

Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 247 OF 2021

Smt. Josephina D'Costa,
W/o late Antinio Cyril D'Costa,
R/o H.No. 18/158/2, aged 64 years
Mahadeva Mordi-Tilamol, Shirvoi,
Quepem, Goa.

Versus

1. The Chief Officer,
Office of the Chief Officer,
Quepem Municipal Council,

2. Mr. Yogesh A. Bene,
R/o H.No. 400, Mahadev Moddi,
Tilamol, Quepem.

Mr. Vallabh D. Pangam, Advocate for the Petitioner.

Mr. A. D. Bhobe with Ms. Romana Prazares, Advocates
appearing for the Respondent no.1

Mr. C.A. Coutinho with Ivan Santimano, Advocates appearing
for the Respondent no. 2.

CORAM: BHARAT P. DESHPANDE, J.

RESERVED ON: 04th November, 2023

PRONOUNCED ON: 09th November, 2023

JUDGMENT:

1. Rule.
2. Rule is made returnable forthwith

3. Heard finally at the stage of admission with consent.
4. Heard learned Counsel Shri V. Pangam on behalf of the Petitioner, learned Counsel Mr. A. D. Bhohe with Ms. Romana Prazares for the Respondent no. 1 and Mr. C.A. Coutinho with Advocate Ivan Santimano for the Respondent no. 2.
5. The present petition is filed thereby challenging the impugned order dated 26.12.2016 passed by the learned Administrative Tribunal in Municipal Appeal No. 83/2013 together with the order passed by Quepem Municipal Council dated 20.03.2013 by which the order was passed to demolish the illegal construction.
6. The Petitioner received a show cause notice under Section 184 of the Goa Municipalities Act on 05.08.2012, on the basis of complaint lodged by Respondent no. 2. The said complaint is against the illegal encroachment and public nuisance in property bearing survey no.24/1 of village Shirvoi, Quepem. The Petitioner filed a detailed reply to show cause notice stating that one structure is in the name of mother-in-law of the Petitioner and other structure is in the name of father-in-law. One structure is partly occupied by the Petitioner whereas the other structure is let out on

rental basis. The property bearing survey no.24/1 of village Shirvoi is a tenanted property and the Petitioner along with his family members is in possession of it from last more than 50 years. Both the structures are registered with the municipal records for house tax and the Petitioner is paying it regularly. However, the Municipal Council passed an order of demolition of one structure, without hearing the Petitioner. Appeal filed by the Petitioner before the Appellate Authority was dismissed on 26.02.2013.

7. Accordingly, the Petitioner filed an appeal before the Administrative Tribunal which was dismissed. The Petitioner then filed an appeal before the Minister of Urban Development, however the same was returned somewhere in the year 2016. Due to ill health of the Petitioner she was unable to process the matter further. Suddenly, the Petitioner received a notice from the Municipal Council on 23.06.2021 directing her to remove illegal structures. Challenging the Tribunal's orders as well as the notice, the Petitioner preferred the present petition.

8. Mr. Vallabh Pangam would submit that it is a case of remand as no proper opportunity was given to Petitioner to produce her evidence before the Municipal Authorities and therefore the order

passed by the Tribunal also needs to be quashed and set aside. He submits that there are two structures for which Petitioner is paying house tax. One structure is occupied by the Petitioner and other is tenanted. He submits that both these structures are existing since long. He then submits that the disputed structure is within the parameters of the bye-laws and building regulations. The said structure is having setbacks on all sides.

9. Mr. Vallabh Pangam would submit that initially it was old structure in the form of cow-shed and thereafter it was converted into rooms. Mr. V. Pangam would then submit that this structure is existing since long and false complaints were filed by Respondent No. 2 from time to time which were rejected by the concerned authorities. On a specific question as to when the cow-shed was converted into rooms, Mr. V. Pangam was unable to answer. Similarly, he failed to show any permission for conversion of cow-shed into rooms.

10. Mr. V. Pangam would then submit that these rooms were used by the Petitioner for keeping her agricultural equipments. He would then submit that there is no need to demolish the structure as the structure could be regularised. Petitioner could be given

opportunity to ask for regularisation of it.

11. Mr. Coutinho learned Counsel for the Respondent No. 2 submits that initially there was only one house which is occupied by the Petitioner. However, thereafter she constructed one room illegally and rented it. Though a complaint was lodged, the authorities failed to take any action. The Petitioner thereafter constructed adjoining rooms to the earlier room, one after another and now there are more than Five rooms which have been constructed illegally and without any licence or authority. He claimed that earlier complaints were filed by Respondent No.2, but the authorities failed to take any action for which Respondent No.2 cannot be blamed. He then submitted that somewhere in the year 1999, there was only one room having an area of around 20sq.mts. where as, now there are more than four rooms. He claimed that all these rooms are illegally constructed which has been considered by Respondent No.1 and therefore no interference in the impugned order is necessary.

