
(2018) 07 BOM CK 0149
In the Bombay High Court
Case No : Writ Petition No. 8 Of 2017

Sateesh @Satish K. Azgaonkar and Ors. APPELLANT
Vs
State of Goa And Ors. RESPONDENT

Date of Decision : 04-07-2018

Acts Referred:

Constitution of India, 1950 — Article 227
Goa, Daman and Diu Land Revenue Code, 1968 — Section 30, 31, 32, 33
Goa (Regulations of Land Development and Building Construction) Act, 2008 —
Section 6A
Chief Town Planner under the Town and Country Planning Act, 1974 — Section 18A

Citation : (2018) 07 BOM CK 0149

Hon'ble Judges : Nutan D. Sardesai, J

Bench : Single Bench

Advocate : C. Padgaonkar, Arun Talaulikar, S. Taleigaonkar

Final Decision : Dismissed

Judgement

1. This petition takes exception to the impugned judgment and order passed by the Administrative Tribunal which dismissed the appeal preferred by

the petitioners and upheld the judgment and order passed by the Deputy Collector and Sub-Divisional Officer exercising his powers under Section 33

of the Goa, Daman and Diu Land Revenue Code, 1968, 'the Code' for short hereinafter.

2. Heard Shri C. Padgaonkar, learned Advocate for the petitioners who contended that the order passed by the learned Deputy Collector under

Section 33 of the Code was liable for reversal as it was passed in violation of the principles of natural justice. He adverted to the check list drawn

by the Talathi pointing out the four allegations against the petitioners viz a viz developing the plots, hill cutting, construction of the road by rubble and

laterite stones and cutting down trees. They had filed their reply in which it was clearly stated that there existed a Panchayat road in their property

being situated on the Northern side of the Survey No.129 which was being cleared off all the bushes as it was not maintained by the Panchayat and/or

the PWD as being the only access to their property.Â Another plea was taken in the reply of some of the respondents that besides the Panchayat

road shown on the survey plan, there was no other road at the site and the so called road shown on the plan by the Field Surveyor Mapusa as an

illegal road constructed with laterite stones did not exist at the site and which could be verified by a joint site inspection.

3. He further contended that the petitioners had otherwise clearly asserted in their petition that there was no other road on the site besides the

Panchayat road shown in the Survey Plan and the so called illegal road shown in the plan by the Field Surveyor as an illegal road did not exist at the

site which could be verified by a joint site inspection.Â There was only one road in the middle of the property under Survey No.129 which was

constructed with the pavers only because the terrain was sloppy and the trail was usually washed away during the monsoons. He next adverted to the

inspection report drawn at the instance of this Court where there was a clear reference to the fact that there was no on going development work or

machinery or labourers seen at the site to buttress his case that no activity was carried out in the disputed property by the Petitioners. Besides the

inspection report made a reference to a katcha road leading from the village road to the disputed property bearing Survey No.129/0, 130/0 and 131/0

which was unlike the statement of the Village Panchayat- respondent No.9 that there was no notified Panchayat road leading internally towards the

said properties.

4. He next adverted to the Goa (Regulations of Land Development and Building Construction) Act, 2008 and the Goa Land Development and Building

Construction Regulations, 2010 Act, 'the Act and Regulations' for short hereinafter and invited attention to Section 6A 2.1 which prescribed the uses

prohibited except those permitted with restrictions in respect of Zones S1, S2, S3 and S4 and sub Section (g) which dealt with Zone A1 and A2

relating to all uses other than agriculture, horticulture, farming and allied operations. He next adverted to Section 6A.3.1 regarding the uses permitted

with certain restrictions in respect of Zones S1, S2, S3 and S4 and sub clause (i) in particular relating to Zone A1 and A2 and submitted that the

Petitioners property was primarily an orchard property. Any internal development was prohibited under the Act and the Regulations framed

thereunder. Proceedings initiated by the Deputy Collector under Section 33 of the Code was without any basis as there was no prohibition in law to

carry out the internal development in terms of the Act and the Regulations thereunder. The Petitioners had obtained permission from the Deputy

Conservator of Forests in the matter of tree cutting and even assuming without admitting that there was hill cutting, it was a cognizable offence of

which cognizance could be taken under Section 18A by the Chief Town Planner under the Town and Country Planning Act, 1974. Besides, it was

apparent from the evidence of the Panchayat respondent No.9 that an FIR was registered against the petitioners. The Petitioners had a good case and

therefore the impugned judgment had to be quashed and set aside.

