
(2008) 03 BOM CK 0006
In the Bombay High Court
Case No : Writ Petition No. 448 of 2007

Mrs. Joaquina Rodrigues

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:

Citation : (2008) 03 BOM CK 0006

Hon'ble Judges : R.M.S. Khandeparkar, J;N.A. Britto, J

Bench : Division Bench

Advocate : A.D. Bhobe, for the Appellant; S.S. Kantak, Advocate General with Mrs. R. Chodankar, Addl. Govt. Advocate for the Respondent Nos. 1 and 7, Mr. M.S. Usgaonkar with Mr. Sudesh Usgaonkar, Advocate for the Respondent Nos. 4, 5 and 6, Mr. M. Pereira, Advocate for the Respondent No. 2 and Mr. S.D. Padiyar, Advocate for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard. By the present petition, the petitioner is seeking relief in the nature of writ of Mandamus or direction to the respondent Nos. 1, 2, 3 & 7 to stop the construction carried out by the respondent Nos. 4, 5 & 6 in the property bearing Chalta No. 19, 20, 26 & 28 of P.T. Sheet No. 141 of City of Margaon and further to quash and set aside the licences, permissions and approvals granted to the said respondents by the concerned authorities for the construction of building in the said property. The challenge to the construction activity in the said property is of two fold, firstly on the ground that there is no required set back maintained by the construction and secondly the said respondents have not obtained necessary clearance from the Directorate of Fire and Emergency Services in accordance with part IV of the Fire Protection National Building Code of India r/w. the Planning and Development Authority Regulation, 2000 in force in Goa. The defence on the part of the respondents to the said challenge is that there has been no violation as far as the set backs are concerned and as regards the requirement of N.O.C. from the Directorate of Fire and Emergency Services, that has already been applied for. The objection that

the petitioner has already approached the Civil Court in the civil suit filed by the respondent No.4 for the same relief which is asked for in the petition has already been raised on behalf of the respondents. It is to be noted at this stage that after hearing the petition for admission on 10.12.2007, this Court by its order had appointed a committee to inspect the site and to submit its report regarding the alleged violation in relation to the construction activity pertaining to the building A in the said property and the committee has already submitted its report dated 4.1.2008.

2. As far as the first ground of challenge is concerned, the contention of the petitioner relates to clause 4A.5 of the said regulation, according to which the construction in case of building having height of more than 15.40 meters requires to have side rear set back to the extent of 5.40 meters and approved plan. In the case in hand, originally discloses 3.5 meters set back towards the house of the petitioner in the property whereas the revised plan shows only 2 meters set back. Considering the same, according to the learned Counsel for the petitioner, it is clear violation of the said regulation and hence, the construction should be stopped. On the other hand, the learned Counsel appearing on behalf of the respondent No. 4 drew our attention to the definition of various expressions used in the said Regulation including clause 2(29), 2(40), 2(52), 2(65), 2(63), 2(64) and clause 4A.6(4) of the said Regulation and submitted that considering the shape of the plot of the respondent No. 4 and the fact that the plot of the petitioner is undisputedly carved out from the said plot, she being entitled to purchase the same in terms of the mundkarial rights and the proposed construction being up to the boundary line of the respondent Nos. 4's plot towards such mundkarial plot of the petitioner, there is no violation of any rule of set back is concerned.

3. It is to be noted that there is no dispute on the point that the plot of the petitioner was purchased by the petitioner in exercise of her mundkarial rights under the Mundkar Act in force in Goa. Pursuant to the order for such purchase passed by the concerned authority on 22.8.2003, the initial permission for the construction in the respondent's plot, was granted by P.D.A. on 8.2.2002 and by the Municipality on 1.4.2002 and a revised plan was approved on 3.7.2007. At the same time, it is also to be noted that there is also suit pending between the parties. The same has been instituted by the respondent No.4 and therein the petitioner has moved an application for temporary injunction. It is informed across bar that the said temporary injunction application has been kept in abeyance on account of pendency of the present petition.

4. The perusal of the provision of the said Regulation and more particularly the definition of clause 4A.6(4) which appears to be the exception to the provision under clause 4A.5 of the said Regulation, prima facie it is found that the grievance made regarding the non-compliance of requirement of law relating to set back has not been substantiated with any material on record. As the matter stands today and the material placed before us, there is hardly any substance in

the contention sought to be raised on behalf of the petitioner. However, we make it clear that this observation has been made on the basis of materials placed before us in the writ petition. Undoubtedly, the rights of the parties are to be adjudicated in the civil suit filed by the parties and admittedly, the suit is pending between both the parties. Considering the same, it would not be appropriate for this Court to deal with the matter in writ jurisdiction. It will be more appropriate to leave the matter for the civil court to deal with the rival contentions regarding the rights of the parties to the property and while dealing with such rights obviously, the court will have to deal with the matter as to whether the right of the petitioner regarding the light and air, if any, as well as other similar such rights have been violated or not, and whether on that count there is any change in the construction activity is necessary. It will be true premature for this Court to deal with the matter in writ jurisdiction without giving opportunity to both the parties to place before the Civil Court the necessary evidence in respect of their rival contentions.

