

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.200 OF 2024

ROCQUE NOEL FERNANDEZPETITIONER

VS

SEEMA SURESH TARI AND 3 ORSRESPONDENTS

Mr. Shivraj Gaonkar with Mr. P. Shirvoicar, Advocate for the Petitioner.

Mr. A.D. Bhobe with Ms. S. Shaikh, Advocates for Respondent No.4.

CORAM: BHARAT P. DESHPANDE, J

DATED: 28th February, 2024

ORAL ORDER:

1. Heard Mr. Shivraj Gaonkar, learned Counsel for the petitioner and Mr. A.D. Bhobe, learned Counsel for respondent No.4.
2. The order which I proposed to pass in the present matter notice to respondent Nos.1, 2 and 3 through the Court is not necessary. Even otherwise the petitioner privately served respondent Nos.1, 2 and 3. Mr. Gaonkar has placed on record the postal acknowledgment showing that the notice is served on respondent Nos.1,2 and 3.
3. The challenge in the present petition is to the order dated 25/01/2024 passed by the Additional Director of Panchayats - I, Panaji thereby granting stay to the demolition notice.
4. Mr. Gaonkar would submit that even though the petitioner along with his Advocate was present no opportunity was given to argue the

matter with regard to stay and there are no reasons disclosed as to why the stay is required to be granted to the impugned order.

5. Mr. Gaonkar would submit that the Additional Director of Panchayats even did not allow the petitioner to appear in the matter and directed him to file an application for intervention. A copy of appeal was also not furnished to the petitioner. He submits that the petitioner filed a caveat before the Additional Director of Panchayats though he was not made party by respondent No.1, 2 and 3 in the said appeal.

6. Mr Gaonkar further submits that in Writ Petition No.460 of 2023, the Division Bench of this Court directed the Panchayat to dispose of the Show Cause Notice in accordance with law by granting opportunity to the petitioner of hearing. Accordingly, the Panchayat has disposed of the Show Cause Notice and directed respondent Nos.1, 2 and 3 to demolish the illegal structure. Final demolition notice under Section 66(4) of the Goa Panchayat Raj Act is dated 03/01/2024 issued by the Village Panchayat /Respondent No.4.

7. Mr. Gaonkar submits that said respondent Nos.1 and 2 preferred an appeal before the Additional Director of Panchayats challenging the demolition order dated 03/01/2024, in the said appeal the present petitioner was not added as respondent though he is a complainant. However, the petitioner filed a caveat and appeared before the Additional Director of Panchayats in view of notice dated 19/01/2024.

8. Perusal of the impugned order dated 25/01/2024 would go to show that there is absolutely no reason coming forward for grant of stay of the impugned demolition notice. The order dated 25/01/2024 reads thus:

“Adv. S. Chodankar for Appellant present.

V.P. Secretary Nachinola Ranjana Raul present. The caveator, Rocque Fernandes present. Adv. for Appellant prayed for stay. Stay granted till next date. Matter fixed for Res/VP reply and for caveator to file Intervention application.”

9. Admittedly, the Additional Director of Panchayats-I, Panaji, is acting as a quasi judicial authority and therefore such authority is duty bound to adhere to the settled procedure of passing reasoned order even at the stage of stay. Only one line order of granting stay itself shows non-application of mind as well as arbitrary exercise of the powers. Such order cannot be sustained in the eyes of law which is without any reasoning.

10. However, Mr. Gaonkar would submit that even though he appeared on the basis of caveat and ask for the Certified Copy of appeal memo, the same is now furnished to him on 31/01/2024. Mr. Gaonkar submits that he will file an intervention application.

11. Since the impugned order shows that the stay is granted till the next date i.e. on 06/03/2024 the concerned authority is bound to hear the petitioner as well as the Village Panchayat and decide whether the stay needs to be continued.

12. The petition could be disposed of by directing the concerned authority to hear the petitioner as well as the Village Panchayat on the question of continuation of stay of the impugned order on 06/03/2024 and pass a reasoned order.

13. Needless to mention that this Court has not gone into the contentions raised by the petitioner in the present petition. All contentions of the parties are left open.

14. Accordingly, the Additional Director of Panchayats -I, Panaji, is directed to hear the petitioner and respondent No.4 on 06/03/2024 and decide whether the stay should continue further. While doing so, the concerned authority shall pass a reasoned order and communicate it to the parties on the same date. The parties are free to argue the matter on merit itself on the same date.

15. In view of the above petition stands disposed of.

16. Parties to act on an authenticated copy of this order.

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BHARAT P. DESHPANDE, J