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

**WRIT PETITION NO.325 OF 2022**

1. Mr. Amol S. Sawant,  
son of late Mr. Shambhu Sawant,  
aged about 39 years, professional,  
Indian National, R/o. House No.647,  
Walkeshwar Wada, Betim,  
Penha de Franca, Bardez – Goa.

....Petitioner

***Versus***

1. Mr. Sanyog Janardhan Chodankar,  
son of late Mr. Janardhan Chodankar,  
aged about 52 years, service,  
Indian National, r/o. H.No.650,  
Walkeshwar Wado, Betim,  
Penha de Franca, Bardez – Goa.

2. Mrs. Sulochana Janardhan Chodankar,  
wife of late Mr. Janardhan Chodankar,  
aged about 72 years, housewife,  
Indian National, r/o. H.No.650,  
Walkeshwar Wado, Betim,  
Penha de Franca, Bardez – Goa.

3. The Secretary of Village Panchayat,  
Penha de Franca, Bardez – Goa.

4. Sarpanch/Dy. Sarpanch of Village,  
Penha de Franca, Bardez – Goa.

....Respondents

**Mr Neelesh Takkekar, Advocate for the Petitioner.**

**Mr Arun Talaulikar, Advocate for Respondent nos.1 & 2.**

**Ms P. Tari, Advocate for Respondent Nos.3 & 4.**

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

**DATE : 24<sup>th</sup> MARCH 2023**

**ORAL JUDGMENT :**

1. Heard Mr Neelesh Takkekar for the petitioner, Mr Arun Talaulikar for respondents nos.1 and 2 and Ms P. Tari for respondents nos.3 & 4.
2. On 21.03.2023, the parties were notified that this petition would finally be disposed of at admission. Accordingly, rule. The rule is taken up for final disposal immediately.
3. The petitioner challenges the judgment and order dated 07.05.2022 passed by the Adhoc District Judge-1, FTC at Mapusa in Civil Revision Application No.4/2020 instituted by respondents 1 and 2 under Section 201-B of the Panchayat Raj Act, 1994 (said Act).
4. The Civil Revision Application No.4/2022 was instituted by respondents 1 and 2 to challenge the order dated 25.01.2019 made by the Director of Panchayats and the order dated 16.12.2019 made by the Secretary (Panchayats) in purported exercise of powers under Section 178 of the said Act. By the impugned order, the revisional Authority has set aside these two orders and Panchayat's notice of

demolition dated 23.03.2019 issued by the Panchayat directing demolition of the constructions put up by respondents 1 and 2.

5. Mr Takkekar, the learned Counsel for the petitioner, submits that the petitioner was constrained to institute a petition under Section 178 of the said Act to question Panchayat's resolutions dated 15.07.2016 and 23.07.2016 because vide resolutions, the Panchayat had resolved to keep the petitioner's complaints against illegal constructions made by respondents 1 and 2 pending as according to the Panchayat, the Government of Goa was going to pass the bill for regularising the houses in Goa. Mr Takkekar submits that in anticipation of some law that the Panchayat expected the Government to pass, the Panchayat could never have resolved to keep matters pending or decline to discharge the duties that the law had imposed upon it. He submits that the Director of Panchayats and Secretary (Panchayats) had, therefore, correctly directed the Panchayat to take action on the petitioner's complaints about illegal constructions by respondents 1 and 2. He submits that since the revisional Authority has not considered this aspect, the impugned order warrants interference.

6. Mr Takkekar pointed out that even though the demolition notice dated 23.03.2019 was not challenged before the revisional Authority, the revisional Authority has set aside the same. Accordingly,

he submits that such an exercise exceeded jurisdiction and warrants interference.

