

Presented on : 02.04.2011

Registered on : 02.04.2011

Decided on : 30.11.2019

Duration :

Years Months Days

8 7 28

**IN THE COURT OF THE DISTRICT JUDGE-1, NORTH
GOA, PANAJI.**

(Before Ms. Sherin Paul, District Judge-1, Panaji)

Civil Suit No.43/2011

Shri Ibrahim Sab,
Major of age, Indian National,
Resident of House no.100/3 (i),
Tivim, Auchitwada, Bardez Goa

.....Plaintiff

V/s

1. The State of Goa,
Through its Chief Secretary,
Secretariat Office,

2. Collector, North Goa,
Collectorate Building,
Panaji, Goa

3. Administrator of Comunidades of
North Zone, Mapusa, Bardez Goa,

4. Comunidade of Tivim,
Through its Attorney,
Tivim, Bardez Goa.

5. Village Panchayat of Tivim,
Through its Sarpanch, Bardez, Goa.Defendants.

Plaintiff represented by Ld. Advocate Shri C. Shirodkar

Defendants no.1, 2 and 3 represented by Ld. Adv. Ms. P.
Kamat

Defendants no.4 represented by Ld. Advocate Shri V.
Parsekar,

J U D G M E N T

(Delivered on this the day 30th of the month of November
of the year 2019.)

This Judgment shall dispose of the suit for
declaration, permanent injunction and consequential
reliefs. The case of the plaintiff in brief is that he is in
receipt of the demolition notice/order dated 24.01.2011
from defendant no.3, which has been referred to as "the
said notice". That he has his residential house duly
constructed in the property bearing survey no.343/14 of
Village of Tivim. This property has been referred to as "the
said property". The plaintiff stated that defendant no.4
claims to be the owner of the said property. That his

residential house is duly electrified and they are paying necessary house tax and is in existence for the last about more than 17 years. That his house is duly consented and permitted by defendant no.4 and even otherwise the same is within the knowledge of defendant no.4 and in such circumstances, his house was/is in existence on or before 15.06.2000 and the same is a residential house. That assuming without admitting that his construction is unauthorized, then the same can very well be regularized as is contemplated under the Special Statute that is, Code of Comunidades and, hence, the proceedings initiated for demolition are totally bad in law. That by way of abundant caution he has in fact filed representation before the Collector in accordance with the amended Section 372-A of the Code of Comunidades and in terms of law, till the above application was decided by the Collector, no proceedings much less demolition proceedings can be initiated against him. That defendant no.2 is bound to consider his case in terms of the amended Code of Comunidade as they are well within the framework of law and to that extent they are entitled for a Judgment and Decree directing defendant no.2 to regularize the suit house.

2. The plaintiff claimed that vide order dated

24.01.2011, defendant no.3 has alleged that he has illegally constructed a house in the property bearing survey no.343/14 allegedly belonging to defendant no.4. That the said order is issued without application of mind and is totally false. That the defendant no.3 is acting in total abuse of the powers under the Code of Comunidade. That defendant no.3 has no jurisdiction to issue the said order and therefore the said order being illegal is required to be declared as null and void. That defendants no.3 and 4 falsely claim that he is an outsider and therefore, not entitled to have his residence in Goa which is totally illegal. That he has learnt that defendants no.3 and 4 are acting on the instruction of vested interest and under influence of certain section of highly influential group of people who are out to cause harassment to him and consequently drive him away from the Village of Tivim and demolish his residential house. That he has learnt that defendants nos.2, 3 and 4 are falsely swayed away by the notion or allegation made by a certain sect of likeminded highly influential group of people who are falsely claiming that he being outsider is not entitled to have residence in the Village of Tivim or elsewhere in the State of Goa. That the said order is illegal in as much as no notice or inquiry is initiated nor norms of judicial procedure are adhered as required to be mandatory followed whilst exercising

powers by the quasi judicial authorities, that is, defendant nos.2 and 3 under the law and therefore, the Order of defendant no.3 is totally illegal. According to the plaintiff he cannot be condemned unheard and without affording any opportunity to him to show cause to any notice. That defendant no.3 in his Order has quoted that the Collector has passed Order dated 09.11.2010. That the said Order dated 09.11.2010 is totally illegal and is required to be set aside. That no inquiry was conducted by defendant no.2 and no notice was issued by the Collector as such, any Order as alleged by defendant no.3 is totally illegal and therefore is bad in law. That there is very apprehension that defendant no.3 and 4 may cause demolition of the house structure under the grab of the said Order from defendant no.2. That defendants nos.2, 3 and 4 have not followed due process of law and he apprehends that defendants nos. 2, 3 and 4 are not interested in following due process of law.

