



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 282 OF 2023
WITH
CIVIL APPLICATION NO. 54 OF 2023
AND
MISC. CIVIL APPLICATION NO. 179 OF 2023**

Mr. John Pascoal Dias
Age 74 years, Occu:- Business,
Residing at H. No. 791,
Gr. Floor, Dias Villa
St. Mary's Colony, Miramar,
Panajim, Goa-403 709.
Through its Power of Attorney Holder
Mrs. Janice Maria Perpetua DiasPETITIONER

Versus

1. The Chief Secretary
Government of Goa
Secretariat, Porvorim, Bardez,
Goa-403521
2. The Secretary, Urban
Development Appellate Authority,
Government of Goa,
Secretariat, Porvorim, Goa.
3. Mr. Albert Cyril Dias
Age 64 years, Occ- Retired
4. Mrs. Idalina Nancy Dias
Age 60 years, Occupation-service
Both are Residing at H.No. 13/782/4,
1st Floor, Dias Villa,
St. Mary's Colony,
Miramar, Panajim,
Goa, 403 709

5. The Commissioner City
Corporation of Panajim,
Panajim, Goa.RESPONDENTS

Ms. Barbara Andrade, Advocate for the Petitioner.

Ms. Sulekha Kamat, Additional Government Advocate for Respondent Nos. 1 and 2.

Mr. Jatin Ramaiya, Advocate for Respondent Nos. 3 and 4.

Mr. Vledson Braganza, Advocate for Respondent No. 5.

CORAM: BHARAT P. DESHPANDE, J.

RESERVED ON : 08th AUGUST 2024

PRONOUNCED ON 14th AUGUST 2024

JUDGEMENT

1. Rule.
2. Rule is made returnable forthwith.
3. Matter is taken up for final disposal at the admission stage with consent.
4. The petitioner who is the owner of a flat and a garage wherein he is carrying out business of restaurant and general stores, approached this Court thereby challenging the order passed by the Secretary (Urban Development) Appellate Authority, Government of Goa dated 27.12.2022.

5. The respondent No. 3 filed a complaint regarding illegal construction carried out by the petitioner upon which the transgression report was prepared and filed by the authorities of the corporation of city of Panaji, showing four structures which are found to be illegal and without any permission. Accordingly, a demolition order was issued by the Commissioner, on 26.05.2020, which the petitioner challenged before the Secretary.

6. The said municipal appeal was dismissed by the Secretary of Urban Development, which is now challenged in the present petition.

7. Heard. Ms. Barbara Andrade, learned Advocate for the Petitioner, Ms. Sulekha Kamat, learned Additional Government Advocate for Respondent Nos.1 and 2, Mr. Jatin Ramaiya, learned Advocate for Respondent Nos 3 and 4 and Mr. Vledson Braganza, learned Advocate for Respondent No.5.

8. Ms. Andrade learned Advocate for the Petitioner would submit that there are minor deviations and infact the vegetable stall, existing in front of the garage is now removed. She submits that the front and back protection was erected 30

years back, and it is only for the purpose of protection of the said premises which has been now allotted to the petitioner during the inventory proceedings. She submits that regularisation of these minor deviations/structures was already filed and such application is pending. She would submit that no prejudice is going to cause to the respondent as such structures are only for the purpose of protecting the things.

9. Ms. Kamat learned Additional Government Advocate appearing for the State would submit that earlier application for regularisation was rejected, whereas second application filed by the petitioner is also recently rejected. She submits that the illegal structures were erected without any permission and thus, such structures need to be removed as application for regularisation has been rejected.

10. Mr Ramaiya learned counsel appearing for respondent No. 3 and 4 would submit that the said house was initially constructed by the parents of the petitioner and respondent no.3 and there are four apartments along with one garage. He submits that though during the lifetime of father of petitioner and respondent no.3, the garage was used for conducting the

business after obtaining permission. The petitioner is now operating the restaurant in the flat allotted to him. Mr Ramaiya would submit that though permission is obtained by the petitioner to operate the restaurant, he is not entitled to extend the front and back portion of the flat/apartment by erecting a shed as the property/land is for the common use of all the co-owners.

11. Mr. Ramaiya would submit that the petitioner has extended the front and back portion by erecting a shed and that too for using it for storing the things as well as for his employees working in the restaurant. He submits that the rear extension on the chamber creates disturbance.

12. Mr Ramaiya would submit that on the front there is a tin sheet erected above the garage, which is again an illegal extension. Similarly, on the front portion of the garage, a sitting arrangement is made for the customers by erecting a platform around the tree and by reducing the open space. He submits that there is no permission or any license obtained by the petitioner to carry out such extension.

13. Rival contentions fall for consideration.

14. From the pleadings in the petition, it would be clear that the said house was constructed by the parents of the petitioner, respondent no.3 and other siblings. It consists of four apartments/villas. On the ground floor, there are two apartments whereas on the first floor, there are remaining two and there is one garage.

15. It further shows that the garage was converted into a shop by obtaining permission. Similarly, after the death of the parents of the petitioners, inventory proceedings were taken up wherein four apartments were divided amongst the four children. The petitioner is allotted a ground floor portion along with the shop. The respondent no. 3 is allotted apartment, which is on the first floor. The remaining two sisters have been allotted apartments, which exist on the ground floor and the first floor, respectively.

