
(2000) 07 BOM CK 0099
In the Bombay High Court
Case No : Writ Petition No. 106 of 2000

Serrao Francis Socorro

APPELLANT

Vs

Town and Country Planning Board and Another

RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Goa Public Mens Corruption (Investigations and Enquiries) Act, 1988 — Section 24
Goa, Daman and Diu Town and Country Planning Act, 1974 — Section 121, 134,
23(3), 44, 49

Citation : (2000) 4 BomCR 517 : (2001) 1 MhLj 725

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : A.A. Agni, for the Appellant; A.N.S. Nadkarni, General, S. Vahidulla, A.G. for respondent No. 1 and V.P. Thali, for the Respondent

Final Decision : Dismissed

Judgement

F.I. Rebello, J.—Rule. Respondents waive service. Heard forthwith.

2. The petitioner was the occupant of office premises bearing No. F-16 situated at Panaji, Goa in the building known as "Casa Dr. Domingos Roque de Souza". They were purchased by a sale deed dated 30-3-1992. The original promoters had agreed to sell office No. F-16 to M/s. Champs who assigned and transferred their rights in the said shop with the concurrence of the owners and the developers, admeasuring 10 sq. metres. No objection certificate was issued u/s 49 of the Town & Country Planning Act by North Goa Planning and Development Authority. The sale deed thereafter came to be executed and registered with the Sub-Registrar of Ilhas. Panaji Municipal Council issued occupancy certificate. The petitioner was thereafter put in possession of the premises and has been in continuous occupation thereof. On 16-8-1993, the petitioner procured a licence from the Panaji Municipal Council for putting up a wooden mezzanine floor to the office premises.

3. On 12-3-1999, respondent No. 2 issued a notice alleging that the petitioner

had unauthorisedly converted one lift well and adjoining area of landing on the first floor of approximate dimension of 4.70 x 1.50 metres into shops/office. The petitioner was directed to show cause within 7 days of receipt of the notice. The petitioner showed cause by his reply dated 20-3-1999. The petitioner set out therein that Panaji Municipal Council had granted permission vide letter dated 13-8-1993 and licence fees had been paid. The petitioner received notice dated 6-4-1999 fixing the matter for appearance on 8-4-1999. The petitioner was arrested by Old Goa Police at 2.30 p.m. on 8-4-99. He could not remain present on account of that, nor he could make any other arrangement as the appearance had been fixed by respondent No. 2 at 3.30 p.m. On 10-4-1999, the petitioner requested for another date as he could not appear on 8-4-99 for the circumstances beyond his control. No further date was intimated and on 23-4-1999, an order was passed holding that the petitioner had carried out illegal development in contravention of section 51-1 (b) and (c) and 51(2) of the Goa Daman & Diu Town & Country Planning Act, 1974, hereinafter referred to as the "Planning Act." Aggrieved by the order, the petitioner filed an appeal to respondent No. 1. On perusing the notice dated 23-4-1999, the petitioner realised that respondent No. 2 had relied upon various material facts and documents. No reference had been made to these documents in the show cause notice. Copies had also not been supplied to the petitioner. The petitioner, by application dated 20-9-99 sought leave to rely on certain documents. Additional grounds were also raised. The petitioner had raised a contention that the action taken was beyond the period prescribed u/s 52 of the Planning Act. The changes were internal and did not require permission from the second respondent u/s 43 of the Planning Act. The appeal was heard on 2-2-2000 and an order dismissing the appeal was passed on the same day. The petitioner applied for copy, which was delivered on 15-3-2000.

4. Respondent No. 2 has filed a reply. It is contended therein, that one Smt. Angela Alvares had filed Writ Petition No. 299/97 before this Court. The petition was filed alleging inaction of respondent No. 2 and Panaji Municipal Council in respect of various illegalities in the construction of the building. Pursuant to the said petition, respondent No. 2 carried out an inspection on 7-10-97. On inspection, various illegalities were found vis-a-vis the approved plan. An affidavit was filed by the Planning Authority setting out the various illegalities. In Para 7(b) of the affidavit filed in Writ Petition No. 299/97 one of the violations which was noticed was that in terms of the approved plans the building was to have two lifts. The second lift had been eliminated and the space reserved for the lift had been converted into shops/offices. Open space in front of the second lift had been converted into offices. This Court, by judgment dated 11-12-1997 disposed of the writ petition directing the respondents to take necessary action as regards such violations. The judgment is reported in 1998(1) GLT 184. Apart from the petitioner, it is contended that, there were three more similar cases. Respondent No. 2 had issued notices regarding others. The same were challenged in appeal. The appeal by one Smt. Hilda Menezes was dismissed. Her

illegal premises were demolished by respondent No. 2 on 12-7-1999.

