



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.541 OF 2024

The Village Panchayat of Nachinola,
Through its Secretary,
Ms. Ranjana Raul,
36 years age, Having office at:
Village Panchayat of Nachinola,
Nachinola, Bardez, Goa

... PETITIONER

VERSUS

1. Mr. Nasli Jamshed Batliwala,
Major of age,

2. Kanchi Anilkumar Mehta,
Major of age, Both residents of
Acron Water Vista, 13, Carona,
Aldona, Bardez, Goa.

3. Mrs. Miriam Jamshed Batliwala,
Major of age, Resident of 14B,
Darbhanga Mansion, Carmichael
Road, Mumbai, Maharashtra, 400026.

4. Ms. Shameem E. Botawala alias
Shamim E Botawala, Major of age,
Resident of G-2, Pemino South,
1-B, S.K. Barodawala Road,
Mumbai, Maharashtra - 400 026.

...RESPONDENTS

Mr. Ashwin D. Bhobe with Ms. Shaizeen Shaikh, Advocates
for the Petitioner.

Mr. Nigel Da Costa Frias with Mr. Shane Coutinho,
Advocates for the Respondent.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 09th October, 2024

ORAL JUDGMENT.

1. Rule.
2. Rule is made returnable forthwith.
3. Heard Mr. Ashwin D. Bhobe with Ms. Shaizeen Shaikh,
Advocates for the Petitioner and Mr. Nigel Da Costa Frias
with Mr. Shane Coutinho, finally with consent.
4. Mr. Bhobe learned counsel for the
Petitioner/Panchayat would submit that an application for
construction license was filed by Respondent No. 1 along
with necessary documents. However, the Panchayat issued
notices for inspection on two occasions. In the meantime
Respondent No. 1 approached the Block Development Officer
as the period of 30 days expired from the date of application.
The Block Development Officer though issued notices,

adjourned the matter and allowed the period of 30 days to pass over and then observed that the license is deemed to have been granted. The Panchayat approached the Additional Director of Panchayat by filing an appeal. However, the concerned Appellate Authority without issuing notice to the Respondent observed in its order dated 01/11/2023 that appeal cannot be entertained in view of the **deemed** provisions and hence, the same is not maintainable.

5. The Petitioner then approached the Revisional Court by filing a revision.

6. Mr. Bhobe submits that though the Revisional Court while considering the provisions and the approach of the Additional Director, observed that the appeal was maintainable and that it should have been decided, failed to remand the matter and discussed the other aspects and rejected the revision, which is challenged in the present matter.

7. It is the contention of Mr. Bhobe that once the Revisional Court observed that the appeal filed before the Additional Director of Panchayat is maintainable and ought to have been decided on merit, the only recourse available to the Revisional Court was to remand the matter to the Additional Director of Panchayat to decide it on merit.

8. Per contra, Mr. Nigel Costa learned counsel appearing for the Respondent No. 1 would submit that the amended provision of Section 66 of the Goa Panchayat Raj Act would clearly show deeming provision of grant of license incase Panchayat fails to decide the application within 30 days. He further submit that even the Block Development Officer before whom such report is placed or an appeal is filed, is duty bound to decide such matter within 30 days.

9. Mr. Frais submits that in this matter, the Block Development Officer took up the matter, however, since the period of 30 days was over, he closed the said proceedings observing that the license is deemed to have been granted

and nothing survives in the said matter. He would then submit that even nothing survives in the appeal which was filed before the Additional Director of Panchayat which has been rightly considered by the Revisional Court.

10. The provisions of Section 66 of the Panchayat Raj Act (Amended provisions) would clearly demonstrates that Panchayat is duty bound to determine whether permission should be granted or not, within 30 days from the date of receipt of application. The Panchayat is also duty bound to communicate its decision to the Applicant and the Secretary of the Panchayat is again duty bound to forward the application to the Block Development Officer on expiry of such period of 30 days. The Applicant may also file an appeal within a period of 30 days from the date of expiry of the period, to the Block Development Officer, who upon receipt of such application, either from the Secretary or an appeal from the Applicant, proceed to determine whether such permission should be given or not. If the Block Development Officer fails to determine whether such permission should be

given or not and communicate his decision to the Applicant within a period of 30 days from the date of intimation by the Secretary or on receipt of appeal, immediately upon expiration of such period of 30 days, such permission shall be deemed to have been granted to the Applicant to execute the work strictly in accordance with technical clearance and plans approved by the Town and Country Planning Authorities and in conformity with the conditions laid down by all other Statutory Authorities.

11. A perusal of this provision would go to show that the Panchayat is duty bound to decide the application within 30 days. Similarly, if the Panchayat determines whether such permission should be given or not, must communicate its decision to the Applicant and further the Secretary shall forward the application to the Block Development Officer on expiry of period of 30 days. This shows that the Panchayat must take a decision within a period of 30 days. If it fails to do so, the Secretary is duty bound to forward such application to the Block Development Officer.

