

(2013) 03 BOM CK 0193
In the Bombay High Court
Case No : Writ Petition No. 94 of 2009

Mr. Remedios (Alias Remy) Goes

APPELLANT

Vs

The Goa Coastal Zone Management Authority

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Citation : (2013) 5 ALLMR 19

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : A.F. Diniz, for the Appellant; Susan Linhares, Addl. Government Advocate, for the Respondent

Judgement

F.M. Reis, J.—Heard Shri A.F. Diniz, learned Counsel appearing for the Petitioner and Ms. Linhares, learned Addl. Government Advocate appearing for the Respondent. The above Petition challenges an Order passed by the Respondent No. 1 dated 31.12.2008, whereby the Petitioner has been directed to demolish the disputed structure as, according to the authorities, the same is in breach of the CRZ Notification.

2. Shri A.F. Diniz, learned Counsel appearing for the Petitioner, has pointed out that the original show cause notice was issued in the name of the deceased father who was never served with such notice as he had already expired and that the statement in the impugned Order that the Petitioner had received the said notice, is not correct. Learned Counsel has taken me through the averments in the Petition to the effect that the address shown in the said show cause notice was at a different place where the Petitioner otherwise resides and that there is a specific averment that the Petitioner had never appeared before the authorities. Learned Counsel further pointed out that only a subsequent notice calling upon the said Santano Goes to produce the document was received by the Petitioner and, accordingly, documents were produced to disclose that the disputed structure was in existence much before the year 1991. Learned Counsel further pointed out that there is an application filed by the father of the Petitioner to the

concerned Panchayat in the year 1985 for reconstructing the existing structure and there is other material produced from the Panchayat to the effect that the structure was much prior to the year 1991. Learned Counsel further pointed out that the documents have not at all been scrutinised and as such the Respondent be directed to hear the Petitioners and dispose of the show cause notice in accordance with law.

3. On the other hand, Ms. Linhares, learned Addl. Government Advocate appearing for the Respondent, has supported the impugned Order. Learned Addl. Government Advocate pointed out that there is a specific recital in the impugned Order that the show cause notice was in fact received by the Petitioner. Learned Addl. Government Advocate as such submits that there was an effective hearing given to the Petitioner and, as such, the question of interference in the impugned Order does not arise. Learned Addl. Government Advocate further submits without prejudice that a hearing can be given to the Petitioner and the show cause notice be decided afresh by the Authorities expeditiously.

4. I have considered the submissions of the learned Counsel as also I have gone through the records. No doubt, in the Petition, there is a specific averment that the Petitioner had not appeared before the concerned authorities but, however, the said averments have not been disputed by the Respondent as no return was filed in the above Petition. Be that as it may, the documents which have been produced by the Petitioner have not been scrutinised by the authorities whilst passing the impugned Order. Though there is a specific statement in the impugned Order that the document do not make reference to the survey number, I am afraid that the said finding by itself does not mean that the documents produced by the Petitioner do not refer to the disputed structure. The Petitioner can always establish the said aspect by other evidence. The Authority has to scrutinise the said documents and consider the authenticity and the validity of the said documents after hearing the Petitioner in accordance with law.

5. Taking note of the contention of the learned Addl. Government Advocate appearing for the Respondent that the Respondent shall give a fresh hearing to the Petitioner on the said show cause notice and as the Respondent has passed the impugned Order without appreciably considering the documentary evidence produced by the Petitioner, I find it appropriate to quash and set aside the impugned Order dated 31.12.2008 and direct the Respondent to decide the show cause notice after giving an opportunity to the Petitioner to file a reply and proceed in accordance with law. The Respondent shall as such proceed to decide the said show cause notice dated 22.10.2007 on its own merits in the light of the observations made herein above. In view of the above, I pass the following:

ORDER

(i) The impugned Order dated 31.12.2008 is quashed and set aside.

(ii) The Respondent is directed to dispose of the said show cause notice dated 22.10.2007 in the light of the observations made herein above in accordance

with law as expeditiously as possible preferably within three months from the date of receipt of this Order.

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

(iv) Petition stands disposed of.