5. As regards the second ground of challenge pertaining to the non-obtaining of N.O.C. from the Directorate of Fire and Emergency Service Department, undisputedly, the concerned authority is seized with the matter pursuant to the appropriate application in that regard having been filed. It has been candidly stated on behalf of the respondents that the department has not dealt with such application in view of the pendency of the petition. Simultaneously, there is also categorical statement made on behalf of the respondent No. 4 in response to the report submitted by the Committee appointed by this Court wherein it has been stated that

As to the observation that length of access corridor from the front door of the 3 apartments on every floor to the fire escape at the moment is more than 15 meters and same will be revised as required under the Regulations by making it less than 15 meters.

Since the respondent No. 4 has objected the competent authority for necessary N.O.C. as well as there is statement that necessary amends will be made in the construction activity, we hope and trust that the concerned authority will take appropriate decision in that regard and obviously would not allow any illegality to be committed by the respondent No.4 in relation to the proposed construction in that regard. It is true premature to make any comment in that regard in view of the fact categorically stated by the Advocate General that the department has already seized the matter in view of pendency of this writ petition and will take appropriate decision in accordance with law.

6. In the course of argument we were repeatedly reminded by the learned Advocate for the petitioner that the Court has taken cognizance of the matter and even had appointed a committee and, therefore, this Court should not reject the petition at this stage. He further stated that prima facie case is made out for issuance of rule and grant of interim relief. It is to be noted that undoubtedly, by order dated 10.12.2007 this Court had appointed a committee for ascertaining

about the alleged illegalities committed by the respondents in the matter of construction of the building. Undoubtedly, that was on the basis of allegations made in the petition and the plan submitted which apparently disclosed that pursuant to the revision in the plan hardly 2 meters space was left between the proposed building and the building of the petitioner. In the course of argument when the provisions of law more particularly clause 4A.6(4) of the Regulation, which clearly speak of exception to clause 4A.5 of the said regulation as well as fact that the petitioner has efficacious alternative remedy available from the Civil Court and in that regard already the petitioner has filed necessary proceeding, has been brought to the notice of this Court. The question of exercising writ jurisdiction in relation to the matter pertaining to the alleged violation of the provisions of law pertaining to the construction activity on mere allegation that such violation affects some of the rights of the petitioner, would not be proper exercise of writ jurisdiction more particularly when already the suit is pending between the parties in that regard. Being so, merely because, initially the Court had appointed the commission or committee to ascertain about the alleged illegalities on account of the construction activity that itself would not be justification for issuance of rule on interim relief in the facts and the circumstances of the case.

7. The committee's report disclosed the following conclusions:

- i) The proposed Building with its 18.15 meters blank wall deprives the front of the petitioners house from adequate light and ventilation and a 6.1 metre set back needs to be maintained from their front boundary to building A.
- ii) A fire escape staircase needs to be provided on the external face of the building on the outside and not to the internal of the building.
- iii) The main staircase and the fire escape staircase need to be placed close to the extremities of the access corridor as is required by fire regulations.
- iv) Since the building qualifies to be a high rise building all the extensive safety norms set for high rise buildings of water tanks, fire hydrants etc need to be provided as per the fire regulations in force and an inspection done by the fire department that they are properly installed before the occupancy certificate is given to them by the municipality.
- v) A proper verification of the area of the property needs to be done and tally up with the areas given in the license drawing submitted.
- vi) That adequate and realistic car parking slots be shown based on the number apartments and shops in both building A and B.
- vii) A verification of building B license drawing be made to check if car parking slots were shown in the plinth of this building or shops indicated and the extent of these shops.
- viii) A proper section through the front shops and floor above it need to be

provided to prove that there is no violation of maximum allowable height for the building.

All the conclusions, except in relation to car parking facility and fire safety measures can be looked into by the Civil Court in the suit filed by the respondent No.4 wherein the petitioner has raised counterclaim. As regards the fire safety measures as already observed above, there is no justification for this Court to consider the petition only on that ground when there is a specific statement made on behalf of the concerned government department that it will look into the matter pursuant to the application filed by the respondent No.4. Added to that the respondent No.4 having been made a statement that there is intention on the part of the respondent No.4 to reduce the height of the building.

8. Besides the respondent No. 2 in his submission with reference to the committee report has categorically stated that

In any event, this authority would even otherwise hold back the completion certificate and would act against the respondents if the construction was done without the approval from Fire services department.

Being so, there is absolutely no case for interference in writ jurisdiction merely because initially a committee was appointed.

9. Before we part with the matter, we express appreciation to the services rendered by the members of the committee and direct the petitioner to pay a sum of Rs. 5,000/- to Shri Dean Da Cruz and Advocate Shri S.R. Rivonkar as token of appreciation of service rendered by them. For the reasons stated above, therefore, we find no case made out for entertaining the petition. The petition, therefore, is dismissed. Interim relief stands vacated. No order as to costs.