12. It further shows that on receipt of such intimation from the Secretary of Village Panchayat or on receipt of Appeal by the Applicant, incase of inaction on the part of the Village Panchayat, the Block Development Officer shall proceed to determine whether such permission should be given or not.

13. The amended provision of Sub-section (2) of Section 66 would then further provide that if the Block Development Officer fails to determine whether such permission should be given or not and communicate his decision to the Applicant within a period of 30 days from the date of intimation by the Secretary or receipt of Appeal, immediately, upon expiration of such period of 30 days, such permission shall be deemed to have been granted.

14. The above provision would go to show that on expiry of period of 30 days from the receipt of application by the Village Panchayat and thereafter by the Block Development Officer, such Authorities when failed to take action or determine such application, becomes *functus officio*. In such

manner, the legislature has granted deeming provision of the permission to construct in accordance with the plans which are already approved by the Town and Country Planning Department and in conformity with the other authorities.

15. Thus, duty of the Block Development Officer is equally in conformity with that of the Village Panchayat, to decide such application or appeal within a period of 30 days. If he fails to decide it, he becomes *functus officio* of the said matter.

16. The main contention of the Village Panchayat/Petitioner is that notices were issued for site inspection on two occasions and in the meantime, the period of 30 days was over. The Respondent No. 1 filed an appeal before the Block Development Officer and thereafter, the Block Development Officer issued notices and the matter was adjourned.

17. It is the contention of Panchayat that the Block Development Officer failed to take decision and allowed the

period of 30 days to pass, and then simply observed in its impugned order dated 04/09/2023 that the licenses deemed to have been granted, and accordingly, the proceedings before him became infructuous.

18. Such order of the Block Development Officer would clearly go to show that he was duty bound to decide such appeal within 30 days. Inaction on his part cannot give him license to say that the proceedings have become infructuous. The statute clearly casts a duty on the concerned authority to decide the appeal within a time bound frame. If he is not able to decide such appeal, it does not lie in his mouth to say that the proceedings becomes infructuous. The Block Development Officer then becomes *functus officio* and thus need to close proceedings.

19. Be that as it may, the Petitioner challenged such order of the Block Development Officer before the Additional Director of Panchayat who again without considering the grounds of appeal and without issuing notices to the other

side, observed that the appeal is not maintainable since the license is deemed to have been granted. Such cryptic order passed by the concerned authority on 01/11/2023 was further challenged by Panchayat by filing a revision under Section 201(b) of Panchayat Raj Act. While, deciding the said revision on 16/05/2024, the Revisional Court in paragraph 10 clearly observed that the remarks of the Additional Director of Panchayat that the Appeal is not maintainable, is incorrect.

20. Mr. Bhobe is fully justified in his submissions that once the Revisional Court observed that such observation of the First Appellate Authority is incorrect and the Appeal is maintainable, the recourse available to the Revisional Court is to remand the matter to the First Appellate Court.

21. However, it is observed that the Revisional Court went ahead and decided the matter on merits, which was not considered or decided by the First Appellate Authority. Thus, it is clear that Revisional Court should have restricted itself

to the observations of remanding the matter to the First Appellate Authority so that the First Appellate Authority would have been in a position to decide such appeal on its own merit and on the grounds raised in the memo of appeal.

22. The Revisional Court, on the other hand usurped the powers of the First Appellate Authority and decided the contentions raised by the Respondent No. 1 as to how the provisions has to be interpreted and how the order of the Block Development Officer was correct.

23. Proper recourse available to the Revisional Court was to quash and set aside the order dated 01/11/2023 passed by the Additional Director of Panchayat in Appeal and remand the matter to decide it on its own merits so that the Petitioner as well as the Respondent would have had an opportunity to argue the matter on merits.

24. For all the above reasons, impugned order passed by the Revisional Court is required to be partly quashed and set aside.

25. The recourse available is to remand the matter to the First Appellate Authority to decide the appeal filed by the Panchayat/Petitioner in accordance with law and after hearing both the sides.

26. Accordingly, the Revisional Court's order is modified to the above extent by partly allowing such revision, the matter stands remanded to Additional Director of Panchayat in Appeal No. 343/2023 with the direction to hear both the sides and decide such appeal on merit.

27. It is needless to mention that this Court has not considered the merits and the grounds in the appeal and accordingly, the First Appellate Court is free to decide the contentions of both the sides in accordance with law, without being influence by the observations of order of Revisional Court.

28. The parties shall appear before the Additional Director of Panchayat on 11/11/2024 at 03:00 p.m. The Additional Director of Panchayat shall thereafter hear the parties and

decide the matter as expeditiously as possible.

29. Rule is made partly absolute in above terms.

BHARAT P. DESHPANDE, J.