3. The plaintiff claimed that in the said Order dated 24.01.2011, defendant no.3 has quoted several orders from the Hon'ble High Court and other authorities. That they were not parties to any proceedings before the Hon'ble High Court and as such they are required to be heard by the law enforcing authorities which is the

fundamental right of any citizen in the Country before taking such drastic action. That in the said order, violation of Goa Land (Prohibition on Construction) Act, 1995 is alleged, however, defendant no.4 is fully aware and permitted him (plaintiff) to construct the house and therefore the provisions of the Goa Land (Prohibition on Construction) Act, 1995 is not applicable to him. That defendant no.4 has not initiated any action and this fact goes to show that defendant no. 4 was very well aware of his residential house. That defendant no.3 had issued final notice dated 15.06.2009 which was appealed before the Administrative Tribunal and vide order dated 25.02.2010, without adjudicating merits, the Administrative Tribunal was pleased to dismiss the appeal on the ground that the appeal is not maintainable against final notice. That he thereafter immediately filed appeal before the under thereafter the Under Secretary, Revenue Department, Government of Goa, Porvorim, who was pleased to re-direct the appeal to collector vide his letter dated 09.04.2010 for appropriate decision. That defendant no.2 did not bother even to issue notice to him and to his shock and surprise, it is seen vide order dated 24.01.2011 defendant no. 2 had passed orders on 09.11.2010 for demolition and consequently defendant no. 3 has issued orders for demolition which are totally illegal and abuse of

process of law.

4. According to the plaintiff the issue of construction is subjudice before the Village Panchayat of Tivim. That the Village Panchayat of Tivim had similarly tried to demolish his house however vide order dated 29.10.2010 his appeal was allowed and the Order of demolition of his house was set aside and, hence, it was totally improper and illegal on the part of the defendants no.2 and 3 to pass orders of demolition without hearing him.

5. The plaintiff stated that the Village Panchayat of Tivim, vide show cause notice dated 18.02.2011 in terms of Section 64 - J, has falsely initiated proceedings against him. That the proceedings initiated by the Panchayat are bad in law as the concerned Authorities, that is, the Collector under the Special Statute, that is, Code of Comunidades had already initiated action. That the special statute would prevail over the general law and hence, it was not permissible for the Village Panchayat of Tivim to initiate parallel proceedings and vex him twice for one cause. That besides the above, the proceedings that are initiated by the Village Panchayat are inherently illegal in as much as the Village Panchayat of Tivim has no jurisdiction under section 64 -J as there is no authorized

construction undertaken by him. That the action initiated by the Village Panchayat of Tivim is not independent and impartial throwing justifiable doubts that the Village Panchayat are in collusion with some vested interest.

6. The plaintiff therefore, prayed that Order dated 24.01.2011 issued by the defendants no.3 be declared as null and void and consequently, be set aside and further by way of permanent injunction restrain the defendant, its agents, servants and/or any other person acting on their behalf be restrained from interfering with him pursuant to the said Order. That by way of appropriate Judgment and Decree declare that the Order dated 09.11.2010 as null and void and consequently be quashed and set aside and further by way of permanent injunction restrain the defendants, its agents, servants, and/or any other person in any manner whatsoever nature or executing the said order dated 09.11.2010 against him. That by way of appropriate judgment and Decree direct defendant no.2 to consider his case for regularization in terms of Article 372-A of the amended Code of Comunidades and consequently direct defendant no.2 to regularize the suit structure if in case, this Courts comes to the conclusion that the suit structure is unauthorized. That by way of Judgment and Decree quash and set aside the show cause notice dated

18.02.2011 issued by the Village Panchayat of Tivim and Order the Village Panchayat of Tivim to drop the proceedings.

