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# IN THE HIGH COURT OF BOMBAY AT GOA

## CIVIL REVISION APPLICATION NO. 5 OF 2021

Goa Industrial Development Corporation, Corporate Office at Plot No. 13A-2, EDC Complex, Patto Plaza, Panaji, Goa.
Through its Managing Director, Shri Derrick P. Neto. ... APPLICANT

Versus

M/s Tulsyan NED Limited, A limited Company, registered under Companies Act, 1956 and registered Under No. 437, having its registered Office at 37, Tank Bund Road, Vasant Nagar, Bangalore, Karnataka, India.
Through Mr. Divyant Patel, Major in age, Resident of F 402, Martins Palm Fringe, Taleigao, Goa. ... RESPONDENT

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Mr. H.D. Naik with Mr. Aditya D. Naik, Advocates for the Applicant.

Mr. Sudesh Usgaonkar with Ms. Marie Rosette Pereira, Advocates for the Respondent.

**CORAM: B.P. DESHPANDE, J.**

**RESERVED ON: 31$^{st}$ AUGUST 2023**

**PRONOUNCED ON: 7$^{th}$ SEPTEMBER 2023**

**<u>JUDGMENT</u>:**

**1.** Admit.

**2.** Heard learned Counsel Mr. H.D. Naik who appears along with Mr. Aditya D. Naik for the Applicant and Mr. Sudesh Usgaonkar who appears along with Ms. Marie Rosette Pereira for the Respondent.

**3.** The Applicant-Goa Industrial Development Corporation, in short, GIDC preferred the present Revision thereby challenging the impugned order dated 26.02.2021 passed by the learned Trial Court wherein the Application [Exhibit D-8] filed by the Applicant under Order VII Rule 11 of CPC for rejection of plaint was dismissed.

**4.** The Applicant is the Defendant whereas the Respondent is the Plaintiff in a suit instituted for grant of declaration and permanent injunction.

**5.** Learned Counsel Mr. H.D. Naik appearing for the Applicant submits that the plaint needs to be rejected for want of statutory notice under Section 52A of the Goa Industrial Development Act, 1965 [GIDC Act, for short]. He submits that the suit was filed in the year 2017 for declaration and injunction thereby challenging the order dated 20.04.2017, by which, the Respondent/Plaintiff were directed to hand over possession of the suit plot for the reasons disclosed therein. He submits that after the accrual of the cause of action i.e. from 20.04.2017, the Respondent/Plaintiff ought to have issued a notice under Section 52A of GIDC Act, 1965 disclosing all the particulars and the cause of action. In the absence of such notice, the plaint could not have been entertained and needs to be rejected under Order VII Rule 11 of the CPC as barred by law.

**6.** Mr. Naik would then submit that on 18.02.2015, a show cause notice was issued to the Respondent/Plaintiff and thereafter, the notice purported to be issued under Section 52A was served upon the Applicant/Defendant dated 20.10.2016. The Respondent challenged subsequent order passed therein by filing a Writ Petition before this Court. Since it was observed by this Court that before the order, no hearing was given to the Respondent/Plaintiff and therefore, the said order was set aside and the Applicant/ Defendant was directed to give a hearing to the Respondent/ Plaintiff and thereafter, to pass orders in accordance with law.

**7.** Mr. Naik would therefore submit that the earlier notice dated 20.10.2016 cannot be termed as notice after the actual accrual of the cause of action on 20.04.2017. He, therefore, submits that the earlier notice which the Trial Court has considered, cannot be accepted as compliance to the mandatory provisions of Section 52A of the GIDC Act. He then submitted that admittedly, such procedure under Section 52A of the GIDC Act is mandatory and special provision is made therein to issue notice and to file the proceedings within a specified time. Therefore, even if the earlier notice dated 20.10.2016 is considered, the same was not issued within time as prescribed under the GIDC Act and that the suit is also not filed within the time frame.

**8.** Mr. Naik placed reliance on the following decisions:-

(a) **V.M. Salgaocar & Bros. Vs. Board of Trustees of Port of Mormugao & Another**, (2005) 4 SCC 613;

(b) **M/s Boshan Developers Pvt. Ltd. Vs. Communidade of Bordem & Others**, 2015 (6) ALL MR 868;

(c) **Nagpur Improvement Trust Vs. Kishorchand Sakaria**, 2014 (6) ALL MR 624 and

(d) **Noor Mohd. Shami Shaikh & Others Vs. Maharashtra Housing & Development Board & Others**, 2014 (1) Mh.L.J 92.

