



Vinita

# IN THE HIGH COURT OF BOMBAY AT GOA

## WRIT PETITION NO. 380 OF 2024

M/S RAO AND COMPANY, Partnership registered under partnership Act, Having Office at Cine National, Panaji Goa, through its partner, Mr. Satish Jaiwant Rao, & Age 65 years, Advocate having Office at Cine Alankar building Mapusa Goa.

... Petitioner.

Versus

- 1 CORPORATION OF CITY OF PANAJI, Corporation constituted under, Goa Act 1 of 2003, Represented by its Commissioner, Municipal Building, Panaji Goa;
- 2 THE ESTATE OFFICER, Corporation of City of Panaji Goa, Municipal Building Panaji Goa ...Respondents

Mr Raunaq Rao, Advocate for the petitioner.  
Mr Vledson Braganza, Advocate for respondents

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<b>CORAM:</b>	<b>B. P. DESHPANDE, J</b>
<b>RESERVED ON :</b>	<b>5<sup>th</sup> July 2024</b>
<b>PRONOUNCED ON:</b>	<b>15<sup>th</sup> July 2024</b>

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## JUDGMENT

1. Rule. Rule is made returnable forthwith. Matter is taken up for final disposal at the admission stage with consent of the parties.

2. Petitioner is challenging the legality or otherwise of the order dated 2.2.2024 passed by the Estate Officer of the Corporation of the City of Panaji. By this order two applications filed by the petitioners dated 22.9.2023 and 6.1.2023 were disposed of by the Estate Officer thereby dismissing that there is no need for correction and issuance of fresh show cause notice as tried to be sought by the petitioner.

3. Mr Rao would submit that prime land existing in the City of Panaj was given to the petitioner by the erstwhile Portuguese Regime on the lease basis in the year 1933. Petitioner out of his own funds erected a structure to be used as a theatre. After liberation of Goa, separate lease agreement was executed between the petitioner and the respondent wherein condition no.5 was incorporated which shows that in case of termination of lease or expiry, the petitioner would be entitled to receive compensation towards the structure erected in the said property.

4. Mr Rao would submit that the petitioner received a notice from the Estate Officer dated 1.4.2010 claiming that the petitioner is unauthorisedly occupying the public premises as described in the schedule and more particularly in chalta no. 16 of P. T. Sheet No. 43 having an area of around 1650 sq.mts.

5. By the said notice, the petitioner was called upon to vacate and hand over peaceful possession of the said premises to the respondent.

6. Mr Rao would submit that the petitioner appeared before the Estate Officer and filed a reply and thereafter the proceedings commenced. He would submit that for the purpose of valuation of the structure existing in the suit plot, respondent called for a valuation report from a certified engineer and such report shows various structures existing in the said plot and not only chalta no.16 of P. T. Sheet No. 43.

7. According to Mr Rao, said plot admeasuring around 1650 sq.mts consists of various chalta numbers i.e. Chalta No. 14 having an area of 25 sq mts, Chalta No. 15 having an area of 650 sq mts, Chalta No. 16 having an area of 992 sq mts, Chalta No. 17 having an area of 38 sq mts and Chalta No. 21 apart from Chalta No. 16 having an area of 650 sq. mts, total admeasuring 1650 sq.mts.

8. Mr Rao submits that the petitioner is in possession of all the above chalta numbers which are clearly shown in the plan attached to the valuation report dated 24.3.1990 signed by Mr B. M. Kamat and on the request of the respondent.

9. Mr Rao would submit that initial notice issued by the Estate Officer in the year 2010 referred only to chalta no.16 of P. T. Sheet No. 43 and not other chalta numbers and thus in view of the lease agreement, petitioner would be deprived of claiming compensation of other structures existing therein. Accordingly, petitioner filed two applications before the Estate Officer for the purpose of correction and with a request to issue fresh notice by including all the chalta numbers. Mr Rao would submit that there is clear infirmity in the show cause notice issued to the petitioner and therefore in order to correct such discrepancies, it is necessary that the Estate Officer should issue fresh show cause notice by including all other chalta numbers for effective decision regarding eviction. He would therefore submit that the observation in the impugned order that the petitioner has lost possession of other chalta numbers, is clearly unacceptable and detrimental to the case of the petitioner. He would submit that such finding is based on no record and infact the petitioner is still in possession of the remaining chalta numbers for which eviction notice is required.