5. A show cause notice had been earlier issued to the builder as illegal premises were sold to various persons. Respondent No. 2 thought it fit to issue show cause notice also to the occupants. The petitioner had replied to the show cause notice on 23-3-1999. Though the principles of natural justice did not require personal hearing, respondent No. 2 decided to give hearing to the petitioner. In the notice given it was clearly mentioned that no further adjournment would be granted and in case the petitioner failed to avail of the opportunity, decision would be taken according to law. Even in letter dated 10-4-99, the petitioner did not spell the exact reason which prevented him from attending the hearing at 3.30 p.m. on 8-4-99. No ground in respect of sections 43 and 52 of the Planning Act were raised. The matter was considered by respondent No. 2 in the 64th meeting on 8-4-99 which considered the reply of the petitioner dated 23-3-99. Order of demolition was passed on 23-4-99. At any rate, it is contended that the petitioner's case that the development does not fall within the purview of section 43 or section 52 of the Planning Act is not acceptable. The petitioner, it is contended, has not produced any licence from the Panaji Municipal Council for construction of the premises.

6. The petitioner has filed affidavit-in-rejoinder. The petitioner has also relied on an affidavit filed by one Bernandinho L. De Souza in the appeal filed before respondent No. 1. Additional grounds raised before the first respondents have also been annexed. They are dated 7-1-2000.

7. At the hearing of the petition, on behalf of the petitioner, it is contended as under :

i) Respondent No. 2 in denying hearing to the petitioner has violated the principles of natural justice and fair play. It is contended that the petitioner could not remain present on 8-4-2000 for reasons beyond control. In these circumstances, an opportunity should have been given to the petitioner for a further personal hearing. On that count alone it is contended, the order is liable to be quashed and set aside;

ii) Respondent No. 2, it is contended, relied on material not given to the petitioner. In a case of quasi-judicial inquiry, if any person seeks to rely on material, the material should be made available to the person aggrieved. Failing to do so, must result in violation of principles of natural justice and fair play. The order to that extent, it is contended, is also liable to be quashed and set aside;

iii) The order of the appellate authority, disclosed no reasons, hence it was a non-speaking order. The said order was, therefore, liable to be quashed and set aside.

iv) The petitioner, it is contended, had not done any development work and consequently, the provision of section 43 of the Planning Act was not attracted. That being the case, the order of the first and second respondents are without jurisdiction and, consequently, liable to be quashed and set aside;

v) Lastly, it is contended that respondent No. 2 in granting the N.O.C. was aware of the construction as N.O.C. was granted for the sale deed on 14-2-1992. That being the case, no action could be taken u/s 52 of the Planning Act as the show cause notice was given on 12-3-99 and hence beyond the period prescribed u/s 52 of the Planning Act. The orders are, therefore, without jurisdiction.

8. Bearing this in mind, we will now decide the issues arising in the petition. The first contention is that the petitioner was denied opportunity of personal hearing. Once such an opportunity was denied, the order passed must suffer from violation of principles of natural justice and fair play and consequently, must be liable to be set aside. In the instant case, there is no provision in the Planning Act, Rules or Regulations that the petitioner must be given a personal hearing before an order is passed. u/s 52, if any development or change of use of land had been carried out, the authority has to serve on such a person a notice requiring him to take steps set out therein. Under sub-section (6), if such a person does not comply with the notice, the authority can prosecute the owner for not complying with the notice or direct the demolition etc. of the offending structure. The Act itself does not contemplate therefore personal hearing. True there is also no exclusion of the principle of personal hearing. What is contemplated is a show cause notice. In the instant case, show cause notice was given. Apart from that, the petitioner was also given an opportunity of personal hearing. The petitioner did not avail of the personal hearing. It is immaterial what the reasons were. The authority, based on the material before it, proceeded to pass the impugned order. The petitioner being aggrieved, preferred an appeal, where he was given a full-fledged hearing. In these circumstances, it cannot be contended that there was violation of the principles of natural justice and fair play.