**9.** Per contra learned Counsel Mr. Usgaonkar appearing for the Respondent/Plaintiff would submit that the purposive test if applied, would lead to the only conclusion that the earlier notice dated 20.10.2016 served the purpose by intimating the Applicant/Defendant about the challenge raised by the Plaintiff to the show cause notice and to the order subsequently passed. He would submit that such notice issued on receipt of show cause notice gives a fair idea to the Applicant/Defendant regarding the ground of challenge raised by the Respondent/Plaintiff and thus, the purpose of Section 52A of the GIDC Act stands fulfilled.

**10.** Mr. Usgaonkar would then submit that on receipt of the show cause notice, admittedly, the statutory notice under Section 52A of the GIDC Act was served upon the Applicant/Defendant. In the meantime, the Applicant/Defendant passed some orders and that too, without hearing the Respondent. Accordingly, a Writ Petition was filed before this Court which was allowed thereby giving specific directions to the Applicant to hear the Respondent and then pass orders. He submits that the earlier order as well as the present order under challenge are the same and therefore, earlier notice issued under Section 52A serves the entire purpose. He then submitted that the contentions raised in the Petition filed before this Court clearly give all the grounds which the Respondent had raised against the show cause notice which is also challenged in the suit. He submits that though in the plaint, the Plaintiff/Respondent disclosed the actual cause of action on 20.04.2017, in fact, the cause of action is considered to be a bundle of facts and has to be deduced from the pleadings and not from one sentence. He submits that finally, the cause of action arose on 20.04.2017 when the impugned order was passed. He then submitted that the decisions cited by the Applicant are not applicable to the facts and circumstances as in those matters, no earlier notice was issued and that no Petition was preferred disclosing all the details and the challenge raised against the impugned orders.

**11.** Mr. Usgaonkar placed reliance on the following decisions:-

(a) **Delhi Development Authority Vs. Nehru Place Hotels Ltd. & Others**, 1993 Delhi SCC Online 57;

(b) **Nehru Place Hotels Vs. Delhi Development Authority**, MANU/DE/0509/1990 and

(c) **N. Parameswara Kurup (D) & Others Vs. State of Tamil Nadu & Others**, AIR 1986 MADRAS 126.

**12.** Both the learned Counsel filed written submissions.

**13.** The rival contentions fall for determination as under:-

**14.** Few facts along with the dates are required in order to understand the matter in the proper perspective. The GIDC leased out a plot admeasuring 12,700 square metres at Madkaim Industrial Estate to Respondent on 29.06.1998. Though the Respondent set up some units, it failed to fulfil all the conditions of the lease and more particularly, using the entire leasehold land. On 18.02.2015, the show cause notice was issued by the GIDC to the Respondent stating therein that the unit of the Respondent is not functioning and further there is non-payment of dues. By this notice, the Respondents were called upon to show cause as to why action should not be taken against them to cancel the allotment of the said plot and revert it back to the Corporation by forfeiting the entire amount paid. On 02.03.2015, the Respondent replied to the show cause notice giving the reasons and specifically stating that the unit was functional till 2013 and due to slack in the market they had to marginalise their operations. As far as the dues are concerned, it is claimed that some dues were paid vide Demand Draft dated 02.03.2015 for ₹ 2,54, 121/-.

