

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.524/2022

Smt. Milagrina D'Mello, Wife of
Antonio Filomena F. D'Mello alias
Domingo F. D'Mello, Age 73 years,
Resident of House No. 150, Neura, O
Grande, Guddi Vaddo, Tiswadi, North
Goa, Goa.

... PETITIONER

Versus

1. Shri. John Gonsalves, Age 68 years,
Resident of House no.151, Guddi
Vaddo, Neura, North Goa.

2. The Village Panchayat of Neura,
Through its Secretary, With office at
Panchayat Ghar, Neura, Tiswadi, Goa.

3. The Deputy Director of Panchayats
North Goa, With office at 4th floor,
Myles High Corporate Hub, Patto
Centre, Panaji, Goa-403001.

4. The Additional Director of
Panchayats, North Goa, With office at
5th floor, Myles High Corporate Hub,
Patto Centre, Panaji, Goa 403001.

... RESPONDENTS

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

Mr S. Karpe with Mr Anand Shirodkar, Advocates for
Respondent No.1.

Ms Sapna Mordekar, Additional Government Advocate for Respondents No.3 and 4.

CORAM: M. S. SONAK, J.

Reserved on: 13th OCTOBER 2023

Pronounced on: 18th OCTOBER 2023

P.C.:

1. Heard Mr Sudesh Usgaonkar with Ms Marie Rosette Pereira for the Petitioner, Mr S. Karpe with Mr Anand Shirodkar for Respondent No.1 and Ms Sapna Mordekar, learned Additional Government Advocate for Respondents No.3 and 4.

2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties. Even otherwise, by order dated 21.04.2023, it was clarified that subject to constraints of time, an endeavour would be made to dispose of this petition finally at the admission stage. This was reiterated in the order dated 16.06.2023.

3. The petitioner challenges the Judgment and Order dated 21.06.2022 made by the Ad-hoc District Judge-1, FTC-I, North Goa, Panaji, in Civil Revision Application No.50/2021 under Section 201-B of the Panchayat Raj Act, 1994 (said Act).

4. The petitioner and the first respondent are neighbours. On the boundary dividing their properties is situated a common well, which is partly in the petitioner's and partly in the first

respondent's property. This well is duly reflected in the old as well as new survey records. About the existence and location of this well, there is no dispute.

5. The petitioner, between May and August 2016, filed complaints inter alia to the health authorities and the Panchayat alleging that the first respondent had unauthorisedly covered this well and constructed a toilet, septic tank and soak pit on this common well without obtaining any permissions from any authorities. The second respondent-Panchayat conducted a site inspection on 30.09.2016. It is the petitioner's case that the Panchayat, despite noticing the apparent illegalities, failed to take any action against the same. It is also the petitioner's case that the first respondent, emboldened by the second respondent's inaction, commenced further illegal construction of an extension of the house by erection of cement concrete poles. The petitioner accordingly filed a complaint before the Block Development Officer (BDO), complaining about the second respondent's inaction in the matter.

6. The petitioner has pleaded that in November 2016, the BDO carried out an inspection and submitted the report to the Deputy Director of Panchayat, i.e., the third respondent. Mr Usgaonkar pointed out that in case of inaction by the Panchayat, the Deputy Director is authorised to assume the powers of the

Panchayat and initiate action. Accordingly, on 20.12.2016, the Deputy Director of Panchayats issued a notice to the Panchayat.

7. The Panchayat issued a notice to the first respondent on 27.12.2016, requiring the first respondent to show cause as to why action should not be taken against the prima facie illegal constructions put up by him. The Panchayat, however, responded to the Deputy Director that since the Deputy Director had already assumed jurisdiction, the Panchayat was only awaiting a response from the first respondent.

8. The first respondent replied to the show cause notice. However, despite the reply, the Panchayat failed to take any action in the matter, mostly citing that the matter was pending before the Deputy Director. In short, despite the petitioner's complaints and further despite the inspection reports showing prima facie violations, the Panchayat, the BDO and the Deputy Director did not take any immediate action in the matter. The period between May 2016 and February 2017 was spent by the authorities writing to each other or issuing notices but without taking any concrete action against the prima facie illegal constructions of a toilet, septic tank, and a soak pit over the common well.