12. Learned Counsel Shri Bhobe appearing for Respondent No. 1 claimed that on receipt of complaint, a transgression report was prepared wherein it was noticed that illegal construction was

carried out. Show cause notice was issued to the Petitioner. Since there was no satisfactory reply an order was passed for demolition. He submits that the Petitioner carried out illegal construction in the property wherein she has no right at all, except one house which is found in the survey records.

13. Rival contentions fall for determination.

14. The Form I and XIV of Survey no.24/1 of village Shirvoi of Quepem Taluka shows the details including area and the name of occupants. The name of ancestors of Respondent No. 2 appears in the occupants column. In the other rights column, there is reference to a house which belongs to Deoginho Piedade D'Costa, through whom the Petitioner is claiming right.

15. As rightly pointed out by Mr. Bhobe and Mr. Coutinho, learned Counsel for the Respondents, there is only one house referred to in the survey records standing in the name of the ancestors of the Petitioners. Even the survey plan shows only one house.

16. Before issuing show cause notice, Respondent No. 1 carried out inspection of the site on 24.07.2012. The particulars of the transgressions are shown in the document with the plan. It is the

contention of Respondent Nos. 1 and 2 that a notice for inspection was issued to the Petitioner and such inspection was carried out in her presence. Since the Municipal Council found that the illegal construction was put up as shown in the transgression report, a show cause notice was issued to the Petitioner dated 05.09.2012 asking her to show cause as to why action should not be initiated.

17. The Petitioner vide her reply dated 07.09.2012 denied of carrying out illegal construction and claimed that the Respondent No. 2 is filing complaint against her and harassing her. She then claimed that she is in possession and enjoyment of the entire land under survey no. 20/2 and part of survey no. 24/1 from last more than 50 years. She then claimed in the reply that there are two structures in her possession. One structure is registered in the name of her mother-in-law and whereas second structure is registered in the name of a father-in-law. She is occupying one structure whereas the other structure is rented out. She then claimed that the other structures comprises of various tenements and are let out on rental basis. She specifically claimed that there is no new structure, but both the structures are old and registered in the Municipal Council. Finally, she claimed that survey no.24/1 is her tenanted property

and in her possession since last 50 years. She also claimed that she will produce oral as well as documentary evidence to justify her defence.

18. Since no evidence or documents were placed by the Petitioner, Respondent No. 1 passed order dated 20.03.2013. By this order the Respondent No. 1 found that the Petitioner has constructed rooms illegally with laterite masonry stones covered with A.C. sheet roof in survey no. 24/1, without prior permission and violating building rules. Though show cause notice was issued, Petitioner failed to produce documentary evidence. Accordingly, the Municipal Council observed that her reply dated 7.09.2012 was not satisfactory and no documentary evidence supporting illegal structures was produced, the Petitioner was directed to demolish the said illegal constructions within 15 days from the receipt of the said order.

19. The Petitioner challenged this order before the learned Appellate Tribunal vide Municipal Appeal No. 83 of 2013. After hearing the Petitioner and Municipal Council, the learned Appellate Tribunal dismissed the said appeal vide Judgement dated 26.02.2016.

20. The learned Appellate Tribunal observed that the Petitioner was given opportunity before the Tribunal to produce documents in support of the legality of the structure. The Petitioner failed to produce any document. The learned Tribunal further observed that the record showed that initially one room was constructed and later on additions were made from time to time till it was inspected by Municipal Council by preparing transgression report.

21. Section 184 appearing in chapter XII of Goa Municipalities Act, 1968 deals with notice of construction of building. The word building is defined and also considered in the above section which includes any material alteration, enlargement, reconstruction of any any building, or any wall including compound wall and fencing, *verandah*, fixed platform, plinth, door step or the like, whether constituting part of a building or not. It also includes addition of any rooms, building or other structures to any buildings, and a building so altered, enlarged, re-constructed, converted or added to, is throughout this Chapter included under the expression as “a new building”.

22. Section 184 (2) deals with intimation to be given to the Chief Officer of the Municipal Council in writing and furnishing to him

by special order, plans of the proposed building including design etc. before starting of the construction.

23. Section 184 (8) is material wherein it is provided that if any person begins any construction of building of which notice is required to be given under subsection (2), without permission of the Chief Officer or the Council as the case maybe or having received permission contrary to the plans or having received permission contrary to the conditions imposed under the clause or contrary to the plans etc., 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 service of such notice, the work of demolition is not commenced, the Chief Officer may cause such work to be done and the expenses incurred there from shall be recoverable from the person concerned in the same manner as an amount due on account of a property tax.

24. Thus, first of all, it is clear from the records and from the survey entries, that there was only one house recorded in the name of father-in-law of the Petitioner. The survey records are promulgated. It is no doubt true that Petitioner placed on record the

house tax receipt in respect of 2 constructions. However, only because the house tax is levied on a structure by the authority, such structure cannot be considered as legal. The Municipal Council is entitled to tax a structure which is existing and occupied. It is one thing to claim tax, but it is another thing to prove that such structure is legal i.e. constructed after obtaining permission.

