

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 579 OF 2023**

Mr. Siddharth S/o. Chandrakant Mayekar,  
Age : 51 years, Oucc. : Business, C/o. Jeevan  
Cold Drinks, near Old Asilo Hospital, Mapusa  
Bardez Goa. ...Petitioner

Versus

1. Chief Officer Mapusa Municipal Council  
having their office at Municipal Building,  
Mapusa Goa
2. Mr. Jeevan @ Sabaji Chandrakant Mayekar  
S/o Chandrakant Mayekar, Occu : Business,  
Indian National, R/o Alto Duler, Near  
St. Francis Xavier High School,  
Pedem Mapusa Bardes Goa
3. M/s. Prabhu Construction,  
Thr. ITS Proprietor, Venkatesh Narayan  
Prabhu Moni, Having their office at  
Dempo Trade Centre, 505B, 5<sup>th</sup> Floor,  
EDC Complex, Patto Panajim Goa ...Respondents

**WITH**

**WRIT PETITION NO. 678 OF 2023**

Mr. Jeevan @ Sabaji Mayekar  
S/o Late Chandrakant Mayekar,  
Age : 64 years, R/o. Alto Duler, Near  
SFX High School, Pedem, Manpusa Goa ...Petitioner

Versus

1. Chief Officer,  
Mapusa Municipal Council,  
Mapusa – Goa
  2. M/s. Prabhu Construction,  
Represented by  
Mr. Venkatesh Narayan Prabhu Moni,  
Having office at Dempo Trade Centre,  
505B, 5<sup>th</sup> Floor, EDC Complex,  
Patto, Panaji – Goa
  3. Mr. Siddharth S/o Chandrakant Mayekar,  
C/o Jeevan Cold Drinks, Near Old Asilo  
Hospital, Mapusa Bardez – Gao ...Respondents

**WITH  
CIVIL APPLICATION NO.1982 OF 2023 (F)  
IN  
WRIT PETITION NO. 678 OF 2023**

Jeevan @ Sabaji Mayekar  
Age : 50 years, R/o Alto Duler Near  
SFX High School, Oedem, Mapusa,  
Bardez, Goa ...Applicant

## Versus

1. The Chief Officer,  
Mapusa Municipal Council,  
Mapusa – Bardez Goa
  2. Mr. Venkatesh Narayan Prabhu Moni  
Age : 53 years, R/o R-4, Ocean Mist,  
Near Amar Hotel, Dona Paula, Goa

3. Mr. Siddharth S/o Chandrakant Mayekar,  
Age : Major C/o Jeevan Cold Drinks,  
Near Old Asilo Hospital, Mapusa  
Bardez – Gao ...Respondents

**WITH  
CIVIL MISC. APPLICATION NO.620 OF 2023  
IN  
WRIT PETITION NO.678 OF 2023**

Mr. Venkatesh Narayan Prabhu Moni  
Age : 53 years, R/o R-4, Ocean Mist,  
Near Amar Hotel, Dona Paula, Goa ...Applicant/  
Respondent No.2.

**IN THE MATTER BETWEEN**

Jeevan @ Sabaji Mayekar  
Age : 50 years, R/o Alto Duler Near  
SFX High School, Oedem, Mapusa,  
Bardez, Goa ...Petitioner

**Versus**

1. The Chief Officer,  
Mapusa Municipal Council,  
Mapusa – Bardez Goa
2. Mr. Venkatesh Narayan Prabhu Moni  
Age : 53 years, R/o R-4, Ocean Mist,  
Near Amar Hotel, Dona Paula, Goa
3. Mr. Siddharth S/o Chandrakant Mayekar,  
Age : Major C/o Jeevan Cold Drinks,  
Near Old Asilo Hospital, Mapusa  
Bardez – Gao ...Respondents

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Mr. Arjun f. Naik, Advocate for the Petitioners in WP/579/2023 and Respondent No.3 in WP/678/2023.

Mr. S.D. Padiyar a/w Mr. P. Shirodkar a/w Ms. A. Rane, Advocate for Respondent No.1 in both the Petitions.

Mr. S.M. Walwaikar a/w Mr. M. Raikar, Advocate for Respondent No.3 in WP/579/2023 and for Respondent No.2 in WP/678/2023.

Mr. Ashwin D. Bhobe a/w Ms. S. Shaikh, Advocate for Respondent No.2 in WP/579/2023 and for the Petitioner in WP/678/2023.