9. However, on 09.02.2017, the Deputy Director assumed powers of the Panchayat and issued notice to the first and second respondents. On 27.06.2017, the first respondent filed a reply to

the notice. The Panchayat also filed its response on 19.10.2017, purporting to explain why no action was taken despite the inspection reports showing prima facie that the first respondent carried out illegal constructions.

10. By order dated 08.09.2021, the Deputy Director allowed the petitioner's complaint and directed the second respondent (Panchayat) to demolish the illegal constructions carried out by the first respondent. The Deputy Director, in effect, ordered the demolition of the illegal constructions as specified in the BDO's report within one month from the receipt of the order. The BDO was also directed to report compliance.

11. The first respondent challenged the Deputy Director's order before the Additional Director of Panchayats by preferring an appeal against the same. The Additional Director – Appellate Authority by Judgment and Order dated 23.12.2021 dismissed the appeal and confirmed the Deputy Director's order dated 08.09.2021.

12. Aggrieved, the first respondent instituted Revision Application No.51/2021 under Section 201-B of the Panchayat Raj Act to the District Court, which was made over to the Ad-hoc District Judge-1, FTC-1, North Goa at Panaji.

13. By the impugned Judgment and Order dated 21.06.2022, this revision was allowed by the Revisional Authority and the

Deputy Director's order dated 08.09.2021 and the Additional Director's Order dated 23.12.2021 confirming the same was set aside inter alia on the grounds that the petitioner's original complaint to the Panchayat was barred by limitation under the residuary Article 137 of the Schedule of the Limitation Act and that the powers of the Panchayat to act against illegal constructions could be exercised only where the illegal construction was going on but not after the wrongdoer completed the illegal construction.

14. Mr Usgaonkar learned counsel for the petitioner, submitted that Article 137 in the Schedule to the Limitation Act applies only to Courts and not to authorities like Panchayat. He submitted that the Revisional Authority's view amounts to an error apparent on the face of the record. He submitted that such a view is contrary to the law laid down in *Nityananda, M. Joshi & Ors. v/s. Life Insurance Corporation of India & Ors. - 1969 (2) SCC 199* and *Kerala State Electricity Board, Trivandrum – (1976) 4 SCC 634*.

15. Mr Usgaonkar, by referring to the reasoning in paragraph 28 of the impugned Judgment and Order, submitted that the same also constitutes an error apparent on the face of the record. He submitted that there is nothing in Section 66 of the Panchayat Raj Act to suggest that the Panchayat can intervene only while the illegal construction is on, but it cannot intervene once the

illegal construction is complete. He submits that such a reading of the provisions of Section 66 of the Panchayat Raj Act constitutes a perversity. He, therefore, submitted that the impugned Judgment and Order must be interfered with because otherwise, the powers of the Panchayat to deal with illegal constructions would be unduly curtailed contrary to the clear provisions of the Panchayat Raj Act and the intention of the Legislature to deal with the illegal constructions with the firm hand.

16. Mr Usgaonkar submitted that the Revisional Authority exceeded its jurisdiction in granting the first respondent liberty to apply for compounding or regularisation. He submitted that such liberty is contrary to several decisions of this Court and the Hon'ble Supreme Court on the issue of regularisation of patently illegal and unauthorised constructions. He submitted that there is no power vested in the Panchayats to regularise such illegal and unauthorised structures put up by taking advantage of the inaction of the Panchayat despite repeated complaints of the petitioner. He relied on *Gurudas Vattu Chati Aldonkar v/s. State of Goa and Ors. - Writ Petition No.284/2022 decided on 29.09.2022* and other decisions referred to therein.

17. Mr Usgaonkar submitted that for all the above reasons, the impugned Judgment and Order made by the Revisional Authority may be set aside, and the concurrent orders made by the Deputy

Director and the Additional Director of Panchayats may be restored.

