

(2017) 04 BOM CK 0154
In the Bombay High Court
Case No : 784 of 2016

MR. DASTAGIRSAB BEPARI

APPELLANT

Vs

VILLAGE PANCHAYAT, MERCES REPRESENTED ITS
SECRETARY

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court

Citation : (2017) 04 BOM CK 0154

Hon'ble Judges : M. S. Sonak

Bench : SINGLE BENCH

Advocate : Ryan Da Piedade Menezes, Ashwin D. Bhobe

Final Decision : Dismissed

Judgement

1. Heard Mr. R. Menezes, learned Advocate for the petitioner and Mr. A. D. Bhobe, learned Advocate for the respondent.
2. The challenge in this petition is to the following order:- (a) Demolition order dated 25.4.2002 issued by the respondent/panchayat,
(b) Judgment and order dated 10.3.2011 made by the Additional Director of Panchayat upholding the aforesaid demolition order dated 25.4.2002 but granting liberty to the petitioner to apply for regularisation of the illegal construction,
(c) Judgment and order dated 31.3.2015 made by the Ad-hoc District Judge-I, Mapusa, dismissing the revision application against the aforesaid judgment and order dated 10.3.2011 with some modification.
3. Mr. Menezes, learned Counsel for the petitioner submits that material on record amply bears out that there was existing structure at site which was gutted in fire. He submits that the petitioner has merely undertaken repairs without exceeding the plinth area. He concedes that permissions from the Panchayat may

necessary even before undertaking repairs and such permissions may not have been taken. However, he submits that, this is only an irregularity and the same can always be regularised. He submits that Appellate Authority and Revisional Authority have committed manifest error in proceeding on the basis that the suit structure was some entirely a new structure and on such basis, granted liberty to the petitioner to apply for regularisation. He submits that on account of such manifest error the petitioner, is put to unwarranted hardship in seeking regularisation. Mr. Menezes, submits that the parameters with regard to regularisation of repairs are significantly different from the parameters with regard to regularisation of an entirely unauthorised structure, the two authorities on account of failing to regularise that the petitioner at the highest had only undertaken repairs without permissions have, severely prejudice the petitioner in his quest for regularisation. He submits that in case two authorities had acknowledged, that the petitioner had only undertaken repairs without permission and thereafter granted liberty to the petitioner to apply for regularisation, perhaps, the petitioner, would not even challenged the orders. However, difficulty arises because two Authorities have proceeded on the basis that the petitioner has carried out a new unauthorised construction, which is far from correct.

4. Mr. Menezes, also submits that in the meanwhile there is new legislation and the petitioner ought to be permitted to avail some benefit of such new legislation in the matter of regularisation of the suit structure. This he submits is clearly submission made without any prejudice. For this purpose, he submits that at least four weeks time is required to be granted to the petitioner to make necessary application and procedural compliance.

5. Mr. Bhole, learned Counsel for the respondent/Panchayat submits that the petitioner's conduct ought to be disentitled the petitioner for any relief in the petition under Article 227 of the Constitution of India. He submits that the petitioner taking advantage of the certain interim order, has carried out even illegal extension to the suit structure thereby virtually doubling the height of the unauthorised structure. Such conduct, Mr. Bhole, submits, disentitles the petitioner to any relief whatsoever under Article 227 of the Constitution of India. He submits that panchayat has already initiated action in the matter of such illegal construction. Mr. Bhole, further submits that petitioner, is not prepare to make any statement as to whether he had applied to the authority for regularisation in pursuance of the liberty granted by the Appeal Court and Revisional Court. Mr. Bhole, submits that new legislation does not apply to the suit structure and in any case time statutorily prescribed in order to apply for regularisation have already expired. He submits that this Court, may not grant any indulgence particularly since, the petitioner has abused the indulgence granted on the earlier occasions.

6. Mr. Bhole, submits that suit structure put up by the petitioner is wholly unauthorised. He submits that this is case of total new reconstruction taking

advantage of the alleged fire in respect of earlier structure. The petitioner has deliberately avoided process in the part structure, only with a view to take undue advantage and put up an wholly an unauthorised structure in its place. For all these reasons, Mr. Bhobe submits that this petition may be dismissed with costs.

