

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.16 OF 2023

Linnet Nunes

... Petitioner

Versus

State of Goa thr. Chief Secretary

And Anr.

... Respondents

Mr Shivan Desai and Mr Nathan Savio Vas, Advocate for the
Petitioner.

Mr S. G. Bhobe, Public Prosecutor, Advocate for Respondents.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED : 13th FEBRUARY 2023

ORAL ORDER.

1. Heard Mr Shivan Desai, learned counsel for the petitioner and Mr S. G. Bhobe, learned Public Prosecutor for the State.
2. The challenge in this petition is to the order dated 29.08.2022 made by the Police Inspector of Anjuna Police Station purportedly to exercise powers under Section 149 of CrP.C. The impugned order dated 29.08.2022 reads as follows:

*'No.PI/ANJ/7180/2022
Anjuna Police Station
Dated:-29.08.2022*

*To,
Mrs. Linnet Nunes,
Owner of Curlies Beach Shack,*

Anjuna, Bardez Goa.

Sub:- Notice U/s 149 CrPC...

*Ref:- Anjuna PS Cr. No.134/2022 U/s 302
r/w 34 IPC.*

*Anjuna PS Cr. No.135/2022 U/s 22(b)
of NDPS Act.*

With reference to the above, I am to inform you that the above referred crimes are registered at this Police Station and the same are under investigation.

During the course of investigation it was found that your establishment Curlies Beach Shack is operated without necessary permission/Licenses.

The unauthorised operation of Curlies Beach Shack, Anjuna Goa resulted in serious incidents which are referred above.

Therefore, in order to prevent further commission of crime at Curlies Beach Shack, Anjuna Goa, you are directed to shut down the operation of Curlies Beach Shack.

Sd/-

(Prashal P. N. Dessai)

Police Inspector

Anjuna Police Station '

3. At least prima facie, we are satisfied that the above order is without jurisdiction. Powers of this nature could not have been exercised by resorting to Section 149 of CrP.C. Further, before making such orders, at least minimum compliance with principles of natural justice was expected.

4. However, we also agree with the contention of Mr Bhobe, learned Public Prosecutor that subsequent events have rendered it unnecessary for us to quash the above impugned order. Mr Desai and Mr Bhobe pointed out that the following orders dated 09.09.2022

and 20.01.2023 passed by the Hon'ble Supreme Court in Civil Appeal (Diary) No.28426/2022. On 09.09.2022 the following Order was passed:

Pending notice, we direct as under :

(a) Consistent with the statement made by the learned senior Advocate on behalf of the appellant, structures in existence in lands other than Survey No.42/10, are not covered by the width of this Order. Resultantly, if there be any unauthorized construction in lands other than Survey No.42/10, the demolition can certainly go on.

(b) There shall be stay of demolition with respect to structures standing on Survey No.42/10 subject to the appellant not undertaking any commercial activity in or with respect to said structure.

(c) Mr. Anturkar, learned Advocate, shall file response on behalf of the concerned respondents on or before 14th September, 2022, enclosing all the reports in connection with the matter as well as the pictures and plans.

The following Order was passed on 20.01.2023:

'ORD ER

1. Heard Mr. Huzefa Ahmadi, learned senior counsel for the appellant as also Mr. K.M. Nataraj, learned ASG and perused the appeal papers.

2. Though, several contentions have been urged in the appeal, at the time of hearing a pointed reference is made to Paragraph-6 of the Order dated 06.09.2022 passed by the National Green Tribunal (for short 'NGT') wherein, the NGT has taken note that the Goa Coastal Zone Management Authority (for short 'GCZMA') had submitted that the appellant had not taken part in the

second inspection conducted on 15.07.2016 by the expert Members.

3. At this stage, we need not refer to that aspect of the matter to arrive at a conclusion as to whether one more inspection is required, to be done or not in the presence of the appellant.

4. Be that as it may, it has been brought to our notice that the order impugned was passed on 06.09.2022, on which day, the respondents herein, had not appeared in the proceedings before the NGT. From the records it is pointed out that the as per Annexure A-16, the respondents herein, on 07.09.2022 had filed an application before the NGT reflecting the reason as to why they were unable to join the proceedings, and seeking for a fresh hearing of the matter.

5. Though, it is pointed by the learned ASG that since the ultimate order passed by the NGT is in favour of the respondents and their absence, at this stage would not be material, the learned senior counsel for the appellant would point out that such absence of the respondents during the hearing has prejudiced the appellant herein, who was the appellant before the NGT since, the appellant was denied of an opportunity of putting forth its contentions in response to the contentions to be urged on behalf of the respondents so as to clarify the factual position so as to enable the NGT to take an informed decision. In that circumstance, we feel that the principles of natural justice would require that an appropriate opportunity be granted to both the parties and then, an appropriate decision be taken by the NGT.

6. Hence, without adverting to the merits of the rival contentions, only on the procedural aspect, we deem it appropriate to set aside order dated 06.09.2022 passed by

the NGT, Special Bench and restore Appeal No. 48/2016(WZ) and MA No. 212/2016(WZ) to the file of

the NGT to provide opportunity to both the parties and pass fresh orders in accordance with law.

7. In the meanwhile, pending consideration of the appeal by the NGT, the benefit of the interim order dated 09.09.2022 granted by this Court on 16.09.2022 during the pendency of this appeal shall continue till the disposal of the appeal by the NGT, unless the NGT deems it necessary to make such interim order/arrangement, if any. The NGT may take up the appeal and dispose of the same as expeditiously as possible and in accordance with law.

8. The appeal is accordingly, disposed of.

9. Pending application(s), if any, shall stand disposed of.'

5. Accordingly, since the petitioner has undertaken not to carry out any commercial activities from the subject premises until the disposal of proceedings before the National Green Tribunal (NGT), we clarify that should the proceedings before the NGT conclude in favour of the petitioner, then, the above impugned order dated 29.08.2022 will not come in the way of the petitioner from undertaking permissible activities from the subject premises.

6. With the above observations and directions, we dispose of this petition. There shall be no order for costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.