18. Mr Karpe learned counsel for the first respondent did not support the Revisional Authority's reasoning based on limitation, i.e., Article 137 or, for that matter, the reasoning in paragraph 28 of the impugned Judgment and Order that Panchayats can intervene only while the illegal construction is going on but not thereafter. However, Mr Karpe submitted that the structures were extremely old, and there were repair permissions of 1985 to establish this fact. He submitted that the complaints were filed after several years, and the Panchayat was justified in not entertaining such complaints. He submitted that the well was not usable and was locally known as "*Paadi Bai*", which means spoilt well. He submitted that the Revisional Authority correctly interfered with the orders of the Deputy Director and the Additional Director of Panchayats because they failed to appreciate that the construction was an existing structure and not some illegal or unauthorised structure, as alleged by the petitioner.

19. Mr Karpe placed on record some photographs to show that even the petitioner had constructed a toilet right next to the well, which, according to the first respondent, was also an illegal and unauthorised structure. Mr Karpe submitted that the Panchayat had not taken any action against the illegal construction put up by the petitioner as well. He, therefore,

submitted that the petitioner was not justified in insisting upon any action against the first respondent's structure, which was an old and existing structure and not an illegal or unauthorised structure.

20. Mr Karpe submitted that the principle in *Syed Muzaffar Ali & Ors. v/s. Municipal Corporation of Delhi – 1992 LawSuits (SC) 800* was attracted, and the same was correctly followed by the Revisional Authority while granting liberty to the first respondent to apply for compounding or regularisation. Mr Karpe submitted that there is no illegality or jurisdictional error in the impugned Judgment and Order made by the Revisional Authority. Therefore, no case is made out to exercise the extraordinary jurisdiction under Article 227 of the Constitution of India. Based on all this, Mr Karpe urged that this petition may be dismissed.

21. Ms S. Mordekar, learned Additional Government Advocate, defended the orders made by the Deputy Director and the Additional Director of Panchayats by relying on the reasoning therein. She submitted that the Limitation Act does not apply. Further, there was nothing in Section 66 of the Panchayat Raj Act which supported the view taken by the Revisional Authority in the impugned Judgment and Order.

22. The rival contentions now fall for my determination.

23. Section 66 of the Panchayat Raj Act is concerned with the regulation of the erection of buildings within the jurisdictional limits of a Panchayat. This Section provides that no person shall erect any building or, alter or add to any existing building or reconstruct any building without the written permissions of the Panchayat. The permissions may be granted on payment of such fees as may be prescribed.

24. Section 66(3) of the Panchayat Raj Act provides that where any building is erected, added to or reconstructed without such permission or in any manner contrary to the rules prescribed under sub-section (1) or any conditions imposed by the permission granted, the Panchayat may, direct that the building, alteration or addition be stopped, or by written notice require within a reasonable period to be specified therein, such building alteration or addition to be altered or demolished.

25. Section 66(4) of the Panchayat Raj Act provides that in the event of non-compliance with the terms of any notice under sub-section (3) of Section 66 within the period specified in the notice, it shall be lawful for the Panchayat to take such action as may be necessary for the completion of the act thereby required to be done, and all the expenses therein incurred by the Panchayat shall be paid by the person or persons upon whom the notice was served and shall be recoverable as if it were a tax imposed under the Panchayat Raj Act.

26. Section 66(5) of the Panchayat Raj Act provides that where the Panchayat fails to demolish the building which is erected, added to or reconstructed without the permission of the Panchayat or in any manner contrary to the rules made under the Act or any conditions imposed in the permission, within a month from the date of the knowledge, the Deputy Director shall assume the powers of the Panchayat under sub-sections (3), (4) and (5) and take such steps as may be necessary for the demolition of such building.

27. Section 66(6) of the Panchayat Raj Act provides that notwithstanding anything contained in the foregoing provisions, the Block Development Officer concerned may, by notice addressed to the person responsible, stop any construction which is being constructed in violation of the provisions of the Act or rules or bye-laws made thereunder and refer the case to the Deputy Director of Panchayats. On receipt of such notice, such person shall forthwith stop the same.

28. Thus, there is nothing in Section 66 of the Panchayat Raj Act to suggest that the Panchayat acting under Section 66 is a Court, and, therefore, the provisions of the Limitation Act, 1963 apply to the Panchayat. In case of appeals or revisions, the Panchayat Raj Act provides for a specified period of limitation. The Panchayat Raj Act also makes provisions for condonation of delay wherever the Legislature intended delay to be condonable

for sufficient cause. Therefore, the Revisional Authority's reasoning about the application of the Limitation Act or the application of Article 137 in the Schedule to the Limitation Act is an error apparent on the face of the record.

