
(2013) 01 BOM CK 0272
In the Bombay High Court
Case No : Writ Petition No. 862 of 2012

KHR Hospitality India Ltd.

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 ABR 139 : (2013) 3 ALLMR 130 : (2013) 6 BomCR 212

Hon'ble Judges : V.M. Kanade, J;U.V. Bakre, J

Bench : Division Bench

Advocate : S.G. Dessai, Shivan Dessai, for the Appellant; D. Lawande, Government Advocate, Zeller Desouza, in Person, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—Heard Mr. Dessai,. learned Senior counsel for the petitioner, Mr. Lawande, learned counsel for respondents Nos. 1 and 2 and Mr. De Souza, learned counsel for respondent No. 3. We have also heard the intervener in person. Rule. By consent heard forthwith.

2. By this petition which is filed under Article 226 of the Constitution of India, the petitioner which is a company running a Five Star Resort is seeking an appropriate writ, order or direction for quashing and setting aside the order dated 30th November, 2012 issued by respondent No. 3-Village Panchayat of Majorda-Utorda-Calata. In this petition, an intervention application is filed by one Aleixo Arnolfo Pereira for permitting him to intervene in the petition and seeking a direction for dismissing the writ petition.

3. The brief facts giving rise to the present petition are as under:--

The petitioner is owner of a property bearing Survey Nos. 45/1, 43, 44, 45, and 46 of Village Utorda, where it is running a Five Star Resort under the name and style "Kenilworth Beach Resort" (KHR Hospitality India Ltd.). It is the contention of the petitioner that respondent No. 2-Director of Tourism has approved a shack

policy for erection of temporary shacks on the beach front of private properties for the season period from October to 31st May, subject to the terms and conditions of the licence. It is the case of the petitioner that such a permission has been granted to the petitioner for erecting temporary shack in Survey No. 46/1 of Village Utorda for the tourist season 2008-09, 2009-10 and also up to 31st May, 2011. The petitioner again made an application dated 20th October, 2011 for erection of a temporary shack for the tourist season 2011-12 and the said NOC was again granted by respondent No. 3, up to 31st May, 2012. It is contended that after expiry of the said licence, the said temporary shack was removed on 31st May, 2012. It is contended that for the year 2012-13, again an application dated 10th October, 2012 was made by the petitioner for erection of a temporary shack and the respondent No. 2 was pleased to grant NOC dated 22nd October, 2012. On the basis of the said NOC granted by respondent No. 2, the petitioner applied for permission to respondent No. 3 for erection of the temporary shack by application dated 2nd November, 2012. An objection was raised by one Panch Member by name Domnic Rodrigues. However, the application was processed and NOC was granted by respondent No. 3 dated 28th November, 2012 after the petitioner deposited an amount of Rs. 40,000/-. It is contended that the petitioner received a letter dated 30th November, 2012 from respondent No. 3, revoking the NOC dated 28th November, 2012. Being aggrieved by the said revocation of the permission which was granted by respondent No. 3, the petitioner has filed the present petition under Article 226 of the Constitution of India.

4. Mr. S.G. Dessai, learned Senior counsel appearing on behalf of the petitioner, submitted that the period for erection of temporary shacks is only up to 31st May, 2013 and more than two months have passed on account of revocation and, therefore, it was submitted that the petition may be decided at the stage of admission. He submitted that the said revocation of the NOC is challenged firstly on the ground that the said order was passed without giving hearing to the petitioner and without issuing any show-cause notice to the petitioner why the permission which was already granted should not be revoked. Secondly, it was submitted that a Division Bench of this Court in *Suo Motu Writ Petition No. 2 of 2006* by order dated 1st May, 2007, had directed the State and the Goa Coastal Zone Management Authority (GCZMA) to prepare a policy for the tourist seasons for erection of temporary shacks. A direction was also given to the Tourism Department to formulate its policy for grant of permission for shacks on the beaches in Goa in consultation with the GCZMA. It was submitted that pursuant to the direction which was given by the Division Bench, a policy accordingly was framed and a notification dated 6th January, 2011 was issued. The policy was in respect of erection of temporary shacks to be put up between the months of September to May. It was submitted that, therefore, the said notification has been issued keeping in view the peculiar situation which existed in Goa from the tourist point of view and also in view of the directions which were given by the Division Bench of this Court. It was submitted that, there fore, erection of

temporary shacks for the period from September to May was perfectly legal and in accordance with the Rules and Regulations of CRZ and under the guidelines and supervision of the Tourism Department. It was submitted that, therefore, the respondent has clearly committed an error or law which was apparent on the face of record in revoking the permission which was already granted.