**15.** Vide letter dated 27.06.2016, the GIDC passed an order of cancellation and reversion of unutilized area admeasuring 8,890 square metres out of Plot No. 4 of Madkaim Industrial Estate. This order was challenged by the Respondent/Plaintiff by filing a Writ Petition in this Court bearing No. 823 of 2016. In that Petition, notice dated 16.08.2016 and letter/order dated 27.06.2016 were challenged mainly on the ground that no opportunity was given to the Respondent/Plaintiff before passing such orders. The said Writ Petition was allowed by this Court on 06.04.2017 thereby quashing the said order/notice and giving an opportunity to the Plaintiff/Respondent to file a reply, if any, to the show cause notice dated 18.02.2015, in addition to the earlier reply filed on 02.03.2015. Thus, it is clear that the letter dated 27.06.2016 and the letter/notice dated 16.08.2016 issued by the GIDC were quashed and set aside. However, it is again required to be noted that the show cause notice dated 18.02.2015 was not quashed and set aside and the Respondent/Plaintiff was allowed to file a reply to such show cause notice dated 18.02.2015 and the GIDC was directed to hear the parties and thereafter, to decide it afresh. Thus, the validity of the show cause notice dated 18.02.2015 was not decided by this Court in the said Writ Petition. In other words, it means that the show cause notice was considered to be valid.

**16.** The Respondent/Plaintiff vide detailed additional reply dated 17.04.2017, to the show cause notice dated 18.02.2015, submitted its contentions to be considered by the GIDC. Only after receipt of such additional reply dated 17.04.2017, the impugned order dated 20.04.2017 was passed. Thus, in light of the above factual aspects, it needs to be considered whether there is compliance of Section 52A of the GIDC Act before instituting the suit. Secondly, it is necessary to consider whether the earlier notice issued by the Respondent/Plaintiff dated 20.10.2016 could be considered as substantial compliance of Section 52A of the GIDC Act, 1965.

**17.** First of all, the second aspect which Mr. Usgaonkar tried to project about the compliance or purposive test in connection to the earlier notice dated 20.10.2016, is concerned, it needs to be noted that such notice was issued on the receipt of notice dated 16.08.2016 and letter dated 27.06.2016, which were subsequently quashed and set aside by this Court in the Writ Petition filed by the Respondent. In this notice dated 20.10.2016, there is reference in paragraph 6, of the show cause notice issued on 16.08.2016. However, paragraph 18 of the said notice issued by the Plaintiff to the GIDC is very much relevant and reads thus:

> *"18. By this notice we hereby call upon you to withdraw the Notice No. IDC/ED/MAK/E-4/2610 dated 16.08.2016 and Letter No. IDC/ED/MAK/TULSYAN/1859 dated 27.06.2016 to quit, vacate and deliver the part of plot area admeasuring 8890 sq. mts. reverting to you of plot E-4, Madkai Industrial Estate forthwith, failing which we shall take appropriate legal proceeding challenging your action."*

**18.** It thus clearly goes to show that this notice dated 20.10.2016 purportedly sent under Section 52A of the GIDC Act by the Plaintiff to the GIDC is only challenging the notice dated 16.08.2016 and order dated 27.06.2016 for handing over possession of 8,890 square metres. A perusal of this notice dated 20.10.2016 nowhere shows that the show cause notice dated 18.02.2015 was ever challenged. Similarly, in the entire notice the date on which the cause of action accrued to the Respondent/ Plaintiff is not found mentioned. Since both the letters mentioned in paragraph 18 of the above notice were quashed and set aside by this Court in Writ Petition No. 823 of 2016, the purpose of issuing such notice stands fulfilled. Thus, the said notice dated 20.10.2016 by no stretch of imagination could be considered as notice in compliance of Section 52A of the GIDC for the purpose of filing the suit which was admittedly filed on 26.05.2017.

**19.** In light of the above, the provisions of Section 52A of the GIDC Act need to the considered which reads thus:-

> *"52. Protection of action taken in good faith.— No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule or regulation made thereunder.*
>
> *[52A. Notice to suit and limitation of suits against Corporation, Committees, Officers and servant for acts done in pursuance of execution of this Act.— (1) No suit shall lie against the Corporation or against any committee constituted under this Act, or against any Officer, or servant of the Corporation in respect of any act done in pursuance or execution or intending execution of this Act, or in respect of any alleged neglect, or default in the execution of this Act,—*

*(a) unless it is commenced within six months after the accrual of the cause of action; and*

*(b) until the expiration of two months after the notice in writing has been in the case of the Corporation or its Committee, delivered or left at the Corporation's office and in the case of an officer or servant of Corporation, delivered to him or left at his office or place of abode; and all such notices shall state with reasonable particulars the cause of action and the name and place of abode of the intending plaintiff and of his advocate, pleader, or agent, if any, for the purpose of the suit.*