7. Mr Talaulikar, the learned Counsel for respondents 1 and 2, submits that the construction put up by respondents 1 and 2 is legal and authorized. He offers that the petitioner's conduct is such that this Court should decline to entertain this petition. He submits that the orders made by the Director of Panchayats and the Secretary (Panchayats) were contrary to the law laid down by this Court in ***Mr. Claudio Michael D'Souza V/s. Secretary (Panchayats), Government of Goa, Secretariat, Panaji & Ors.***<sup>1</sup> in which the scope of Section 178 of the said Act was explained. He submits that since the demolition order was passed under directions issued by the Director of Panchayats, in its judgment and order dated 25.01.2019, once this judgment and order were set aside by the revisional Authority, the revisional Authority had full powers to set aside the demolition order dated 23.03.2019.

8. Mr Talaulikar submitted that respondents 1 and 2 had already instituted an appeal before the Director of Panchayats in which a stay was granted for executing the demolition notice dated 23.03.2019. Accordingly, Mr Talaulikar, on instructions, states that no further construction is going on at the site and that respondents 1 and 2

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<sup>1</sup> 2010 (5) ALLMR 669

intend to undertake no further construction during the pendency of the Appeal.

**9.** Though Mr Talaulikar could not give the details of the Appeal filed, Mr Takkekar fairly placed on record the information received by the petitioner under the RTI. In terms of this information, the Appeal filed by respondent no.1 is numbered DP/N/7/2019 and is pending before the Additional Director of Panchayats at Panaji. Mr Takkekar also confirms that an interim order has been made in this Appeal on 03.04.2019. Finally, Mr Takkekar pointed out that the petitioner is not impleaded as a party to this Appeal.

**10.** Ms Tari, learned Counsel for the Panchayat, despite the opportunity, has not made any submissions in this petition.

**11.** The rival contentions now fall for my determination.

**12.** The records show that the petitioner filed a complaint on 05.03.2016 to the Panchayat complaining about some illegal constructions being put up by respondents 1 and 2 concerning house bearing no.650 in property bearing Survey No.71/1 of the Village Panchayat of Penha de Franca. Based on this complaint, the Panchayat issued a show cause notice dated 28.05.2016 to respondents 1 and 2, requiring the said respondents to show cause as to why action should not be taken based upon the petitioner's complaint.

13. Respondents 1 and 2 filed their reply on 20.06.2016, denying the allegations in the complaint and pointing out why no action should be taken as prayed for by the petitioner.

14. The Panchayat, after considering the complaint and reply passed a resolution on 30.06.2016, which reads as follows :

*“Swachh Bharat/Nital Goem”*  
**VILLAGE PANCHAYAT PENHA DE FRANCA**  
BRITONA BARDEZ-GOA  
Ph.: Nos.: 2417213 & 2417822

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Ref. No. VP/PDF/0      /16-17/      Dated

TRUE COPY OF THE RESOLUTION PASSED IN THE  
VILLAGE PANCHAYAT BODY MEETING HELD ON  
30/06/2016.

Serial No. H(4): Reply from Sanyog & Sulochana Chodankar

Reso. No. H(4): Reply dated 20/06/2016 received from Shri. Sanyog Chodankar & Sulochana Chodankar R/o. Walkeshwar waddo, Penha De Franca to the showcase notice dated 28/05/2016 issued vide VP/PDF/013/16-17/426 and the counter reply filed by Shri. Amol Sawant was read and place before the Panchayat body meeting to discuss and decide on same. And after discussion, it was informed by Panchayat body that the reply received is satisfactory and is accepted. Further, it was informed to keep the same pending as Government of Goa is going to pass a bill for regularizing the houses in Goa, same to be considered, till then no action to be taken on same. Resolution passed by the members present.  
Proposed by : Smt. Radhika Sawant

*Seconded by: All Members Present"*

**15.** The records suggest that the petitioner pursued the matter in his letter dated 13.07.2016. The Panchayat took up this letter for consideration in its meeting held on 15.07.2016 and passed the following resolution :

*"Swachh Bharat/Nital Goem"*  
**VILLAGE PANCHAYAT PENHA DE FRANCA**  
BRITONA BARDEZ-GOA  
Ph.: Nos.: 2417213 & 2417822

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Ref.No. VP/PDF/0 /16-17

Dated

TRUE COPY OF THE RESOLUTION PASSED IN THE  
VILLAGE PANCHAYAT BODY MEETING HELD ON  
15/07/2016.