29. Quite correctly, therefore, Mr Karpe learned counsel for the first respondent did not even endorse the above proposition. The learned Additional Government Advocate also opposed the proposition. But it is clarified that this matter is not decided on a concession of the Counsel. The Impugned judgment and order are proposed to be set aside because the view taken is wrong and contrary to the decisions of the Hon'ble Supreme Court, which were binding upon the Revisional Authority.

30. In *Nityananda, M. Joshi & Ors. (supra)*, the Hon'ble Supreme Court clarified that Article 137 in the Schedule to the Limitation Act, 1963, only contemplates application to Courts. In the Third Division of the Schedule to the Limitation Act, 1963, all the other applications mentioned in various articles are applications filed in the Court. Further, Section 4 of the Limitation Act, 1963 provides for the contingency when the prescribed period for any application expires on a holiday, and the only contingency contemplated is "when the court is closed". Again, under Section 5, it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the applications.

The scheme of the Indian Limitation Act, 1963, is that it only deals with applications to courts.

31. In *Kerala State Electricity Board, Trivandrum (supra)*, the Hon'ble Supreme Court held that Article 137 includes petitions within the words "applications". The alteration of the division, as well as the change in the collocation of words in Article 137 of the Limitation Act, 1963 compared with Article 181 of the 1908 Limitation Act shows that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure. In the 1908 Limitation Act, there was no division between applications in specified cases and other applications as in the 1963 Limitation Act. The words "any other application" under Article 137 cannot be said on the principle of *ejusdem generis* to be applications under the Civil Procedure Code other than those mentioned in Part 1 of the third division (Article 137 occurs in Part II). Any other application under Article 137 would be a petition or any application under any Act. But it must be an application to a court because Sections 4 and 5 of the 1963 Limitation Act speak of courts.

32. More recently, in *M.P. Steel Corpn. v. CCE - (2015) 7 SCC 58*, the Hon'ble Supreme Court, after exhaustively considering several authorities on the subject, held that a series of decisions of this Court have clearly held that the Limitation Act applies only to courts and does not apply to quasi-judicial bodies

or tribunals. The Court considered and approved the above precedents in *Nityananda (Supra)* and *Kerala State Electricity Board, Trivandrum (Supra)*.

33. The Revisional Authority, in making the impugned order, completely lost sight of the fact that the provisions of the Limitation Act, 1963 and the provisions in Article 137 in the Schedule to the Limitation Act, 1963, applied only to the Courts and not to the Panchayat acting under the Section 66 of the Panchayat Raj Act. Therefore, even assuming that the petitioner's complaint was three years after the first respondent put up the construction, such complaint could not be said to have been barred by the law of limitation as held by the Revisional Authority.

34. Even the assumption that the constructions were made more than three years before complaints were lodged is not correct. Because, as discussed later, such an assumption was entirely based on 1985 repair permission, which had nothing to do with such illegal constructions of a toilet, septic tank or a soak pit after covering the common well. The Revisional Authority, in the impugned Judgment and Order, a little diffidently accepted the first respondent's case about the constructions being old based upon a repair license dated 01.10.1985. The discussion in this regard is in paragraph 23 of the impugned Judgment and Order. Mr Usgaonkar pointed out that the reference to the repair

license dated 01.10.1985 is nothing but another instance of perversity. There is merit in the submission.

35. The repair license dated 01.10.1985 was issued based upon an application dated 20.08.1985 made by the first respondent's mother to the Panchayat. In this application, there was no reference whatsoever to the construction of a toilet, septic tank or soak pit. This application concerns repairs to the walls of the kitchen at the estimated cost of ₹3,000/-. Based upon this application, permission for repairs was issued on 01.10.1985. Even this permission refers to "*minor repairing work of your old kitchen and also for changing wooden structure of roof provided it should be within old plinth area*".