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| <b>CORAM</b>         | <b>: PRAKASH D. NAIK, J.</b>                 |
| <b>RESERVED ON</b>   | <b>: 9<sup>th</sup> NOVEMBER, 2023 &amp;</b> |
|                      | <b>23<sup>rd</sup> JANUARY, 2024.</b>        |
| <b>PRONOUNCED ON</b> | <b>: 25<sup>th</sup> APRIL, 2024.</b>        |

#### **JUDGMENT :**

1. The Petitioners have invoked Article 227 of the Constitution of India challenging the Judgment and Order dated 10<sup>th</sup> July, 2023 passed by Principal District Judge, North Goa, Panaji in Civil Appeal No.05 of 2023 and Judgment and Order dated 10<sup>th</sup> July, 2023 passed by Principal District Judge, North Goa, Panaji in Civil Appeal No.4 of 2023 respectively. Both the appeals were preferred assailing final notice dated 11<sup>th</sup> January, 2021 issued by Chief Officer Mapusa Municipal Council directing demolition of erection/construction/ encroachment admeasuring area of 7.10 mts X 5.65 mts within 15 days from the date of receipt of notice.

2. The Show Cause Notice dated 10<sup>th</sup> February, 2020 was issued to Petitioner Jeevan Mayekar by Chief Officer Mapusa Municipal Council stating that the approved plan is showing a structure in road widening area as to be demolished. M/s. Prabhu Constructions had applied for occupancy certificate vide Application dated 26<sup>th</sup> October, 2018 and it is noticed that he has not demolished the structure constructed in road widening area which is described in the transgression report. The resident of building namely Prabhu Chambers vide complaint letter dated 11<sup>th</sup> July, 2019 has brought to the notice of the council that the said illegal construction which is done in road widening area has led to blockage of access to the parking area. The office is in receipt letter dated 29<sup>th</sup> November, 2019 from Prabhu constructions enclosing Order dated 25<sup>th</sup> November, 2019 issued by Goa Real Estate Regulatory Authority Department of Urban Development, Panaji-Goa. The noticee was called upon to show cause, why an Order under Section 184(8) of the Goa Municipalities Act, 1968 should not be passed for removal / demolition of the illegal kiosk. If nothing is heard from him within stipulated time it will be presumed that he has nothing to say in the matter and the council shall be free to proceed with further action as provided under the Act.

3. In response to show cause notice dated 10<sup>th</sup> February, 2020, the Petitioner in Writ Petition No.678 of 2023 submitted reply dated 18<sup>th</sup> March, 2020 contending that the show cause notice and the Transgression Report dated 3<sup>rd</sup> January, 2020 were bad in law, not maintainable being beyond the jurisdiction of Respondent No.1. The subject matter of show cause notice was in existence during Portuguese time before coming into force, the Goa Municipalities Act and that trade licence fees is regularly paid in respect of shop premises. Electricity connection was issued. Father of Petitioner Chandrakant Mayekar was conducting business in shop and was residing Mundkar in said property and since relationship with Priest was good no case for Munkarship was filed. They were in possession and enjoyment of shop premises and surrounding area which was within the knowledge of the Priest of St. Jeromes Church. Show cause notice is issued on false complaint prepared agreement for development-cum-sale and it was executed on 21<sup>st</sup> July, 2011. The complainant was supposed to deliver possession of premises having space of 80 sq. meters with 20 sq. meters of mezzanine on ground floor in Prabhu Chambers. Premises were vacated and possession given to complainant. Letter was issued to complainant for delivery of possession. The complainant made with allegations in reply. Complainant failed to

handover possession of premises.

4. Vide Final Order dated 11<sup>th</sup> January, 2021 the Respondent No.1 ordered demolition.

5. The brief facts incorporated in final notice dated 11<sup>th</sup> January, 2021 issued by Chief Officer Mapusa Municipal Council/Respondent No.1 are as follows :

i. Council is in receipt of letter dated 29<sup>th</sup> November, 2019 from M/s. Prabhu Constructions requesting therein to expedite the representation dated 4<sup>th</sup> November, 2019. In the letter dated 4<sup>th</sup> November, 2019 M/s. Prabhu Constructions has informed that one Shri. Jeevan Mayekar (Petitioner in Writ Petition No.678 of 2023), who is in possession of the structure as denoted structure 'C' admeasuring 2 X 1 mts as denoted in the survey records of Chalta No.71 of PT sheet 148 of the Mapusa City Survey has failed to comply with the terms of the agreement for development-cum- sale dated 20<sup>th</sup> July, 2011 wherein the two parties have unconditionally agreed upon to vacate and give peaceful possession of the said area denoted as structure 'C' to M/s. Prabhu Constructions in lieu of space of an area of 80 sq.mt with 20 sq.mt mezzanine on the ground floor of proposed building "Prabhu Chambers". M/s. Prabhu

