

(2011) 07 BOM CK 0133
In the Bombay High Court
Case No : Writ Petition No. 243 of 2011

Mrs. Maria Mauela E Da Silva e Mascarenhas	APPELLANT
Vs	
Town and Country Planning Board, North Goa Planning and Development Authority, The Conservation Committee and Mr. Aravin Gomes Pereira	RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2011) 07 BOM CK 0133

Hon'ble Judges : A. P. Lavande, J

Bench : Single Bench

Advocate : J.P. Mulgaonkar, for the Appellant; Guru Shirodkar, Government Advocate, Respondent nos.1 to 3 and Mr. A.D. Bhobe, Advocate, Respondent No. 4, for the Respondent

Judgement

A. P. Lavande, J.—Heard Mr. Mulgaonkar, learned counsel for the Petitioner, Mr. Shirodkar, learned Government Advocate for Respondent nos.1 to 3 and Mr. Bhobe, learned counsel for Respondent No. 4. Rule. By consent of the learned counsel for the parties heard forthwith.

2. By this petition under Article 227 of the Constitution of India, the petitioner challenges order dated 7/3/2011 passed by the respondent No. 1 by which the appeal preferred by the petitioner u/s 45 of the Town and Country Planning Act against the order dated 11/12/2009 passed by the North Goa Planning Development Authority has been dismissed.

3. Briefly, the facts relevant for disposal of this petition are as under:

On 2/2/2009, the petitioner was given a notice dated 23/1/2009 by North Goa Planning and Development Authority (NGPDA) u/s 52(1) of the Town and Country Planning Act to show cause as to why action should not be taken for carrying out development without seeking permission from the Planning Authority. Thereafter, the petitioner filed an application dated 18/2/2009 seeking regularization. The

respondent No. 2 gave final notice in terms of Section 52(1) which was challenged by the petitioner by filing Writ petition No. 328/2009. The Division Bench of this Court by order dated 13/7/2009, directed respondent No. 2 as well as the Conservation Committee to take appropriate decision on the application dated 18/2/2009 filed by the petitioner and further directed the respondent No. 2 to dispose of the application finally within a period of ten weeks from 21/7/2009. The Conservation Committee in its 101st meeting held on 17/9/2009 gave an ex post facto no objection from conservation point of view for the regularization subject to certain conditions and further directed the Member Secretary, North Goa Planning and Development Authority to deal with other building aspects like the F.A.R, coverage set backs etc. and to ensure compliance of all the regulations before granting development permission for regularization, repairs/reconstruction carried out of the existing house.

4. The respondent No. 2 by order dated 11/12/2009 rejected the application on the following grounds:

i) F.A.R exceeds permissible limit.

ii) Specific use of the rooms are not mentioned on plans submitted.

iii) Height of the proposed building is increased from the original height as such minimum required setbacks are required to be maintained.

5. The petitioner filed Writ petition No. 130/2010 before this Court challenging the decision of the Conservation Committee as well as the order passed by respondent No. 2. The Division Bench of this Court by order dated 5/5/2010 permitted the petitioner to file an appeal u/s 45 of the Goa Town and Country Planning Act, 1974 on or before 20th May 2010 and directed the respondent No. 1 to dispose of the matter on merits as expeditiously as possible.

6. Pursuant to the said order, the petitioner filed an appeal before the Planning Board. In the appeal respondent No. 1 passed an order remanding the case to North Goa Planning and Development Authority for reexamining the proposal once again with due site inspection vis-a-vis Planning and Development Authority Regulations for the purpose of assessing the violations which cannot be regularized by the PDA or the Conservation Committee. The said order was challenged by filing Writ petition No. 819/2010 before this Court. Writ petition No. 819/2010 was allowed and respondent No. 1 was directed to decide the appeal expeditiously and in any case within a period of eight weeks.

7. Respondent No. 1 by order dated 7/3/2011 dismissed the appeal which is impugned in the present petition.

8. Mr. Mulgaonkar, learned counsel for the petitioner submitted that the grounds on which the regularization was refused by the respondent No. 2 were factually not tenable and this aspect of the matter has not been considered by the Planning Authority. According to Mr. Mulgaonkar the reasons given by respondent No. 2 for refusing to regularize the construction were contrary to the provisions

of the Act and the Regulations and this aspect of the matter has not been considered by the respondent No. 1 in the impugned order and therefore the impugned order is clearly unsustainable in law.

9. The learned counsel appearing for the respondents supported the impugned order.

10. Having heard the learned counsel for the parties and having perused the record, I am of the considered view that the impugned order is liable to be quashed and set aside on a short ground.

11. Perusal of the impugned order discloses that the respondent No. 1 has not addressed itself as to whether the grounds on which respondent No. 2 had refused to regularize the construction were tenable in law. The petitioner having urged such grounds before respondent No. 1, the respondent No. 1 was bound to consider the same and give a finding thereon. Such an exercise which was bound to be undertaken.

12. On this short ground the impugned order is liable to be quashed and set aside.

13. For the reasons aforesaid, the impugned order dated 7/3/2011 passed by Respondent No. 1 is quashed and set aside. Respondent No. 1 shall pass a speaking order dealing with the contentions of the petitioner in the light of the observations made above. It is to be noted that on earlier occasion also the matter was remanded to respondent No. 1 to decide the appeal on merits and therefore it is expected of respondent No. 1 to deal with the matter in terms of the directions given by this Court. It is also made clear that the deeming provision in terms of proviso to Section 45 of the Town and Country Planning Act would not be applicable.

14. Respondent No. 1 shall dispose of the appeal on merits in accordance with law expeditiously and in any case within a period of twelve weeks.

15. Rule is made absolute in the above terms. The petition stands disposed of.