36. From the above, it is apparent that the Revisional Authority did not even bother to look into the application dated 20.08.1985 and the repair permission dated 01.10.1985 before accepting the first respondent's case that the repair license concerned the toilet or the septic tank or the soak pit which were alleged to be illegal constructions put up on the common well. Again, therefore, this is a clear case of either not reading or grossly misreading the documents on record by the Revisional Authority. The Revisional Authority's assumption about the constructions being old is, thus, not a valid assumption.

37. Revisional Authority's reasoning that Section 66 of the Panchayat Raj Act applies only when the illegal construction is going on but will not apply once the illegal construction is complete is, again, a patent error apparent on the face of the record. There is absolutely nothing in Section 66 of the Panchayat Raj Act to sustain such a reasoning or interpretation. Instead, the provisions of Section 66 of the Panchayat Raj Act are very clear since they would apply not only to cases where an illegal construction is going on but would also apply to an illegal construction which is completed. Therefore, the reasoning in paragraph 28 of the impugned Judgment and Order is unsustainable. Revisional Authority's reasoning about sub-sections 3 and 4 of Section 66 of the Panchayat Raj Act being rendered infructuous is also unsustainable and warrants interference.

38. Ultimately, one of the main objects of Section 66 is to ensure that constructions come up in accordance with rules and bye-laws after valid permission is obtained from authorities, including the Panchayats. Therefore, even if the Panchayat omits acting against an illegal construction while it is going on, it cannot be said that the Panchayat is powerless to act against illegal construction after the same is completed. There are several instances where the Panchayats, despite complaints, choose, for reasons which the Panchayats and their members know the best, to not act against the ongoing illegal constructions. After such

illegal construction is complete, the complainant cannot be told that there is no remedy available under the Panchayat Raj Act to act against such completed illegal constructions. Mere completion of illegal construction neither renders such construction legal nor does it absolve the Panchayat from acting against the same.

39. The reasoning of the Revisional Authority is, in fact, contrary to the express provisions of Section 66(3)(b) of the Panchayat Raj Act, which refers to a written notice requiring a party within a reasonable period to demolish the unauthorised construction. Further, Section 66(4) provides that where there is non-compliance with a notice under subsection (3)(b) of Section 66 within the period specified in the notice, it shall be lawful for the Panchayat to take such action as may be necessary for the completion of the act thereby required to be done, and all the expenses have to be paid by the person or persons upon whom the notice was served.

40. Further, Section 66(5) of the Panchayat Raj Act provides for the contingency where the Panchayat fails to demolish the building which is erected, added to or reconstructed without the permission of the Panchayat or in any manner contrary to the rules made under the Act or any conditions imposed in the permission, within a month from the date of its knowledge.

41. All these provisions do not support the reasoning of the Revisional Authority. With respect, the reasoning of the Revisional Authority is capable of wholesale mischief because the parties who are able to complete illegal constructions without the knowledge of the Panchayat or due to the inaction by the Panchayat will, based upon the view now taken by the Revisional Authority, claim immunity from action by the Panchayat under the provisions of the Panchayat Raj Act. Accordingly, a strong case is made out to interfere with the impugned Judgment and Order made by the Revisional Authority. Quite correctly, none of the counsel for the respondents endorsed this line of reasoning adopted by the Revisional Authority.

42. In this case, two authorities under the Panchayat Raj Act, i.e., the Deputy Director of Panchayats and the Additional Director of Panchayats, upon consideration of the material before them and after hearing the petitioner and the first respondent in some details, concluded that the structures put up by the first respondent by covering the common well were wholly illegal and unauthorised. The two authorities have recorded the concurrent findings of fact, which are supported by the material on record. In such circumstances, the Revisional Authority was not justified in interfering with the two orders.

43. The interference, as noted earlier, was not really on merits but was based on the premise that the petitioner's complaint to

the Panchayat was barred by limitation and secondly, the Panchayat can act against illegal constructions only whilst they are going on and not after they are completed. The reasoning, with respect, is entirely unsustainable. The impugned Judgment and Order made by the Revisional Authority, therefore, warrants interference.