25. Mr. V. Pangam while arguing the matter, claimed at one stage that earlier there was a cow-shed, later on he claimed that the structure was old and used to keep agricultural instruments. Both these statements are apparently incorrect. The survey records show only one structure registered in the name of father-in-law of the petitioner. Second structure is not at all appearing in the survey records. There is no explanation appearing on the behalf of Petitioner about the absence of the second structure in the survey records.

26. The contention of Mr. V. Pangam that earlier it was a cow-shed and later on it was converted into rooms is more probable. However, even converting cow-shed into room requires permission from the authorities. For that purpose, the Petitioner was supposed to apply with Respondent No. 1. Admittedly, there is no such

permission sought.

27. The record clearly goes to show that initially one room was constructed and even though complaints were lodged, the Municipal Council failed to take proper action. Inaction on the part of Municipal Council encouraged the Petitioner in carrying out further illegal construction. Attempts were made by Mr. V. Pangam to suggest that the matter needs to be remanded to the Municipal Council so that Petitioner could produce the documents. However, he failed to satisfy this Court and even the learned Administrative Tribunal who clearly observed in para number 11 wherein it is recorded thus:

“Learned Advocate for Appellant prayed for remand of the matter to the Respondent for giving opportunity to the Petitioner to produce relevant documents. This Tribunal has afforded opportunity to produce on record documents, if any, which would prima facie justify the disputed construction. However, no document is placed on record. In such circumstances the exercise to remand the matter to the Chief Officer shall be a futile exercise. Moreover, when the reasonable opportunity of hearing was given to the Appellant”.

28. Besides the Municipal Council in its show cause notice dated 05.08.2012 called upon the Petitioner to produce documentary evidence to justify illegal construction as noted in the transgression report. Instead of producing documents in support of such construction, the Petitioner made allegations against Respondent No. 2. Though she claimed that she will produce oral as well as documentary evidence, but the wordings clearly goes to show that the Petitioner had no documents. Reply dated 07.09.2012 at the last para reads thus:

“I shall produce both oral and documentary evidence to justify my case if need be. The disputed structure is existing since ages and is availed of public facilities. The same is also registered in your records for the purpose of house tax. Various parts of the said structure are occupied by our tenants, lessees, licences”.

29. The language in the first line of the above quoted portion clearly shows that even though Petitioner was called upon to show cause with documentary evidence within 15 days from the date of receipt of the notice dated 05.09.2012, she failed to do so. Thus the contention of Mr. V. Pangam that no opportunity was given to the Petitioner to produce documentary evidence is factually

incorrect. The show cause notice clearly depict that the Petitioner was called to produce documentary evidence within 15 days from the date of receipt. No further invitations/investigation was necessary since the Municipal Council is duty-bound to decide the matter within time bound period, and once Petitioner failed to produce documents.

30. The discretion exercised by the Administrative Tribunal cannot be faulted with. Detailed reasons are disclosed in the impugned order for which no interference is necessary.

31. Mr. V. Pangam placed reliance in the case of *Syed Muzaffar Ali Versus is Municipal Corporation of Delhi* reported in *1995 supplement 4 SCC 426*. First of all, observations in the para 5 and 6 of the Judgement are with regards to the matter in question. It was claimed on behalf of Syed Muzaffar Ali that structural changes brought out by him in respect of the building do not amount to construction and that at all events no notice was served on him before passing the impugned order. Both these contentions were rejected by the Apex Court. Thereafter it was argued that mere departure from the authorised plan or putting up a construction without sanction does not *ipso facto* and without more necessarily

and inevitably justify demolition of the structure. The Apex Court observed that there are cases and cases of such unauthorised construction. Some are amenable to compound and some may not be. There may be cases of grave and serious breaches of the licensing provisions or building regulation that may call for extreme step of demolition. These are the matters for the authorities to consider at the appropriate time having regard to the nature of transgressions.

32. These observations of the Apex Court are in fact supporting the case of Respondent for the simple reason that the transgression report in this matter shows brazen and without any permission.

33. Learned Counsel Shri Coutinho placed reliance in the case of ***Smt. Milagrina D'Mello V/s Shri John Gonsalves and others*** in ***Writ Petition 524/2022*** decided by this Court on ***18th October 2023***.

In the said matter this Court has observed that illegal structure erected without following building bye-laws must be dealt with iron hand. Many cases have been discussed on the similar nature including ***Shanti Sports Club V/S Union of India (2009) 15 SCC 705*** observing that Panchayat has no power to grant regularisation. Even in the Goa Municipalities Act, Mr. V. Pangam failed to point

out any provision by which such illegal structures could be regularised.

34. The impugned order as well as the notice challenged in the present petition, needs no interference. Accordingly, the petition deserves to be rejected and accordingly it stands rejected. Parties shall bear their own cost.

BHARAT P. DESHPANDE, J.