was 5.70mts from the ground level. That the second structure which was of laterite stone masonry with ground + one floor had a height of 5.70mts from the ground level while the third structure which was an RCC framed structure with columns having a height of 3.20mts and platform thereon was constructed for a storage of water tank. These three structures were found situated in the land surveyed under No.134/4 at Village Palolem. The report further records that the fourth structure comprises two parts, the first admeasuring 9.10mts x 4.20mts and the second comprises of garage structure admeasuring 5.50mts x 4.80mts both of laterite stone masonry upon which one room was constructed of laterite stone with roofing of zinc sheets. Both these structures have been constructed on the land under Survey No.136/1.

c) Show cause notice dated 08.02.2012 was then issued to the late respondent no.2 along with the Transgression Report calling upon him to show cause as to why the four

structures should not be demolished pursuant to the powers vested in respondent no.1 under the provisions of Section 184(8) of the Goa Municipalities Act, 1968.

d) In reply to the show cause notice dated 08.02.2012 late respondent no.2 contended that all the structures mentioned in the Transgression Report were old structures, constructed during the lifetime of the father of the applicant about 40 years prior to the notice and before even the formation of the respondent no.1-Council. The reply further stated that the various structures were assessed for house tax in the name of respondent no.2 after the death of his father and that respondent no.1 had granted a No Objection Certificate to respondent no.2 on 30.04.2003 specifying that house bearing no.168 was listed in the records of the Municipal Council as a legal structure, and that respondent no.1 had no objection to release a three-phase supply electricity line for domestic use of the respondent no.2.

The reply to the show cause notice further refers to the NOC obtained by respondent no.2 on 22.04.2004 in respect of yet another house no.174-A which was issued for the release of a three-phase electric energy connection and yet another NOC dated 24.09.2008 with respect to house no.168 stating the respondent no.1 had no

objection for release of water connection for the domestic purpose for that house.

e) The petitioner/complainant filed his written submissions before respondent no.1, at the hearing of the complaint and show cause notice. The written submissions were filed on 13.06.2012.

Late respondent no.2 also filed his written submissions before respondent no.1 on 22.08.2012.

f) By order dated 12.12.2012, respondent no.1 held that the late respondent no.2 had built the structure where the old cowshed existed as well as the other new structures referred to in the Transgression Report without obtaining permission under Section 184 of the Goa Municipalities Act and were, therefore, constructed illegally. Respondent no.1 also held that late respondent no.2 had obtained all the NOCs referred to in the complaint, for releasing water and electricity connection to the structures by misrepresenting facts to respondent no.1, and consequently, the NOCs were all revoked. Consequent to the order of revocation of the NOCs, respondent no.1 directed the PWD (Water Department) and the Electricity Department to disconnect the supply of electricity and water to the structures bearing house no.10/168 and 174-A. Further direction was given to the tax section of

respondent no.1 to stop the reassessment of house tax with respect to structures under house no.10/168 and 10/170B.

g) The order dated 12.12.2012 passed by respondent no.1 was challenged before this Court in Writ Petition No.109/2013 mainly on the ground that the late respondent no.2 had not been heard in the matter. It appears that this Court, by its order dated 24.06.2013, on a statement made by the learned counsel for respondent no.1, that it had decided to withdraw the order dated 12.12.2012 and initiate fresh proceedings in accordance with the law, the said petition at the behest of late respondent no.2 was disposed of after setting aside the order dated 12.12.2012.

h) Since no action was taken thereafter, the petitioner once again reminded respondent no.1 by his letter dated 07.08.2013 to comply with the order of this Court dated 24.06.2013 by issuing fresh notice to the parties and deciding the proceedings afresh as stated by it before this Court. A further complaint was made by the petitioner on 20.03.2014 requesting respondent no.1 to initiate fresh action pursuant to its statement which was accepted by this Court in its order dated 24.06.2013.

i) Due to further inaction by respondent no.1, the petitioner then approached the Directorate of Municipal