7. Defendants no.1 and 2 filed their written statement and stated that the suit on the face of it is not maintainable in as much as the notice Order dated 24.01.2011 which is challenged in the present suit is in the nature of execution/implementation of the final order/notice dated 15.06.2009 issued by the office of defendant no.3 in exercise of the powers conferred by defendant no.2 in the capacity as Director of Civil Administration. That the said order dated 15.06.2009 was issued directing the plaintiff to remove/demolish the suit illegal structure. That the plaintiff had challenged the said final order/notice dated 15.06.2009 before the Hon'ble Administrative Tribunal in Comunidade appeal and the said appeal was dismissed. That the Code of Comunidade is the special statute governing the functions of the Comunidade and the Comunidade land. That the plaintiff has thus already exhausted the remedy under the special statute, that is, the Code of Comunidade and, hence, it is not permissible for the plaintiff to invoke the jurisdiction of this Court under the general law, that is, the Specific Relief Act. That the Hon'ble Bombay High Court was seized of the Civil Suit No.43/2011

same subject matter of illegal constructions in the Writ Petition no.192/2010 filed by one Jacinto M. Sequeira and three others. The plaintiff had full knowledge about the said Writ Petition since one Lala Ismael Bepari, who according to the petitioner is head of all illegal constructions (including of the plaintiff), was made party to the said Writ Petition. Thus the plaintiff had constructive notice of the said Writ Petition. That the Hon'ble High Court while disposing the said Writ Petition by Order dated 07.07.2010 directed defendant no.2 to look into allegations made by the said Jacinto M Sequeira and three others (that is the petitioner in the said Writ Petition) and if necessary to initiate proceedings against the encroachers by exercising powers under Article 371 of the Code of Comunidade.

8. According to defendants no.1 and 2 defendant no.3, that is, the Administrator of the Comunidade is empowered to exercise the powers vested in defendant no.2 under Article 372 of the Code of Comunidade to discharge the function as contemplated under the Article 371. That in exercise of the said power defendant no.3 had given show cause notice to the plaintiff vide notice dated 06.04.2009. That the plaintiff had replied the show cause notice, however, since the reply was not satisfactory, the office of

defendant no.3 had issued final notice dated 08.06.2009 for demolition of the illegal construction of the plaintiff. The said final notice was impugned by the plaintiff before the Hon'ble Administrative Tribunal invoking the provisions of Code of the Comunidade, which appeal was dismissed.

9. These defendants claimed that after disposal of the said Writ Petition, defendant no.2, vide order dated 09.11.2010, directed the defendant no.3 to take necessary action for removal/eviction of the encroachers including the plaintiff. That all legal requirements about giving show cause notice, etc. were already complied with and the final order/notice issued by defendant no.3 on behalf of defendant no. 2 which is in conformity with the direction given by the Hon'ble High Court.

10. These defendants stated that the house structure constructed by the plaintiff is nothing but an illegal encroachment upon the Comunidade land. That the plaintiff has no right to construct such house in the property of Comunidade. That the obtaining electricity connection by misrepresenting facts to the concerned authority or getting the illegal house registered in the Panchayat for the house tax purpose does not legalize the illegality nor can the encroachment in the Comunidade

land be regularized. That the notice dated 24.01.2011 is legally and rightly issued by defendant no.3. That defendant no.3 was duly empowered to exercise the powers under Article 371 of the Code of the Comunidade. That there is no question of having any apprehension since it is the fact that the said illegal encroachments are to be removed as per direction of the Hon'ble High Court, as well as, the Hon'ble Supreme Court. That no person is given any right as fundamental right to encroach upon property of others and there is no substance in statement of the plaintiff that the defendant no. 4 had ever permitted him to construct the house. That under the Code of Comunidade, no land of the Comunidade can be given to any person without sanction of the Governor of the State. That the Hon'ble Administrative Tribunal, while dismissing the appeal, considered the same on merit and held that the construction carried out by the plaintiff is illegal. These defendants prayed that the suit be dismissed with costs.

11. Defendant no.3 filed his written statement and stated that the suit is not maintainable either in law or on facts and deserves dismissal. That the notice issued to the plaintiff basically for summary eviction under Section 4 of the Goa Land (Prohibition on Construction) Act 1995 with the delegated powers and authority under Article 371 and

372 of Code of Comunidades as the plaintiff is unauthorisedly occupying land vested in Comunidade of Tivim as such, the suit deserves dismissal in limine. That under Section 7 of the Goa Land (Prohibition on Construction) Act 1995 there is bar on proceeding against the local authority or any officer authorized by the Government in this behalf in respect of any act done in good faith or intended to be done in pursuance of the provisions of this Act.