16. It further shows that the petitioner has obtained license to run the restaurant business in the ground floor flat, whereas the garage consists of a mini market.

17. The respondent no 3, who is residing on the first floor lodged a complaint with the commissioner of CCP on 04.12.2018, thereby claiming that petitioner carried out

construction of four illegal structures, in front and on the rear side of the flat and the shop.

18. On the receipt of such complaint, the officers of CCP visited the site and carried out inspection. A transgression report is prepared along with sketch. In the said report, the officials of CCP found four structures erected without any permission which are described as follows:

- (i) Shed made of laterite bricks on the rear side of the building.
- (ii) Shed covered with AC sheets/galvanised sheets on the rear of the building.
- (iii) Shed /Stall for selling vegetables in the front side of the building.
- (iv) Square parapet retaining wall around a tree in the front side of the building.

19. A show cause notice was issued to the petitioner as to why demolition order should not be issued. After the petitioner appeared and filed a reply, final notice was issued by the CCP, which is dated 26.05.2020. In the said final notice, the Commissioner of CCP found that when the petitioner was called upon to file reply to the show cause

notice, he came up with an application dated 08.04.2019, seeking regularisation of temporary structures.

20. The Commissioner, therefore, found that by filing an application for regularisation, the petitioner accepted that these four structures were constructed without any permission. The commissioner also observed that various opportunities were given to the petitioner to submit the proper reply. Such a reply was filed only on 29.01.2020 but failed to submit any documentary evidence regarding the legality of structures. No permission from the competent authorities was produced to justify the erection of such structures.

21. Accordingly, the Commissioner of CCP, held that such structures are illegal and erected without permission of the competent authority and ordered the petitioner to remove/demolish it within a period of 28 days from the receipt of such notice.

22. The petitioner then approached the Secretary Urban Development by filing a municipal appeal challenging the order of the commissioner. The learned secretary after hearing the petitioner and the respondent, observed that four

structures were erected without permission wherein the petitioner failed to justify the erecting of such structures. The Secretary further observed that the procedure was followed by the competent authority before passing an order of demolition. Since the structures are found to be illegal, the same cannot be allowed to be retained.

23. Ms. Kamat appearing for the State, placed on record the order passed on 06.02.2024 by North Goa Planning Development Authority informing the petitioner that his application for regularisation of such structure cannot be considered. Thus, it is clear from the records that four structures erected by the petitioner are without any license or permissions. Application for regularisation of such structures has been rejected by the competent authorities.

24. Ms. Andrade would submit that the vegetable stall is already removed. However, she would submit that three structures which are existing at present, are minor deviations and would not in any manner affect the rights of the parties. She would submit that only because regularisation is rejected, does not *ipso facto* necessarily be removed or demolished. In this respect, she placed reliance in the case of **Syed**

***Muzaffar Ali versus Municipal Corporation of Delhi,
1995 Supp (4) SCC 426.***

25. The Apex Court in the case of **Syed (supra)** was dealing with a challenge to the structural changes carried out by Syed in respect of a building, which were claimed to be not amounting to construction, however, such contention has been rejected. In this view of the matter, the Apex Court observed that mere departure from the authorized plan or putting up the construction without sanction, does not *ipso facto* and without more necessarily and inevitably, justify demolition of the structure, as some are amenable to compounding and some may not be. It thus shows that the deviation from the plan may not justify demolition when it is possible to regularise.

26. In this case, an attempt of the petitioner to regularise is rejected on two occasions by the competent authorities. However, the observation in the case of **Syed (supra)**, may not be of help to the petitioner in the present petition for the simple reason that the Transgression Report would clearly go to show that the temporary structure has been erected by the petitioner and used for his commercial purpose. Admittedly,

respondent no.3 is residing on the first floor. The entire building which was constructed by the parents of petitioner and respondent no. 3 is for residential units.

27. It is no doubt true that such an extension covers a small area of around 2/3 square meters. However, the question here is not of the small area, but of the legality of such structures. When notices were issued to the petitioner, he would have immediately removed such structures. However, he tried to justify it by showing that the structures are used for storing the material. The front and the rear side extensions clearly goes to show that such extensions are illegal and therefore, there is no justification that could be accepted for and on behalf of the petitioner to retain it. Admittedly, the front and rear extensions are used by the petitioner for commercial purpose. Similarly, the front portion is erected only for the purpose of customers who are coming in the restaurant or shop for the purpose of sitting area. The said structure is also encroaching into the open space.

28. Coming back to the impugned order, the learned Secretary has clearly observed that the illegal structures which are constructed in violation of the rules and regulations

must be required to be demolished and no sympathy could be shown to such violation. There is absolutely no illegality or infirmity in the observations of the learned authorities. Even if it is considered that area covered by the structures are small, once it is found to be illegal, the petitioner cannot be allowed to take advantage of it. If such contention is allowed, each unit holder will extend its area by erecting illegal structures in the front and the rear side. Accordingly, the order needs no interference under the writ jurisdiction.

29. Petition, therefore, stands dismissed. Accordingly, Civil Application No. 54 of 2023 and Misc. Civil Application No. 179 of 2023 stand disposed of.

BHARAT P. DESHPANDE, J.