9. In so far as the second contention is concerned, in the show cause notice dated 12-3-99, respondent No. 2 pointed that one lift well and adjoining area of landing on the first floor of approximate dimension 4.70 x 1.50, mtrs. had been authorized converted. The substances of the illegal construction was therefore made known to the petitioner. The only answer to that was that the Panaji Municipal had granted permission. The Panaji Municipal Council's permission is Exhibit "C" at page 46. That permission is for construction of wooden mezzanine floor. The permission is not for construction of the premises itself. While passing the final order after issuing show cause notice, it has been mentioned therein that the authority was not satisfied with the reply and, consequently, had dismissed the application. The only material referred to was the site inspection which was referred to in the notice and the judgment of this Court. The existence of the structure is not denied. The only other material was the judgment of the Court. Therefore, no material was used against the petitioner which, if produced, would have resulted in affecting the rights of the petitioner in answering the show cause notice. Even, otherwise, before the appellate authority, the petitioner was given a full-fledged hearing and in fact, additional grounds were raised and documents filed. The order also does not suffer from infirmity on that count.

Reliance, for that purpose, was placed on the judgments of the Apex Court in the case of Sahi Ram Vs. Avtar Singh and Others, . In that case, the respondents had filed a petition challenging the termination of the mining lease. The petition was allowed on the ground that it violated the principles of natural justice. A learned Single Judge of the Punjab and Haryana High Court restored the lease without directing any further inquiry. Sahiram, the appellant before the Apex Court, was granted lease of major minerals during the interregnum on 13-9-1983 and the lease was being renewed. He filed the appeal contending that the orders cancelling the lease of R.L. Sharma, the petitioner was justified and the orders of the learned Single Judge and the Division Bench be set aside. It was noted that certain documents were not put to the respondents. In those circumstances, the Courts below should have remitted the matter back, instead of straight away setting aside the termination and restoring back the mining lease. The case was remanded to the revisional authority to make available the documents and thereafter to hear the revision and to dispose it of. In the instant case, the appellants had all the documents and relied upon them before the appellate authority and had argued the matter before the first respondent. For these reasons also the second contention must be rejected.

10. We shall now come to the third contention that the order of the appellate authority is non-speaking order. It is true that the order of the appellate authority is not very elaborate. It must be noted that the Town and Country Planning Board has its Member Secretary, Town and Country Planning Board Chief Town Planner and there are also other persons conversant with the plan. The issue before the Board was whether the conversion of lite well into a room amounted to development. The appellate authority confirmed the view of respondent No. 2 and held that the development has been carried out in violation of development plan regulation. The substance as to why the appeal has been rejected, has been set out. In view of one violation of the approved plan, the appellate authority held that the order of the second respondent could not faulted. In my opinion, the order discloses the main reason as to why the appeal has been dismissed. Once that be the case, it cannot be said that the order of the second respondent is a non-speaking order. That contention must be rejected.

11. We shall now deal with the contention of the petitioner that what the petitioner had done in fact was not development, but only internal changes. In the context, it is contended that Section 43 prohibits development. If it is not development, question of taking permission will not arise even in terms of the regulations framed. The Court's attention is invited to Regulation 8 of the Planning and Development Authority (Development Plan) Regulations 1989. That regulation provides that a holder of any development permission issued under these regulations shall follow the approved plans and subsequent conditions laid down. If such a holder wishes to make any major change/deviation from the approved plans in the course of executing the project, the same could be done under intimation to the authority and subsequently, the revised plans with such deviations are submitted and obtained, the approval prior to the occupancy of

the building. Regulation 8 itself provides that it is open to the authority to revoke any permission given under the regulations if it is found that subsequent major deviations have taken place during development and proper permission for these changes have not been obtained. "Development" with its grammatical variations and cognate expressions, means the carrying out of building, engineering, mining, quarrying or other operations in, on or under land, etc. and includes subdivision of land. In terms of the definition contained in the Regulations. The definition is the same as set out in section 2(10) of the Planning Act. In this context, therefore, let us examine whether the contention of the petitioner can be accepted that what the petitioner and/or the developer had done was no development. In the show cause notice dated 17-3-1999, the petitioner was informed that unauthorised conversion of one lift well and adjoining area of landing on the first floor of approximate dimension of 4.70 x 1.50 mtrs., was an illegal development. In the reply dated 23-3-1999, the defence of the petitioner was that permission had been taken from the Panaji Municipal Council vide letter dated 16-8-1993. That permission is at Exhibit "C". That permission is only for construction of wooden mezzanine floor. The planning regulations have defined a mezzanine floor to mean an intermediate floor between two floors not less than 2.20 metres height from the lower level of the floor and 2.20 metres in height from the intermediate level to the ceiling of a room or hall and with not more than 1/3 of the floor area of room in which it is contained and not enclosed on side overlooking the room in which it is contained. Therefore, the permission has been for a mezzanine floor. It has nothing to do with the conversion of the lift well into a room. In the application for further hearing dated 10-4-1999, the petitioner has made reference to mezzanine floor. As can be seen, the show cause notice spoke of unauthorised conversion of one lift well and adjoining area and not mezzanine floor. The only other document was the N.O.C. for the sale deed. The N.O.C. for the sale deed cannot be construed as permission for development even if the N.O.C. was granted. Therefore, the second respondent has given a specific finding that the petitioner was occupying a room which was constructed in violation of the development plans. The appellate authority, the first respondent has concurred with the second respondent that it was development and, therefore, the construction made without permission was illegal. It is, therefore, not possible to accede to the contention of the petitioner that there was no development and consequently, section 42 of the Planning Act would not apply.