5. Shri A. Talaulikar, learned Additional Government Advocate for the respondent No.1 submitted that the petitioners had not obtained any

permission and had still gone ahead with the construction activities in their property. He referred to the permissible uses in terms of Section 6A

3.1 but submitted that the permissions of the authorities was necessary which was not produced by the petitioners. There were two concurrent

findings by the two authorities against the petitioners and therefore the petition was not tenable and liable for dismissal. He placed reliance in

Agostinho Fernandes v/s. State the Mamlatdar of Salcete and anr (WP No.295/2013) and pressed for the dismissal of the petition. Shri S.

Taleigaonkar, learned Advocate for the Panchayat - respondent No.9 submitted that the petitioners had made plots and disposed off to various parties

which was apparent from the mutation records forming a part of the records. He adverted to the order of the Town and Country Planning

Department dated 15/09/2014 and submitted that the case of the petitioners could not stand the test of legal scrutiny.

6. Shri S. Taleigaonkar, learned Advocate next adverted to the report annexed to the Resolution adopted by the respondent No.9 alongwith the

photographs and submitted that the case set up by the respondent No.9 about the illegality committed by the petitioners was not denied by filing any

rejoinder. The plan to the checklist showed the existence of an illegal road which too was not denied on behalf of the petitioners. Last but not the least he referred to the inspection report drawn at the instance of this Court where there was a due reference to the road being laid by the petitioners. There was no justification for interference and hence the petition had to be dismissed. It was the contention of Shri Padgaonkar, learned Advocate for the petitioners that the property was an orchard property and there was no prohibition to sell such property. There was no power in the Deputy Collector to initiate proceedings against the petitioners. No structures too were at site nor were there any averments in the reply or the Joint Inspection Report. The Show Cause Notice did not show any violation on the basis of the Building Regulations and therefore the impugned judgment be quashed and set aside.

7. I would consider their submissions, the relevant provisions of the Code, Act and Regulations and the judgment under challenge and decide the petitioner appropriately.

8. Section 30 of the Code provides that no land used for agriculture shall be used for any non-agricultural purpose and no land assessed for one non-agricultural purpose shall be used for any other non-agricultural purpose or for the same nonagricultural purpose but in relaxation of any of the conditions imposed at the time of the grant or permission for nonagricultural purpose, except with the permission of the Collector under Section 32.

Section 31 deals with the restrictions on the use and empowers the Collector or a Survey Officer to regulate or prohibit the use of land liable for the payment of land revenue as provided therein while Section 32 provides for the procedure for conversion of use of land from one purpose to another.

Section 33 in particular prescribed the penalty for so using the land without permission and reads that if any land held or assessed for one purpose is used for another purpose without obtaining permission of the Collector under Section 32 or before the expiry of the period after which the change of user is deemed to have been granted under that Section, or in contravention of any of the terms and conditions subject to which such permission is granted, the holder thereof or other person claiming through or under him, as the case may be, shall be liable to the one or more of the penalties, as prescribed therein.

9. In other words, the powers of the Collector are quite vast insofar as imposing penalty for using the land held for a purpose other than the one for

which it is granted. It is therefore to be seen whether there is basis in the contention of Shri Padgaonkar, the learned Advocate for the

petitioners that the Deputy Collector acted in violation of the principles of natural justice while taking resort to the provisions of Section 33 of the

Act. Admittedly, the land of the petitioners was an orchard land as per the Certificate issued by the Town and Country Planning Department dated

06/05/2014. The learned Deputy Collector acting on the basis of the check list drawn by the Talathi and forwarded by the Mamlatdar of Ponda had

issued a Show Cause Notice to the petitioners calling upon them to show cause on the unauthorised conversion of the use of land by illegally

developing plots, hill cutting, constructing road by rubble and laterite stones and cutting trees in the said property without obtaining permission from the

Competent Authorities. The petitioners herein had submitted their detailed reply spelling out that they were intended to carry out the development in

the said property in the nature of dairy farming and that nothing could be done as the Town and Country Planning Department had refused permission

by their letter dated 15/09/2014. However, besides the Panchayat road shown in the Survey Plan, there was no other road at the site and no illegal

road as shown in the plan by the Field Surveyor existed at the site which could be verified by a joint inspection at loco. They had laid two other

roads in the middle of Survey No.129 with pavers to take vehicles for the dairy farm and to reach to the sheds which were developed and all this

was done on the assumption that since the Town and Country Planning Department had accepted their fees they would process their request. It is