Serial No.I(22): Letter from Amol Sawant

*Reso. No. I(22); Letter dated 13/07/2016 received from Shri. Amol Sawant, R/o. Walkeshar waddo, regarding request to issue resolution passed in respect of counter reply place before the meeting held on 30/06/2016 & subsequent meeting to be held & further to issue final notice under section 66(4) of the Goa Panchayat Raj Act'1994 for failure to produce documentary evidence on illegally constructed house was read and place before the Panchayat body meeting to decide and after discussion it was informed by Panchayat body that the same to be kept pending, as they have decided in last meeting that till decision is made of regularization of house by Government of Goa no action to be taken. Same was approved by the members present. Resolution passed by the members present.*

*Proposed by: Shri Ghanshyam Naik*

*Seconded by: All Members Present"*

**16.** Thus, in sum and substance, the Panchayat virtually resolved not to take any action on the petitioner's complaint simply because the Panchayat anticipated that the Legislature would pass a bill for regularising the houses in Goa even though such houses may be illegal or unauthorized.

**17.** The petitioner, aggrieved by the above resolutions dated 30.06.2016 and 15.07.2016, invoked the provisions of Section 178 of the said Act and filed proceedings before the Director of Panchayats.

**18.** By judgment and order dated 25.01.2019, the Director of Panchayats disposed of the proceedings under Section 178 of the said Act bearing no.ADP-II/P.P.7/1016 directed the Panchayat/its Secretary to process the petitioner's complaint and take action per law. By a further order dated 16.12.2019, the Secretary (Panchayat), in terms of Section 178 of the said Act, confirmed the judgment and order made by the Director of Panchayats on 25.01.2019.

**19.** Although Mr Talaulikar is justified in submitting that the impugned resolutions dated 30.06.2016 and 15.07.2016 were not specifically suspended, rescinded or otherwise interfered with, from the tenor of the Director's judgment dated 25.01.2019, it is apparent that the Panchayat's resolutions were not approved by the Director

and the Secretary (Panchayat). Therefore, based upon this disapproval, the Panchayat/Secretary issued directions to process the petitioner's complaint and Act according to the law.

**20.** The revisional Authority has now interfered with the Director's and Secretary's (Panchayats) orders dated 25.01.2019 and 16.12.2019, mainly because certain procedural requirements were not complied with. Further, Secretary (Panchayats) order has been interfered with because it contains no reasons.

**21.** Although it is correct that the Secretary (Panchayats) order contains no reasons, the revisional Authority should have appreciated that this was a case of affirmance. Therefore, although citing reasons would have been better in the peculiar facts of the present case, the absence of reasoning was not sufficient to exercise revisional jurisdiction and interfere with the Secretary (Panchayats) order particularly, since the reasons given by the Director of Panchayats could be said to have been accepted by the Secretary (Panchayat).

**22.** The revisional Authority, in such a matter, should have also looked into the gross illegality and perversity of the two resolutions dated 30.06.2016 and 15.07.2016, based upon which the Panchayat virtually abdicated its statutory duty of at least looking into the complaints of illegal constructions made within its jurisdiction. No Panchayat can refuse to even look into such complaints on the

specious plea that the Legislature would pass a law for regularising illegal constructions. First, no law was pointed out to the Panchayat based on which it could have abdicated its responsibility. Secondly, merely because there was some law that would be passed in the future, Panchayat could not have refused to discharge these statutory duties, thereby giving a free hand to illegal constructions. The revisional Authority did not even consider this aspect of the matter.

**23.** The revisional Authority failed to appreciate that the revisional jurisdiction is discretionary. Therefore, if, due to the exercise of such revisional jurisdiction and patently illegal or ultra vires orders were to revive, the revisional Authority would be justified in declining such revisional jurisdiction even if some procedural irregularities were pointed out. In such matters, the substance must take precedence over the form.