Constructions has further complained that Shri. Jeevan Mayekar has illegally extended the said kiosk resulting in blockage to basement parking

ii. In pursuance to the complaint filed by M/s. Prabhu Constructions directions were issued to the engineering section of this council to conduct site inspection and report. In the site inspection conducted on 3<sup>rd</sup> January, 2020 by Municipal Engineer Grade – III of the Council it is transpired that Shri. Jeevan Mayekar alias Sabaji Mayekar has constructed kiosk of G.I. sheets admeasuring 7.10 mts X 5.65 mts in front of Prabhu Chambers building and that the said structure is coming under the road widening. Accordingly, show cause notice bearing no. MMC/Engg/206/2020 dated 10<sup>th</sup> February, 2020 was issued to Mr. Jeevan Mayekar alias Sabaji Mayekar as to why an order under Section 184(8) of Goa Municipalities Act, 1968 should not be passed for removal/demolition of the illegal kiosk of G.I. sheets admeasuring 7.10 mts X 5.65 mts situated in property bearing chalta no. 71(part) of P.T sheet 148 of city survey of Mapusa.

iii. In reply to show cause notice dated 18<sup>th</sup> March, 2020 Mr. Jeevan Mayekar alias Sabaji Mayekar stated that show cause

notice dated 10<sup>th</sup> February, 2020 and transgression dated report dated 3<sup>rd</sup> October, 2020 is bad in law and is not maintainable being beyond the jurisdiction as the shop premises is existing during Portuguese time much before promulgation of the Goa Municipalities Act, 1968 and that trade license fees are regularly being paid in respect of shop premises. With respect to the issue of shop premises being situated in the road widening area it was contended that the shop premises is existing much before Goa Municipalities Act, 1968 come into existence and therefore, the allegations are false. The other contentions made by Mr. Jeevan Mayekar is beyond the scope of purview for this council to decide.

iv. Personal hearing was afforded to the parties in the matter on 14<sup>th</sup> October, 2020 alongwith documentary evidence in support of the claims. Mr. Jeevan Mayekar in his written arguments dated 26<sup>th</sup> October, 2020 claims to have submitted all his documents to establish that the business premises is existing since the time of Portuguese regime. He relied on trade license issued by the council in 1993 to the said business premises. He also submitted electricity bills wherein it is evident that the electricity has been released to the shop

premises in 1991.

v. Mr. Jeevan Mayekar has failed to produce any documentary evidence to substantiate his claims that disputed structure is existing since Portuguese regime or prior to promulgation of Goa Municipalities Act, 1968. It is not disputed that the shop/kiosk has been issued trade license by the council in 1993. However, mere issuance of trade license to any business entity does not entail any perpetual rights and that the trade license is subject to revocation in case of credible objection.

vi. It is evident from the transgression report prepared by the Municipal Engineer Grade – III of this council that Mr. Mayekar has illegally constructed/extended kiosk using G.I sheets covering a total area of 7.10 mts X 5.65 mts in road widening area. The terms of agreement for development-cum-sale dated 20<sup>th</sup> July, 2011 executed between the M/s. Prabhu Constructions and Mr. Jeevan Mayekar is beyond the scope of adjudication to authority to decide. The present proceedings are initiated under Section 184 of the Goa Municipalities Act, 1968 at the behest of M/s. Prabhu Constructions who has complained that the illegal construction/extension is causing

blockage to the basement parking area of the building “Prabhu Chambers” and causing water logging. The allegations of illegal construction/extension being corroborated in the transgression report prepared by the engineering section of Council.

vii. Prior permission of the council for erection/construction/activity carried out by Petitioner Jeevan Mayekar was not obtained as required under Section 184(2) of the Goa Municipalities Act, 1968 and therefore it is unauthorized and illegal and against the provisions of the Goa Municipalities Act, 1968 and by laws framed thererunder.

viii. In exercise of powers vested under Section 184(8) of the Goa Municipalities Act, 1968 the Petitioner in Writ Petition No.678 of 2023 was directed to remove/demolish the said illegal erection/construction/encroachment admeasuring an area of 7.10 mts X 5.65 mts within 15 days from the date of receipt of the notice failing which Council shall demolish/remove the same.

6. The Petitioners challenged the final notice dated 11<sup>th</sup> January, 2021 by preferring Civil Appeal No.05 of 2023 and Civil Appeal No.04 of 2023 before the Court of Principal District Judge,

North Goa, Panaji.

7. Vide separate Judgment and Order dated 10<sup>th</sup> July, 2023, the learned District Judge, Panaji dismissed the Appeals and consequently directed removal/demolition of structure/encroachment in the property bearing chalta no.71 of P.T. sheets No.148 of Mapusa City.