7. Upon due consideration of the rival submissions and perusal of the material on record, I am satisfied that there is no case made out to interfere with the impugned orders. Save and except, grant of some time to the petitioner to apply for regularisation in case, petitioner chooses to do so.

8. Record bears out that the demolition order dated 25.4.2002 issued to the petitioner was preceded by compliance with the principles of natural justice and fair play. The petitioner has accepted that he had not obtained any permission even for undertaking repairs of the structure last existing at the site, when it was stated to be gutted in fire. Authorities, have repeatedly pointed out that the petitioner had failed to indicate the details or dimensions of the existing structure, with a view to appreciate as to whether what was undertaken by the petitioner was merely some repairs or full scale reconstruction. Even to the queries of this Court all that Mr. Menezes could answer was that reference can be made to the fire statutory report for determining the details or dimensions of the existing structure. Such report indicates no details or dimensions.

9. From the material on record it does appear that the petitioner, taking advantage of the fire, has proceeded to undertake a massive reconstruction, without bothering to apply for or obtain permissions from any of the statutory authorities. In such circumstances, authorities were fully justified in issuing the demolition order dated 25.4.2002. Reliance upon some trade licences or some communication between the panchayat and the petitioner are hardly any substitute for licences from the statutory authorities for repairs or reconstruction of the suit structure.

10. The First Appeal Court, has in fact been indulgent with the petitioner. Notwithstanding illegalities, leave was granted to the petitioner to apply for regularisation within a period of 30 days. The petitioner however, failed to avail this indulgence and instead instituted Revision Petition before the Revisional Authority i.e Ad-hoc District Judge-I, Mapusa. It appears that all this was in order to buy some time in the matter. The Revisional Authority upon detailed consideration of the petitioner's case has upheld the order made the Appellate Authority with some slight modification. The Revisional Authority has directed that the regularisation, if any, can be considered provided the petitioner has kept necessary setbacks which are provided under law, since, such requirement cannot be compromised. The Revisional Authority was entirely justified in making this observation because even regularisation, if permissible, can never be any breach of statutory bye-laws, Rules, as regards setbacks etc. The Revisional Authority also, indulged the petitioner by granting three full months to apply for regularisation.

11. The petitioner, once again to buy time, has instituted the present petition to challenge the impugned orders. Roznama bears out that matter was not diligently pursued. Adjournments were applied for and quite some time was spent even to pay process fees and take steps. Upon due consideration of the submissions made by Mr. Menezes, there is no case made out to interfere with the impugned orders. There is hardly any material to substantiate the contention that what was undertaken by the petitioner was mere repairs and not reconstruction a new structure. Despite repeated opportunities, the petitioner, has failed to provide the details with regard to the existing structure its dimensions, the plinth. In such a situation, the petitioner cannot expect the authorities to accept his contention that only repairs were undertaken and not reconstruction. There is no error in the findings recorded by the Authorities or in the approach of the Authorities. Accordingly, no case is made out to entertain this petition.

12. At this stage it will not be possible to go into the submissions made by Mr. Bhobe, that the petitioner has taken advantage of the pendency of this proceeding and without applying for regularisation has proceeded to increase size of the illegal construction which was subject matter of the initial demolition notice. In any case since the panchayat has already initiated action in the matter, it will not be appropriate for this Court to make any observations in this regard, one way or the other.

13. The petition is dismissed. However, it is clarified that the petitioner will still have 60 days time to comply with regularisation in accordance with law. Since, already so much indulgence has been shown to the petitioner and there are allegations that petition has abused such indulgence, there is no question of any further extension of these 60 days time limit. Even, if the application for regularisation is made within a period of 60 days from today, the same to be disposed of by the concerned authority strictly in accordance with law and on its own merits. The directions in the impugned orders are only to "consider" application for regularisation, if made, within prescribed period and after compliance with procedural formalities. The application for regularisation is to be considered in accordance with law and on its merits.

14. With the aforesaid observations, the petition is dismissed. There shall be no order as to costs.