

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 773 OF 2019

Sociedade Agricola Dos Gauncares De
Cuncolim e Veroda Through its President
Shri. S. Desai

... Petitioner.

Versus

1. The Chief Officer,
Cuncolim Municipal Council
Office of the Cuncolim Municipal
Council
Cuncolim, Salcete-Goa

2. Menino Xavier Fernandes,
Major in age, s/o late Pedro Minguel
Fernandes - resident of House No. 1771,
Savorcotto, Cuncolim, Salcete-Goa

2a. Mrs. Ana Maria Sofia Fernandes
Awwundaurl UArLed Wife of late Mr.
Menino Xavier Fernandes

2 b. Mr. Armstrong Avinash Fernandes
Son of late Mr. Menino Xavier Fernandes

2 c. Mrs. Glancy Fernandes
wife of Mr. Armstrong Fernandes

2 d. Mr. Aldrino Jesus Fernandes,
Son of late Mr. Menino Xavier Fernandes

2 e. Mrs. Fabina Fernandes
Wife of Mr. Aldrino Jesus Fernandes

All residents of H. No. 1771, Savarcotto,
Cuncolim, Salcete- Goa. 403 703

2 f. Mrs. Amita Braganza
Daughter of late Mr. Menino Xavier
Fernandes
2 g. Elisius Braganza,
Husband of Mrs. Amita Braganza
Both residents of Dandevado,
Near Corporation Bank, Chinchinim,
Salcete- Goa. 403 715

3. Mrs. Immaculada Fernandes,
Savorcontto, Cuncolim, Salcete-Goa. ...Respondent.

**Mr Chaitanya Prakash Padgaonkar, Advocate for the
Petitioner.**

Mr Prayash Shiroadkar, Advocate for Respondent No.1.

**Mr Sudesh Usgaonkar with Ms Rosette Perreira, Advocates
for Respondents No.2(a) to 2(g).**

CORAM : M. S. SONAK, J.

DATE : 20th APRIL 2023

ORAL JUDGMENT :

1. Heard Mr Padgaonkar for the Petitioner, Mr Shiordkar for Respondent No.1, and Mr Sudesh Usgaonkar for the LRs of deceased Respondent No.2. Respondent No.3, though served, was neither present nor represented.

2. By an order dated 28/8/2019, this Court had directed that the notice indicate that this Petition would be taken up for final disposal at the admission stage.

3. Accordingly, Rule. The rule is made returnable immediately.
4. This Petition challenges the Chief Officer's order dated 31st January 2018, dismissing the Petitioner and Respondent No.3 (Immaculada) 's complaint about some illegal construction carried out by the original Respondent No.2.
5. Based on the complaint, the Chief Officer had issued a demolition notice dated 4/9/2013. However, the original Respondent No.2 (Menino) challenged the same by instituting Municipal Appeal No. 121/2013 before the Goa Municipal Tribunal at Panaji.
6. By a judgment and order dated 18/8/2017, the Tribunal set aside the demolition order dated 4/9/2013 and remanded the matter to the Chief Officer for a fresh decision after hearing Menino, the Petitioner herein, and Immaculada.
7. The operative portion of the Tribunal's judgment and order dated 18/8/2017 reads as follows :

"ORDER

Appeal is partly allowed.

The impugned order is quashed and set aside.

The Chief Officer shall consider the reply dated 15.5.2013 filed by the Appellant and decide the matter with reasoned order in accordance with law after giving reasonable

opportunity of hearing to the Appellant and Respondents No.2 & 3.

Respondent no.1 shall also examine if the structure is capable of being regularised prior to issuing final order.

This exercise shall be completed within three months from today."

8. Upon remand, one of the complaints, Immaculada, applied on 31/1/2018 to delete the Petitioner's name as a co-complainant. Immaculada and Menino filed the consent terms on the same date before the Chief Officer. In the consent terms, it was recorded that Immaculada was not to pursue the complaint of the illegal construction. Further, some issues between the said Immaculada and Menino, unconcerned with the issue of unlawful construction, were also included. Over such matters, the Chief officer perhaps had no concern or jurisdiction. All this is very surprising.

9. However, what is most surprising is that the Chief Officer allowed all this to happen. Based on such a strange procedure, the Chief Officer rejected the complaint about the illegal construction by Menino and summarily disposed of the matter by the impugned order dated 31/1/2018. The Chief Officer made no enquiries whatsoever about the legality of the construction, which is what he was duty-bound under the law. All this was most improper.

