
(2015) 02 BOM CK 0039
In the Bombay High Court
Case No : Writ Petition No. 766 of 2013

Sebastiana Cardozo and Others

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Citation : (2015) 02 BOM CK 0039

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

Bench : Single Bench

Advocate : A. Agni, Senior Advocate and Kalpa Govekar, for the Appellant; Neha Kholkar, Additional Government Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

N.M. Jamdar, J.—Rule. Rule made returnable forthwith. Respondents waive service.

2. Leave to amend the prayer clause to correct the date of the impugned order granted. Amendment to be carried out forthwith.

3. The petitioners challenge the order passed by the respondent no.3-Town and Country Planning Board dated 22 November, 2011 and order passed by the South Goa Planning Authority dated 17 October 2011, in respect of the proceeding taken for demolition of structure in occupation of the petitioners. The Board has dismissed the Appeal of the Petitioner.

4. It is the case of the petitioners that they are mundcars of the house situated at Margao-Goa. A Notice came to be issued to the petitioners by respondent no.2-South Goa Planning and Development Authority calling upon the petitioners to demolish the structure as according to the Authority it was in violation of the planning laws. The petitioners thereafter filed an appeal as provided under section 52 of the Goa Town and Country Planning Act, to the respondent no.1-Board. The Board disposed of the appeal by the impugned order dated 22 November, 2013.

5. The impugned order firstly narrates the submissions of the appellants, then the contention of the Planning Authority, and the appeal is dismissed with one line reasoning.

"After deliberation the Board passed the following order:

"The TCP Board dismissed the appeal since construction in the plot does not confirm to prevailing regulations"

That the construction of the plot does not conform to prevailing regulation was the ground on which the action was initiated against the petitioners and in the appeal the appellant had stated the grounds why this was not so. There is absolutely no discussion at all as regards the rival contention. The order passed by the Board proceeds as if the Board is under no obligation to disclose its mind as to why a particular decision is arrived at. It is long settled that any quasi judicial authority must give reasons. Apart from this general proposition, the Division bench decision of this Court in Writ Petitions Nos. 267 and 322 of 2005 "Shri Pramod S. Dabolkar Vs. Senior Town Planner and others" and "Shri Louis Antonio Fernandes and others Vs. The Senior Town Planner and others" in specific terms, interpreting the powers of the Board, has held that reasons must be given by the Board. In spite of this position, the Board has proceeded to dispose of the appeal without any reasons.

6. Section 52 of the Act provides the Board as a forum to any person aggrieved by the proceedings under Section 52 (1). Section 52 (5) of the Act provides that the Board shall give reasonable opportunity of being heard to the appellant and to the Planning Authority. The Board can allow or dismiss the appeal by quashing or varying the notice. Thus, the Board may either accept the stand of the Planning Authority or the applicant. It is part of principles of natural justice that a person against whom an order is passed must know why the order is passed against him. This basic proposition cannot be disputed. However, the Board has tried to put the clock back by passing a completely unreasoned order.

7. Section 4 of the Act constitutes the Board. It consists of the Ministers-in-charge, Secretaries to Government, Head of Public Works Department, Head of Forest Department, Director of Agriculture, Director of Tourism, Director of Transport, Director of Health Services, Director of Education, Director of Fisheries, Four members nominated by the Central Government dealing with various Ministries, two persons with special knowledge of planning, representative of Chamber of Commerce, two members of Legislative Assembly. The Chief Town Planner is the Member Secretary of the Board. The Board has various powers as enumerated under section 8. The Chief Town Planner is appointed under Section 3. His qualifications are prescribed under the Act, whose functions are provided under the Act. Thus, it is clear from the composition of the Board that it consists of high ranking officers and eminent persons. It will have to be presumed that the members of the Board are aware of the long settled position of law that while exercising appellate powers, they must give reasons in

support of their decision.

8. Normally the Board does give reasons in support of its decision, however, in the present case, there are absolutely no reasons given. In view of this position, the Member Secretary was called upon to place on record his explanation as to why in this matter a deviation was made. Reply dated 24 February, 2015 has been filed by the Chief Town Planner. The reply seeks to justify the decision on merits and states that the Board will henceforth pass speaking orders. No explanation is placed on record as to why there was a deviation. The Town Planner has not even bothered to say that it is a mistake nor any apology is tendered. It is not even the stand that it was an oversight or it was due to pressure of work. The affidavit only states that point made by the Court is noted and henceforth Board will give reason.

9. There is an important angle that must be emphasized. The usual consequence of such orders is remand for fresh hearing. While doing so, this Court has to protect the structure, which in the opinion of the Board, should be demolished. Therefore, if the Board is of the opinion that the structure does not deserve to be protected, by passing unreasoned order, it in fact extends protection to such structure in view of the usual consequences that follow from such order. By not giving reason in the cases of unauthorized construction, the board in fact end up extending protection to them.

10. The Board is presumed to be aware of this consequence. It is for this very reason that an explanation was sought, but has not been given. The action of the Board is not only in violation of the principles of natural justice but is against public interest. The Board not only exercises power that affect right of the parties, but the Board decides matters affecting town planning, in which all residents have a interest.

11. Not following well settled positions of law laid down by the Apex Court and this Court may amount to disobedience and contempt, but it is not necessary to take the matter that far. But for lack of any cogent explanation inspite of opportunities, I am constrained to impose some deterrent to inculcate a sense of responsibility and discipline in decision making and to draw the attention to the underlying public interest. Imposition of costs will serve the purpose.

12. In the result, the petition requires to be allowed and the matter requires to be remanded back to the Board to pass a reasoned order. Accordingly, the petition is disposed of by quashing and setting side the order dated 22 November 2013. The appeal filed by the petitioner stands restored to file. The Board will dispose of the appeal within a period of one month from today. Till the appeal is disposed off, the structure of the petitioner shall stand protected.

13. The Board shall deposit the cost of Rs.10,000/- (Rupees Ten thousand only) in the registry of this Court which shall be furnished to the Goa State Legal Services Authority, within six weeks from today.