10. Mr V. Braganza appearing for the Corporation of the City of Panaji would submit that first of all show cause notice was issued in the year 2010 whereas the petitioner has filed his reply only on 1.3.2017. He claimed that even in this reply to the show cause notice filed in the year 2017, petitioner has not raised such issues. Mr

Braganza would submit that petitioner by filing such applications is only trying to delay the proceedings and the show cause notice cannot be directed to be amended as per the whims and fancies of the petitioner. Mr Braganza would submit that there is inordinate delay of 13 years in raising such objection to the show cause notice which this Court while exercising the writ jurisdiction should not entertain.

**11.** Besides Mr Braganza would submit that only chalta no. 16 i.e structure wherein theatre exists, is in possession of the petitioner whereas all the other structures within the said plot are not in possession of the petitioner. He submits that Corporation of the City of Panaj has installed Bio Methanation plant in one part of the said property which they have been operating since long. He submits that Sulabh Shauchalaya also exists in one corner which is operated by the Corporation of the City of Panaji. Remaining part or structure as claimed by the petitioner is in dilapidated condition.

**12.** Rival contentions fall for determination.

**13.** Admittedly agreement of lease was executed between the petitioner and the respondent which is dated 12.11.1975, for a period of 30 years. After expiry of 30 years, said lease was not renewed or extended though the petitioner requested to renew it. It is a matter of

record that some negotiations were held between the parties. However, there was no success. Accordingly, Estate Officer of the Corporation of the City of Panaji vide notice dated 1.4.2010 called upon the petitioner to appear before him and to satisfy as to why the eviction order should not be issued on the ground that after the expiry of the lease, the petitioner became unauthorised occupant of public premises.

**14.** It is the matter of record that though thereafter the petitioner communicated with Corporation of the City of Panaji for renewal of the lease, a reply to the show cause notice was admittedly filed on 1.3.2017. It is surprising that from the date of issuance of show cause notice i.e. in the year 2010 proceedings were not taken up by the Estate Officer for 7 long years. Reply dated 1.3.2017 filed by the petitioner would show that the petitioner cannot be evicted from the said premises and more specifically from chalta No. 16 of P. T. sheet No. 43 for the reasons disclosed in the said reply.

**15.** Admittedly the petitioner did not raise any objection to the show cause notice and more specifically the absence of other chalta numbers in the show cause notice.

**16.** It is also a matter of record that after filing of the reply to the show cause notice, proceedings before the Estate Officer were just

kept pending. Petitioner then suddenly on 22.9.2022 filed an application thereby pointing out infirmity in the show cause notice and claiming that other chalta numbers are not included. Accordingly, petitioner prayed that order be issued for issuance of fresh show cause notice by incorporating all the chalta numbers.

**17.** Petitioner also filed another application dated 6.1.2023 in support of their contention and prayed that the Estate Officer must first decide the aspect of inclusion of other chalta numbers before asking parties to file an affidavit in evidence. Written arguments were filed and even Corporation of the City of Panaji objected to such applications which resulted in passing the impugned order.

**18.** First and foremost aspect is the fact that notice was issued by the Estate Officer in the year 2010 whereas after 14 long years, matter did not progress much except filing reply that too in the year 2017 by the petitioner. It is quite surprising that the Estate Officer failed to take up the matter since it concerned public premises. Admittedly the lease executed between the petitioner and the respondent expired somewhere in the year 2005 and since then no steps have been taken by Corporation of the City of Panaji either to renew the lease or to evict the petitioner.

**19.** Besides, the petitioner in his reply filed in the year 2017 to the show cause notice never raised the issue of non inclusion of other chalta numbers. Such an aspect is raised for the first time somewhere in the month of September 2022 and thereafter in January 2023 by two separate applications.

**20.** Thus one thing is clear that the petitioner is also guilty of delay and laches. Nothing prevented the petitioner from intimating the Estate Officer about the exclusion of other chalta numbers, immediately after receipt of the show cause notice in the year 2010. Even in the reply filed in the year 2017, there is no whisper about it. Now after 14 long years, petitioner is attempting to rectify the show cause notice by praying that fresh show cause notice by including other chalta numbers be issued. In other words, petitioner is now trying to start entire eviction proceedings fresh by seeking prayer of issuance of fresh show cause notice. First of all, such prayer is unusual. The contention raised by the petitioner and that too to the Estate Officer, has been rightly rejected though for other reasons and not for delay and laches.

**21.** Admittedly, there is a Sulabh Shauchalaya as well as a plant erected by the Corporation of the City of Panaji which are functioning. These particular portions are clearly in physical

possession of the Corporation of the City of Panaji and therefore the question of issuing eviction notice would not arise.