Administration with a complaint dated 20.03.2014 with no success; thereafter, the petitioner filed a further representation dated 07.05.2014 in the nature of an appeal before the Directorate of Urban Development, based upon which the respondent no.1 was called upon to submit its comments. No comments were forthcoming from respondent no.1, who steadfastly refused to proceed with the issuance of a fresh show-cause notice in terms of this Court's order dated 24.06.2013.

j) Having no other alternate remedy, the petitioner then approached this Court in Writ Petition No.549 of 2014 seeking a writ of mandamus against respondent no.1, which was disposed of by order dated 29.10.2014 on the basis that respondent no.1 had issued a show-cause notice on 27.08.2014.

After going through the show-cause notice dated 27.08.2014, the petitioner requested, by letter dated 08.12.2014 for the issuance of a fresh show-cause notice by respondent no.1 to respondent no.2, pursuant to which, show-cause notice dated 09.12.2014 was issued to the respondent no.2.

k) Reply dated 23.12.2014 came to be filed by respondent no.2 in which, inter alia, a contention was raised that the complaint was barred by limitation; apart

from this defence, there was no statement made in the reply that any of the structures that had been constructed by the respondent no.2 had any valid licence issued by the respondent no.1 in terms of Section 184 of the Act or in terms of The Goa Land Development and Building Construction Regulations, 2010.

l) It then appears that respondent no.1 set the matter for hearing of arguments on 01.01.2015 and thereafter, adjourned to 06.01.2015, 08.01.2015 and then to 24.02.2015; after the matter was adjourned from time to time, arguments were finally heard on 09.06.2015 and the matter was posted for orders on 23.06.2015. No orders were passed thereafter, and the petitioner was finally called into the chamber of the then Chief Officer of respondent no.1 on 20.08.2015 and in the presence of respondent no.2 was told that the order which was pronounced directed the show-cause notice to be withdrawn. On the petitioner applying for a certified copy of the order dated 20.08.2015 was told that the order was not ready and he would be given a certified copy through post, only after the order was completed; the petitioner sent several reminders the last of which was sent to the respondent no.1 on 08.10.2015 but never received a certified copy of the order dated 20.08.2015. Thereafter, the petitioner made a complaint to the Director of Municipal

Administration on 02.11.2015 complaining that he has till date not received the order. Consequently, he has filed the present petition seeking a writ of certiorari to quash the impugned order dated 20.08.2015 in the absence of a copy thereof.

3. Heard learned Advocate Shri Vishnuprasad Lawande for the petitioner, Shri Sudesh Usgaonkar for respondent no.1 and Shri Parikshit Sawant for the legal representatives of the deceased respondent no.2. Perused the record of the petitioner, including the record of Case No.CMC/TECH.SEC/2014-15/2506.

4. It is the submission of the petitioner that the impugned order dismisses the complaint of the petitioner and directs withdrawal of the show cause notice dated 09.12.2014 mainly on the finding that the complaint was barred by law of limitation owing to the fact that there was considerable delay and laches in bringing the alleged illegalities to the notice of the respondent no.1. Learned Advocate Shri Lawande for the petitioner has taken us through paragraph 21 of the impugned order whereat, the respondent no.1 has come to a conclusion that the structures in question are old and have been in existence for more than 20-25 years and that being so the complaint which was dated 02.11.2011 was time-barred. It is the contention of the petitioner that in matters where the Authority is required to take action against an illegal construction or one that has been erected without a valid

licence or the authority of law, the provisions of the Limitation Act should not be made applicable; he contends that the withdrawal of the show-cause notice on grounds of limitation would amount to passing of an order which is totally without jurisdiction and contrary to set principles of law.

