

Sonam

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 119 of 2021

1. Mrs. Martina Fernandes,
W/o Late Salvador Fernandes.
Major of age, 68 years,
R/o House No. 423, Xepem,
Ambaulim, Quepem, Goa.
2. Mrs. Dumentina Fernandes,
W/o Minguel Fernandes,
Major of age, 68 years,
R/o Xepem, Ambaulim,
Quepem, Goa.
3. Mrs. Caterina Fernandes,
W/o Late Andrew Fernandes,
Major of age, 68 years,
R/o House No. 427, Xepem,
Ambaulim, Quepem, Goa.
4. Mrs. Peiedade Fernandes,
W/o Late Agostinho Fernandes,
Major of age, 60 years,
R/o House No. 424, Xepem,
Ambaulim, Quepem, Goa.
5. Mrs. Pedrinha Fernandes,
W/o Natlino Fernandes,
Major of age, 48 years,
R/o House no. 426,
Xepem, Ambaulim,

Quepem, Goa.

... Petitioners.

V/S

1. Rajanikant Vijaynath Keni Robolow (deceased)
Through Legal heirs.

(a) Maya Keni Robollo,
W/o late Rajanikant Keni Robollo,
Major of age,

(b) Sanman Keny,
S/o Rajanikant Keni Robollo,
Major of age,
Both residents of H. No. 1735,
Sanvorcotto Cuncolim, Salcete, Goa.

2. Village Panchayat of Ambaulim,
Through the Secretary,
Office of the Village Panchayat of Ambaulim,
Ambaulim, Quepem, Goa. ... Respondents.

Mr. Joseph Vaz along with Mr. Terrance Anthony Vaz, Advocates
for the Petitioners.

Mr. Shivan Dessai along with Mr. A. V. Pavithran and Mr. P.
Kholkar, Advocates for Respondent No.1(a) and 1(b)

CORAM: VALMIKI SA MENEZES, J.

DATED: 11th January, 2024

ORAL JUDGMENT:

1. Rule. Rule is made returnable forthwith, with the consent of the learned counsel for the parties same is disposed of finally.

2. This is a petition under Article 227 of the Constitution of India seeking to challenge Judgment dated 24/07/2020 passed by the District Court, South Goa, in Criminal Revision Application No. 23/2018, Judgment dated 12/03/2018 passed by the Additional Director of Panchayat in Appeal No. MAR-I/109/2013, MAR-I/111/2013, MAR-I/112/2013, MAR-I/113/2013, MAR-I/114/2013, and demolition order dated 02/08/2013 issued by the Village Panchayat of Ambaulim, Quepem, Goa.

By the order dated 02/08/2013 the Panchayat directed the demolition of 5 structures standing in the land bearing Survey No. 122/1 and 124/59 of village Ambaulim. These five structures are the subject matter of this Petition.

3. The facts that have led to the filing of this petition are stated herein under:

(a) On a complaint made by Respondent No. 1 to the concerned Panchayat, the Panchayat exercised jurisdiction under Section 66 of the Goa Panchayat Raj Act, 1994 ('The Act') and after issuance of a Show cause notice to 9 parties who were alleged to have constructed 9 structures in the above properties, after eliciting their

reply proceeded to pass demolition orders dated 02/08/2013 holding all 9 structures to be illegal.

(b) Against the order of demolition, the 5 Petitioners herein preferred 5 Appeals in terms of the provision of section 66(7) of the Act before the Director of Panchayats, who concluded that all 5 structures of the Petitioners were illegal; however, the Director of Panchayats has observed that these Petitioners may seek regularization only after the finalization of the title suit between them and Respondent No. 1/ complainant. In that view of the matter, the Director of Panchayat held that the final order of the demolition dated 02/08/2013 would be kept in abeyance and executed by the Panchayat only after finalization of the title suit pending before the Civil Court, such that it would enable the Petitioners to seek regularization of their structures.

(c) From the records, it also transpires that the Petitioners filed a Special Civil Suit No. 16/2011/A before the Civil Judge Senior Division, 'A' Court at Quepem claiming title to the above properties from the year 1991, seeking a decree of declaration of their title and correction of the survey record which stood in the name of the complainant's ancestors. In this suit, there appears to be no pleadings of the existence, dimension or location of the structures held to be illegal and subject matter of the demolition order.

(d) Note made also to be taken of the facts that in reply dated 07/07/2011 to the Show- cause notice issued by the Panchayat, the Petitioners took up a plea that they were Mundkars in respect of the structures in question and that the Petitioner No. 1, 3, 4 and 5 were allotted house numbers for their structures respectively in the year 1989, 1987, 1990 and 1996. They also claim in the reply that some of the structures were given Electricity connection between the period 1987 and 1997.

