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Meenakshi Financial Consultants (P) Ltd. and Satwaik Dwellings Private Ltd. Vs The Village Panchayat of Orlim

Writ Petition No. 116 of 2009

Court: Bombay High Court (Goa Bench)

Date of Decision: April 28, 2009

Acts Referred:
Goa Village Panchayat Raj Act, 1994 â€" Section 178, 201(A), 3(2), 4, 5#Goa, Daman and Diu Village Panchayat (Regulation of Buildings) Rules, 1971 â€" Rule 9

Citation: (2009) 4 BomCR 666 : (2009) 111 BOMLR 2068

Hon'ble Judges: U.D. Salvi, J; B.P. Dharmadhikari, J

Bench: Division Bench

Advocate: Sudesh Usgaonkar, for the Appellant; M.S. Sonak, for the Respondent

Final Decision: Allowed

Judgement

B.P. Dharmadhikari, J.
With the consent of the parties, the petition is taken up for final hearing, considering the nature of controversy, by

making Rule returnable forthwith.

2. The petitioners have purchased the plot of land admeasuring 7031 sq.mts. as Palcuta Premiera Adicao and Palcuta Secunda Adicao , having

survey No. 87/14(part) of revenue Village Orlim, Salcete for the purposes of having a housing Scheme after obtaining necessary clearance from

the Revenue Authorities and Town and Country Planning Authorities. On 19.8.08, the petitioners filed an application for issuance of construction

licence and the same was issued to them on the payment of necessary fees. Thereafter, the petitioners also obtained No Objection Certificate from

Primary Health Centre, Chinchinim, Government of Goa.

3. After this, on 25.11.2008, the petitioners received a show cause notice calling upon them to show cause as to why their licence for construction

should not be revoked. The petitioners approached this Court in Writ Petition No. 748/2008 and as this Court was not inclined, the petitioners

withdrew their Writ Petition and filed the reply to show cause notice on 13.12.2008. After considering the said reply on 2.1.2009, the Secretary of

respondent - Village Panchayat informed the petitioners that licence issued to them on 19.8.08 has been revoked. The Petitioners have challenged

the said order dated 2.1.2009 in the present matter.

4. We have heard the learned Advocate Shri S. Usgaonkar for petitioners and the learned Advocate Shri M. S. Sonak for respondent.

5. Learned Advocate Shri Usgaonkar has after pointing out facts as mentioned above stated that The Goa Panchayat Raj Act 1994 contemplates

Panchayat and the Gram Sabha to be separate and distinct authorities. He has relied upon the provisions of Section 6 to point out the functions

entrusted to the Gram Sabha and according to him, the consideration of construction licence given to the petitioners by the Panchayat is not the

subject within its jurisdiction. He has also relied upon the provisions of Rule 9 of The Goa Daman & Diu Village Panchayats (Regulation of

Buildings) Rules, 1971 to point out that the said Rule contemplates revocation only in circumstances stipulated therein and as no such

circumstances are present in the present matter, the impugned order is liable to the quashed and set aside. He has also contended that the

objection of alternate remedy raised by respondent in affidavit-in-reply is misconceived because neither Section 178 nor Section 201(A) enables

petitioners to move appeal in such circumstances. He contends that reason of demography given by respondent is misconceived and is contrary to

the Rules and Regulations framed under The Goa Panchayat Raj Act. According to him, the entire action is without jurisdiction and as it violates

the rights of present petitioners, this Court should interfere in the matter and the construction licence issued to petitioners should be restored by

quashing and setting aside the impugned order.

6. Learned Advocate Shri Sonak on the other hand has contended that this Court should not interfere in the matter as the statute has provided

alternate remedy to the respondent. In order to substantiate his contention, he argued that the last part of the said Section 201-A which deals with

refusal of any request by the authority, etc. cannot qualify earlier part of the said provision and he relies upon the explanation of the said Section to

contend that the said explanation itself shows that the refusal contemplated in the said Section is one of the species and genus as such has not been

expressly mentioned in it to keep the remedy wide open. According to him, the order passed by Panchayat or any action or the resolution of

Panchayat can thus be challenged u/s 201-A. He has invited our attention to the provisions of Section 6 of Sub-section (1) and also Section 6 (4)

and Section 6 (5) that the Gram Sabha is the supreme body and it can deal with any subject concerning the welfare of the respondent or any

development activities in the village. He contends that the reason for demography given is on account of the pressure which new housing complex

is going to create on the otherwise limited resources available in the village. He contends that this purpose behind the show cause notice is properly

understood by the petitioners and he invites our attention to the reply to the show cause notice filed by the petitioners in support. He contends that

in the circumstances, no case is made out warranting any interference in writ jurisdiction.