44. The Revisional Authority, in a sense, admits that the constructions are illegal and unauthorised. But relying upon *Syed Muzaffar Ali & Ors. (supra)* gives liberty to the first respondent to move for compounding or regularisation. Even this direction is ex-facie without jurisdiction, or in any case, such a direction could not have been issued in the facts and circumstances of the present case.

45. The first respondent was not at all clear as to whether the structures had been put up on the well after obtaining permission from authorities or not. At one stage, the defence taken was that permissions were obtained, but the permissions are now not traceable. Secondly, the defence raised was that these were the structures put up in the 1990s or thereabouts, i.e., before the coming into force of the Panchayat Raj Act, 1994, and therefore, no permissions as contemplated by the Panchayat Raj Act, 1994 were necessary. The third defence is that the structures put up are regularizable or compoundable, meaning that the structures are illegal but deserve compounding or regularisation.

46. The defence about the structures being put up with permissions is a patently false defence. It is inconceivable that the permissions were not retained by the first respondent in case such permissions were applied for and obtained. Even the Panchayat has no record of the grant of such permissions. Secondly, for construction, even in the 1990s, permissions were necessary under the then-existing Village Panchayat Regulations and Building Rules. Therefore, the defence that the structures were put up before 1994 and, therefore, required no permissions is untenable. Thirdly, the material on record shows that the structures were not as old as claimed but were put up by taking advantage of the inaction on the part of the Panchayat to the numerous complaints filed by the petitioner. The constructions are put up by closing an existing well. This existing well was on the boundary line, dividing the property of the petitioner and the first respondent. The constructions are of toilets, septic tanks and soak pits.

47. Although the Panchayat did not act on the petitioner's complaints, both the Panchayat and the BDO conducted site inspections, and there are site inspection reports clearly demarcating the illegal constructions carried out by the first respondent. Considering the nature of the illegal constructions and the way they were carried out, there is no question of the regularisation of such structures. As noted earlier, a common well has been covered, thereby stopping its use. On the well, a

toilet, soak pit and a septic tank are constructed. These kinds of constructions are not capable of being regularised and should not be regularised by the Panchayat. The Revisional Authority completely exceeded its jurisdiction in indulging the first respondent with the liberty to apply for regularisation on the patently erroneous premise that the constructions were old.

48. The decision in *Syed Muẓaffar Ali & Ors. (supra)* is not an authority for the proposition that patently illegal and unauthorised constructions need to be regularised. Only those constructions which marginally deviate from the approved plans, and which are otherwise well within the rules and regulations concerning building and development can qualify for regularisation, that too if the Panchayat has such powers of regularisation and not otherwise.

49. Mr Karpe, on instructions, stated that the first respondent no longer uses the toilet, septic tank and soak pit constructed on the common well. He submits that the first respondent now has a separate toilet which is being used. Even accepting this statement, no case is made out to spare the illegal construction put up by the first respondent. If the first respondent is not using the toilet, septic tank or soak pit illegally constructed, then the same must be demolished as directed by the Deputy Director and the Additional Director of Panchayats. There is no good reason why the common well should be closed in such an

unauthorised manner based upon the illegal constructions put up on such a common well.

50. In *Gurudas Aldonkar (supra)*, the Division Bench of this Court has held that the Panchayat has no power of regularisation of illegal constructions by relying upon the Village Panchayat Regulations of 1962 or the Building Regulations of 1971. In any case, considering the law laid down in *Shanti Sports Club v/s. Union of India - (2009) 15 SCC 705*, *Royal Paradise Hotel (P) Ltd. v/s. State of Haryana – (2006) 7 SCC 597*, *Friends Colony Development Committee v/s. State of Orissa – (2004) 8 SCC 733*, no case for the Panchayat even considering the case of regularisation or compounding was made out. The Revisional Authority's direction in the impugned Judgment and Order proceeds upon a completely erroneous premise and ignores these decisions of the Hon'ble Supreme Court on the issue of regularisation and compounding of illegal and unauthorised constructions.

51. This Court, in the case of *Commissioner v/s. Tahir Isani – 2021 SCC OnLine Bom 122* and *Captain Lans E Lobo v/s. Village Panchayat of Reis Magos (Writ Petition No.1292/2022/F decided on 20.07.2022)*, in similar circumstances, disapproved the plea that the parties who had put up illegal and unauthorised constructions should be permitted to

go for regularisation. The Hon'ble Supreme Court dismissed the Special Leave Petitions against both these decisions.