12. This defendant admitted that defendant no.4, that is, the Comunidade of Tivim is the owner of the property in survey No. 343/14 of Tivim village, Bardez, Goa and stated that the plaintiff has forcibly encroached upon the said property without any title, right or ownership. That the action taken (by defendant no.3) is within the jurisdiction of defendant no. 3 who has administrative and controlling authority over defendant no. 4 under Code of Comunidade.

It was also admitted that the said notice was issued under Section 4 of Goa Land (Prohibition on Construction) Act 1995 and this defendant stated that it was under the delegated powers with reference to Article 371 and 372 of Code of Comunidades with direction to remove the illegal construction done by the plaintiff by encroaching in Survey No. 343/14 of Village Tivim, Bardez, Goa in the property

belonging to Comunidade of Tivim.

13. Defendant no.3 further submitted that the plaintiff has neither locus nor any right or title to the suit property. That the plaintiff has been given enough time and opportunities to remove the said illegal house structure by issuing the show cause notice no.ACNZ/Tivim/38/09-10/582 dated 06.07.2009, subsequently final notice was issued under no.ACNZ/Tivim/38/09-10/1079 dated 14.10.2009. That instead of removing illegal structure from the encroached property, the plaintiff preferred an appeal before the Hon'ble Administrative Tribunal of Goa wherein the said appeal was dismissed for maintainability and jurisdiction. That defendant no.3 is duty bound to carry out the directives and orders from the respective authorities and act legally upon the same. That the plaintiff was not prohibited from participating in the proceedings before Hon'ble High Court when the same was within his knowledge. That it becomes crystal clear that the plaintiff was well aware of the situation and as such filed appeal before Administrative Tribunal North Goa and also before under Secretary, Revenue Department, Government of Goa. That the said property belongs to Comunidade of Tivim that is, defendant No. 4 and this defendant has administrative, supervisory and controlling authority over

defendant no. 4, hence it is within his jurisdiction to take appropriate action under Code of Comunidades. The proceedings by the Village Panchayat are under Goa Panchayat Raj Act, whereas, this defendant issued the notices under the Goa Land (Prohibition of Construction) Act 1995 read with Article 371 of Code of Comunidades as such, the proceedings by Village Panchayat are distinctly independent and separate under the Goa Panchayat Raj Act. That as per Article 1 of the Code of Comunidades the constitution of Comunidades or Gauncarias are governed by the bye laws contained in the Code of Comunidades and specially by the private law of each of them, whereas, Village Panchayats are established in replacement of the enactment relating to Panchayats by a comprehensive legislation and, hence, both the actions are independent of each other and separated and, as such, cannot be dealt with together. Defendant no.3, hence, prayed that the present suit primarily be dismissed taking into consideration section 7 of the Goa Land (Prohibition on Construction) Act 1995 which bars legal proceedings against the local authority or any officer as duly authorized by the Government on his behalf, in respect of any act in good faith done or intended to be done in pursuance of the provisions of this Act.

14. Defendant no.4 filed a written statement and stated that the suit property belongs to it wherein the plaintiff has forcibly encroached upon the same without any right, ownership or locus standi and, as such, summary eviction of a person unauthorisedly occupying land vested in the Comunidade in the manner provided in Clause (2) of Article 371 of Code of Comunidade and, hence the suit deserves dismissal primarily. That the Administrator of Comunidades North Zone (defendant no.3) has supervisory and controlling authority over Comunidade of Tivim and as such the action taken by the authority of issuing notices for summary eviction under Article 371 and 372 of the Code of Comunidades is in right earnest in clearing out the illegal encroachment over the landed property of Comunidade of Tivim under the delegated powers by the Director of Civil Administration.

15. That the notice (dated 24.01.2011) and the order issued on 09.11.2010 were issued in the right earnest under procedure of law and under due process of law. That the plaintiff been given sufficient time by issuing notices but failed to take the cognizance. That in order to protect the interest of defendant no. 4, defendant no.3 acted under the delegated powers by the Directorate of Civil Administration, that is, the Collector of North Goa. That it

is crystal clear that the plaintiff was well aware of the matter and unsuccessfully agitated before various authorities. That the proceedings by Village Panchayat are coming under Goa Panchayat Raj Act, whereas, defendant no.3 issued the notices under the Goa Land (Prohibition on Construction) Act 1995 read with Article 371 of Code of Comunidade as such, the proceedings by the Village Panchayat are distinctly independent and separate under the Goa Panchayat Raj Act. That the present suit is barred under Section 7 of the Goa Land (Prohibition on Construction) Act 1995 as such the suit is not maintainable against the local authority or any officer duly authorized by Government in this behalf, in respect of any act in good faith done or intended to be done in pursuance the provisions of the Act under Section 7 of the Goa Land (Prohibition on Construction) Act 1995. Defendant no.4 prayed that the suit be dismissed.

