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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.762 OF 2023

1. Smt. Nagina Akbar Bangui,
57 years of age,
Wife of Akbar Bangui,
Resident of House no. 37,
Ward No. 8, Valpoi,
Sattari, Goa.

2. Shri. Mustakir Mohammed Hussain Aga,
45 years of age,
Son of Mohammed Hussain Aga,
Resident of House no. 37,
Ward No. 8, Valpoi,
Sattari, Goa.

... Petitioners

Versus

1. Shri. Aslam Kassam Aga,
Major of age,
Son of Kassam Aga,
Resident of House no. 37,
Ward No. 8, Valpoi,
Sattari, Goa.

2. The Deputy Town Planner,
Office of the Dy. Town Planner,
Town and Country Planning Department,
Bicholim, Sattari Taluka,
Bicholim, Goa.

3. The Chief Officer,
Valpoi Municipal Council,
Valpoi, Sattari, Goa.

4. The State of Goa,
Through Chief Secretary,
Secretariate, Porvorim, Goa.

5. The Deputy Collector and S.D.O.,
Sattari Sub Division at Valpoi,
Valpoi, Sattari, Goa.

... Respondents

Mr A.D. Bhobe with Ms Annelise Fernandes, Ms A. Bandekar and Ms Ramona Prazeres, Advocates for the Petitioners.

Mr Vibhav Amonkar, Advocate for Respondent No.1.

Mr D. Pangam, Advocate General with Mr Geetesh Shetye, Additional Government Advocate for Respondent Nos.2, 4 and 5.

Mr Prayash Shirodkar, Advocate for Respondent No.3.

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

DATED: 3rd April 2024

ORAL JUDGMENT: (Per M.S. Sonak, J.)

1. Heard Mr Ashwin Bhobe for the Petitioners. Mr Vibhav Amonkar appears for Respondent No.1. Learned Advocate General appears with Mr Geetesh Shetye for Respondent Nos.2, 4 and 5. Mr Prayash Shirodkar appears for Respondent No.3.

2. Rule. The Rule is made returnable immediately at the request of and with the consent of learned Counsel for the parties.

3. The challenge in this petition is to the following orders:-

- a) Technical clearance bearing no.DD/2093/VALPOI/TCP-22/720 dated 18/04/2022, issued by the Respondent no. 2 to the

Respondent no.1.(pg.20)

- b) Construction license bearing no. 03/2022-2023 dated 07/09/2022 issued by the Respondent no. 3 by which a structure which was subject-matter of demolition order dated 10/05/2022 passed by Respondent no. 3 has been regularized.(pg.23)
- c) Order dated 19/01/2024 passed by the Respondent no. 5 under the Goa Regularization of Unauthorized Construction Act, 2016, thereby regularizing the structure of the Respondent no. 1 admeasuring 100 sq. mts. constructed in property bearing Survey no. 7/2 of Valpoi.(pg.104)

4. The Petitioners filed a complaint with the 3rd Respondent on 16.07.2019 about construction and businesses being carried out by the 1st Respondent in the property bearing Survey No.7/2 of Village Valpoi, within the municipal limits of Valpoi Municipal Council.

5. The 3rd Respondent, the Chief Officer of the Valpoi Municipal Council (VMC), issued a show-cause notice dated 13.02.2020 based on a site inspection and document of transgression dated 27.09.2019. The 1st Respondent replied on 23.07.2021, basically seeking regularisation of the construction.

6. On 18.04.2022, the Deputy Town Planner issued technical clearance along with the approved plan. This is on page 20 of the paper book. In terms of the technical clearance and the approved plan, the 1st Respondent had to maintain a front setback of 3.55 metres and a side setback of 1.5 metres (on the western side). Besides, the 1st Respondent had also to maintain a dead wall on the eastern side.

7. The Chief Officer (R-3) ultimately issued the demolition order on

10.05.2022, perhaps because the 1st Respondent took no steps to remove the offending portions of his construction so that it was in accordance with the technical clearance dated 18.04.2022 and the approved plan.

