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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.839 OF 2023

PIEADADE MASCARENHAS

... PETITIONER

Versus

DEPUTY COLLECTOR, AND
SUB DIVISION OFFICER-II
OF SALCETE, AND 2 ORS.

... RESPONDENTS

Mr Abhishek Sawant, Advocate *for the Petitioner.*

Ms Sulekha Kamat, Additional Government Advocate *for the State.*

Mr T. Patel, Advocate for Respondent No.2.

Mr G. Agni with Mr K. Kavlekar, Advocates for Respondent No.3.

**CORAM: M.S. SONAK &
VALMIKI SA MENEZES, JJ.**

DATE: 16th JANUARY 2024

P.C.:

1. Heard Mr Abhishek Sawant for the Petitioner, Ms Sulekha Kamat, learned Additional Government Advocate for the State, Mr T. Patel for Respondent No.2 and Mr G. Agni for Respondent No.3.
2. The complaint in this petition is non-implementation of the demolition order dated 03.10.2017 issued by the Village Panchayat even though, such order was upheld by the Principal District Judge by his order dated 02.06.2022 and Writ Petition No.1469/2022 (F) against the District Court's order was dismissed by this Court by order dated 04.08.2022.

3. Mr T. Patel, learned counsel for the Panchayat tenders affidavit by the Panchayat stating that the demolition order insofar as the compound wall is concerned has been implemented. However, he submitted that the outhouse which was adjudged as unauthorised and ordered to be demolished could not be demolished because of order dated 25.10.2023 made by the authorised officer under the provisions of Regulation of Unauthorised Construction Act, 2016 (said Act).
4. Mr Sawant raised some disputes about the implementation of the demolition order insofar as it concerns the compound wall. According to him, there was no compliance.
5. Now the Principal District Court's order dated 02.06.2022 (operative portion) reads as follows:-

“ORDER

The civil revision application is allowed.

The impugned judgment and order dated 24.11.2021 passed by the Additional Director of Panchayat is hereby quashed and set aside. The demolition notice dated 03.10.2017 is maintained to the extent that Mrs. Lucia Fernandes is directed to demolish the outhouse and the portion of the compound wall which is constructed without leaving necessary setback of 3 metres from the public road within a period of 30 days from the date of passing of this judgment.”

6. Therefore, what was to be demolished was the portion of the compound wall which was constructed without leaving necessary setback of 3 mtrs. for the public road. Mr T. Patel and Mr Agni submitted that this portion of the compound wall was duly demolished.
7. Mr Agni also produced on record permission granted by the Town and Country Planning Department dated 17.01.1995. He pointed out

that the grievance of the petitioner was that the compound wall was constructed by deviating from the plan approved by the Town and Country Planning Department. With the demolition, he submitted that the compound wall now confirms to the original approved plan.

8. Considering the above position we do not think that it would be appropriate on our part to go into further details about compliance or non-compliance. If the petitioner is dissatisfied by the compliance made, it is open to the petitioner to resort to remedies under law whereby such disputed questions of fact could be gone into.

9. Insofar as regularization of the outhouse is concerned, the petitioner has an alternate and efficacious remedy under Section 7 of the said Act to appeal against the same. Section 7(2) provides that such appeal is to be instituted within sixty days and provisions of Sections 4, 5, 12 and 14 of the Limitation Act shall apply to the filing of such appeal.

10. Mr Sawant, states that the petitioner will file an appeal against the order dated 25.10.2023 within four weeks from today before the Appellate Authority. If such appeal is indeed filed within four weeks from today, the Appellate Authority must decide the appeal on its merits expeditiously without going into the issue of limitation. In any case, the petitioner, through the services of an advocate provided under the Legal Aid Scheme, was pursuing the matter before this Court. Accordingly, sufficient cause exists for not instituting appeal within the prescribed period of limitation.

11. Depending upon the outcome of such appeal, the Panchayat must decide on the issue of implementation of its demolition order. This means that if appeal is allowed and order of regularisation is set aside, the Panchayat must within four weeks of being intimated of the Appellate Authority's order carry out the necessary demolition. However, if the

appeal is dismissed, then, there will be no question of implementing the demolition order unless the petitioner obtains a reversal of the orders made by the authorised officer and the Appellate Authority.

12. With the liberty as above this petition is disposed of. There shall be no order for costs.

13. All concerned to act on an authenticated copy of the order.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.

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