5. It was then contended by the petitioner that under Section 184 of the Goa Municipalities Act, 1968, the Chief Officer is vested with the authority to regulate construction activity within his jurisdiction, and any construction of a structure, after coming into force of the Municipalities Act, in contravention of provisions of Section 184 or without a valid construction licence, would be illegal and consequently would attract the provisions of sub-section (8) of Section 184 of the Act. He contends that it was the bounden duty of the Chief Officer in terms of these provisions that if respondent no.2 constructed any building, as the one complained of, without permission of the Chief Officer under sub-section (4), or of the Council under sub-section (5), or constructs contrary to the licence, plan or information furnished to the Council, a show-cause notice for demolition of such a structure ought to have been issued.

6. The petitioner further submitted that in the present case, there was already a document of transgression which if compared to the survey records of the concerned survey numbers, would clearly demonstrate that all the structures complained of were not only constructed illegally but were allotted house numbers without there

being any valid licence for their construction as contemplated under Section 184 of the Act. The learned counsel for the petitioner took us through various house tax receipts produced by the petitioner before respondent no.1. During the hearing of the matter, the survey plan which depicts the structures in existence at the time the revenue records were finalised/promulgated, the survey record in Form I and XIV shows uncultivable area under the occupation of the structures and the photographs produced by the petitioner before the Chief Officer. It was contended that the perusal of these photographs would clearly show that all the structures were new and were clearly an extension of the original house which was shown in the survey plan. According to the petitioner, this would be a case for setting aside the impugned order which was passed without exercising jurisdiction vested in the Chief Officer under Section 184 of the Act and the matter ought to be remanded back to the Chief Officer for a fresh hearing and a fresh decision.

7. Shri Sudesh Usgaonkar, learned counsel appearing for respondent no.1 has supported the impugned order, submitting that the petitioner could avail of the alternate remedy of filing an appeal before the Appellate Tribunal. He supports the order by contending that the Chief Officer had given a hearing to both the parties and had considered the written arguments of both the contesting parties and arrived at conclusions in the order which were based upon material before him and taken a view which may not be termed as unreasonable.

Shri Parikshit Sawant learned advocate appearing for the legal representatives of the deceased respondent no.2 has also supported the impugned order and contended that the legality of the structures complained on cannot be doubted since they all have a house number allotted to them and the construction work done by the deceased respondent no.2 was in fact not a new construction but only in the nature of repairs to existing structures which are belonging to the common ancestors of the respondent no.2 and of the petitioner.

8. It would be advantageous to quote the provisions of Section 184 of the Goa Municipalities Act, 1968:-

'184. Notice of construction of building.— (1) *The expression “to construct a building” throughout this Chapter includes—*

(a) any material alteration, enlargement or reconstruction of any building, or of any wall including compound wall and fencing, verandah, fixed platform, plinth, door step or the like, whether constituting part of a building or not;

(b) the conversion into a place for human habitation of any building not originally constructed for human habitation;

(c) the conversion into more than one place for human habitation of any place originally constructed as one such place;

(d) the conversion of two or more places of human habitation into a greater number of such places;

(e) such alterations of the internal arrangements of a building, as affect its drainage, ventilation or other sanitary arrangements, or its security or stability; and

(f) the addition of any rooms, buildings, or other structures to any buildings, and a building so altered, enlarged, reconstructed, converted or added to, is throughout this Chapter included under the expression “a new building”.

(2) Before beginning to construct any building, the person intending so to construct shall give to the Chief Officer notice thereof in writing and shall furnish to him at the same time, if

required by a bye-law or by a special order to do so, a plan showing the levels, at which the foundation and lowest floor of such building are proposed to be laid, by reference to some level known to the Chief Officer, and all information required by the bye-laws or demanded by the Chief Officer regarding the limits, design, ventilation and materials of the proposed building, and the intended situation and construction of the drains, privies, water-closets, house-gullies and cess-pools, if any, to be used in connection therewith, and the location of the building with reference to any existing or projected streets, the means of access to such building and the purpose for which the building will be used:

Provided that, if the bye-laws of the Council so require, such notice shall be in such form as the Council may from time to time prescribe and such plans shall be signed by a person possessing the qualifications laid down in the bye-laws or licensed under the byelaws so to sign such plans.

