

(2015) 02 BOM CK 0079
In the Bombay High Court
Case No : Writ Petition No. 587 of 2014

Narayan Parsekar

APPELLANT

Vs

Umavati Mahadev Hadfadkar and Others

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Citation : (2015) 6 ABR 579 : (2015) 5 BomCR 124

Hon'ble Judges : N.M. Jamdar, J.

Bench : Single Bench

Advocate : Valmiki Menezes, for the Appellant; Sandesh D. Padiyar, Advocates for the Respondent

Final Decision : Allowed

Judgement

N.M. Jamdar, J.—Rule. Rule made returnable forthwith. Respondents waive service. Taken up for final disposal.

2. The petitioner challenges the orders passed by the District Judge, Mapusa dated 7 February 2014, Additional Director of Panchayats dated 23 January 2012 and Deputy Director of Panchayats dated 1 February 2006, dismissing the complaint filed by the petitioner in respect of construction carried out by the respondents no.1 and 2.

3. The petitioner is owner of a property situated at Mandrem, Pernem, Goa along with a residential house and a hospital. On the east side of the petitioner's property is a property owned by one Gurunath Shetye, part of which is occupied by the respondents no.1 and 2. The petitioner filed a complaint to the Village Panchayat, Mandrem that the respondents no.1 and 2 were illegally extending construction of their house beyond the original plinth, touching compound wall on the eastern side and the foundation of the house was damaging the compound of the petitioner. According to the petitioner the construction was being done without maintaining proper setback. The petitioner stated that when he had gone to Bangalore to attend a conference, the respondents no.1 and 2

carried out the unauthorised construction.

4. The complaint was filed under Section 66 of the Goa Panchayat Raj Act, 1964. As per Section 66, if the Panchayat does not take decision within stipulated period, the Deputy Director of Panchayat appointed by the Government assumes jurisdiction to entertain the complaint. The Deputy Director came to the conclusion that the construction of the house which was being carried out was not a new house but old house. The Deputy Director held that the permission was duly granted to the respondents no.1 and 2 to reconstruct the building on 15 January 1996. The Deputy Director held that the house was in existing for long time it was reconstructed by securing valid licence, and therefore, the complaint filed by the petitioner could not be entertained, and it was dismissed by order dated 1 February 2006. An appeal came to be filed by the petitioner to the Additional Director of Panchayats which was dismissed by order dated 23 January 2012. Thereafter, the petitioner filed a Civil Revision Application under Section 201B of the Act which was dismissed by the District Judge by order dated 7 February 2014.

5. I have heard Mr. V. Menezes, the learned Counsel for the petitioner and Mr. S.D. Padiyar, the learned Counsel for respondents no.1 and 2.

6. Though all the authorities below have recorded a concurrent finding that the complaint of the petitioner is liable to be dismissed, there is a fundamental flaw in the approach of the authorities below, which needs to be created in the writ jurisdiction.

7. It is the case of the petitioner that certain unauthorized extensions are carried out by the respondents no.1 and 2. The response of the respondents no.1 and 2, which has been accepted by the Courts below is that the construction is as per the permission dated 15 January 1996. According to the petitioner when site inspection was carried out by the Block Officer, it was found that the construction was not as per the permission granted. It is the contention of the respondents no.1 and 2 that the Block Development Officer has not properly carried out the inspection and has made contradictory remarks. Courts below have simply proceeded on the premise that since there is a permission whatever the respondents no.1 and 2 have done is within the ambit of that permission.

8. Section 66 of the Act requires that even addition to the existing building need to be carried out with the permission of the Panchayat. The petitioner had questioned the legality of the extension to the building carried out by the respondents no.1 and 2. The issue therefore was whether the extension was as per the permission.

9. The authorities below have completely lost sight of the fact that the best way the matter could have been resolved was by comparing the plan attached to the permission, with the site inspection report. Rule 75 of the Goa, Daman and Diu Panchayats (Regulation of Buildings) Rules, 1971 states that permission will be granted along with the building plans. Permission granted on 15 January 1996

also states that the permission is granted to carry out construction as per the attached plan. The document of permission only states the condition on which the applicant is allowed to carry out the work, but the extent of permitted work is always in the plan. There is no reason on record as to why exercise of comparing the plan with the site report was not carried out. It is not the case that the plan is not available. The permission specifically refers to the same.

10. Mr. Padiyar contended that this Court should not interfere in writ jurisdiction in view of the findings of the Court below and that the complaint is motivated. However, if it is noticed that the authorities are deciding complaints without checking the basic documents i.e. the building plan such approach needs to be corrected. If such an approach is permitted it will nullify the purpose for which an elaborate machinery to deal with complaints of unauthorised construction, is set up. The building plan, pursuant to which construction takes place, is a basic document by reference to which any unauthorised alteration, extension or deviation can be ascertained. In the absence of cogent reasons for nonavailability of the plan, an inquiry conducted without reference to the building plan, will be fundamentally flawed.

11. The orders passed by the authorities below will have to be set aside for this fundamental error and the matters need to be sent back to the Deputy Director for reconsideration. It is open to the Deputy Director to carry out site inspection again in presence of both parties. However, that decision is left to the Deputy Director, as there is already one survey report on record. Mr. Padiyar submitted that the plan may not be available. However, there is no such finding recorded by the Courts below. This issue is kept open.

12. In the circumstances, the petition deserves to be allowed and is accordingly allowed. The impugned orders dated 7 February 2014, 23 January 2012, 1 February 2006 are quashed and set aside. The complaint stands restored on the file of the Deputy Director of Panchayats to be disposed of as per law. Rule is made absolute in the above terms. No costs.