8. The 1st Respondent thereupon instituted Municipal Appeal No.29/2022 before the Municipal Appellate Tribunal challenging the demolition order dated 10.05.2022. During the pendency of this appeal, Valpoi Municipal Council (R-3) issued the Petitioner a construction license bearing No.03/2022-2023 based upon the technical clearance dated 18.04.2022. The 1st Respondent applied to produce this construction licence before the Municipal Appellate Tribunal in Municipal Appeal No.29/2022.

9. At this stage, the Petitioners, on whose complaint Respondent No. 3 issued the demolition order dated 10.05.2022, instituted the present petition to challenge the technical clearance, construction license, and the order dated 19.01.2024, which was issued by the Deputy Collector (R-5) during the pendency of this petition.

10. On 07.12.2023, a joint inspection was carried out, and the Joint Inspection Report dated 20.12.2023 was placed on record on page 79 of the petition's paper book. This report refers to the following violations at the site:-

Sr. No.	Approved plan for regularization of residential house	Existing structure as per site condition
1	Front setback approved with 3.55mts.	Available on site is 2.85mts.
2	Part of the structure to be demolished to maintained side setback of 1.50mts. (i.e. on Western side)	Part of the structure is existing with 1.00mts. setback, which is not demolished

3	Dead wall was approved on Eastern side of the plot. (Eastern side of the plot)	There are existing 2 nos. of ventilation's on the Dead wall
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11. As noted earlier, during the pendency of this petition, the 5th Respondent, by order dated 19.01.2024, has purported to regularise the 1st Respondent's structure by resorting to the Goa Regularization of Unauthorized Construction Act, 2016, provisions.

12. From the material on record, it is evident that the Deputy Town Planner, in terms of the technical clearance order dated 18.04.2022, had regularised the 1st Respondent's structure subject to the 1st Respondent complying with the requirements of front setback, side setback and maintaining of a dead wall on the eastern side. The Municipal Council had earlier issued a construction license by adhering to these requirements precisely because the applicable building regulations prescribe these requirements. Neither the Deputy Town Planner nor the Valpoi Municipal Council (R-3) could have permitted the 1st Respondent to construct or retain anything that breached the applicable building regulations on the aspect of setbacks and maintenance of dead wall.

13. The 5th Respondent, therefore, by exercising the powers under the Goa Regularization of Unauthorized Construction Act, 2016, could not have regularised or purported to regularise anything that was in excess of the permissible limits under the building regulations. The learned Advocate General submitted that the 5th Respondent's order dated 19.01.2024 only regularises the 1st Respondent's construction to the extent such construction was in accord with the technical clearance order dated 18.04.2022. The learned Advocate General submits that the construction

in the front setback or the side setback or the non-maintenance of a dead wall on the eastern side has not been regularised by the 5th Respondent, and the 5th Respondent's order should not be construed as regularising all these portions.

14. In our Judgment, the 5th Respondent's order cannot be read or construed as regularising something that was not even permissible under the building regulations. Accordingly, we accept the learned Advocate General's construction of the 5th Respondent's order dated 19.01.2024. That would be the correct manner of reading and construing the regularisation order. The same would also apply to the other two orders impugned in this petition.

15. Even otherwise, the Division Bench of this Court in *Anil Vasant Parmekar vs. State of Goa*¹, has approved the view taken by the Appellate Authority, i.e. the Government under the Goa Regularization of Unauthorized Construction Act, 2016, that this Act applies to a situation where a person may have put up construction without obtaining permission from the authorities provided such construction otherwise abides by the provisions of the Acts and Regulations referred to in Section 2(f) of such Act. In other words, regularisation is only with respect to irregular constructions, i.e., constructions put up without permission but constructions that were otherwise liable to be permitted in terms of the relevant Act and the rules and regulations made thereunder. The Division Bench held that this Act does not contemplate regularisation of unauthorised constructions, i.e. the constructions which are put up in

¹ Writ Petition 943/2023 dt.11-01-2024

breach of the construction or planning regulations or constructions which could not have been permitted even if a person had sought permission to put up the same.

16. The Petitioners' Special Leave to Appeal Nos. 2305-2306/2024 against the Division Bench's Judgment and Order dated 11.01.2024 in Writ Petition No. 943/2023 was dismissed by the Hon'ble Supreme Court on 29.01.2024.