Incidentally ,it was sought to be pointed out that even otherwise, the matter could be regularised. The petitioner is not a developer. The person holding the licence did not apply for regularisation. What is relied upon is the affidavit filed by the developer one Bernandinho L. De Souza before the appellate authority. Therein the affidavit speaks about some additional area. In the agreements with various purchasers of the premises in the building, they had shown only one lift. Shri Bernandinho De Souza himself has not applied for regularisation. Secondly, there is no material on record to show that he could not have so applied. His

affidavit discloses that the tenements have been sold. Thirdly, there is no material on record to show whether, in fact, the area was available. In these circumstances, it is not possible to accept the contention of the petitioner that the area could be regularised. The affidavit filed on behalf of respondent No. 2 sets out that premises constructed in the place reserved for lift were not in terms of the approved plans. It is, therefore, not possible to accede to that contention of the petitioner.

That the authority could regularise in such situations, reliance is placed on the judgment of the Apex Court in the case of *Raghubir Singh and Chatter Singh Vs. Union Territory of Chandigarh and others*, . In that case, the issue was in respect of mezzanine floor. The Court held that there was a technical violation as to the rules then stood. The authorities could not have withheld the sanctions for conversion. In those circumstances, the Apex Court directed regularisation by payment of compensation. In *Syed Muzaffar Ali and Others Vs. Municipal Corporation of Delhi*, , the issue was of unauthorised construction. The Apex Court reiterated that if the construction was unauthorised, the order of demolition could not be faulted. The Apex Court further reiterated if the violations could be compounded or regularised, they should be so done. The Apex Court also noted that resort to demolition could be only in serious and grave breaches of building regulations. Considering the facts as set out earlier, both the authorities have come to the conclusion that the development was illegal. Consequently, the F.A.R. would be increased. There was no application before them for regularisation, except the affidavit filed by the developer before the appellate authority, wherein also he did not pray for regularisation. Even, otherwise, reasons have been given as to why such matters could not have been considered. In these circumstances, that contention must be rejected.

12. We now come to the last contention. It is contended, based on the N.O.C. dated 14-2-1992, that the second respondent had granted permission for sale and, as such, would be aware that the construction had been put up. The show cause notice, it is contended, is of 17-3-1999. Even if the show cause notice issued to the developer *Shri Bernandinho De Souza* is considered, it is dated 18-12-1997. u/s 52(1) of the Planning Act, it is contended that the authority could issue a notice within 4 years of such development or change. Admittedly, from the time of granting N.O.C. for the sale, the period of 4 years had elapsed and consequently, the show cause notice could not have been issued. The language of a statute, it is contended, should be given its natural meaning. It is further contended that if power has to be exercised in a particular manner, it must be so exercised and not in any other way. Reliance for that purpose is placed on the judgments of the Apex Court in the case of *State of Uttar Pradesh v. Singhara Singh and others* AIR 1964 S.C. 368 and in the case of *Chandra Kishore Jha Vs. Mahavir Prasad and Others*, .

Reliance is also placed on the judgement of the Apex Court in the case of *M/s. Oswal Agro Mills Ltd. Vs. Collector of Central Excise and others etc. etc.*, to

contend that when the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation which are merely presumptive in cases of ambiguity in the statute, otherwise, the Court would interpret them as they stand. The object and purpose has to be gathered from such words themselves. Words should not be regarded as being surplus nor be rendered otiose. In such cases, there is no place for interpretation or construction except where the words of statute admit of two meanings. Reliance then is placed on the judgment in the case of *R. Rudraiah and Another Vs. State of Karnataka and Others*, . This judgment was cited for the proposition when limitation would commence. This was a case under the provisions of the Karnataka Land Reforms (Amendment) Act. A person entitled to grant of occupancy had to apply within a time frame. That was an issue before the Apex Court. It was a case of an individual applicant and not a case of a power conferred on a authority to initiate actions against illegal construction.