(e) The Petitioners chose not to challenge the decision of the Director of Panchayat and accepted the findings of the Director of Panchayat, that the structures were illegal. However, the complainant preferred a Revision Application No. 23/2018, before the District Court, Margao, Goa, impugning that part of the order of the Director of Panchayat by which his demolition was stayed until the decision in the Civil Suit. The Revision Application was ultimately allowed by Judgment dated 24/07/2020, whereby the District Court has modified the order passed by the Director of Panchayat holding that the direction granting a stay of the operation of the demolition order until the decision in the Civil Suit, was dropped. Consequently, the District Court has upheld the order of the demolition and removed all conditions granting the stay of the demolition until the decision of the Civil Suit.

(f) Against this Judgment, the present Writ Petition has been preferred mainly on the ground that the Petitioners were not

furnished with the copy of the Transgression report / Panchanama demarcating the illegal structures and this according to the Petitioners would be in violation with the principles of natural justice.

4. Mr. Joseph Vaz appearing for the Petitioners has submitted that the concerned structures according to the reply filed by the Petitioners were in existence at least from the year 1987 having been allotted house number and Electricity connection. He further submits that it is a matter of record that the Petitioners have been residing in these structures since the time of its construction. He further submits that in the event of the Civil Suit, being decreed in favour of the Petitioner, the Petitioners would be entitled to apply for regularization under the Goa Daman and Diu Land Revenue Code, 1968 ('Regularization Act'), and until such time, the suit was decided, it would be just for this court to reverse the Judgment passed by the District Court and maintain the order of the Director of Panchayat. Mr. Vaz has relied upon the Judgment of this Court in *Shri. Gaddu Zaraunkar V/s Village Panchayat of Velim reported in 2013 SSC Online, Bombay 1569* and would submit that on facts, this Court has, in this Judgment taken into consideration, the documents such as House Tax and Electricity Bills to draw the presumption of the legality of the structures in question.

5. Countering this submission, Mr. Shivan Dessai appearing for Respondent No. 1(a) and 1(b) submits that 2 authorities below having concurrently held on facts that the structures in question are illegal, and

without procuring any license, interference of this Court in the supervisory jurisdiction under Article 227 of the Act is not called for. He further submits that as held by the court's below there is no material placed by the Petitioners on record to substantiate their claim of the existence of the structures prior to preparation of the survey record of the Goa Daman and Diu Land Revenue Code, 1969 ('The Code').

6. He relied upon two Judgments of this Court: 1) *Mrs. Marina Lobo V/s Secretary / Sarpanch, Village Panchayat, Cortalim, Quellosim and anr.* dated 10/04/2018 passed in Writ Petition No. 49/2018 and (2) *the Commissioner, Corporation of the City of Panaji V/s Tahir Isani* dated 22/01/2021 in Writ Petition No. 743/2010 to buttress his argument that the scope of the proceedings before this court are very limited once two Authorities first being Appellate Authority and other Revisional Authority has held that these structures are illegal. He referred to the observations of this court in paragraph Nos. 8 and 9 tendered in the Judgment *Mrs. Marina Lobo (Supra)* contented that powers of the Director of Panchayat under Section 66 of the Act are limited in deciding the legality of the order of the demolition and cannot be exercised in the manner that would grant or allow the party to proceed for the regularization of the structures. He contends that the judgment of the District Court is in consonance with the view taken by this Court in *Mrs. Marina Lobo (Supra) and the Commissioner, Corporation of the City of Panaji (Supra)*.

7. The first question that arises for the decision of this petition is whether in pursuance of the supervisory Jurisdiction of this Court, orders

of the Revisional Court and Appellate Court call for interference in the light of the fact that the Petitioners have accepted the Judgment of the Director of Panchayat holding the structures to be illegal and not challenging the same in any further Revisional proceedings. Having accepted that the structures were illegal as held by the Director of Panchayat, the record reveals that the Petitioners proceeded to seek regularization to their structures under the Regularization Act, by submitting an application for regularization. This application came to be rejected on the preliminary ground that the same was not maintainable since the Petitioners claim to the title of the said property was under the cloud, and pending adjudication proceeding before the Civil Court.

8. On the perusal of the records, the survey plan which is a record promulgated in the year 1984 before the Land Revenue Code, does not reveal the existence of any structures. The survey record in Form I & XIV also do not reflect in its statement of area that any part of the land as cultivated or uncultivated or have structures therein. There being a presumption as to the correction of the record under the Code, and this being a legal presumption, one must proceed to examine the matter on the assumption that the structures were not in existence at least from the date of promulgation of record in the year 1984.

