



Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 479 OF 2024

1. Shri Shankar V. Naik, 54 years of age, son of Vinayak Naik, resident of Chaudi, Canacona, Goa.
2. Shri Ramkrishna V. Naik, 53 years of age, son of Vinayak Naik, resident of Chaudi, Canacona, Goa. ... PETITIONERS

Versus

1. Shri Anand B. Naik, major of age, resident of Nagarcem, Canacona, Goa.
2. The Chief Officer, Canacona Municipal Council, Canacona, Goa. ... RESPONDENTS

Mr. Ashwin D. Bhobe with Ms. Shaizeen Shaikh, Advocates for the Petitioners.

Mr. C.A. Coutinho with Mr. Ivan Santimano, Advocates for Respondent No. 1.

Ms. Marie Rosette Pereira, Advocate for Respondent No. 2.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 12th JULY 2024

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith.

2. This matter is taken up for final disposal at the admission stage itself with consent.

3. Heard Mr. Bhobe for the Petitioner, Mr. Coutinho for Respondent No. 1 and Ms. Pereira for Respondent No. 2.

4. This Petition could be disposed of by remanding the matter to the Chief Officer to decide the entire dispute afresh, for the following reasons.

5. The dispute started on the basis of a complaint forwarded by the Deputy Collector/SDM, Canacona to the Municipal Council in connection with the collapse of the structure partly i.e. House No. 170, Survey No. 60/3 of village Chaudi, Canacona.

6. The Complainant herein is one of the co-owners of the said structure, who submits that part of the structure has already collapsed and the remaining is in dilapidated condition. It is also claimed that Respondent No. 1 is conducting business in the part of the said structure and it is claimed that there is a likelihood of collapsing of the remaining structure posing danger to the lives of the parties.

7. The Chief Officer issued notices to the parties and even asked for inspection. Similarly, a report from the Goa College of Engineering was received as per the instructions of the Deputy Collector. Respondent No. 1 produced a report from the Don Bosco College of Engineering, Fatorda.

8. The Chief Officer after considering the said reports, however, without giving any findings as to why the report of the Goa College of Engineering was rejected and that of the Don Bosco College of Engineering was accepted, directed the Petitioners to demolish the dilapidated structure and further, to repair the front portion of the said structure, which is challenged in the present proceedings.

9. Though today reply is filed on behalf of Respondent No. 1 claiming therein that the Petitioners are trying to evict him without following due process of law and by allowing the structure to collapse, the fact remains that the impugned order nowhere suggests as to why such directions were issued only on considering the report of the Don Bosco College of Engineering.

10. The Chief Officer is admittedly not an Expert to find out whether the structure is in dilapidated condition or whether it

should be demolished or is capable of carrying out repairs. When two opinions of the Experts are placed on record, the Authority must opine as to why the opinion of the Expert is either accepted or rejected. In the entire order, there are no findings recorded by the Chief Officer as to why he rejected the report of the Goa College of Engineering wherein there is no categorical finding that the entire structure is in dilapidated condition and is required to be demolished. Accordingly, the only option is to remand the matter back to the concerned Authority to decide it afresh in light of the observations recorded above.

11. The report of both Experts shows contrary findings that some parts of the building have partially collapsed and the remaining is either in dilapidated condition or not fit for human occupation and/or could be repaired. It is made clear that the concerned Authority may seek a report from any other Expert or Authority in order to decide the issue with regard to the demolition or otherwise of the said structure/building. However, it is also made clear that the dispute between the parties needs to be decided as expeditiously as possible.

12. In such circumstances, it is expected that the Chief Officer shall decide the said Application/matter within a period of three

months from the date of receipt of this Order. Accordingly, the impugned order is quashed and set aside. The matter is remanded to the Chief Officer of Canacona Municipal Council with a direction to decide the matter afresh by giving an opportunity to both sides and if required, to obtain another report from the Expert.

13. Rule is made absolute in the above terms.

BHARAT P. DESHPANDE, J.