(3) If the person giving notice under sub-section (2) fails to—

- (i) furnish all the information and documents required under sub-section (2); or*
- (ii) the Chief Officer deems it necessary to call for any further information or documents, the Chief Officer shall, within sixty days of the receipt of the notice, require such person by an order in writing to furnish such information or documents.*

(4) Within sixty days of the receipt by the Chief Officer of the notice under sub-section (2), or if any further information and documents have been called for under sub-section (3) then within sixty days of the receipt of all such further information and documents, the Chief Officer may—

- (a) grant the necessary permission to construct according to the plans and information furnished under sub-section (2) and sub-section (3);*
- (b) impose any conditions in accordance with this Act or the rules and bye-laws made thereunder, as to the level, drainage, sanitation, materials or to the number of storeys to be erected, or with reference to the location of the building in relation to any street existing or projected or to the means of access to such building on the purpose for which the building is to be used;*
- (c) direct that the work shall not be proceeded with unless and until all questions connected with the respective*

location of the building or street have been decided to his satisfaction;

(d) subject to the provisions of the next succeeding section, refuse such permission for reasons which shall be communicated to the applicant in writing.

(5) The Council may, before any work has been commenced in pursuance of any permission granted by the Chief Officer under sub-section (4), revoke such permission and may give fresh permission in lieu thereof or issue any other order as may be passed by the Chief Officer under sub-section (4).

(6) If the Chief Officer fails to issue an order under clause (c) or (d) of sub-section (4) within the period prescribed in that sub-section, the person giving notice under subsection (2) shall, after the expiry of the said period, be entitled to proceed with the work in respect of which such notice has been given under sub-section (2), in the manner specified in such notice, provided that such manner is not inconsistent with any provision of this Act or any rule or bye-law for the time being in force thereunder.

(7) No person who becomes entitled under sub-section (4), (5) or (6) to proceed with any intended work of which notice is required by sub-section (2), shall commence such work after the expiry of the period of one year from the date on which he first became entitled so to proceed therewith, unless he shall have again become so entitled by a fresh compliance with the provisions of sub-sections (2) to (6).

(8) If any person begins any construction of a building of which notice is required to be given under sub-section (2)—

(i) without the permission of the Chief Officer under sub-section (4) or of the Council under sub-section (5), save as otherwise provided under sub-section (6); or

(ii) having received permission under clause (a) of sub-section (4), contrary to the plans and information furnished under sub-sections (2) and (3); or

(iii) having received permission under clause (b) of sub-section (4), contrary to the conditions imposed under that clause or contrary to the plans and information submitted under sub-sections (2) and (3) in so far as such plans and information are not modified by such conditions; or

(iv) contrary to the provisions of sub-section (6), when construction is begun under that sub-section, the Chief Officer may, by a written notice, require such person to stop such construction and to alter or demolish any

construction already made as specified in the notice. If, within fifteen days from the service of such notice for demolishing any such construction, the work of demolishing it is not commenced, the Chief Officer may cause such work to be done and the expenses incurred therefor shall be recoverable from the person concerned in the same manner as an amount due on account of a property tax.

(9) Any person who fails to comply with the notice issued by the Chief Officer under sub-section (8), shall, on conviction, be punished with fine which may extend to [fifteen thousand rupees].

(10) The Court convicting such person may also direct such person to demolish or alter the building in accordance with the order of the Chief Officer or in such other manner as the Court may deem proper and within the period specified by the Court. If such person fails to demolish or alter the building within the period specified by the Court, or in the manner required by the Court, he shall, on conviction, be punished with further fine which may extend to 346 [one hundred rupees] for every day after the expiry of the period for compliance specified by the Court in its order during which such non-compliance continues.

(11) Nothing in sub-section (8) or (10) shall be deemed to affect the power of the Council or the Chief Officer to demolish or alter the building under section 190.