13. Reliance is next placed on the judgment of a Single Judge of this Court in the case of *Tukaram Nagthane Vs. Grampanchayat Karyalaya*, . In this case a power was conferred in the Panchayat to remove encroachment within 6 months when encroachment was noticed. Time frame was fixed pursuant to the rules framed. In that case, encroachment had taken place and was noticed in 1961. Notice for removal was issued on 28-5-1976. The plaintiff filed a suit to restrain the Panchayat. It is in these circumstances that the Court held that a notice issued was in contravention of sub-section 53(2-A) of the Rules. It is contended that the same principle should be applied to the facts of the present case. There is nothing before the Court to show that the provisions are similar to the provisions of the Planning Act.

14. On the other hand, on behalf of respondent No. 1 learned Advocate General contends that the Act is meant for the planned development of the planning area. Apart from the Act, Regulations have been framed, so that the area is properly developed. Preamble to the Act itself sets out that it is meant for planning the development and use of rural and urban land. The Act provides for setting up of various authorities for planning areas and preparation of plans for development. In exercise of those powers, various authorities have prepared plans. Chapter VII of the Planning Act provides for control of development and use of land. Section 42 sets out that every change in land use and every development has to conform to the provisions of the Planning and the Development Plan. u/s 43, no development can be undertaken without obtaining permission from the Planning and Development Authority. u/s 44, the procedure has been set out as to how a person should apply for permission. In case of refusal of permission, an appeal is provided u/s 45. Section 46 sets out that permission granted is valid for 3 years from the date of granting such permission. u/s 50, there is a power to revoke or modify the permission already granted to develop in the situation set out in the section. Section 51, sets out punishment of imprisonment. Under sub-section (2) of section 51, a person who continues to use or allows the use of land or building in contravention of the

provisions of the development plan without having been allowed u/s 42, is also liable to be prosecuted. These provisions, it is contended, must be considered while interpreting section 52. Section 52 will have to be read to ensure that the object of the Act is achieved. Section 52 cannot be used to regularise illegal development which is unauthorised. Section 52 is not a provision for limitation. It is a power conferred on un-authority to direct show cause notice on the persons who carry out development without permission. The authority, it is contended, is a body of persons. Therefore, when the Act contemplates that power is to be exercised by the Planning and Development Authority, the Planning and Development Authority has to arrive at a decision, prima facie, that the development is illegal. It is, therefore, contended that in these circumstances, limitation cannot be read based on document produced. It must be seen that the authority has to consciously arrive at a decision. It is, therefore, contended that in the instant case, at the highest, if so considered, it would be the show cause notice first issued on 18-12-1997, pursuant to a site inspection carried out on 7-10-1997 and 16-12-1997 which could be said to be the starting point of limitation. On the facts of the present case, it is contended, action was not barred by limitation.

15. Shri Thali, appearing for respondent No. 2 supports the said contention.

Reliance is also placed on a judgement of Division Bench of this Court in the case of Overseas Chinese Cuisine (India) Pvt. Ltd. and another Vs. The Municipal Corporation of Greater Bombay and others, . It is contended that a wrong doer cannot invoke extra ordinary jurisdiction of this Court. The power under Articles 226 and 227 has to be exercised to render succor to a deserving litigant when there are no other remedies available for relief from oppression and injustice and not intended for relief to a self-confessed law breaker with impunity.

16. With the above, section 52 of the Planning Act may now be considered. The relevant portion of section 52 reads as under :

"52. Power to require removal of unauthorised development.---

(1) Where any development or change of use of land had been carried out in any manner specified in Clauses (a) to (f) of sub-section (1) of section 51, the Planning and Development Authority may, within four years of such development or change, serve on the owner a notice requiring him, within such period, being not less than one month from the date of service of such notice as may be specified therein, to take any of the following steps as may be specified in the notice, namely :---

(a) in the cases specified in Clause (a) or Clause (c) or Clause (e) of the said sub-section to restore the land to its condition before the said development took place;

(b) in the cases specified in Clause (d) or Clause (f) of the said sub-section to secure compliance with the conditions subject to which the permission was

granted or with the permission as so modified;

(c) in the cases specified in Clause (b), to pay the development charge and such penalty, if any as may be prescribed, and in particular, such notice may, for any of the purposes aforesaid require---

(i) the demolition or alteration of any building or work;

(ii) the carrying out on land, of any building or other operations; or

(iii) the discontinuance of any use of land;

Provided that in case the notice required the discontinuance of the use of any land, the Planning and Development Authority shall serve a notice on the occupier also.