*(2) If the defendant in any such suit is an officer, or servant of the Corporation, payment of any sum or part thereof payable by him in or in consequence of the suit may, with the sanction of the Corporation, be made from the Corporation funds].”*

**20.** A perusal of this provision would go to show that no suit shall lie against the Corporation or against any Committee constituted under the said Act or against any Officer, or servant of the Corporation in respect of any act done in pursuance or execution or intending execution of this Act, unless it is commenced within six months after the accrual of the cause of action. Thus, first of all, the special limitation is provided to launch the prosecution or the suit within a period of six months after the accrual of the cause of action. It shows that any suit needs to be filed within a period of six months from the accrual of the cause of action. The second limb of this Section which is very much relevant is that not only the suit has to be filed within six months, but until expiration of two months after notice in writing has been delivered to the Corporation or to the concerned Officer stating reasonable particulars, the cause of action, name and place of abode of the intending Plaintiff and of his Advocate, pleader or agent, if any, for the purpose of the suit.

**21.** Thus, it shows that after accrual of the cause of action, the notice in writing disclosing reasonable particulars, cause of action etc. must be delivered or left at the Corporation's office or delivered to the concerned Officer. It thus shows that the Plaintiff after serving such notice to the Corporation or to the Officer as the case may be, has to wait for the expiration of two months period. The suit has to be instituted only after the expiration of two months from the date of delivery of such notice but within a period of six months from the date of actual accrual of the cause of action. The dual purpose is to give an opportunity to the

Corporation to consider whether its action needs correction or whether the same could be defended. The mentioning of the cause of action along with other details is also necessary to find out whether the recourse of the affected parties is within time.

**22.** Applying the above provisions to the matter in hand, let us examine the plaint to find out what really is the cause of action. The suit is for declaration and permanent injunction. The Plaintiff has given the details of allotment of the plot in the year 1997 and explained as to how the said plot has been utilized. Paragraph 7 of the plaint discloses about the show cause notice issued by the GIDC on 18.02.2015 and the reply filed by the Plaintiff on 02.03.2015. Paragraph 10 of the plaint then refers to a letter dated 27.06.2016 whereby the GIDC cancelled the allotment of an area of 8,890 square metres and called upon the Plaintiff to hand over the possession.

**23.** The earlier notice under Section 52A which the Plaintiff claimed was issued on 20.10.2016, is admittedly not issued by disclosing any cause of action. No doubt in the said notice dated 20.10.2016, the letter/notice dated 27.06.2016 was challenged.

**24.** Plaint paragraph 24 then refers to the filing of Writ Petition No. 823 of 2016 challenging the notice dated 16.08.2016 and the letter dated 27.06.2016. Admittedly, both these documents were quashed and set aside by this Court by order dated 06.04.2017. This Court observed that the Respondent/Plaintiff be given an opportunity before passing any order on the show cause notice dated 18.02.2015. Admittedly, the show cause notice dated 18.02.2015 was not considered as bad in law. Therefore, the notice issued by the Respondent/Plaintiff dated 20.10.2016 stands worked out as both the documents challenged therein and as referred to in paragraph 18, quoted above, were quashed and set aside. Thus, the purpose of the notice dated 20.10.2016 was substantially complied with. Thus, the said notice dated 20.10.2016 cannot be considered as notice under Section 52A as subsequent orders were passed by the GIDC that too, after hearing the Respondent/Plaintiff as per the directions given by this Court in the said Writ Petition.

**25.** The contention of the learned Counsel Mr. Usgaonkar about the purposive test, would therefore not apply to the facts and circumstances of the matter for the simple reason that the notice given by GIDC with specific orders to hand over the possession was quashed and set aside by this Court on the ground that no opportunity of hearing was given to the Plaintiff/Respondent. The first show cause notice dated 18.02.2015 was kept alive by giving an opportunity to the Respondent/Plaintiff to file an additional reply with direction to GIDC to hear or give an opportunity and thereafter to decide it afresh. For these reasons, the plaint specifically refers to the cause of action which accrued in their favour on 27.06.2016 i.e. the impugned cancellation and reversion order passed by the GIDC after hearing the Respondent/Plaintiff.