5. On the other hand, the intervenor who is appearing in person vehemently opposed the submissions made by the learned Senior counsel appearing for the petitioner. He submitted that pursuant to the directions given by the Division Bench of this Court in Writ Petition No. 422/1998. No structures either permanent or temporary nature could be erected in the CRZ area. He invited our attention to the various orders which were previously passed by this Court, the first one being dated 13th October, 2006 and the subsequent orders which were passed from time to time for implementation of the directions which were given by the Division Bench in the said case. He also invited our attention to the various other orders passed in various other petitions in which the applicant had either intervened as party in person or had filed independent petitions.

6. Mr. Zeller De Souza, learned counsel appearing on behalf of respondent No. 3 has filed an affidavit-in-reply in which it has been stated that in view of the directions given by this Court in Writ Petition No. 422/1998 dated 13th October, 2006, no new licence could be issued to the structures of whatsoever nature in CRZ-III in the State of Goa and, therefore, in view of the said directions, said permission which was granted, was revoked.

7. After having heard the learned Senior counsel appearing for the petitioner, the learned counsel appearing for the respondents and the intervenor who has appeared in person, we are of the view that the order of revocation of permission dated 30.11.2012 is unsustainable in law for the following reasons.

8. In the first place, it is an admitted position that the Panchayat, after giving hearing to the petitioner and all other persons who had taken objections, had permitted the petitioner to erect a temporary shack by granting NOC dated 28.11.2012, after respondent No. 2 the Director of Tourism had granted NOC dated 21st November, 2012. Thereafter, suddenly, without giving any hearing or show-cause notice to the petitioner, respondent No. 3 took U-turn and, ultimately, cancelled the NOC and this fact was communicated to the petitioner by letter dated 30th November, 2012. This was done purportedly on the ground that the legal advice was not informed to the Panchayat Members at the time when the resolution granting permission dated 16th November, 2012 was passed.

9. From the facts narrated above, it is abundantly clear that the subsequent revocation of the permission communicated by the letter dated 30th November, 2012 was passed without giving hearing to the petitioner and, therefore, the said communication is ex facie bad and is liable to be set aside on that ground alone.

10. Apart from that it is an admitted position that the Division Bench of this Court in Suo Motu Writ Petition No. 2 of 2006 (Coram S.A. Bobde and N.A. Britto,

JJ.) dated 1st May, 2007 had given directions to the Tourism Department to formulate its policy for grant of permissions for erection of shacks on the beaches in Goa, in consultation with the GCZMA and, accordingly, the notification dated 6th January, 2011 was issued and the said policy was formulated after hearing the objections and taking into consideration the peculiar circumstances of the State of Goa, its past history and other developments, the specific activities were regulated. Clause (iii) of the said Notification reads as under: (iii) purely temporary and seasonal structures customarily put up between the months of September to May". Such temporary permissions were being granted from time to time. In the present case, the Department of Tourism had granted permission on 2nd November, 2012 and, thereafter, respondent No. 3 had granted its NOC on 28th November, 2012.

11. In our view, therefore, revocation of the permission which was already granted to the petitioner is clearly contrary to the Notification of 6th January, 2011 which permits erection of temporary and seasonal structures between September to May of each year and the shack policy was framed pursuant to the specific directions given by the Division Bench of this Court in Suo Motu Writ Petition No. 2/ 2006. The impugned communication therefore, is liable to be set aside as it is per se illegal.

12. The next question which needs to be taken into consideration is whether the said permission is contrary to the directions given by this Court in Writ Petition No. 422/1998? The said petition was filed by Goa Foundation. While dealing with the said issue, certain directions were given by the Division Bench of this Court, which are referred to in para 32 of the said judgment, and they read thus:--

(A) To conduct survey and inquiry as regards the number of dwelling units and all other structures and constructions which were existing in the CRZ-III zone in Goa, village town-wise as on 19th February, 1991 and increase in number thereof thereafter, date wise.

(B) To identify on the basis of permission granted for construction of the dwelling units which are in excess of double the units with regard to those which were existing on 19th February, 1991.

(C) To identify all types of structures and constructions made in CRZ-III zone, except the dwelling units, after 19th February, 1991 in the locality comprised of the dwelling units and to take action against the same for their demolition in accordance with the provisions of law.