(12) The Chief Officer may, at any time, inspect without giving notice of his intention to do so, any work of which notice is required by sub-section (2); and at any time during the execution of any work may, by written notice, specify any matter in respect of which the execution of such work is in contravention of any provision of this Act or of any bye-laws made under this Act or of any order passed under this section; and require the person executing such work to cause anything done contrary to any such provision or bye-laws or order to be amended or to do anything which by any such provision or bye-law or order he is required to do but which has been omitted.

(13) Any person aggrieved by an order of the Chief Officer made under sub-section (8) may prefer an appeal against the order to the Appellate Tribunal within the period specified in the order for the demolition of the construction or work to which it relates.

(14) Where an appeal is preferred under sub-section (13) against the order of demolition, the appellate Tribunal may, subject to the provisions of

sub-section (3) of section 184 C, stay the enforcement of that order on such terms, and for such purpose, as it may think fit:

Provided that where the erection of any building or execution of any work has not been completed at the time of the making of the order of demolition, no order staying the enforcement of the order of demolition shall be made by the Appellate Tribunal unless security sufficient in the opinion of the said Appellate Tribunal has been given by the appellant for not proceeding with such erection or work pending the disposal of the appeal.

(15) Subject to any order may by the Government on appeal under section 184 D, every order made by the Appellate Tribunal on appeal under this section, and subject to the orders of the Government and the Appellate Tribunal on appeal, the order of demolition made by the Chief Officer shall be final.

(16) Where no appeal has been preferred against an order of demolition made by the Chief Officer under sub-section (8) or where an order of demolition made by the Chief Officer under that sub-section has been confirmed on appeal, whether with or without variation, by the Appellate Tribunal in a case where no appeal has been preferred against the order of the Appellate Tribunal, and by the Government in a case where an appeal has been preferred against the order of the Appellate Tribunal, the persons against whom the order has been made shall comply with the order within the period specified therein, or as the case may be, within the period, if any, fixed by the Appellate Tribunal or Government on appeal and on the failure of the person to comply with the order within such period, the Chief Officer may himself cause the erection or the work to which the order relates to be demolished and the expenses of such demolition shall be recoverable from such person as an amount due on account of property tax.

(17) If an order made by the Chief Officer under sub-section (8) directing any person to stop the construction is not complied with, the Chief Officer may in addition to any other action that may be taken under this Act, may require any Police Officer to remove such person or his assistants and workmen from the premises or to seize any construction material, tool, machinery, scaffolding or other things used in the construction within such time as may be specified in the requisition and such Police Officer shall comply with the requisition accordingly.

(18) Any of the things caused to be seized by the Chief Officer shall be disposed off by him in the manner specified in section 156.

(19) After the requisition under sub-section (18) has been complied

with, the Chief Officer may, if he thinks fit, depute by a written order, a Police Officer or a Municipal Officer or other Municipal employee to watch the premises in order to ensure that the construction is not continued.

(20) Where a Police Officer or a Municipal Officer or other Municipal employee has been deputed under sub-section (19) to watch the premises, the cost of such deputation shall be paid by the person at whose instance such construction is being continued or to whom notice under sub-section (8) was given and shall be recoverable from such person as an amount due on account of a property tax].

Notwithstanding anything contained in any other provisions of this Act, the Chief Officer may, subject to the recommendation of the Council, regularize any construction in respect of which no notice as required under sub-section (2) has been given, on payment of a fine equivalent to the fees and taxes payable in respect thereof from the date of commencement of such construction, provided that such construction is as per the building bye-laws and complies with the provisions of any other law for the time being in force.]

9. Section 184 specifies that the expression "to construct a building" includes any material alteration, enlargement for the reconstruction of a building or the conversion of any space into one for human habitation. The definition is inclusive and of a very wide nature and includes the addition of any rooms to a building or any other structure in the form of alteration, enlargement or conversion of space to or within an existing building.