16. Based on the rival contentions, the following Issue/Additional Issue were framed:-

ISSUES

1. Whether the plaintiff
proves that the demolition
notice/Order dated

24.01.2011 is arbitrary,
biased and not sustainable
under law?

ADDITIONAL ISSUE

Whether the plaintiff proves
that he is entitled to get his
structure regularized in terms
of Article 372-A of the Code of
Comunidades?

17. My findings, along with reasons on the Issues are as
under:-

Issue No.1

18. In his affidavit in evidence, the plaintiff has reiterated all the averments made by him in the plaint. The plaintiff has claimed that the house has been in existence for last more than 17 years, that he is paying house tax and that the house is duly electrified. However, in cross examination the plaintiff stated that he is not paying any house tax plaintiff. The plaintiff has not produced any document to substantiate his case that the house has been in existence for more than 17 years. At this juncture it is of relevance to take a note of the fact that in cross

examination the plaintiff has also stated that the suit house does not have a house number, however, in the cause title of the plaint, the plaintiff has given his house number as 100/3 (i). From this it can safely be inferred that the plaintiff is residing in another house and this brings out the falsity in the case of the plaintiff. This is further fortified from the fact that though the plaintiff has produced an electricity bill at Exhibit 46, in cross examination at page 3 he stated that he does not have any documents such as an electricity bill in respect of the suit house. He admitted that the property in which he has done the construction of the house is in the property of the Comunidade and that he does not have any document from the Comunidade allotting/giving the property to him for the purpose of constructing the suit house. He admitted that he does not have any document such as electricity bill or any other document in respect of the suit house. At page 4 of cross examination he further admitted that he did not obtain any license from any authority for construction of the suit house.

19. In support of his contention the plaintiff has examined one Shri Ayub Khan as PW2, who has stated in cross examination that the plaintiff is residing in the house for around 20 years. In his affidavit in evidence PW2 has

stated that the plaintiff along with him and others were allotted 100 sq.mts. each of land at Auchitwada, Tivim by one Mr. Sidney who was a member of the Comunidade of Tivim and that this was in the year 1997-1998. This has not been the case of the plaintiff, as the plaintiff has not made any such statement in the plaint or in his examination in chief. It is only in the cross examination that the plaintiff has made a reference to one person from the Comunidade and this reference is to the effect that the said person showed him the plot. There is no statement made by the plaintiff that the said person had allotted 100 sq. mts. to him (plaintiff). This apart, there is nothing placed on record to show under what authority the said person could have allotted any plot of the Comunidade to any person. As such, the evidence of this witness will not further the case of the plaintiff.

20. This apart, it is apparent that PW2 is one of the persons to whom similar demolition notices have been issued by the Comunidade for having done illegal construction in the property of the Comunidade. He has admitted this fact in his cross examination having stated that he filed Civil Suit 30/2011 in this Court he having received the notice for demolition of his house which he constructed in the property of the Comunidade of Tivim. In

view of this fact also, his evidence cannot be believed even as far as his contention that the plaintiff is residing in the suit house for around 20 years there being no documentary evidence to this effect.

21. DW1 Shri Vivek Naik (Administrator of Comunidades, North Zone) and DW2 Shri Ramesh Tulaskar (Secretary of the office of the Administrator of Comunidades, North Zone) who were examined by defendants no.1 to 3, have stated in their affidavits in evidence that the plaintiff had illegally constructed the house in survey no.343/14 of Tivim Village. They have both contended that the Order dated 24.01.2011 passed by defendant no.3 is within jurisdiction. Similarly, DW3 Savio Pereira (the attorney of the Comunidade of Tivim), who was examined by defendant no.4, has stated in his affidavit in evidence that the plaintiff had forcibly encroached upon the suit property. He has also stated that the action taken by defendant no.3 against the plaintiff for eviction is in right earnest under procedure of law. In cross examination DW1 was questioned whether there was any NOC from the Comunidade to construct the house, to which he replied that he had not verified. DW2 has also stated in cross examination that he did not know whether any NOC was given by defendant no.4 (Comunidade of Tivim) to the