8. Learned Advocate for the Petitioner in Writ Petition No.579 of 2023 and Respondent No.3678 of 2023 submitted as follows :

i. There exists a house structure originally belonging to the ancestors of the Petitioner in property of Fabrica of St. Jeromes Church Mapusa situated in the property bearing chalta no.70, 71 of P.T. sheets no.148 of City Survey of Mapusa. The said house was used as shop and it is in existence in the said property and shown in the survey plan.

ii. The dwelling house initially used partly for commercial purpose and subsequently it was registered as kiosk no.57. The shop has been in existence since the time of Portuguese regime and it is used by the Petitioner since 1994 for selling lime soda and from 1<sup>st</sup> January, 1995 the Petitioner has been

using the said shop as milk distribution center.

iii. The Goa State Co-operative Milk Producers Union Ltd. has issued a certificate dated 13<sup>th</sup> March, 2020 and the said shop was marked as center no.MAP-37.

iv. The said shop was initially occupied by his brother Jeevan Mayekar (Respondent No.2 in Writ Petition No.579 of 2023 and Petitioner in Writ Petition No.678 of 2023). The Respondent No.2 being the elder brother suit shop was named as Jeevan Cold Drinks. For the purpose of house tax the shop has been registered in the name of Respondent No.2.

v. Since 1994 the Petitioner has been occupying the part of the suit shop for his business pursuant to agreement dated 22<sup>nd</sup> December, 1994. From 1<sup>st</sup> January, 1995 the shop was allotted distribution center no. MAP-37 by the Goa State Co-operative Milk Producers Union Ltd. in favour of the Petitioner as the Petitioner has been engaged in distribution of Goa Dairy Milk. Since then the shop is used as milk distribution center by Petitioner. The Goa State Cooperative Milk Producers Union Ltd. have issued the certificate to that effect.

vi. In 1997 the Petitioner had taken STD & ISD connection in

the suit shop in his name from Bharat Sanchar Nigam Ltd. (BSNL) and the Respondent No.2 had issued NOC dated 6<sup>th</sup> January, 1997 to that effect. The Petitioner had also signed agreement to that effect with BSNL. The Petitioner had given undertaking on 21<sup>st</sup> August, 1997 to the commercial officer which also shows the address of the suit shop. The Petitioner deposited security deposit with BSNL.

vii. Part of the suit shop is in peaceful possession and enjoyment of the Petitioner. It was initially partly used for commercial activities by the father of the Petitioner and thereafter since 1994 the Petitioner has been in peaceful occupation and possession of the suit shop.

viii. Few years ago the Respondent No.2 demolished his part of the suit shop without knowledge of the Petitioner. It is since then the relation between the Petitioner and Respondent No.2 are strained.

ix. The Petitioner visited office of Mapusa Municipal Council on 18<sup>th</sup> January, 2021 and at that time he was intimated that some proceedings were initiated based on complaint lodged by M/s. Prabhu Constructions before Respondent No.1 and that the shop will be shortly demolished. The Petitioner

applied for documents under RTI on 18<sup>th</sup> January, 2021.

x. The Petitioner learnt that show cause notice was issued in respect of the suit shop to the Respondent No.2. Although he had already demolished the part of his shop. The Respondent Nos.2 and 3 executed the agreement for development dated 20<sup>th</sup> July, 2011 to compensate and accommodate Respondent No.2 in the building of Prabhu Constructions. There is addendum and corrigendum to the agreement dated 8<sup>th</sup> January, 2014 which states that Respondent No.3 settled the rights of the other occupants in the property. However, the agreements were suppressed from the Petitioner.

xi. Respondent Nos.2 and 3 acted in collusion to oust the Petitioner from the suit shop and Respondent No.3 fraudulently filed complaint before Respondent No.1 to demolish the structure 'C' belonging to the Petitioner alleging illegal constructions.

xii. Since 1994 and prior to that the Petitioner has been in settled possession of the suit shop through his ancestors. The suit shop is not the new construction and the same has been in existence from Portuguese regime and it has been shown in the survey plan prepared by City Survey of Mapusa and

shown in agreement *inter se* between Respondent Nos.2 and 3.

xiii. Complaint is filed by the Respondent No.3 to oust the Petitioner from the suit shop and false transgression report is drawn without visiting suit shop and based on that the show cause notice was issued.

xiv. Respondent No.1 attempted to demolish the shop on 28<sup>th</sup> August, 2023 without prior notice of demolition.

xv. The Petitioner filed Regular Civil Suit No.175 of 2023 before the Civil Court at Mapusa seeking declaration that the Petitioner is owner of the suit shop and also prayed for injunction against respondents from disturbing the possession of Petitioner.

xvi. The final notice and the Order passed by Appellate Authority are perverse and contrary to law.