Sub-section (2) mandates that before beginning the construction of a building, the person intending to construct such building shall give the Chief Officer notice of his intention together with a plan showing the level, foundation and all other specifications of the building that he desires to construct; such person is required to obtain

a licence for carrying on the construction in terms of sub-section (4) of Section 184. Sub-section (8) specifically provides that after such a person begins any construction of a building without the permission of the Chief Officer under sub-section(4) or in contravention of such permissions/licences, it is the duty of the Chief Officer to issue a written notice requiring such person to stop such construction and to demolish such construction as may be specified in the notice. Sub-section (9) also prescribes that failure to comply with the notice under sub-section (8) would attract punishment with a fine which may extend to rupees fifteen thousand.

10. A plain reading of Section 184 would place the entire burden of compliance with the mandate of that provision on the Chief Officer of the Municipality, whose bounden duty it is, to, whether on a complaint or otherwise on information, to inspect the site in question, ascertain the area and nature of the construction work carried out without a licence or in contravention of a licence issued under Section 184 and to ensure that such illegal construction is demolished or removed. After coming into force of the Municipalities Act, 1968 w.e.f. 25.04.1968, and its applicability to respondent no.1-Municipality, there was no question of applying the law of limitation or any question of delay and laches on the part of the complainant in implementing the provisions of Section 184. The Chief Officer is charged, by law, to enforce the provisions of Section 184 and cannot refuse to exercise his jurisdiction on the specious plea of limitation, delay or laches on the part of a private complaint.

11. The tenor of the impugned order seems to be that it is the complainant that approached the Chief Officer with a written complaint only in the year 2011 when the complainant was fully aware that the structure has been constructed much prior to that date. The real question is not about the knowledge of the complainant but whether the constructions in question were licenced under the provisions of Section 184 by respondent no.1 or not. There is no determination of this issue anywhere in the impugned order dated 20.08.2015. The Chief Officer seems to have gone on a totally tangent to what was required of him in terms of his exercising his jurisdiction under Section 184 of the Act. In fact, the Chief Officer has clearly refused to exercise jurisdiction vested by law in him under that provision and has refused to determine the illegality of the construction in question, alleged to have been constructed by deceased respondent no.2. The withdrawal of the show-cause notice being done solely on the ground of limitation and laches, by passing the impugned order, is an act totally without jurisdiction under the provisions of Section 184, and on that ground alone, this would be a fit case to exercise jurisdiction under Article 226 of the Constitution of India to quash and set aside the impugned order, notwithstanding the fact that there may have been alternate remedy in terms of an appeal to the Tribunal.

12. We are of the opinion that this is a fit case to, notwithstanding the plea of alternate remedy, set aside the impugned order on the ground that it is passed totally without jurisdiction. The impugned

order does not touch the real merit/controversy in the matter and does not ascertain whether the structures are illegal or constructed contrary to the provisions of Section 184 of the Municipalities Act.

13. Considering the above facts, we deem it proper to quash and set aside the impugned order dated 20.08.2015 and hold the same to be illegal and contrary to the mandate of Section 184 of the Goa Municipalities Act, 1968. Accordingly, we deem it proper to remand the matter back to the Chief Officer of respondent No. 1 who shall hear the case No.CMC/TECH.SEC/2014-15/2506 afresh after issuing notice to the petitioner and the legal representatives of deceased respondent no.2. The Chief Officer shall decide the show-cause notice preferably within 8 weeks from passing this order.

14. The remaining reliefs sought in this petition could be decided only after the decision on the legality of the structures in question. Under these circumstances, we leave it open to the Chief Officer to take a decision on all the remaining reliefs sought in the petition, including the question of transfer of house tax, grant of NOCs for electricity and water connection and revocation of house tax/allotment of house number, trade licence, if any and use/occupation of the structures in question. The Chief Officer shall pass orders deciding the remaining reliefs as a consequence of and along with the decision on the legality of the structures in question, in terms of the provisions of Section 184 of the Goa Municipalities Act, 1968.

15. The Rule is, accordingly, made absolute in the above terms. No order as to costs.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.

MARIA SUZANA
REBELLO

Digitally signed by MARIA SUZANA
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Date: 2023.05.16 10:39:45 +05'30'