**26.** The contention of the learned Counsel Mr. Usgaonkar is that the cause of action containing a bundle of facts cannot be disputed at all. However, in the present suit, the cause of action first accrues on the Plaintiff when the show cause notice dated 18.02.2015 was issued. However, that could not have been considered as a cause of action for filing the suit for declaration since it was only a show cause notice against the purported action. The purpose of the show cause notice is to give an opportunity to the affected parties to show cause as to why the action proposed could not be initiated. If the parties satisfy the said cause, no further action is required. However, if the cause remains and the explanation is not satisfactory, then action could be initiated. This precisely what happened in the present matter. The show cause notice dated 18.02.2015 cannot be considered as the complete cause of action for filing the suit as it was only a notice for the proposed action which could have been initiated only after giving an opportunity. Thus, the present suit is based only on the cause of action which arose on 27.06.2016 when the order of reversion of an area of 8,890 square metres was passed and that too after giving an opportunity to the Respondent/Plaintiff.

**27.** In these circumstances, the earlier notice dated 20.10.2016 cannot be considered as notice contemplated under Section 52A of the GIDC Act for the purpose of institution of the present suit.

**28.** Admittedly, no notice under Section 52 A of the GIDC Act was issued by the Respondent/Plaintiff after the accrual of the cause of action dated 20.04.2016. It is no doubt true that subsequent to the filing of the suit, another notice was issued by the Respondent/Plaintiff claiming to be notice under Section 52A. However, such notice cannot be termed as notice under Section 52A and more particularly, compliance with the mandatory provisions for the simple reason that such notice has to be issued after the accrual of cause of action and within a period of six months from the date of cause of action. Similarly, the suit has to be filed within a period of six months from the date of cause of action and after the expiry of two months from the date of notice.

**29.** In this matter, the cause of action to the Respondent/ Plaintiff as claimed in paragraph 36 arose on 20.04.2017. Prayer clause (a) refers to an order dated 20.04.2017 to be declared as bad in law, null and void. Admittedly, no notice was issued under Section 52A before instituting the suit. Even otherwise, the suit was filed on 26.05.2017 which means within a period of one month and six days. This again shows that in the case of issuance of statutory notice under Section 52A of the GIDC Act, the Respondent/Plaintiff was required to wait for a period of two months from the date of expiry of receipt of such notice by the GIDC.

**30.** In the case of **M/s Boshan Developers Pvt. Ltd.** (supra), this Court was dealing with the provisions under Section 289 of the Municipalities Act which is *pari materia* to the provisions of Section 52A of the GIDC Act, except the waiting period of two months after giving of the notice. The Municipalities

Act refers to the expiration of one month after the notice is delivered. In such circumstances, it is observed in paragraph 18 as under:

> *"18. It would be, thus, clear that the language of Section 289 is also mandatory in nature as sub-section (1) of Section 289 of the Municipalities Act clearly provides that no suit shall lie against the Council or against the Committee constituted under the Act in respect of any act done in pursuance of, or in execution or intended execution of the act or in respect of any alleged neglect or default in the execution of the act. In my considered view, in the face of the language as used, it would be for the Court to look into whether the suit would be maintainable for want of notice under Section 289 of the Municipalities Act. Thus, once the fact about the absence of a statutory notice under Section 289 of the Municipalities Act is brought to the notice of the Court, the same cannot be brushed aside on the ground that the concerned statutory body, namely Municipal Council has not raised the issue, but is raised by some other defendant. If we were to draw an analogy, the same can be found in Section 3 of the Limitation Act, wherein notwithstanding the fact that any of the parties raise the issue, the Court is obliged and is entitled to look into and ascertain whether the suit is filed within limitation. In view of the language as used in Section 289 of the Act and the observations in the case of <u>Syed Abdul Razzak,</u>*

*[2009(5) ALL MR 818], with which I am in respectful agreement, the objection that the issue of absence of notice under Section 289 is not raised by the statutory body i.e. the Municipal Council, but by a private defendant, cannot be accepted. I also find that non-raising of the said objection by the Municipal Council cannot tantamount to waiver as there is a statutory bar in entertaining the suit in the absence of the notice."*

**31.** In paragraph 19, it was observed that in the face of the language used in Section 285 of the Municipalities Act, the suit filed against the Municipal Council without compliance of such statutory provisions need to be considered as barred by provisions of the said Act and such aspects have to be considered by the Court under Order VII Rule 11(d) of the CPC.