**24.** The result of the impugned order made by the revisional Authority is that the Panchayat, in this particular case, is even precluded from looking into the petitioner's complaint about the alleged illegal construction put up by respondents 1 and 2. Even the demolition order made by the Panchayat after considering the petitioner's reply was set aside by the revisional Authority, even though there was no specific prayer in this regard. Possibly, the revisional Authority proceeded on the basis that the demolition order was a consequence of the directions in the judgment and order dated

25.01.2019 made by the Director of Panchayats. If this judgment and order were to be set aside, the consequential order would be set aside.

**25.** The Director's order dated 25.01.2019 had directed the Village Panchayat Secretary to demolish the illegal construction carried out by respondents 1 and 2 in accordance with law if no documents are placed on record. However, Mr Talaulikar pointed out that no such directions could have been issued.

**26.** Mr Takkekar submits that from the context, it is quite clear that the direction was not to demolish the illegal construction straightaway. Still, the direction was to demolish the illegal construction if it was indeed found illegal and if no documents were placed on record to satisfy its legality.

**27.** According to me, that is the correct manner of construing the Director's order. The direction was to consider and dispose of the petitioner's complaint following the law after giving full opportunity to all parties. This is what, at least *prima facie*, the Panchayat/its Secretary has done. In any case, the legality of the demolition order on merits is open before the Director of Panchayats.

**28.** Mr Talaulikar is confident about the legality of the structure of respondents 1 and 2. He submits that there are documents to prove the legality of the structure. If so, all these are matters for the

authorities to consider and decide following the law in the Appeal already instituted by Respondents 1 and 2.

**29.** The issue of whether the demolition order was correctly made is pending in Appeal before the Director of Panchayats. Therefore, at this stage, it is not for this Court to make any observations on the said issue. However, a clear case is made out by the petitioner; therefore, based upon the same, the revisional Authority's judgment and order dated 07.05.2022 will have to be set aside and is hereby set aside.

**30.** As a result, the demolition notice/order dated 23.03.2019 is revived. Since this demolition order/notice is already challenged by respondents 1 and 2 in Appeal no.DP/N/7/2019, the appellate Authority is directed to take up this Appeal for consideration and dispose of the same in accordance with the law as expeditiously as possible and, in any case, within four months from today. Accordingly, the interim order granted in the said Appeal will continue to operate till the disposal of the Appeal, subject to the condition that respondents 1 and 2 should not do any further construction or change the status quo.

**31.** Mr Talaulikar states that the petitioner will be impleaded as a respondent in the pending Appeal no.DP/N/7/2019. In my opinion, this is necessary because the petitioner has been pursuing his complaint. In the peculiar facts of the present case, no appeal should

have been instituted without impleading him. Accordingly, the appellate Authority before whom the Appeal is pending should permit the petitioner's impleadment as a respondent in the said Appeal.

**32.** The rule in this petition is made absolute in the above terms. The impugned judgment and order dated 07.05.2022 made by the revisional Authority are set aside. It is clarified that even the Panchayat's resolutions dated 30.06.2016 and 15.07.2016 are set aside. The notice of demolition dated 23.03.2019 is revived, but the same shall be subject to the outcome of Appeal no.DP/N/7/2019 is pending before the Appellate Authority. The interim order obtained by respondents 1 and 2 in the said Appeal will also operate until the disposal of the said Appeal and shall abide by the directions in the said Appeal. The Appeal must be decided on its own merits and in accordance with the law. All parties' contentions on the merits of the Appeal are left open for the determination of the appellate Authority. The timeline indicated above will have to be adhered to by the appellate Authority. The impeachment of the petitioner is also allowed, as indicated above.

**33.** The parties to now appear before the appellate Authority on 10.04.2023 at 3.00 p.m. and file an authenticated copy of this order. From this date, the appellate Authority should endeavour to dispose of the Appeal within four weeks.

**34.** The rule is made absolute in the above terms without any cost order.

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

NITI K  
HALDANKAR

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K HALDANKAR  
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