9. Learned Advocate has relied upon the decision of the Apex Court in the case of *Kalabharati Advertising V/s. Hemant Vimalnath Narichania And Ors.*<sup>1</sup> and another decision in the case of *Syed Muzaffar Ali V/s. Municipal Corporation of Delhi*<sup>2</sup>.

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1 2010 (9) SCALE 60

2 1995 SUPP 4 SCC 426

10. Learned Advocate for the Petitioner in Writ Petition No.678 of 2023 and for Respondent No.2 in Writ Petition No.579 of 2023 submitted as follows :

- i. In response to show cause notice dated 10<sup>th</sup> February, 2020, the Petitioner filed his reply dated 18<sup>th</sup> March, 2020 contending that the show cause notice and transgression report dated 3<sup>rd</sup> January, 2020 is bad in law being beyond the jurisdiction of Respondent No.1. The subject matter of show cause notice was in existence during the Portuguese time before the enactment of Goa Municipalities Act, 1968.
- ii. Trade license was issued by Respondent No.1 to the shop. The contention of Respondent No.1 that the shop is covered by road widening area is false.
- iii. The Petitioner relies upon the trade license issued in the year 1993 to kiosk No.57 and electricity bills.
- iv. The Appellate Court has erroneously dismissed the Appeal preferred by the Petitioner challenging the Order in final notice. The shop is registered in the name of Petitioner. It has electricity connection. There is *prima facie* material to demonstrate legality of the shop. The provisions of trade and

occupation licensing by laws would indicate that the trade license is and would be required in respect of license premises.

v. The appellate Court has failed to appreciate intention of Respondent No.2 in filing complaint dated 29<sup>th</sup> November, 2019 with Respondent No.1. The Respondent No.2 is seeking specific performance of the agreement and/or seeking compliance Order passed under RERA with the assistance of Respondent No.1.

vi. The Appellate Court proceeds on the basis as if the subject matter of Municipal Appeal was a civil dispute between the Petitioner, Respondent Nos.2 and 3.

vii. The conclusion of the Appellate Court that there was no evidence to show that the Petitioner had sought permission to put up the structure and that the Petitioner is paying tax and said shop is having electricity connection would not be sufficient to demonstrate the legality of the structure are illegal and perverse. The Respondent No.2 has pressurized Respondent No.1 to execute final notice dated 11<sup>th</sup> January, 2021.

viii. The contention of the Petitioner in Writ Petition No.579

of 2023 that the structure of the Petitioner herein was demolished and that the part of structure continuous to be in possession of the said Petitioner is false.

ix. Section 184(8) is not applicable as the shop premises is lawfully having license no.T/O/4201 reflected in the trade license fee with electricity bill with renewal of license from 1993 till 2020 and also showing in the survey plan of 1971-72 and therefore having not giving any valid reason with regard to the jurisdiction as in terms under Section 184(8) the impugned Order is bad in law.

x. There is no complaint from the landlord or any other person that the Petitioner has carried out extension to the existing shop premises.

xi. The Agreement for development-cum-sale dated 20<sup>th</sup> July, 2011 between Fabrica or the St.Jeromes Church Mapusa, M/s. Prabhu Constructions and the Petitioner was executed in respect of the property surveyed under Chalta nos.70 and 71 part of P.T. Sheet No.148 of the City Survey Mapusa in which property the shop premises of the Petitioner is situated and alongwith said agreement for development-cum-sale a plan was annexed in which the shop premises of the Petitioner is

shown under letter 'C' in the survey plan which was prepared and promulgated in the year 1971 which establishes that that shop premises was in existence prior to 1971.

xii. In the agreement dated 20<sup>th</sup> July, 2011, the Respondent No.2 has admitted that the Petitioner is in occupation of part of the said property and running business in the said property since many years. This establishes that the Petitioner and his family is running the business in the shop premises. The Petitioner has produced license granted by Municipal Council for business on 8<sup>th</sup> April, 1993. The Petitioner is paying trade license fee and electricity charges. The electricity connection was installed on 2<sup>nd</sup> January, 1991.

xiii. The shop premises is in existence for last more than 50 years as it is shown in the survey plan prepared in 1971. There was no complaint of any construction in the said property. Surprisingly, the council has prepared transgression report on 3<sup>rd</sup> January, 2020 and shown the shop premises as legally constructed kiosk. No notice of inspection on 3<sup>rd</sup> January, 2020 was issued to the Petitioner. Transgression report has no basis as to how it is illegal, when the Petitioner has produced documents about running of the shop premises. The report is

manipulated and contrary to government records i.e. survey plan agreement for development.