9. Assuming that the structures were constructed after the year 1984 as is the case of the Petitioners themselves, the entire burden is on the Petitioners to show pursuant to what licence or on whose permission and approvals, the structures are constructed therein.

10. The records reveal that there are no conversions obtained of the concerned Land Revenue Officer for conversion of the land from agricultural to non-agricultural use in terms of the Code. The record further reveals that no licenses has been issued by the concerned Village Panchayat under Section 66 for construction on the concerned land.

11. This being the case, if the same is looked at from whichever angle, the findings arrived at by the Appellate Court and concurrent by the Revisional Authority that, the structures in the question are illegal and are constructed in contravention of Section 66 of the Act, cannot be faulted.

12. The Judgment rendered by this Court in *Gaddu Zaraunkar (Supra)* was clearly on the facts of that case. The reading of the entire Judgment does not reveal any ratio decidendi laid down therein and one cannot rely upon that Judgment to state that it has laid down any rule. The Judgment is clearly distinguishable and cannot be applied to the facts of the present case wherein Petitioners have proceeded for regularization on the assumption that the construction of the structures were illegal.

13. *Mrs. Marina Lobo (Supra)* is a Judgment for the modification that giving directions for regularization after holding that structures are illegal in terms of Section 66 would be in gross contravention of the jurisdiction vested with the Director of Panchayat sitting in Appeal. It has been held so in the following terms:

“8. Section 66 of the Act deals with the regulation of the erection of the buildings and clearly provides in sub-section (1) that no person shall erect

any building or alter or add to any existing building or reconstruct any building without the written permission of the Panchayat. The permission may be granted on payment of such fees as may be prescribed. Sub-section (3) provides that whenever any building is erected, added to or reconstructed without such permission or in any manner contrary to the rules prescribed under sub-section (1) or any conditions imposed by the permission granted, the Panchayat may, — (a) direct that the building, alteration or addition be stopped; or (b) by written notice require within a reasonable period to be specified therein, such building alteration or addition to be altered or demolished. Sub-section 4 provides that in the event if there is no compliance with such notice in terms of sub-Section 3(b) within the period specified in the notice, the Panchayat shall take such action as may be necessary for the completion of the act. Sub-section 5 takes within its sweep that where the Panchayat fails to demolish the building which is erected, added to or reconstructed without the permission of the Panchayat, or in any manner contrary to the rules made under the Act or any conditions imposed in the permission, within a month from the date of the knowledge, the Deputy Director shall assume the powers of the Panchayat under sub-sections (3), (4) and (5) and take such steps as may be necessary for the demolition of such building. Sub-section 7 provides that an appeal shall lie to the Director, within a period of thirty days from any order of direction or notice issued under any of the provisions of this section and the decision of the Director on such appeal shall be final. Therefore, on a bare perusal of Section 66, there is no power in the Additional Director to allow the party to proceed for regularization when it is strictly directed to take recourse to sub-section (3), (4) and (5)

in the matter of demolition. Therefore, the order passed by the learned Additional Director was totally contrary to its powers contemplated under Section 66 of the Act.

*9. The learned District Judge while deciding the matter in revision was unduly swayed by the findings of the learned Additional Director, without any basis observed that Section 66 of the Act dealt with “**Regularization** of the erection of building” when it clearly dealt with “**Regulation** of the erection of buildings”. The learned District Judge for that matter was also unduly swayed by the provisions of the Goa Regularization of Unauthorized Construction Act, 2016 and the judgment referred to in **Sayed Mujafar Ali** (supra), and in that view of the matter hastily concluded that no perversity or illegality was committed by the learned Additional Director while passing the order as it did and dismissed the revision filed at the instance of the petitioner. There were no powers in the Additional Director to consider the aspect of regularization while clearly holding that the construction carried out by the respondent No.2 was illegal and by flouting the Rules and allowing a protective shield to the respondent No.2 to regularize the construction which was beyond the scope of his powers. The learned District Judge too virtually reiterated the findings recorded by the Additional Director and fell in error reflecting a perversity in the impugned order which cannot be allowed to stand. In the result, therefore, the impugned order cannot be sustained and is therefore quashed and set aside.”*

14. In *the Commissioner, Corporation of the City of Panaji (Supra)*, this Court was dealing with an Appeal of the Municipality Corporation

challenging the order of the Minister granting regularization of the illegal structures. The following observation is made by this Court and the powers of an Appellate Authority as to the extent that the regularization of illegal structures is permissible, are referred below:

“34. The impugned Judgment and Order dated 21/4/2010 cannot be construed as regularisation though, Mr. Bhobe is right in his contention that the Appellate Authority has virtually sought to regularise the illegal construction, when, in fact, the Appellate Authority had no jurisdiction to do so in the course of hearing of an appeal against a demolition order. The limited scope of the proceedings before the Appellate Authority was to determine whether there was any legal infirmity in the issuance of the demolition order by the CCP. The Appellate Authority, in the Appeal instituted by the Respondent, had no jurisdiction to proceed to itself make an order in the nature of regularisation or compounding of the illegality committed by the Respondent of putting up the second floor in an illegal and unauthorized manner in a CCZ.