plaintiff to construct the suit house. The fact that there is no such verification done by DW1 and DW2, will not be of assistance to the plaintiff as the plaintiff has not produced any such NOC on record, more so, as it was suggested to DW3 that the Comunidade assured the plaintiff that an NOC would be granted to him after construction of the house, which would be suggestive of the fact that no such NOC was issued by the Comunidade. It may be mentioned that no evidence has been elicited in the cross examination of these witnesses which would go to the benefit of the plaintiff.

22. Coming to the aspect regarding the fact that the plaintiff has claimed that his house is electrified and that he is paying house tax, it is to be stated that, as taken note above, the plaintiff has admitted in cross examination that he is not paying house tax. Even if the plaintiff has been paying house tax and his house is electrified and has a water connection, it cannot be that the said house would be bestowed with any legal status. In this respect I am guided by the Judgment of the Hon'ble Bombay High Court at Goa in the case of **Shri Chandrakant Ruppo Gaude V/s Village Panchayat of Marciam, through its Secretary/Sarpanch and others Writ Petition No.812 Of 2011**, wherein it was held as follows:-

".....Insofar as the ground that the structure is assessed to house tax is concerned, it is now well settled that the fact that the structure is assessed to tax, does not tantamount to the structure being authorised....."

23. The Judgment of the Hon'ble High Court of Bombay at Goa in the case of **Mr. Nazar da Silva and another V/s State of Goa and others 2000 (2) Goa L.T. 168** will make it abundantly clear that even if an illegal house is electrified and has a water connection would be of no consequence. In this matter before the Hon'ble High Court, directions were issued to the Village Panchayat to write to the respective electric circle of the concerned village to disconnect the electricity supply to the illegal structures. So also, the PWD was directed to disconnect the water supply to the structures.

24. It will not be out of place to make a mention of another Judgment of the Hon'ble High Court of Bombay at Goa in the case of '**Down Mangor Valley, Residents' Welfare Association and another V/s Mormugao Municipal Council, Goa and others AIR 2002 Bombay**

258. This was a case wherein illegal constructions were carried out in open spaces at Mangor Hill Vasco, in respect of which notices to demolish the constructions were issued by the concerned Municipal Council under Section 184 (8) of the Goa Municipalities Act. When the matter went up to the Hon'ble High Court, one of the pleas taken by the persons who had done the illegal constructions was that the structures were existing for a long time and that they (the said persons) were born there. At paragraph 13 of the said Judgment the Hon'ble High Court held as under:-

".....The next ground is that the persons have been born there. Assuming for a moment that it may be so, the Court too perhaps can sympathise with that fact, but that does not mean that the rule of law has to be given a go-by. If every encroacher on private or public property is entitled to rehabilitation, it can only be at the cost of public exchequer and those honest citizens who diligently pay taxes and perform their duties according

to law. To our mind, this is not the spirit of the constitutional scheme, nor why the Municipalities Act of the Town and Country Planning Act are enacted. The other ground also as to ration cards or names in the electoral rolls are irrelevant insofar as considering the issue under Section 184 of the Municipalities Act.....”

It was further held at paragraph 15 (iii) as follows:-

“Those who put up constructions or changed user on such open spaces as referred to in conclusion (i), can have no equitable consideration in their favour on the ground that the constructions are existing for a long time, whether the constructions are legal or illegal, as the open spaces have been kept for the benefit of the beneficiaries at the time the development permission or building license was granted, in furtherance of their

right to life. This consideration
outweighs all other
considerations."

25. Taking into consideration the facts of this case, as well as the above quoted Judgments, it becomes obvious that the plaintiff has carried out illegal construction is the property of the Comunidade of Tivim.

26. In support of his case that the Order dated 24.01.2011 passed by the Administrator of Comunidades of North Zone is illegal in as much as neither notice nor inquiry was initiated nor norms of judicial procedure were adhered as required to be mandatorily followed whilst exercising powers by the quasi judicial authorities, that is, defendants no.2 and 3, the plaintiff has produced the said Order at Exhibit 44. It was submitted by the plaintiff that he cannot be condemned unheard and without affording any opportunity to him to show cause to any notice.