(2) Any person aggrieved by a notice served under sub-section (1) may within such period and in such manner as may be prescribed---

(a) apply for permission u/s 44 for the retention of the land or any buildings or works of for the continuance of any use of the land, to which the notice relates; or

(b) appeal to the Board.

(3) Where an application for permission has been made under Clause (a) or an appeal has been preferred under Clause (b), of sub-section (2), the notice served under sub-section (1) shall have no effect until the final determination or withdrawal of the application or the appeal, as the case may be.

(4) where the permission is granted on an application referred to in Clause (a) of sub-section (2) shall not have effect and where such permission is granted for the retention only of some building or work or for the continuance of use of only a part of the land, such notice shall not have effect regarding such building or work or such part of the land, but shall have full effect regarding other buildings or works or other parts of the land.

(5) Where an appeal has been preferred under Clause (b) of sub-section (2), the Board shall, after giving a reasonable opportunity of being heard to the appellant and the Planning and Development Authority concerned, allow or dismiss the appeal either by quashing or varying the notice as it may think fit;

(6) If within the period specified in the notice or within such period after the disposal or withdrawal of an application for permission or an appeal under sub-section (2), as may be prescribed, the notice or so much of it, as continues to have effect or the notice with variations made in such appeal is not complied with, the Planning and Development Authority may---

(a) Prosecute the owner for not complying with the notice and in case where the notice required the discontinuance of any use of land, also any other person who uses the land or causes or permits the land to be used in contravention of the

notice; and

(b) In the case of notice requiring the demolition or alteration of any building or work or other operations, itself cause the restoration of the land to its condition before the development took place and secure the compliance with the conditions of the permission or with the permission modified by taking such steps as the Planning and Development Authority may consider necessary including demolition or alteration of any building or works or carrying out of any building or other operations and may recover the cost of any expenses incurred by it in this behalf from the owner as arrears of land revenue.

(7) Any person prosecuted under Clause (a) of sub-section (6) shall be punishable with fine which may extend to ten thousand rupees, and in the case of a continuing contravention with a further fine which may extend to five hundred rupees for every day during which such contravention continued after conviction for the first such contravention."

A look at section 52 would show that where any development or change of use of land has been carried out in any manner specified in Clauses (a) to (f) of sub-section (1) of section 51, the Planning and Development Authority may, within four years of such development or change, serve on the owner a notice requiring him, within such period, being not less than one month from the date of service of such notice as may be specified therein, to take steps set out therein. The expression, therefore, is "within four years of such development or change". Is the language so clear and unambiguous that the rules for interpretation are not required to be considered whilst considering the language of the section, as is contended on behalf of the petitioner relying on the various judgments of the Apex Court. How does the Planning and Development Authority know that a development or change has taken place? Is the authority expected to carry out daily inspection of the planning area by day and by lantern at night. The embargo imposed by sections 42, 43, 44 is clear. Does section 52(1) have the effect of regularising an illegal structure after four years of development or change. A duty is enjoined on the citizens residing within the planning area not to carry out any development without permission of the Authority. Presumption in such cases is that every citizen living within the planning area knows the existence of the Act. Whilst preparing a development plan for the planning area rigorous procedure of notification, hearing objections is proceeded with before finalising the plan. Section 23 defines a "Planning and Development Authority" to mean any planning and development authority constituted under the Act. u/s 20, the Government is empowered to constitute a Planning and Development Authority for a planning area. Who can be appointed as members, is also set out u/s 20. u/s 20(2), every planning Board is a body corporate. Section 21 sets out the terms of office. Section 23 provides the procedure for meetings.