11. Learned Advocate for Respondent No.1 in both the Petitions submitted that the Appellate Court has dealt with all the issues. The Order is not perverse or arbitrary. No case is made out to interfere in the said Order. It cannot be said that Section 184(8) of the Act applies only to new constructions. Grant of trade license does not legalize the illegal constructions/structure. The Petitioners were given sufficient opportunity to explain by giving show cause notice and final notice. In the absence of satisfactory explanation the structure was ordered to be demolished and the said Order has been confirmed by the Appellate court. The Petitioners have taken contradictory stand about existence of premises. According to the Petitioner in Writ Petitioner 678 of 2023 has demolished the premises which was in his possession and the Petitioner Siddharth Mayekar continued to be in possession of part of the premises. The transgression report indicate that structure was illegal it was covered by road widening and required to be demolished. There was no evidence to show that the structure was mundkarial structure. The Chief Officer was empowered to initiate action in respect to the structure. There is no evidence to show that the

Petitioners had sought any permission to put up the structure. Even if the tax is paid, the structure is electrified and has a water connection. It cannot be said that the structure would be bestowed with any legal status when there is no permission of the Municipality to put up the structure.

12. Learned Advocate for Respondent No.1 has relied upon the following decisions :

- i. **Shantavva Madar V/s. The Chief Officer, Mormugao Municipal Council,** (Judgment dated 29<sup>th</sup> August, 2016 passed by the High Court of Bombay).
- ii. **Shri Socorro Fernandes V/s. The Margaon Municipal Council & Ors.** passed in Writ Petition No.430 of 2002 & other connected matters dated 28<sup>th</sup> July, 2003.
- iii. **Smt. Ratna Shattri V/s. The Chief Officer, Mormugao Municipal Council** in Writ Petition No.964 of 2015 and other connected matters. (Judgment dated 29<sup>th</sup> August, 2016 passed by the High Court of Bombay)
- iv. **Municipal Council, Pusad Vs. Kundanlal Mohanlal Jaiswal**<sup>3</sup>.
- v. **Ram Avatar Agarwal and others Vs. Corporation of Calcutta and others**<sup>4</sup>.

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<sup>3</sup> 2007 (air) Bom 155.

<sup>4</sup> AIR 1982 CALCUTTA 314

vi. **Bihar Finance Service House Constructions Cooperative Society Ltd. Vs. Gautam Goswami and others<sup>5</sup>.**

vii. **Mujibur Rehman Chaudhary Vs. Municipal Corporation for Greater Mumbai.** (Judgment dated 3<sup>rd</sup> March, 2023 in Appeal from Order (St.) No.2662 of 2023 passed by the High Court of Bombay)

13. The learned Advocate for Respondent No.3 in Writ Petition No.579 of 2023 and Respondent No.2 in Writ Petition No.678 of 2023 submitted that by agreement for development-cum-sale dated 20<sup>th</sup> July, 2011 executed between the Respondent No.2 in Writ Petition No.678 of 2023 and original owner of the plot of land Fabrica of St. Jeromes Church Mapusa. The Petitioner Shri. Jeevan Mayekar have surrendered the premises of the shop. He is occupying in the building in consideration of giving him the shop of 80 mts with 20 mezzanine floor shop. He had made a declaration in the agreement that he has no right of whatsoever nature in the property chalta no.70 and 71 of PT. Sheet No.148 of City Survey Mapusa. The said Petitioner had suppressed the fact of relinquishing all the rights in lieu of grant of the newly constructed project and that he has no claim whatsoever nature in the said property. Thus, the claim of the said Petitioner for the illegal structure/kiosk which stand completely blocking the basement

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<sup>5</sup> (2008) 5 SCC 339

entry for parking vehicles and which admitted existed road widening area is dishonest and tented. This Court in exercise of powers under Articles 227 of Constitution of India may not interfere in the finding of facts that have been recorded by the Appellate Court as to the subject structure which is illegal and mere trade license to run a business in no way legalizes the status of subject structure. The trade license relied upon by the Petitioner pertains to 1993. It was prior to the agreement for development-cum-sale dated 20<sup>th</sup> July, 2011 and it was obviously relates to the business which he was carrying on in the old premises which he voluntarily surrendered in favour of the developer for valuable consideration. By preferring Miscellaneous Civil Application No.620 of 2023 the Respondent M/s. Prabhu Constructions has brought on record the additional facts. The whole purpose of preventing the demolition of kiosk is *mala fide* act. The Petitioner is supported by the unit holders. The Goa Real Estate Regulatory Authority has passed Order dated 17<sup>th</sup> March, 2002 for payment of interest at the rate of 9.3% per annum that the deposited with the developer for purchasing their respective units. The developer is also directed to pay compensation to the unit holders. Huge amount is required to be paid to them. The Order of staying the demolition of the kiosk has deprived the developer from obtaining any occupancy