**32.** In the case of **Nagpur Improvement Trust** (supra), the learned Single Judge sitting at Nagpur was again dealing with pre-suit statutory notice under the provisions of Nagpur Improvement Trust Act, 1936 and under Section 115 of the said Act. In paragraph 9, it was observed that the legal position cannot be disputed in view of the judicial precedents on this subject that if the pre-suit statutory notice is required to be issued and served by the mandate of law before the institution of such civil suit. The notice is a must, which is required to be served on the Corporation unless any exceptional ground is made out for non-compliance with such mandatory provision. The valid excuse may be upon the plea of the deemed waiver on the part of the opposite party. In the matter in hand, there are absolutely no pleadings in the plaint about such deemed waiver of the notice by the Applicant/Defendant. Thus, the mandatory nature of said provision requires strict compliance.

**33.** In the case of **Noor Mohd. Shami Shaikh** (supra), the learned Single Judge of this Court while sitting at Bombay again reiterated the same aspect about pre-suit statutory notice which is mandatory before the institution of the suit and in the absence of it, the plaint needs to be rejected.

**34.** In the case of **V.M. Salgaonkar** (supra), the Hon'ble Apex Court while dealing with the aspect of provisions of Section 120 of the Major Port Trusts Act, 1963 held that it is a mandatory pre-condition for the institution of the suit. In that matter, an argument was raised that a letter dated 12.04.1984 needs to be treated as compliance of notice under Section 120 of the Major

Port Trusts Act. Such contention was negated by the Hon'ble Supreme Court on the ground that the cause of action for the first time accrued only on 16.06.1984 and therefore, the letter dated 12.04.1984 by no stretch of imagination can be said to be a notice under Section 120 of the said Act.

**35.** Learned Counsel Mr. Usgaonkar strongly contended that the Writ Petition filed by the Respondent/Plaintiff could be considered as sufficient compliance of Section 52A as it contains all the grounds/challenges to the show cause notice and the subsequent order. Such contentions cannot be accepted for two fold reasons. First of all, a Writ Petition was filed challenging the notice dated 16.08.2016 and the letter dated 27.06.2016. Both these documents were quashed and set aside by this Court. Therefore, the grounds raised in the said Writ Petition were no longer in existence when both these notices/letters were quashed and set aside by this Court. Accordingly, no cause of action was available to the Respondent/Plaintiff as on the date of the decision of the Writ Petition.

**36.** Secondly, when the Writ Petition was filed, the impugned order dated 20.04.2017 was not in existence, which is shown to be the date of cause of action for the Plaintiff to file the suit. This order dated 20.04.2017 was passed only after hearing the Respondent/Plaintiff and that too as per the directions of this Court in said Writ Petition. Thus, the so called contentions raised in the Writ Petition nowhere survive for the purpose of considering the cause of action for filing of the suit.

**37.** Admittedly, after the accrual of cause of action dated 20.04.2017, notice under Section 52A of the GIDC Act was not issued or served on the GIDC. The mandatory provision therefore stands violated. The suit is therefore not maintainable for want of mandatory statutory notice.

**38.** The learned Trial Court committed an error in observing that the earlier notice could be considered as part of the statutory notice and could be decided during the trial. When the mandate requires the Plaintiff to act in a particular manner, there cannot be any deviation from it. There is no question of presuming such notice or purposive test on the ground that the Corporation or the Defendant would be knowing all the challenges. The impugned order, therefore, needs to be quashed and set aside. Hence, the following:

## O R D E R

(a) The Revision stands allowed.

(b) The impugned order dated 26.02.2021 below Exhibit D-8 in Regular Civil Suit No. 65 of 2017 is hereby quashed and set aside.

(c) The Application filed by the Applicant/ Defendant at Exhibit D-8 for rejection of plaint under Order VII Rule 11(d) of CPC is allowed.

(d) The plaint in Regular Civil Suit No. 65 of 2017 hereby stands rejected.

(e) Parties shall bear their own costs.

**39.** The Civil Revision Application stands disposed of.

**B.P. DESHPANDE, J.**

VAIGANKAR ESHA SAINATH

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