

(2010) 07 BOM CK 0201
In the Bombay High Court
Case No : Writ Petition No. 667 of 2009

Ms. Cecelia Lisboa, Through her duly constituted attorney Mr. Krishna Ghat APPELLANT

Vs

The Director of Panchayats, with its office at Junta House, Panaji and others RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Citation : (2010) 07 BOM CK 0201

Hon'ble Judges : F.M. Reis, J;A.S. Oka, J

Bench : Division Bench

Advocate : Valmiki Menezes, for the Appellant; V.A. Lawande, Advocate for Respondent no.6., Mr. P. Kamat, Advocate for Respondent no.3 and Mr. V. Rodrigues, Additional Government Advocate for Respondents nos, 12, 4 and 5, for the Respondent

Judgement

1. We have heard the Learned Counsel appearing for the parties. The only prayer in the writ petition is for issuing a writ of mandamus to the first respondent to demolish illegal structure, which is the subject matter of this petition.
2. Our attention is invited to the orders passed by this Court from time to time in different petitions.
3. Our attention was also invited to order dated 26th November, 2007 passed by this Court in writ petition no.514 of 2007, filed by the present Petitioner. The said petition was filed for seeking a direction of demolition of the same structure. The petition was disposed of by consent of the parties by issuing a direction to the Village Panchayat to pass appropriate orders on representation made by the 6th Respondent, seeking regularization of the structure in dispute.
4. It appears from the communication dated 27th February, 2009 issued by the Member Secretary, Goa Coastal Zone Management Authority that an ex-post facto permission to undertake repairs/renovation of the existing dwelling unit

was granted by the said Authority. The said communication dated 27th February, 2009 records that in view of the permission, the sixth respondent will have to obtain other relevant approvals from the Town and Country Planning Department and Village Panchayat of Assagao. By further communication dated 5th August, 2009 issued by the Member Secretary, Goa Coastal Zone Management Authority, the sixth respondent was informed that in view of the complaint filed by Mr. Krishna S. Ghate, the matter has been referred to the Deputy Collector and S.D.O to conduct a summary inquiry and submit a report. The said communication further records that pending the summary inquiry and submission of report, the approval granted vide communication dated 27th February, 2009 shall be held in abeyance.

5. The learned Additional Government Advocate pointed out that on 26th March, 2010, the Deputy Collector and S.D.O has submitted a report to the Goa Coastal Zone Management Authority and now a decision will be taken by the authority within a period of three weeks from today.

6. At this stage it must be also noted that on 22nd May, 2010, the Village Panchayat passed an order of demolition. In the order of demolition it was recorded that the sixth respondent had applied for regularization and had produced N.O.C from the Goa Coastal Management Authority which was subsequently kept in abeyance. It further records that till the date of the said order, fresh NOC has not been produced by the sixth respondent and therefore, the Village Panchayat was required to take action in the matter in terms of the decision of this Court. The order of demolition passed by the Village Panchayat is made subject matter of challenge by the sixth respondent by preferring an appeal being Appeal no.22 of 2010 before the Director of Panchayats. In the said appeal the order of demolition dated 27th May, 2010 has been stayed.

7. The result of the Goa Coastal Zone Management Authority keeping the NOC in abeyance is that as of today there is no final decision on the prayer for regularization made by the sixth respondent. Apart from this, the subsequent order of demolition passed by the Village Panchayat has been stayed in appeal. We are not examining the question as to whether it was necessary for the Village Panchayat to pass a fresh order. However, the fact remains that the application made by the sixth respondent for regularization has not yet been finally decided. The application was required to be decided in terms of order passed by this Court on 26th November, 2007 in writ petition no.514 of 2007 filed by the Petitioner.

8. Considering the aforesaid factual situation, we cannot issue a writ of mandamus for demolition of the structure. The learned Counsel for the Petitioner prays that the Petitioner be allowed to intervene in the Appeal no.22 of 2010. In this petition, we cannot grant the said relief. It is for the Petitioner to apply. We, therefore, dispose of the petition by issuing the following order:

a) If an application is made by the petitioner in the pending appeal no.22 of 2010 for permitting intervention, the same shall be decided by the Director of

Panchayats, in accordance with law.

b) Hearing of the appeal is directed to be expedited. The appeal shall be decided within a period of three months from today.

c) We have not made any adjudication on the merits of the prayer for regularization and merits of the order of demolition. We keep all questions open.

d) Petition is disposed of.