

(2016) 10 BOM CK 0150
In the Bombay High Court
Case No : Writ Petition No. 324 of 2016

Martha Gracias

APPELLANT

Vs

Shri Shaikh Basir

RESPONDENT

Date of Decision : 04-10-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Goa, Daman and Diu Municipalities Act, 1968 — Section 184(12)

Citation : (2017) 1 BCR 98

Hon'ble Judges : C.V. Bhadang, J.

Bench : Single Bench

Advocate : Shri A. D. Bhobe, Advocate, for the Respondent No. 1; Shri D. Pangam, Advocate, for the Petitioners; Shri P. Arolkar, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

C.V. Bhadang, J. - By this petition, the petitioner is challenging the judgment dated 28/1/2016 in Municipal Appeal No.23/2012 and the order dated 3/7/2014 passed in Misc. Application No.83/2012/Intervener, in the said appeal. By the impugned order dated 3/7/2014, the Tribunal has refused to allow the petitioner to intervene in the appeal. By the judgment dated 28/1/2016, the Tribunal has partly allowed the appeal and while setting aside the final notice of demolition issued to the respondent no.1 on 23/4/2012, has directed for carrying out inspection of the premises, in the presence of the respondent no.1 (the appellant before the tribunal) and thereafter to issue a show cause notice, along with the document of transgression and description and pass a reasoned order, after giving a "reasonable opportunity of hearing to the respondent no.1".

2. The brief facts are that on the basis of a complaint lodged by the petitioner, action was taken against the respondent no.1 which culminated into the final notice of demolition being issued. That was challenged by the respondent no.1 before the Tribunal in which the aforesaid order is passed.

3. It is contended by the learned counsel for the petitioner that section 184 (12) of the Goa Municipalities Act, 1968 (Act for short) provides that the Chief Officer may, without issuing a notice, cause any premises to be inspected. It is submitted that thus there is no requirement contemplated under the provisions of section 184(12) which requires the Chief Officer to issue a prior notice before carrying out inspection. It is submitted that the direction of the tribunal to issue, a prior notice is against the provisions of section 184(12) of the Act. Secondly, it is contended that the Act also does not contemplate a personal hearing being given to the person proceeded against. Reliance is placed on the Division Bench judgment of this Court in the case of *Sopan Maruti Thopte and another etc. v. Pune Municipal Corporation and anr.* AIR 1996 Bom. 304, in which, in the context of similar provisions contained in the Bombay Municipal Corporation Act 1888, the Division Bench has held that personal hearing is not a must. It is submitted that the Tribunal may follow the same line in other matters and in such circumstances, it is necessary for this Court to clarify the legal position.

4. The learned counsel for the second respondent has supported the petitioner. It is submitted that the Tribunal could not have directed holding of a fresh inspection particularly when there was no challenge to the earlier transgression report and secondly, no personal hearing is contemplated.

5. The learned counsel for the first respondent submits that section 184(12) of the Act does not prohibit a prior notice being given to the person being proceeded against. It is submitted that there is also no prohibition from affording an opportunity of personal hearing which in fact would sub-serve the interest of justice. It is submitted that no prejudice, can be said to be caused to the petitioner by the impugned order.

6. I have carefully considered the rival circumstances and the submissions made. At the out set the challenge to the impugned order dated 3/7/2014 by which the intervention was refused would not survive, in as much as the appeal itself is now decided. In so far as the challenge to the order dated 28/1/2016 is concerned, all that the Tribunal has done is directing the respondent no.2 to cause the premises to be inspected in the presence of respondent no.1 and thereafter to issue show cause notice with the documents of transgression and description and pass a reasoned order after giving a "reasonable opportunity of hearing to the respondent no.1". It needs to be emphasized that a matter of alleged illegal construction is essentially a dispute between the local authority, such as, the Village Panchayat or Municipal Council or a Corporation and the person who is said to have carried out such a construction. In some cases intervention of the complainant is allowed where the rights or interest of the complainant is shown to be adversely affected, by the construction. Be that as it may, the petitioner has not demonstrated as to how the impugned order would result in any prejudice or manifest injustice to the petitioner if premises are inspected in the presence of respondent no.1. In this regard it is necessary to refer to the decision of the Hon'ble Supreme Court in the case of *Shalini Shyam*

Shetty & Anr. v. Rajendra Shankar Patil (2010) 8 SCC 329, which lays down the parameters for exercise of the supervisory jurisdiction under Article 227 of the Constitution of India. It has been inter alia held that such jurisdiction has to be exercised to ensure that the Subordinate courts or tribunals act within the bounds of their authority and to ensure that the impugned order does not result in any manifest injustice. A petition under Article 227 of the Constitution is not an appeal in disguise.

7. Coming to the merits all that section 184(12) says is that a Chief Officer may inspect any premises without issuing a notice to the owner. On a plain reading it appears that this is an enabling provision, which permits the Chief Officer to inspect any premisses without issuing any notice. There is no prohibition pointed out, in the said section against issuance of such notice. However, I do not propose to lay down any binding precedent on this aspect as in the present case, I do not find that otherwise any case for interference is made out. In so far as the ground of personal hearing is concerned, the Division Bench of this Court in the case of Sopan Maruti Thopte (supra) has held thus in para 15 of the judgment:

15. In this view of the matter, with respect, it is difficult to accept the general observation made in the decision rendered by this Court in case of Narayan Megha Gohil (supra) that the notice and hearing is a must before demolishing the premises unauthorisedly constructed. The proposition that personal hearing must be given in all cases before demolishing the premises also cannot be accepted. The section empowers the Commissioner either to call for written statement or give a personal hearing for showing cause why such unauthorised construction should not be demolished, altered or pulled down. It is open to the Commissioner, after considering the written statement, to give personal hearing, if at all he requires it.

8. It can thus be seen that while disapproving the general observations made in the case of Narayan Megha Gohil v. Municipal Corporation of Greater Bombay, reported in AIR 1993 Bom.291, that a notice and hearing is must before demolishing a premises unauthorisedly made was held to be not acceptable. It was further held that it is open to the Commissioner, after considering the written statement to give personal hearing if at all he requires it. Thus in the judgment in the case of Sopan Maruti Thopte and anr. (supra), it has not been held that personal hearing cannot be given in any case. I find that it would be open to the Chief Officer to give a personal hearing if he finds it necessary after considering the reply filed by the respondent no.1 to the show cause notice. The Chief Officer may also consider whether the petitioner needs to be heard. With this, no case for interference is made out. The petition is dismissed with no order as to costs.