17. Every planning area has to have a Planning Authority, constituted of such persons who have to meet and transact the business. Therefore, it contemplates that when the power is to be exercised u/s 52, it is to be exercised by the

Planning and Development Authority. A show cause notice can be issued only after a decision at a meeting where the members can decide the question in terms of section 23(3). All questions have to be decided by majority of the votes. In other words, the power u/s 52, to be exercised, must be pursuant to a decision taken at a meeting held unless the body delegates powers for limited purpose. In such event, the delegate can exercise the powers. That would contemplate an agenda on the items. What this means, would be that the Planning and Development Authority must have the issue on its agenda. This is for the purpose of enabling it to decide whether a show cause notice must be issued. There may be cases where there is some unauthorised construction or unauthorised additions to an authorised construction. It is not, as if in every case, that the authority is bound to issue show cause notice. In marginal cases, it may choose not to exercise the powers conferred on it u/s 52. However, where there is development without permission or where major deviations has taken place, which could not have been done under the Planning Regulations and Permission is not taken, then notice can be issued. Therefore, the period contemplated u/s 52 which is conferred on the authority, must be read to mean when the authority meets and decides the issue at its meeting. How does the authority take cognizance of a matter? This could be on a written complaint. It could be by a direction of the Court. It could be on an inspection carried out by it. Therefore, it is clear that the limitation starts not when the illegal construction has been done or merely brought to the notice of the authority. The exercise of powers must be when the matter is placed before the Planning Authority and it decides to issue show cause notice or some such other steps. That would be the starting point of limitation. When a power is conferred on a body or persons, that power can only be exercised by that body of persons, when the matter is placed before the body or persons at regularly constituted meetings. This can only be the meaning assigned to section 52, if the object of the Act is to be achieved. Any other meaning will result in defeating the very ambit and object of the Planning Act.

18. The Act does not contemplate regularisation of an illegal structure outside section 44. u/s 134, the provisions of the Act, Rules and Regulations shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. If permission is granted under any other law, then notwithstanding that permission, permission under this Act has to be taken. No development activities can be carried out without such permission. The Act, therefore, overrides all other enactments on development within its planning area, irrespective of the permission granted by any other body. So considered, the term 4 years can, therefore, be mean 4 years when the matter is placed on the agenda of the authority. A law breaker cannot contend that the period of 4 years commences either from the date of the construction and/or a date when a complaint is made. Mere filing of a complaint is immaterial. A complaint filed may not be put up before the Authority. If it is not put up before the Authority, it would not come to the notice of the Authority. If it has not come to the notice of

the Authority at its meeting, the period of 4 years will not commence. The expression therefore, "four years of such development or change", is not four years of carrying out development or change, but four years when the matter comes up before the Authority and the Authority, *prima facie*, comes to the conclusion that a show cause notice is required to be issued in the matter of development or change. The section must be so read that it would give effect to the objects and aims of what the Act intended. No doubt, in so constructing, the plain or grammatical meaning is being deviated from. It is true that, the Apex Court has said that when the language is plain, it is not for the Court to take aid of rules of interpretation. However, when the section read in its entirety, leads to ambiguity and destruction of its object, the Court must look at the object of the Act and the mischief it seeks to avoid and the remedy provided for it to interpret the words. The mischief sought to be removed is that there should be no development without permission in the planning area. The object is planned development in the planning area. The power u/s 52(1) must, therefore, mean the exercise of powers when the matter is placed on the agenda of the Authority. If not so read, the section itself would become otiose. A direction of a Court to remove an illegal construction could be frustrated on the ground that four years have elapsed since the development had taken place. The matter could be kept away from the Authority by playing fraud. There could be situations wherein the very complaint is held back from the Authority. The law would not countenance, defeating the provisions of the Act. In my opinion, exercising of powers by the Authority in respect of a development carried out, the power to issue the notice is from the time the matter is first placed before a meeting of the Authority. This view is supported by reading sections 53 and 54 of the Planning Act. u/s 53, any development or change being carried out which is not completed, a notice to discontinue can be issued. There is no time frame or limitation. u/s 54 a Planning Authority finds that it is expedient in the interests of the proper planning of its area, that any land use should be discontinued or any building or work should be discontinued, can issue notice for discontinuance of removal of the building or work. There is, no limitation for removal. It can be done at any stage. If that be the object of the Act, then section 52 cannot be so read to defeat the object of the Act. The petitioner's contention must therefore be rejected. Therefore, the 2nd respondent has clearly the power to issue notice apart from section 52, under sections 53 and 54. Therefore, even assuming section 52 is wrongly quoted, then it can be held that the power at any rate was rightly invoked.

19. Another way to look at it would be that the limitation in respect of those works which can be regularised and that there is no limitation in respect of change or development which cannot be regularised. Having said so, in the instant case, clearly, the power has been properly exercised. Even if the inspection is taken to be the date of commencement, the power has been exercised within the time specified.