certificate from Municipal Council and every month the developer is compared to pay an amount of Rs.6,00,000/- approximately to different unit holders due to non-occupancy certificate by Municipal Council. On account of non-removal kiosk from the main entrance of the basement of the project, the partial occupancy which was granted by the Municipal council has been suspended by the Appellate Authority. The amount of interest has been multiplying every month to the advantage of the Petitioner and his supporters. The Respondent has approached Principal District Judge for initiating the proceedings of contempt under the Contempt of Court Act. Under Order 39, Rule II-A of CPC r/w Sections 10 and 12 of Contempt of Court Act. This facts are material and important which may be taken into consideration while passing the final Judgment.

14. Learned Advocate has relied upon the following decision-

i. **Chandrakant Rupo Gaude V/s. Village Panchayat of Marciam, and others** dated 21<sup>st</sup> November, 2017 passed in Writ Petition No.812 of 2011 by this Court.

ii. **M/s. Puri Investments V/s. M/s. Young Friends And Co. & Ors.** passed by Supreme Court in Civil Appeal No.1609 of 2022 dated 23<sup>rd</sup> February, 2022.

iii. **Sandesh B. Naik V/s. Mormugao Municipal Council** dated 18<sup>th</sup> January, 2017 passed by this Court in Writ Petition No.463 of 2016 and 464 of 2016.

15. The Petitioner in Writ Petition No.579 of 2023 has filed a reply to the Civil Miscellaneous Application No.620 of 2023 and contended that the Petitioner having right title and interest in the shop. He has challenged the impugned order. The penalty imposed against the developer is for the violation of the deadline in handing over possession of respective shops to the shop owners despite receiving the sale consideration amount. GRERA has clarified that the shop owners who have not paid the sale consideration are not entitled for compensation. The said order has nothing to do with the shop which is independent structure. The developer has not executed any agreement with the Petitioner neither there is settlement with the said Petitioner. The developer has deceived the shop owners and therefore the GRERA have imposed the fine and penalty. Selling of properties has been done in execution of GRERA Order dated 17<sup>th</sup> March, 2022.

16. From the factual matrix of this proceedings it can be seen that show cause notice dated 10<sup>th</sup> February, 2020 was issued by Chief Officer Mapusa Municipal Council stating that M/s. Prabhu

Constructions had applied for occupancy certificate vide Application dated 26<sup>th</sup> October, 2018 and it is noticed that the Petitioner has not demolished the alleged structure constructed in road widening area described in transgression report. Complainant dated 11<sup>th</sup> July, 2019 was submitted by resident of building to the Municipal Council against the structure. The show cause notice was issued as to why the Order under Section 184(8) should not be passed for removal/demolition of the illegal kiosk. The Petitioner in Writ Petition No.678 of 2023 submitted the reply to show cause notice dated 10<sup>th</sup> February, 2020 and stated that the show cause notice and the transgression report dated 3<sup>rd</sup> January, 2020 is bad in law and beyond jurisdiction as the shop premises is existing during Portuguese time much before Goa Municipalities Act, 1968 came into effect and further that trade license fees is being regularly paid in respect of the shop premises as also the renewable being done from time to time. There is electricity connection in the shop premises and the electricity bill is being paid regularly. The father of the Petitioner was conducting the business in the shop premises and was residing as Mundkar in the property. The father of the Petitioner and Petitioner is in possession and enjoyment of shop premises and surrounding area. The show cause notice is issued without verifying the records and the same is unwarranted

deserves to be withdrawn. The Petitioner is not party to the Order passed by the Goa Real Estate Regulatory Authority. The notice issued under Section 184(8) is not tenable in law in view of the documents referred above. The notice is issued at the instance of developer. The agreement was executed between the Petitioner, developer and the landlord and in terms of the agreement the developer was supposed to deliver the possession of the premises as agreed between the party within stipulated time. Pursuant to execution of the agreement the premises was vacated and handed over to the developer. The developer failed to deliver the possession of the shop premises.