52. Special Leave Petition No.4135/2021 in *Tahir Isani (supra)* was dismissed with the following observations: -

“Heard learned counsel for the petitioner.

The violation of municipal regulations on construction must be met with an iron fist. That deviation from the regularisation by compounding is only an exception. Only deviations that are bona fide or when the benefit of demolition would be less compared to the disadvantage suffered, can the exception be applied. We do not find any ground to interfere. The demolition was ordered in the ear 2001. Till this day, the same is being prolonged. Hence, we decline to interfere with the judgment and order of the High Court. The Special Leave Petition stands dismissed.

Pending application(s) if any, stands disposed of accordingly.”

53. Recently, the Division Bench of the Bombay High Court in ***Vallabha Krupa CHSL In the matter between Prakash Mohandas Aswani v/s. Municipal Corporation of Greater Mumbai & Ors. - Writ Petition (L) No.27550 of 2021, decided on 05.10.2023,*** rejected a plea like that which Mr Karpe raised on behalf of the first respondent. The plea was that the shop, which was alleged to be an illegal and unauthorised construction, had been in existence for many years and, therefore

ought not to be demolished. The other plea raised in this case was that regularisation had been applied.

54. The Division Bench made the following observations in the context of the above defences: -

*“ In every single case of unauthorised constructions, the same defence is trotted out, namely, that there are applications for ‘regularisation’ or, if these have been rejected, appeals under Section 47 of the Maharashtra Regional Town Planning Act, 1966 (“**the MRTP Act**”). This is now become a situation where regularisation is almost in the nature of a fundamental right. Every person seems to believe that planning law is irrelevant and that he or she is entitled to put up an entirely unauthorised construction and can then simply seek regularisation as a matter of right.*

This turns the entire concept of planning law on its head. It obliterates the distinction between an irregularity, that which is capable of being regularised, and an illegality, which by definition is incurable: K Ramadas Shenoy v Chief Officer Town Municipal Council, Udipi & Ors. - (1974) 1 SCC 506; MI Builders (P) Ltd. v Radhey Shyam Sahu – (1999) 6 SCC 464; Friends Colony Development Committee v State of Orissa – (2004) 8 SCC 733.

This does not in any way assist the Petitioner. Under our municipal law either a structure is authorised, or it has to be what is called a ‘tolerable’ structure, i.e., it must be shown to have existed with documentation prior to a specified and specific datum line. It is pointless to say that the shop has been in existence for “many years”, “a long time” etc., etc., to the end of the chapter. These assertions are without any consequence in law.”

55. Mr Karpe's contention that even the petitioner has carried out illegal construction certainly cannot be a ground to condone the illegal construction put up by the first respondent. In one of the responses filed by the first respondent, an allegation was indeed made about illegal construction put up by the petitioner. The Panchayat should have inquired into the complaint, and if there was any merit, the Panchayat should have acted in accordance with the law. However, merely because there was an allegation about the petitioner carrying out an illegal construction, the illegal construction carried out by the first respondent cannot be condoned.

56. For all the above reasons, the impugned Judgment and Order dated 21.06.2022 made by the Ad-hoc District Judge-1, FTC-I, North Goa, Panaji in Civil Revision Application No.51/2021 is set aside, and the orders made by the Deputy Director of Panchayats dated 08.09.2021 and the Additional Director of Panchayats dated 23.12.2021 are restored and confirmed.

57. The Panchayat must now demolish the illegal constructions within a maximum of two months from today and recover the costs of demolition from the first respondent. The Panchayat must file a compliance report with photographs with the Director of Panchayats within three months after giving a copy of the same to the Petitioner.

58. Further, the Panchayat must also investigate the first respondent's complaints against the toilet put up by the petitioner and dispose of such complaints within two months from today after complying with the principles of natural justice and fair play.

59. The Rule is made absolute in the above terms without any order for costs.

60. All concerned must act on an authenticated copy of this judgment and order.

M. S. SONAK, J.

SUCHITRA
NANDAN
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SINGBAL
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