20. Before passing the final order, one more contention raised by the petitioner must be considered. It is contended one P.M. Vaz has also carried out

development without permission. It is contended that though the second respondent had held that it was development and directed demolition, the first respondent has taken a decision that no permission u/s 44 was required and consequently, clauses of section 51 are not attracted. The grievance of the petitioner is that the petitioner alone could not be single out. A wrong act cannot result in this Court issuing a writ to continue another wrong. That would defeat the constitutional objective. However, it is not that the Courts are totally devoid of exercising powers in such a situation. By order of 16-6-2000, the first respondent was directed to file an affidavit (sic) names of the members who were present at the meeting wherein the appeal filed by P.M. Vaz was allowed. We may first notice the judgment of this Court wherein the directions were issued to the respondents. In paragraph 8 of the judgment, the Court has referred to the affidavit of respondent No. 4 before it, who is respondent No. 2 herein. Shri P.M. Vaz was a party to the said proceedings as respondent No. 2. The Court noted that in the affidavit, under item (d), the illegal construction had been set out. It is the case of the petitioner that these are the very constructions which have been carried out by Shri P.M. Vaz. They may be noted as under:

- 1) An area of about 84 square metres on the western side open terrace is converted into rooms;
- 2) Void is converted into roads to the extent of about 49 square meters ;
- 3) Attic floor of about 180 square metres has been constructed.

In the additional affidavit, filed on behalf of respondent No. 2, in this petition, in para 3, the same constructions are set out as being on the Vth floor. Respondent No. 2 has held that this was a development without permission. In paragraph 5 of its judgment in Writ Petition No. 299/97, the Courts noted that respondent No. 4 has admitted that the disputed building/construction is in contravention of the permission granted and the interest of justice would be met if the authority takes such steps for the demolition or rectification of the offending structure or any other order in accordance with law. This Court therefore noted the illegal construction and directed action. The respondent No. 2 herein directed demolition of the structure. Respondent No. 1 has, however, allowed the appeal.

21. Pursuant to directions of this Court Shri R.N. Ray, Member Secretary, Chief Town Planner has filed affidavit. In para 4, it is set out that in the appeal filed by Shri P.M. Vaz, the following members participated :

- 1) The President of the meeting Shri Dayanand Narvenkar, Dy. Chief Minister & Chairman, T.C.P. Board ;
- 2) Shri Jitendra Deshprabhu, M.L.A. ;
- 3) Shri Richard D" Souza, Conservator of Forests ;
- 4) Shri K.G. Sharma, Director of Agriculture ;
- 5) Shri S.S. Kolvekar, Jt. Director, Department of Planning & Statistics ;

- 6) Shri A. Pereira, Asstt. Director of Tourism ;
- 7) Smt. S. Monteiro, Suptd., of Fisheries, Rep. of Director of Fisheries;
- 8) Shri R.N. Ray, Chief Town Planner, Member Secretary.

Prima facie, from the affidavit of respondent No. 2 it is clear that the development is contrary to the approved permission. This Court is Writ Petition No. 299/97 after hearing amongst others, Shri P.M. Vaz, accepted the affidavit of respondent No. 2 herein and issued directions. In the order of the appellate authority, no reasons are discernible as to how the constructions put up are not development. Prima facie on the same reasoning, the petitioner's construction would also be not development. u/s 121 of the Planning Act, no suit or other legal proceeding shall be maintained against the Government, Planning and Development Authority or any of its officers or persons duly appointed or authorised by it in respect of anything in good faith done or purporting to be done under the provisions of the Act or the Rules or Regulations made thereunder. The Town and Country Planning Board is an appellate authority under the Planning Act. Section 121 comes into play when the judgment is bona fide. Prima facie, I am of the opinion, the judgment is not bona fide. Hence, the office to issue notices to the persons listed in paragraph (21) at Serial Nos. 1 to 8, as to why the matter should not be referred to the Hon'ble Governor of Goa u/s 24 of the Goa Public Men's Corruption (Investigations and Inquiries) Act, 1988 and Rules, 1993. Notices made returnable on 14-7-2000. Office to serve notice through Bailiff.

22. Save to the extent as aforesaid, I find no merit in the petition. It is accordingly dismissed. Rule discharged.

There shall be no order as to costs.

Office to register the show cause as a Miscellaneous Application in the writ petition.