
(2019) 04 BOM CK 0147

In the Bombay High Court

Case No : Civil Review Application No. 5 Of 2019, Writ Petition No. 49 Of 2018

Mariana Lobo

APPELLANT

Vs

Secretary Sarpanch And Ors

RESPONDENT

Date of Decision : 12-04-2019

Acts Referred:

Goa Panchayat Raj Act, 1994 — Section 66, 67

Goa Regulation Of Land Development And Building Construction Act, 2008 — Section 6
Goa, Daman And Diu Village Panchayats (Regulations Of Buildings) Amendment Rules,
1988 — Rule 6(6)

Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 04 BOM CK 0147

Hon'ble Judges : Nutan D. Sardesai, J

Bench : Single Bench

Advocate : Shivan Desai, Joaquim Godinho

Final Decision : Dismissed

Judgement

Nutan D. Sardesai, J

1. This is an application for review of the Order dated 10.04.2018 passed by this Court, pursuant to which the Writ Petition came to be disposed off after quashing and setting aside the order under challenge in the same. The applicant seeks a review thereof on the premise that there is an error apparent on the face of the record, in as much as this Court had not considered the ratio laid down in the case of Sayed Muzafar Ali whilst coming to a conclusion that the Additional Director of Panchayats went off at a tangent while considering the aspect of regularization. There was also an error apparent on the face of the record inasmuch as this Court had failed to consider that the regularization application was filed under the provisions of the Goa Regularization of Unauthorized Construction Act, 2016 which was contemplated within the State policy, and therefore, the Additional Director of Panchayats was well within his jurisdiction to direct the regularization prior to demolition. There was also no reference to the said Act by this Court confirming the right of the applicant to get the structure

regularized which had a direct bearing on the impugned judgment and order. The application therefore be allowed and the order under challenge be reviewed. It was accompanied by a copy of the judgment under review dated 10.04.2018 apart from the Goa Regulation of Land Development and Building Construction Act, 2008.

2. Heard Shri. Shivan Desai, learned Advocate for the applicant, who adverted to the judgment under review and reiterated his contention as taken in the application that it was a fit case to review the order. He placed reliance in *Manohar Vithal Korgaonkar and Another Versus Gurudas B. Korgaonkar and Others* [Writ Petition No. 616 of 2008], and in a batch of petitions numbering 152/2018, 132/2018, 133/2018, 136/2018, 140/2018 and 148/2018, filed by one Anthony Barbosa against various persons. Besides, in his submission Section 66 of the Goa Panchayat Raj Act, 1994 read with the Rules indicated that there was sufficient power in the Panchayat to order regularization. Therefore, in view of the errors apparent on the face of the record, the order had to be reviewed.

3. Shri. Joaquim Godinho, learned Advocate for the respondents adverted to the very same order of which review was sought and submitted that there was a detailed discussion on Section 66 of the Panchayat Raj Act. The impugned judgment did not justify any review, and even otherwise, the applicant had approached the Panchayat, which had adopted a resolution and rejected her plea for regularization. Besides, it was his contention that a review was sought to be argued as an appeal, which was not the intention of the law. Moreover, there was a delay of 143 days in filing the review application, and there was no explanation for the delay, nor any application for condoning the delay. The application had therefore to be dismissed.

4. Shri. Shivan Desai, learned Advocate for the applicant in reply submitted that the High Court was a Court of record and the question of limitation was not applicable in the matter of invoking its writ jurisdiction. In that context, he placed reliance in *Jyoti Versus General Manager, Canara Bank, Staff Selection (Workmen)*, [2017 (2) CGLJ 102] to substantiate his contention.

5. I would consider their submissions, the judgments relied upon and decide the application accordingly.

6. At the outset, I would deal with the aspect of delay in filing the review application which was seeking a review of the judgment passed in exercise of the writ jurisdiction of this Court, under Article 227 of the Constitution of India. In that context, the judgment in *Jyoti (supra)* would squarely apply where it was held at paragraph 13 as below:-

"13. In view of the settled legal position as enunciated by the Supreme Court in *Puran Singh (supra)* and *Smt. Sudama Devi (supra)*, it is not permissible to argue to the contrary that provisions of the CPC or the Act, 1963 would apply in proceedings under Article 226 of the Constitution of India. By the same analogy, if these two enactments do not apply in the parent proceedings under Article

226, any application in the nature of restoration or review or modification of any order passed in exercise of power under Article 226 and 227 of the Constitution of India would not be treated to be barred by limitation merely because it is moved beyond the period of 30 days from the date of the order."