17. The proceedings are initiated under Section 184 of the Goa Municipalities Act, 1968 at the behest of Respondent/developer, who has alleged that the structure is illegal although he had executed the development agreement with the Petitioner in Writ Petition No.678 of 2023. The possession as promised by the Respondent/Developer has not been parted to the Petitioner although the vacant possession was handed over to the Respondent/developer. The Respondent No.1 has relied upon transgression report which was prepared before the issuance of show cause notice. It is pertinent to note that for all these years

there were no complaint by the landlord or any other person, that the structure is illegal or it is covered by road widening. The Respondent No.1 or the Appellate Court has failed to consider the documents relied upon by the Petitioners. The core issue is whether the structure in question can be demolished in exercise of powers under Section 184(8) of Goa Municipalities Act, 1968. It is brought on record that the shop is old and is existing since last several years. The documentary evidence was not appreciated by the Respondent No.1 and the Appellate Court. The trade and occupation licencing bye laws, 1989 issued vide notification 3/13/18/87-DUD provides procedure for granting trade licence. Bye laws 7 provides that every person applying a licence to the Chief Officer shall submit the application in writing in the prescribed Form B and shall also if so required by the Chief Officer, furnish the details of the premises such as location, area, reference to payment of house that plans of premises, reference to occupying certificate, NOC from the owner, lease deed, rent receipts, number of employees employed or such other details as may be called for by the Chief Officer. Apparently, the action was initiated pursuant to the complaint received from Respondent/developer. The Petitioners have produced all the documents to establish that the subject premises was in existence since long. The license in respect

to the Kiosk No.57 was produced. It was issued in 1993 by M.M.C. and the Petitioner has been paying trade license fees to the M.M.C. since last several years. The Petitioner has produced electricity bills of shop premises which are in force since 1991. The agreement for development-cum-sale dated 20<sup>th</sup> July, 2011 between the landlord, developer and one of the Petitioner was executed in respect to the subject property. Wherein the said property is shown under letter 'C' in the survey plan which was prepared and promulgated in the year 1971 which clearly establishes that the shop premises was in existence prior to 1971. The father of the Petitioner was conducting business. It was also brought on record that the agreement was executed for distribution of milk. The license granted by M.M.C. for running business from 8<sup>th</sup> April, 1993. The documents on record were sufficient to infer that the premises are in existence from Portuguese regime and suddenly by issuing final notice under the provisions of M.M.C. the structure cannot be demolished. The transgression report is doubtful and appears to have been suddenly issued after the complaints were initiated by the developers. The Petitioner in Writ Petition No.678 of 2023 has dealt with the show cause notice by filing reply. Inspite of that the final notice was issued for demolition. Several documents relating to the shop premises such as license, trade license, electricity bills and

agreement for development were indicative of the fact that the shop premises were being used since last several years. The Petitioner in Writ Petition No.579 of 2023 has also placed on record several documents about issuance of permission to distribute milk etc. In this proceedings this Court is not dealing with any dispute *inter se* between both the Petitioners. The question which falls for consideration is whether final notice for demolition and impugned orders passed in Appeals could sustain. In the light of material before the Respondent No.1 and Appellate Court, the impugned action cannot be justified. The tenor of show cause notice and the final notice itself indicate that it was issued at the behest of the Respondent/Developer. The difficulties expressed by the Respondent/developer cannot be subject matter of the action under Section 184(8) of the M.M.C. Act.

18. In the case of *Sayed Muzzafer Ali (supra)*, it is observed that mere departure from authorized plan or putting up a construction without sanction does not *ipso facto* and without more necessarily and in evitably justify demolition of the structure.

19. In the case of *Shantavva Madar (supra)*, it was held that the competent authority found that documents were of recent origin and Petitioners were unable to substantiate claim that

structures were 35 to 40 years old. The structure was without permission while referring to Section 184(8) it was observed that it would be preposterous to assume that action can be taken only when construction begins.

20. In the case of *Chandrakant Rupo Gaude (supra)*, it was observed that the ground that structure is assessed to tax, does not tantamount to the structure being authorized. There is no licence for construction on record.

21. Several other decisions were relied upon by the parties which were decided in the facts of respective cases.

22. In the present case M/s. Prabhu Constructions had entered into agreement with one of the Petitioner and than made a complainant with Respondent No.1. The Petitioners are relying upon several documents to indicate possession of premises since several years. Suit is filed by one of the Petitioner. In the facts of this case the action vide final notice is not warranted.

23. In view of above, the impugned Orders passed by Respondent No.1 and the Appellate Authority are required to be set aside.

**ORDER**

- i. Writ Petition No.579 of 2023 & Writ Petition No.678 of 1012 are allowed and disposed off;
- ii. Impugned Final Notice dated 11<sup>th</sup> January, 2021 issued by Respondent No.1 and Order dated 10<sup>th</sup> July, 2023 passed by Principal District Judge in Civil Appeal No.05 of 2023 and Civil Appeal No.04 of 2023 are quashed and set aside.
- iii. Petitions stand disposed off accordingly.
- iv. In view of disposal of Petitions, Civil Applications stand disposed off.

**(PRAKASH D. NAIK, J.)**

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