10. The impugned order dated 31/1/2018, as noted by the Chief Officer in the Roznama, reads as follows :

"31/01/2018 Case called out. Advocate Shri Bhupesh Prabhu Dessai present on behalf of complainant – Advocate Shri Ehrlick de Ataide present on behalf of respondent. Application filed by complainant to drop respondent No.2 is allowed. Both the parties filed consent terms. In view of consent terms filed, following order passed :

ORDER

In view of consent terms filed today, complaint stands rejected. Matter to be sent to Technical Section for further action on the point of regularisation of structure. Proceedings closed."

11. The record unmistakably shows that the Petitioner (Sociedade) and Immaculada were the joint complainants who had complained about the alleged illegal construction put up by Menino. Based upon this joint complaint, the Chief Officer had made a demolition order dated 4/9/2013. The Tribunal set aside this order, and the matter was remanded to the Chief Officer to decide the complaint afresh by granting an opportunity of hearing not only to Menino but also to the Petitioner (Sociedade) and Immaculada.

12. Therefore, Immaculada had no right or authority to seek deletion of the Petitioner's name from the complaint. If Immaculada did not wish to pursue the complaint, then Immaculada could have either abandoned pursuing the complaint

or could have herself got dropped from the proceedings. However, Immaculada had no authority to seek deletion of the Petitioner (Sociedade).

13. In any case, whatever Immaculada may have sought, the Chief Officer completely exceeded the jurisdiction by allowing Immaculada's application and deleting the Petitioner's name from the proceedings. The Chief Officer also had no authority to accept any consent terms between Immaculada and Menino and dispose of the complaint about the illegal construction based upon the same. All these actions of the Chief Officer are *ex-facie* perverse and without jurisdiction. The Chief Officer has virtually abdicated his duties by choosing a convenient but ultra vires mode for disposing of the complaint of illegal construction.

14. Mr Usgaonkar pointed out that the Petitioner has made some misstatements. Firstly, he pointed out the statement that Menino was a trespasser when, in fact, Menino was a lessee. Secondly, he pointed out that the Petitioner had wrongly alleged that the application for Petitioner's deletion was made by Menino when, in fact, the same was made by Immaculada.

15. Mr Padgaonkar has explained that these are not intentional misstatements. But, in any case, these so-called misstatements do not go to the root of the matter. Whatever Menino's status may be,

the issue is whether Menino has put up an illegal construction or not. Similarly, the record bears out that the application for deletion of the Petitioner was not made by Menino but by Immaculada. Based upon such statements that may or may not be accurate, the Chief Officer's patently illegal actions cannot be condoned. Accordingly, the Chief Officer's order dated 31/01/2018 is set aside.

16. Mr Shirodkar learned Counsel for the Cuncolim Municipal Council now states that the incumbent, who made the impugned order, is already transferred. Accordingly, the matter is remanded to the present Chief Officer of the Cuncolim Municipal Council, who shall decide whether there is merit in the Petitioner's complaint about the alleged illegal construction put up by Menino and pass a reasoned order on the Petitioner's complaint. The Chief Officer must grant the Petitioner and Menino's legal representatives the opportunity for a hearing. If Immaculada wishes to be heard in the matter, she can be given an opportunity for a hearing.

17. However, in such cases, the Chief Officer should not accept any consent terms or even entertain any applications for withdrawal of complaints. First, the Chief Officer has to find out whether any illegal construction has been put up and, if so, to take action against the same following the law. The complainant's role in such matters is only to notify the Chief Officer of alleged violations of the Municipal laws or by-laws. After that, the Chief Officer must take

action based upon such complaints after verifying whether such complaints have merit or not. However, there is no question of allowing the complainants to compromise such matters and, based upon such compromises, allow breaches of the Municipal rules, regulations, and bye-laws. The Chief Officer cannot be a party to such settlements, or based upon such compromises, the Chief Officer cannot dispose of such proceedings.

18. The Petitioner and the LR's of Menino, who Mr Usgaonkar represents, should appear before the Chief Officer of Cuncolim Municipal Council on 15th May 2023 at 3.00 p.m. without insisting upon any separate notice from the Chief Officer. The Chief Officer may, however, issue notice to Immaculada requiring her to remain present on the said date if she so desires.

19. The Chief Officer must dispose of the Petitioner's complaint as expeditiously as possible and before 10th August 2023. The Chief Officer must communicate his reasoned order to the parties or pronounce the reasoned order on the date to be fixed by him on or before 10th August 2023.

20. This Court has not examined the legalities or otherwise of the Petitioner's complaint or Menino's construction. Therefore, all such contentions are left open for the decision of the Chief Officer.

21. The rule is made absolute in the above terms. There shall be no order for costs.

22. All concerned to act on an authenticated copy of this order.

M. S. SONAK, J.

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