10. The other set of the petitioners too had asserted that there was a Panchayat road in existence in the property situated at the Northern side of

the Survey No. 129 which was being cleared off all the bushes as it was not maintained by the Panchayat respondent No.9 and/or the PWD and

which was the only access to their land. The reply given by them had apparently not found favour with the learned Deputy Collector who vide his

judgment dated 16/11/2015 and on the basis of the various inspections carried out by the local body came to a conclusion that the petitioner had not

obtained conversion as required under Section 32 of the Code, had carried out haphazard development in the land and in view thereof confirmed the

notice, directed them to restore the land and undo the development undertaken in the properties failing which the respondent No.9 was directed to

execute the work of restoration of the land with the help of the demolition squad and finally a direction to the respondent No.9 to file an FIR at the

police station in case there was a violation of the order.

11. The Deputy Collector had not examined the aspect that the petitioner's land was an orchard land and instead in his wisdom proceeded on the

premise that it was an agriculture land and proceeded under Section 32 of the Act. Insofar as the development of the land was concerned, the

petitioner would be guided by the Act and the Regulations framed thereunder, insofar as the allegations of hill cutting is concerned, the petitioners

would be liable for penal action under Section 18A of the Town and Country Planning Act, 1974, insofar as tree cutting was concerned it was

shown that the petitioners had obtained appropriate orders from the Deputy Conservator of Forests for tree felling and therefore it was not open to the

learned Deputy Collector to proceed to take action in accordance with Section 33 of the Act. However, the contention of Shri C. Padgaonkar,

learned Advocate for the petitioner that there was a violation of the principles of natural justice does not stand the test of scrutiny when notice was

given to the petitioners and the order in question was passed giving rise to the appeal before the learned Administrative Tribunal.

12. The learned Tribunal considered all these aspects of the matter while dealing with the appeal at the petitioners instance and ultimately held that

there was no cause for interference with the order of the Deputy Collector and dismissed the appeal. What however is material is that there has

been no rebuttal at the instance of the petitioners that they had demarcated the plot and sold them to different persons as evident from the mutation

records produced on behalf of the respondent No.9. The site visit report and the inspection report ordered by this Court alongwith the

photographs otherwise showed that hill cutting was done apart from levelling of the area and laying of the road at the instance of the petitioners and

who had otherwise also laid the pavers for the roads. Moreover, from the Inspection Report itself it was apparent that the property was developed by

hill cutting, felling of trees, levelling the area in the residential plots by fixing laterite stones and internal katcha road of the width road of 8 meters were

laid in the property in question. It is another matter that at the time of inspection carried out at the instance of this Court no further on going development work or machinery, trucks or labourers were seen at the site but the fact remains that there was development carried by the petitioners including levelling and felling of trees.

13. Agostinho (supra), had challenged in the petition the judgment passed in the Land Revenue Appeal whereby the appeal preferred by the petitioner

challenging the judgment of the Deputy Collector was dismissed and as authorities below had come to the conclusion that he had carried out illegal

construction without obtaining the requisite conversion in terms of the provisions of the Code. It was contended on behalf petitioner that the

construction was in existence over a period of time and much prior to the coming into force of the Code and therefore the conversion was not

required. Quite on the contrary, it was contended on behalf of the respondent No.2 that the construction put up by the petitioner was illegal,

without conversion and liable for demolition and therefore no question arose of granting any relief to the petitioner. The learned Single Judge of this

Court (F.M. Reis, J.) on considering the contentions and perusing the records apart from the impugned judgment concluded that the construction put

up by the petitioner was without obtaining the conversion sanad in terms of the Code and that no interference was called for in the petition

under Article 227 of the Constitution. This judgment clearly substantiates the case of the respondent No.1 against the petitioners. On a

consideration of the material and in exercise of the powers of superintendence under Article 227 of the Constitution of India no case has been made

out for interference with the impugned judgment and in view thereof, i pass the following :

O R D E R

The Writ petition is dismissed.

12. Shri C. Padgaonkar, learned Advocate for the petitioners seeks leave to move an application for regularisation of the development, leave granted.

13. The authorities to desist from acting on the basis of the order dated 16/11/2015 till such an application is moved within four weeks from today.