**22.** As far as other structures are concerned, one which is in dilapidated condition, it is contention of the Corporation of the City of Panaji that the same is not in possession of the petitioner. The contention of the Corporation of the City of Panaji that only chalta no. 16 of P. T. Sheet No. 43 is in possession of the petitioner and accordingly, show cause notice is issued.

**23.** The question here and more specifically under Article 227 of the Constitution of India is whether the impugned order suffers from any illegality or perversity and the answer is obviously in negative.

**24.** First of all notice by the Estate Officer issued in the year 2010 is in respect of scheduled which reads as under :-

*ALL. THAT piece of land situated at Panaji, Panaji Municipal area Sub District of Ilhas Goa, Registration District, admeasuring 1594 sq.meters, say 1600 sq.meters belonging to the Lessor consisting of the land and which is occupied by the Cinema Building known as "National Cinema" belonging to the Lessee and the surrounding open spaces within boundary walls constructed by the original Grantee of the said plot of land. The boundaries of the said plot are as follows:*

*East - Public road.*

*West - Lane separating the plot in which building of the Telephone exchange is installed at present.*

*North- Building of the Education Department separated by boundary wall and the public lavatory and latrine building of Bharat Sevak Samaj.*

*South ~Public road.*

*The said plot is registered in the Land Revenue office of Panaji under No.1367(New) and 1465(old) of the respective “Matriz Predial” and is described in the Land Registration Office of Ilhas, Panaji under No.18810 at Book B-59 New at Page 43 in chalta no.16, P.T. Sheet No.43.*

*Dated:1/4/2010* *sd/-*  
*Signature and Seal of the Estate Officer.*

**25.** Perusal of this schedule would go to show that it is the claim of the Corporation of the City of Panaji that the petitioner is only occupying chalta no. 16 of P. T. Sheet No. 43 which exists in the boundary mentioned in the above schedule and admeasuring around 1650 sq.mts. If notice is issued only for chalta no. 16, the Estate Officer cannot enlarge the scope of inquiry by asking them to include other chalta numbers. Even otherwise, the contention that other chalta numbers are not in possession of the petitioner as recorded in the impugned order would clearly go to show that Corporation of the City of Panaji is only interested in eviction of the petitioner from chalta no. 16 of P. T. Sheet No. 43.

**26.** While exercising jurisdiction under Section 227 of the Constitution of India, this Court is certainly not entitled to correct the

notice issued by the Estate Officer on the basis of a claim raised by the Corporation of the City of Panaji for eviction. Jurisdiction of this Court is to examine orders passed by the concerned authority and find out whether such orders are without jurisdiction or against the settled principles of law. Matter in hand would clearly go to show that petitioner by filing applications in the year 2022-23 is virtually asking the Estate Officer to issue a fresh notice of eviction by including other chalta numbers, which cannot be permitted as it will be beyond the scope and jurisdiction of the Estate officer. Respondent being the applicant before the Estate Officer has to put up its claim and only according to such claim, the Estate Officer assumes jurisdiction. Estate Officer assumes jurisdiction on receipt of request from the Authority to start proceedings eviction against an unauthorised occupant. Hence, Estate Officer cannot enlarge the scope of application filed by the Corporation of the City of Panaji

**27.** Mr Braganza placed reliance in the case of *Jai Singh and others Vs Municipal Corporation of Delhi and another*, <sup>1</sup> wherein the Apex Court discussed the nature, scope and powers under Article 227 of the Constitution of India. Paragraphs 15 and 16 read thus:-

“15 We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we

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<sup>1</sup> (2010) 9 SCC 385

*may notice certain well-recognised principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognised constraints. It can not be exercised like a “bull in a china shop”, to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction*

*of duty or in flagrant abuse of fundamental principles of law or justice.*

16     *The High Court cannot lightly or liberally act as an appellate court and reappreciate the evidence. Generally, it can not substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi-judicial tribunals. The power to reappreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice.”*

28. Admittedly it is a discretion of this Court to exercise such supervisory jurisdiction. Matter in hand clearly goes to show that petitioner himself was negligent from the time of receipt of the notice in the year 2010, till filing of such applications in the year 2022-23. A party who is not diligent in his claim cannot be permitted to use the Court for the purpose of helping him to get more compensation and to delay the matter further.

29. For all the above reasons, the petition deserves to be rejected and accordingly, stands rejected.

30. Rule stands discharged. No order as to costs.
31. Petitions stand disposed of accordingly.

**B. P. DESHPANDE, J**