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**(2008) 08 BOM CK 0098**

**In the Bombay High Court**

**Case No :** Letter Patent Appeal No. 5 in Writ Petition No. 45 of 2008

Vinod R. Kholkar and Another

APPELLANT

Vs

State of Goa and Another

RESPONDENT

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**Date of Decision :** 22-08-2008

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Goa Village Panchayat Raj Act, 1994 — Section 66(5)

**Citation :** (2008) 6 MhLj 584

**Hon'ble Judges :** Santosh Bora, J; S.C. Dharmadhikari, J

**Bench :** Division Bench

**Advocate :** M.S. Sonak and Rohit Bras De Sa, for the Appellant; S.R. Rivonkar, Government Advocate for Respondent No. 1 and V.R. Tamba, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

1. Heard Shri Sonak, appearing for the appellants, Mr. Rivonkar, Government Advocate, appearing for respondent No. 1 and Shri Tamba, appearing for respondent No. 3. Presence of respondent No. 2 is not necessary for disposal of the appeal.

2. The appellants are the original petitioners who had preferred the above Writ Petition in this Court challenging an Order dated 1-6-2006 passed by Dy. Director of Panchayats (N) Goa, Panaji, and an Order made by the Director of Panchayats in Appeal No. 18/07. The Orders which were impugned in the Writ Petition were passed under the Goa Panchayats Raj Act, 1994.

3. The Dy. Director of Panchayat had passed an Order u/s 66(5) of the said Act at the instance of the respondent No. 3/original appellant.

4. Respondent No. 3 had filed a complaint with regard to illegal construction of shop No. 212 by the present petitioners/appellants before us. The property concerned was surveyed under Survey No. 57/4 of Village Orgao, Ponda Taluka.

5. The complaint was that the present appellants have changed the original

structure/shop No. 212 having plinth area of 65 square metres and carried out reconstruction of building of three floors and office premises on the first floor. They have not obtained permission or NOCs from the concerned Village Panchayat so also from the Town and Country Planning Department. The building rules were also referred and it was alleged that the construction was illegal. Such an illegal construction ought to have been pulled down but although the show cause notice was issued in that behalf, no action having been taken, the Complainant had to approach the Deputy Director. The Dy. Director after perusing the records before him, has specifically held that the Village Panchayat in its reply made a vague statement and tried to defend their action by raising an excuse of conveyance executed by one Devasthan and that is why the action was not taken. The Dy. Director has observed that the Panchayat should have been clear and firm in its stand and its decision must reflect that public interest and the interest of the Community, as a whole, has been protected. That having not been done, the Dy. Director allowed the complaint dated 26-6-2005 and directed the Panchayat to initiate appropriate action on the complaint in terms of the Building Regulations and the relevant provisions of Goa Panchayat Raj Act, 1994. Aggrieved by this Order of the Dy. Director dated 1-6-2006, the appellants/petitioners before the Single Judge, approached the Director and the Director after perusing the records and hearing both sides, affirmed the Order of the Dy. Director. The factual aspects have been noted and the appeal of the present appellants came to be dismissed by Order dated 4-10-2007.

6. Aggrieved by these Orders, a Writ Petition was preferred, which was placed before the Single Judge of this Court and by the Order impugned in this appeal, the learned Single Judge proceeded to dismiss the Writ Petition.

7. That is how the instant Letter Patent Appeal.

8. Mr. Tamba, appearing for original respondent No. 3, raised a preliminary objection to the maintainability of the appeal on the ground that the original Writ Petition was filed invoking the jurisdiction of the learned Single Judge under Article 227 of the Constitution of India and in terms of the law laid down by the Supreme Court and this Court, the present Letters Patent Appeal, is not maintainable. It would not lie in such a case.

9. On the other hand, it was contented before us by Shri Sonak appearing for the appellants that jurisdiction could be exercised under Article 226 and the Letters Patent Appeal is, therefore, maintainable.

10. Although this Letter's Patent Appeal challenges the Order of the learned Single Judge in a Writ Petition styled as one under Article 227 of the Constitution of India, we have heard learned Counsel on merits, despite we finding substance in the preliminary objection on maintainability.

11. Mr. Sonak contended that the order passed by the learned Single Judge itself refers to an application made by the petitioners/appellants before us for regularization of the construction. It was urged that an application was made

before the Town and Country Planning Department and the said application is pending. On the other hand, it was pointed out by the respondent No. 3, before the Single Judge, that the Town Planner had written a letter to the Sarpanch of the Village Panchayat on 1-8-2007 communicating rejection of the proposal. Mr. Sonak urged that the matter can be carried further by the original appellants and in any event, they do not have any communication with regard to rejection of the proposal. The grievance of Shri Sonak is that the learned Single Judge having observed that the application was made for regularization, proceeded to observe that the law does not permit regularization in cases, such as the present one. He relied upon the observations in the learned Single Judge's Order wherein it is observed that there is no provision of regularization in such cases.

12. On the other hand, Mr. Tamba urged that the Order of the learned Single Judge must be read as a whole and reliance cannot be placed on some observation therein. Moreso, when there was no contention raised before the Single Judge with regard to maintainability of the application for regularization. The challenge was to the Orders of the Dy. Director and the Single Judge was not called upon to go into the issue of regularization by the appellants.

13. Both sides invited our attention to the Building Rules and several modifications made thereto. We do not wish to enter into a larger controversy. Admittedly, the petitioners applied for a repair permission. The authorities concurrently observed that under the garb of repairs, the petitioners-appellants before us, carried out reconstruction and put up a building with shops on the ground floor and office premises on the first floor. Such a construction is not covered by the repair permission and, therefore, it was obviously illegal. The Panchayat, having failed to take action in accordance with law, it was directed to do so by the Authorities under the authorities of Goa Panchayat Raj Act, 1994, No fault, therefore, can be found with the learned Single judge's Order refusing to interfere with the directions issued by the authorities.

14. Ultimately, matters of construction without permission or construction exceeding the permissible limits are for the concerned Authorities and Panchayats to decide. This Court cannot interfere in its writ jurisdiction in that behalf and more particularly once factually it is proved that the construction is illegal. This is not a Court of further appeal and in its writ jurisdiction it cannot substitute its own view with that of the authorities. The learned Single Judge was right in placing reliance on the observations in the order rendered in Appeal by the Additional Director of Panchayat. They are reproduced in the impugned Order. In such circumstances, there is no error apparent on the face on record requiring the Single Judge's interference in writ jurisdiction. Consequently, the Writ Petition was rightly dismissed.

15. The observation of the learned Single Judge in Paras 4 and 5 of the impugned Order must be read in the context of the factual position. Once the learned Single Judge noticed that permission for repairs has been exceeded and in the garb of the same, a fresh construction has been made and that was clearly

illegal, then, in these peculiar facts, the learned Single Judge observed that there is no question of regularization. Everything depends upon the facts and circumstances of each case and whether regularization is permissible or not are matters which should be decided in the backdrop of the same. Consequently, for the first time plea being taken with regard to the regularization of the said construction, it is for the appellants to approach the concerned Authorities and seek reliefs, if available to them in law.

16. In the result, we find that even on merits, there is no substance in this appeal and it deserves to be dismissed and is accordingly dismissed. However, there is no Order as to costs.