(D) To identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilisation thereof before they are being allowed to be utilised for such construction activities.

(E) Till and until the survey and inquiry is completed, as directed above, no new licence for any type of construction in CRZ-III zone shall be issued or granted, and no new structure of whatsoever nature shall be allowed to be constructed in

CRZ-III zone, except repairs and renovation of the existing houses which shall be subject to the appropriate order on completion and result of the survey and inquiry to be held as directed above and this should be specifically stated in the licences to be granted for the purpose of repairs and/ or renovation of the existing houses.

(F) The respondent No. 5 to conduct inquiry and fix responsibility for the violation of the CRZ notification in relation to Clause III of CRZ-III zone and to take appropriate action against the persons responsible for such violation of the provisions of the Environmental Protection Act and the said notification in relation to the CRZ-III zone.

(G) All these directions stated above are in relation to the CRZ-III zone in Goa in terms of the said notification.

(H) The survey and the inquiry should be conducted as expeditiously as possible and should be concluded preferably within a period of six months, and in any case, by 30th May, 2007, and report in that regard should be placed before this Court in the first week after the Summer Vacation of 2007, for necessary further order, if any.

(I) Meanwhile, on conclusion of the survey and the inquiry, necessary action should proceed against the offending structures and report in that regard also should be placed along with the above referred report.

(J) The respondent Nos. 3 and 4 shall ensure prompt compliance of the directions given in this judgment and shall be responsible for submitting the report required to be submitted as stated above.

(K) All the records relating to the survey and the inquiry should be made available to the public and in that regard a website should be opened and the entire material should be displayed on the website. The respondent No. 3 should ensure due compliance of this direction by 10th June, 2007.

(L) The respondent Nos. 1 and 3 shall pay costs of Rs. 10,000/- in each of the petitions to the petitioners.

(M) Report to be received from the respondents should be placed before this Court in the third week of June, 2007.

(N) Rule is made absolute in the above terms.

13. From the perusal of the order passed by this Court in Writ Petition No. 422/1998, it is abundantly clear that the issue which was decided by the Division Bench in that petition was entirely different and it was pertaining to the structures which were erected in the CRZ area. The contention of respondent No. 3, therefore, that the permission dated 28th November, 2011 which was granted by it was contrary to the directions given by the Division Bench in Writ Petition No. 422/1998, is patently incorrect to say the least. The Division Bench has not given any direction regarding erection of temporary shacks on the beaches or

pursuant to the policy prepared by the Goa Tourism Department. There is, therefore, no substance in the submission made by learned counsel appearing on behalf of respondent No. 3 that the said erection of temporary shack is contrary to the directions given by this Court in Writ Petition No. 422/1998. We had also asked Mrs. Alvares who had appeared on behalf of the petitioner in the said petition whether the petition pertained to erection of temporary shacks during tourist season and she fairly stated that the Goa Foundation had not taken any objection regarding the temporary structures which were erected pursuant to the policy which was formulated by the Goa Tourism in consultation with the GCZMA. She also further stated that Goa Foundation had no intention of challenging the said policy nor had it taken any objection in respect of the permission which was granted to several persons for erection of temporary shacks on beaches.

14. So far as the objection raised by the intervenor who has appeared in person is concerned, in our view, the said objection is totally misconceived. The said intervenor was also of the opinion that such an objection is contrary to the directions given by the Division Bench in Writ Petition No. 422/1998, though very candidly and fairly stated that he was not aware about the reliefs claimed in Writ Petition No. 422/1998 or the specific order passed in the said matter. Hence, there is no substance in the contention raised by the intervenor. Apart from that, all the orders on which reliance has been placed by the intervenor have no application to the issue involved in this case and all the said orders are pertaining to erection of permanent structures and/ or implementation of the directions given in Writ Petition No. 422/1998. We have heard the intervenor at length for about an hour and half and in our considered view, there is no merit in the objections raised by the applicant in the intervention application.

15. In the result, the writ petition is allowed. The impugned communication of respondent No. 3 dated 30th November, 2011 rejecting the NOC/Permission dated 28th November, 2012 which was already granted for erection of a temporary structure for the tourist season from September, 2012 to 31st May, 2013 is quashed and set aside and the permission which is granted by respondent No. 3 dated 28th November, 2012 is restored.

16. The application for intervention is dismissed. All the contentions raised by the applicant in the said intervention application on facts and in law are also dismissed. The writ petition is disposed of in the aforesaid terms. No order as to costs.