In the light thereof, the objection of Shri. Godinho to the maintainability of the review application, would not lie and is accordingly discarded.

7. It was the contention of Shri. Shivan Desai, learned Advocate for the applicant that this Court had not considered the ratio in Sayed Muzafar Ali while coming to a conclusion that the Additional Director of Panchayats had gone off at a tangent while considering the aspect of regularization. Rather, it must be said that the judgment in Sayed Muzafar Ali was dealt with at length which held that it was not necessary that each and every illegal construction was required to be demolished, and it being a matter for the authorities to decide which are the cases which can be regularized or the cases which require demolition. Yet, on consideration of the said judgment, this Court held that the structure constructed by the applicant was illegal, and therefore, it was not for the Additional Director to go beyond its powers in terms of Section 66 of the Act, and allow the appeal. A detailed reference was also made to the scheme of Section 66 of the Panchayat Raj Act, 1994 and thereupon was it held that there was no power in the Additional Director to allow the party to proceed for regularization, when it had to strictly adhere to take recourse to sub-section (3), (4) and (5) in the matter of demolition. To my mind, no error is apparent on the face of the record to warrant an interference with the judgment under consideration.

8. In Manohar Korgaonkar (supra), the learned single Judge of this Court was seized with a petition challenging an order passed by the Deputy Director of Panchayats which came to be dismissed. There the scope of Section 67 of the said Act came up for consideration and also the aspect of the authority of the Panchayat to grant permission and also the aspect on the lack of powers in the Panchayat to grant permission for illegal construction. The learned single Judge considered the judgment in Sayed Muzafar Ali, and more particularly, Rule 6 sub-rule (6) of the Goa, Daman and Diu Village Panchayats (Regulations of Buildings) Amendment Rules, 1988 reading as:

"(6) The Panchayats may direct a person who erects or re-erects or commences to erect or re-erect any building without its permission to present to it an application for such permission, within a period of thirty days, and may grant such permission after following the procedure laid down in this rule subject to the payment of penalty, which shall not be less than one and half times and not more than two times of the fee payable for such permission."

and observed that there were enough powers in the Panchayat to grant such permission, despite the fact that the party had no permission prior to the putting up of the construction. The said judgment was rendered in the facts of that case, and moreover, in the case at large, sub-rule (6) of the said Rules was not

adverted to by Shri. Desai, learned Advocate for the applicant, while canvassing his case for the regularization of the construction, though it must be said that there was reference to the Goa Regularization of Unauthorized Construction Act, 2016.

9. In Anthony Barbosa (supra) another learned single Judge of this Court was seized with a batch of petitions where the issue at large was whether the Additional Director of Panchayats having found the subject construction being without the permission of the Panchayat, and without any approval from the technical officer of the Public Works Department, Town and Country Planning Department, without conversion Sanad, could order demolition. The learned single Judge found that there was no case for interference made out in the order of demolition. In the facts at large, the learned single Judge found that the respondents in the petitions before him had approached the Panchayat for regularization of the subject structures, that no orders were passed thereon, and in that view of the matter, granted four month's time to obtain the orders of regularization, failing which, the order for demolition of the subject structure should be implemented. This judgment too, is clearly distinguishable in the fact situation and does not find parity with the case of the applicant.

10. Moreover, there was no serious dispute to the submission of Shri. Godinho, learned Advocate for the respondents that the applicant could still approach the appropriate authority independently under the Rules for regularization. For that matter, there was also no singular denial of the fact that the applicant had approached the Panchayat, and that the Panchayat had adopted a resolution and rejected the plea for regularization. It is not available to the applicant to enlarge the scope of review by treating it as an appeal in disguise. No case whatsoever has been made out for an interference with the judgment under challenge.

11. Before parting, it would not be out of place to advert to Section 6 of the Goa Regulation of Land Development and Building Construction Act, 2008 which in the submission of Shri. Desai would impinge on his right to pursue his remedy before the concerned authority. The applicant on that specious premise, cannot seek a review of the order, when no error is apparent on the face of the record, or precisely on the point that the authority is likely to desist from exercising its powers in view of the judgment passed by this Court. On that premise too, no modification of the order is called for. I do not find any merit in the application for review, which is accordingly dismissed with no order as to costs.