7. After hearing the parties, we find that under the Scheme of the Goa Panchayat Raj Act 1994, Section 3(2) contemplates the Panchayat to be a

distinct body. Section 4 deals with the Gram Sabha and entire electoral constitutes the Gram Sabha. The Panchayat is elected by the said

electorate. Section 5 deals with meeting of the Gram Sabha and as per Section 5(5) a requisitioned meeting is to be held by Sarpanch upon a

requisition in writing by not less than one fifth of total number of members. The functions of the Gram Sabha are stipulated in Section 6 and Sub-

section (1) mentions that the Sarpanch has to place before the Gram Sabha for its approval certain matters. The matters (a) to (j) specified therein

do not expressly mention any development or construction activity. Sub-section (4) of Section 6 declares that the decision taken by the Gram

Sabha to be binding and final in so far as the Panchayat is concerned. Sub-section 5 of Section 6 permits a person aggrieved by the decision of the

Gram Sabha, an appeal to the Director within a period of 30 days from the date of such decision and the Director s decision on such appeal is

made final. No provision in the Act permitting the Gram Sabha to grant permission to construct or to revoke or interfere with said permission has

been pointed out to us. In fact, the said aspect need not detain us more because no such resolution passed by the Gram Sabha is placed for

consideration before this Court. The affidavit-in-reply filed by respondent also does not mention that the Gram Sabha has passed any resolution

thereby cancelling the construction licence issued to the petitioners. The Show cause notice issued to the petitioners on 25.11.2008 only mentions

objections received from villagers. The said show cause notice states that villagers had objected because the project would change the

demography of their village. Thereafter the Secretary has mentioned in the show cause notice that we have passed a resolution based on the

request of our village. However, again no such resolution passed by Panchayat has been placed on record. The petitioners have replied to the

show cause notice in detail and the final order passed on 2.1.2009 only mentions that the said reply was placed before the meeting of village

panchayat held on 13.12.2008 and it was found to be not satisfactory, hence, the Panchayat has decided to revoke the said licence. The power of

Panchayat to revoke the construction licence is circumscribed by Rule 9 of The Goa Daman & Diu Village Panchayats (Regulation of Buildings)

Rules, 1971 (supra). Said Rule reads as under:

Revocation of permit. - The Panchayat concerned may revoke any permit issued under the provision of these rules, wherever there has been any

false statement or any misrepresentation of any material passed, approved or shown in the application on which the permit was based.

8. Thus, it is apparent that the licence issued can be revoked whenever there has been any false statement or any misrepresentation by the

applicant. The Panchayat has not pointed out any such false statement made by the petitioners or any misrepresentation practiced by them.

Panchayat has not produced any resolution pointing out that the project is going to change the demography of their village. Though in affidavit some

efforts have been made to comment upon the implication of demography, we find that the affidavit cannot be used to supplement the reason which

are not existing on record. No such reasons for cancellation from records are being pointed out. It appears that the Gram Sabha has not passed

any resolution on the subject and the resolution if any passed by the Gram Sabha is contrary to the provisions of Panchayat Raj Act and also

above mentioned Rules.

9. The contention of the learned Advocate Sonak about availability of alternate remedy needs to be looked into in this background. The provisions

of Section 201-A relied upon by him for this purpose permits an appeal on miscellaneous matter which is dealt with by the Panchayat. The phrase

miscellaneous matters has not been defined in the Act but from the said Section it is apparent that it stands attracted when there is no provision

elsewhere in the Act. The provisions of Section 6(5) permit an appeal against decision of the Gram Sabha and provisions of Section 66 itself

permit an appeal in circumstances contemplated Sub-sections 2 and 7 thereto. It is therefore obvious that matters stipulated by Section 6 or by

Section 66 are not subjected to provisions of Section 201-A.

10. Section 201-A permits appeal in miscellaneous matters within period of 30 days from the date of refusal of any request by said authority. The

explanation defines refusal as rejection of any request in writing or non conveying of any reply to the application within a period of 15 days from

the receipt of application in its office by Panchayat. Section 66 of Sub-section (2) permits filing of appeal within 30 days after the date of expiry of

period of 30 days of filing application for grant of permission if no decision is taken thereon by the Village Panchayat with said period. Thus,

provisions of Section 66 (2) prescribe different period for accrual of cause and rule out applicability of explanation of Section 201-A. It is

therefore obvious that Section 201-A read with explanation is not available in the matter regulated by Section 66. In view of this finding, it is

apparent that reliance upon it by Panchayat to point out the alternate remedy to the petitioners is misconceived.

11. Words in Section 201-A like dealt with or request in writing or new obligation to decide within 15 days contemplated therein, all show that

said Section envisages that Panchayat is acting within four corners of Panchayat Raj Act and Rules. It is not attracted when Panchayat undertakes

some activity without any authority of law and jurisdiction. In any case, we find that such alternate remedy need not bar petitioners from directly

approaching us. In the circumstances, the impugned action of Village Panchayat of issuing a show cause notice and of revoking construction licence

of petitioner is found to be without jurisdiction. Hence, the order dated 2.1.2009 impugned in the present petition is accordingly quashed and set

aside.

12. In the result, licence No. VPO/2008-09/3 dated 19.8.2008 in favour of the petitioners is restored.

13. Petition is accordingly allowed with no order as to costs.