17. Accordingly, we were satisfied that the 1st Respondent could retain only such part of his construction as would be in accord with the technical clearance order dated 18.04.2022 and the plan approved along with such order. The 1st Respondent would consequently be required to demolish the offending portions as indicated in the Joint Site Inspection Report dated 07.12.2023 (on page 79 of the paper book). We, accordingly, direct the demolition of the offending portions so that the construction is consistent with the technical clearance and the violations pointed out in the joint inspection report dated 07.12.2023 are rectified. Until such rectification, no occupancy certificate can be issued for this construction, and the 1st respondent cannot occupy the same.

18. Mr Amonkar, learned Counsel for the 1st Respondent, based on instructions from the 1st Respondent, submitted that the 1st Respondent would remove the offending portions and take necessary steps to rectify the existing construction as per the observations made in the joint inspection report dated 07.12.2023. He also stated that the 1st respondent would vacate the structure by 12th April and report compliance.

19. Mr Amonkar also tendered the 1st Respondent's undertaking, duly signed by the 1st Respondent and identified by Mr Amonkar. This undertaking is taken on record and marked as 'X' for the purpose of identification. The contents of this undertaking are transcribed below for convenience of reference.

***“UNDERTAKING ON BEHALF OF THE
RESPONDENT NO.1***

I, Aslam Kassam Aga, major of age, son of Kasam Aga, presently residing at House No. 8/37/A, Ward No.8, Valpoi, Sattari – Goa, the Respondent No.1 herein, hereby undertake that my family and myself will vacate the residential structure bearing House No. 8/37/A on 12.04.2024 by 5 pm.

Thereafter I will take appropriate steps to rectify the present residential structure as per the observations made in the Joint Site Inspection Report of the Town and Country Planning Department at page 79 of the paper book within three months from 12.04.2024.

Once the same is complete, then I shall apply for the Occupancy Certificate with the Valpoi Municipal Council (Respondent No.3)

*sd/-
Aslam Kassam Aga
Respondent No.1”*

20. The above undertaking is accepted as an undertaking to this Court. In terms of this undertaking, the 1st Respondent must vacate the structure, which he unauthorizedly occupied, even before any occupancy certificate could be issued, by 5:00 p.m. on 12.04.2024. Further, the 1st Respondent must rectify the structure as per the observations made in the Joint Site Inspection Report on page 79 of this paper book within three months from 12.04.2024.

21. The 1st Respondent must file a compliance report with the Valpoi Municipal Council (R-3) on completion of the rectification. A copy of this compliance report must also be furnished to the Petitioner. The 3rd Respondent must hold a joint site inspection involving the Petitioner and the 1st Respondent to verify compliance. If there is compliance, the 3rd Respondent is free to consider the 1st Respondent's application for an occupancy certificate. Such application must be disposed of expeditiously and, in any case, within seven days from the 3rd Respondent being satisfied that there is compliance.

22. If the 1st Respondent breaches the undertaking now given for any reason, then, without prejudice to any action under the Contempt of Courts Act, the 3rd Respondent is directed to take steps to see that the 1st Respondent vacates the construction. The 3rd Respondent must then proceed with the demolition of the offending portions at the cost and consequences of the 1st Respondent. The 3rd Respondent must complete this exercise within three months from today. A compliance report must be filed.

23. Mr Bhobe points out that the 1st Respondent has made two other constructions on the same property. He pointed out that a demolition order has also been issued by the 3rd Respondent as regards those structures. However, the 1st Respondent has instituted Municipal Appeal No.29/2022 before the Municipal Appellate Tribunal, which is pending. Accordingly, we clarify that the said appeal must proceed on its own merits and in accordance with the law uninfluenced by this order so far as the other two structures are concerned.

24. The Rule is disposed of in the above terms. There shall be no order for costs. All concerned to act on an authenticated copy of this order.

VALMIKI MENEZES, J.

M.S. SONAK, J.

JOSE
FRANCISCO
DSOUZA

Digitally signed by JOSE
FRANCISCO DSOUZA
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