35. Mr. Bhobe is also right in submitting that the Appellate Authority has referred to some material, which was not even a part of the record. The Appellate Authority has proceeded on the basis that there was no dispute that the building under renovation and repair had ground plus two levels and its height was 13.8 metres. This is not something which was pleaded by the Respondent in the reply to the show-cause notice, or for that matter, in the memo of appeal. In these circumstances, it is quite difficult to comprehend as to how such material finds a place in the impugned order. Therefore, Mr. Bhobe is quite right in his submission that

irrelevant and extraneous material has been referred to whilst making the impugned order.

36. *Reliance on Rajatha Enterprises (supra) is quite misplaced. That was a matter where some minor deviations were noticed in the process of renovation and repairs. This is not a case where some minor deviations are noticed in the process of repairs and renovation. Rather, this is a case where the Respondent has put up the clearly illegal and unauthorized second floor in the CCZ in defiance of the municipal bye-laws, rules, and regulations.*

37. *In Shanti Sports Club and Another v/s. Union of India and others - (2009) 15 S.C.C. 705, the Hon'ble Apex Court, has, after adverting to its several earlier judgments on the subject, taken cognizance of buildings constructed in violation of municipal and other laws and emphasized that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent a substantial amount on the construction of the buildings. The Hon'ble Supreme Court proceeded to state that unfortunately, despite repeated judgments of the Supreme Court and High Courts, illegal constructions continue to mushroom, and thereafter, pleas are made for regularization on grounds of compassion and hardship. Hon'ble Supreme Court has observed that it is high time that the executive and political apparatus of the State take a serious view of the menace of illegal and unauthorized constructions.*

38. *In Royal Paradise Hotel (P) Ltd. vs. State of Haryana and others - (2006) 7 S.C.C. 597, the Hon'ble Supreme Court rejected the plea for regularization of a construction made in violation of the provisions of the planning and municipal legislation by observing that no authority administering municipal laws and other laws like the act involved in the matter, can encourage such violations. Even otherwise, compounding is not to be done the when violations are deliberate, designed, reckless, or motivated. Marginal or insignificant accidental violations unconsciously made after trying to comply with all the requirements of the law can alone qualify for regularization which is not the rule, but a rare exception.*

39. *In Friends Colony Development Committee vs. State of Orrisa and others - (2004) 8 SCC 733, the Hon'ble Apex Court has held that structural and lot area regulations authorize the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts, and open spaces; the density of population; and the location and use of buildings and structures. All these have and do achieve the larger purpose of public health, safety or general welfare. So are front setback provisions, average alignments, and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience, and hardship which is posed to the occupants of the building.*

40. *The Hon'ble Apex Court further observed that though the municipal laws permit deviations from sanctioned constructions being regularised by compounding but that is by way of exception.*

Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum.

41. In fact, the Hon'ble Apex Court has gone to the extent of observing that the officials who connive with the parties to put up unauthorized or illegal constructions, should not be spared and disciplinary proceedings should be initiated against them. In this case, the CCP, after it noticed that illegal construction was being put up in the CCZ, caused an inspection and followed the same with a show-cause notice. If the reply is noticed, read, and considered in its entirety, then, it is apparent that there was not even any proper denial of the allegations in the show-cause notice."

15. The ratio laid down in the aforementioned Judgment of this Court would apply in all force to the facts of the present case. The Revisional Authority has corrected the Appellate Court order of the Director of Panchayat to the extent that it has observed that the structures to be regularized after the decision of the Civil Suit. No fault can be found in the Judgment of the District Court; this Petition does not call for exercising supervisory jurisdiction of this Court under Article 227 in favor of the Petitioners in the facts of the present case.

16. In that view of the matter, the Petition stands dismissed with no order as to costs.

17. Needless to state, any observations made in this Judgment shall not in any manner affect the decision of the Civil Court taken in Special Civil Suit No. 16/2011/A which shall be decided purely based upon the rival claims to the title of the suit property. The interim order dated 25.08.2020 shall stand vacated.

VALMIKI SA MENEZES, J.