27. It is taken note of that the said Order at Exhibit 44 indicates that a show cause notice was issued to the plaintiff on 06.04.2009 in respect of the construction carried out by him in the property bearing survey no.343/14 of Village Tivim, which was followed by a final notice dated 15.06.2009 by which the plaintiff was directed

to remove the illegal construction done by him in the said survey number and this in turn was followed by another show cause notice dated 07.04.2010 directing the plaintiff to remove the said illegal construction. The Order further indicates that the Hon'ble High Court had passed an Order on 07.07.2010 in Writ Petition No.192/2010 directing the Collector, North Goa to look into allegations made by the petitioners in that Writ Petition regarding illegal construction in survey no.343/14 and if necessary to initiate proceedings under Article 371 of the Code of Comunidade, after which the Collector, North Goa passed an Order dated 09.11.2010 directing the Administrator of Comunidades of North Zone to remove the encroachment on lands belonging to the Comunidade of Tivim. The plaintiff has claimed that even this Order dated 09.11.2010 of the Collector (defendant no.2) is illegal as neither an inquiry was conducted by defendant no.2 nor any notice was issued by defendant no.2.

28. It is of relevance to state that it is not the case of the plaintiff that he was not issued the show cause notices dated 06.04.2009 and 07.04.2010, as well as, the final notice dated 15.06.2009. Much to the contrary the said Order at Exhibit 44 indicates that the plaintiff had filed an appeal before the Administrative Tribunal challenging the

notices dated 06.04.2009 and the final notice dated 15.06.2009. Besides this, Shri Ramesh Tulaskar (Secretary attached to the office of the Administrator of Comunidade), who was examined by defendants no.1 to 3 as DW2 has produced at Exhibit 75 a show cause notice issued to the plaintiff, by which the plaintiff was directed to stop illegal activities in survey no.343/14 and to show cause why he should not be vacated from the said property. In cross examination of this witness there was no suggestion put that this show cause notice was not issued and it was only suggested to him that the said show cause notice was issued without following the principle of natural justice and that it was issued without application of mind. These suggestions were denied by DW2. This will make it manifest that the plaintiff was given ample opportunity to show cause why he should not be directed to demolish the construction carried out by him and on failure to do so, the same would be demolished by the Comunidade. As such, the claim of the plaintiff that the Order dated 24.01.2011 at Exhibit 44 was illegal, cannot be countenanced. For the same reason it cannot be said that the Order dated 09.11.2010 passed by the Collector, North Goa was illegal.

29. As the plaintiff has claimed that neither notice was issued to him nor was any inquiry conducted, it will be

appropriate to refer to the Judgment of the Hon'ble Supreme Court in the case of **Secretary, Andhra Pradesh Social Welfare Residential Educational Institutions V/s Pindiga Sridhar and others (2007)**

13 Supreme Court Cases 352, in which case the respondent was given Government employment on the death of his father who was also a Government Servant. The employment of the respondent was on compassionate ground. His appointment was thereafter terminated on the ground that the respondent had secured his appointment by suppressing facts. He challenged his termination before the single Judge of the High Court but was not successful, hence, he preferred an appeal before the Division Bench of the High Court and the Division Bench allowed his appeal on the sole ground that the Order of termination violates the principles of natural justice as no show cause notice has been given to the respondent before the Order of termination was issued. Setting aside the Order of the Division Bench of the High Court, the Hon'ble Supreme Court held as follows:-

7. "The High Court on the basis of the erroneous view upset the well-merited judgment of the learned Single Judge. By now, it is well-

settled principle of law that the principles of natural justice cannot be applied in a straitjacket formula. Their application depends upon the facts and circumstances of each case. To sustain the complaint of the violation of principles of natural justice one must establish that he was prejudiced for non-observance of the principles of natural justice. In the present case, the fact on which the appellant terminated the services of the respondent appointed on compassionate ground was admitted by the respondent himself that when he applied for the post on compassionate ground by his application dated 6-5-1996, his mother was in service. So also when he secured the appointment by an order dated 22-11-2002 his wife was in service since 3-8-1997 as Extension Officer in Rural Development and later on

promoted as Mandal Parishad Development Officer at the time when he was appointed on compassionate ground. These facts clearly disclose that the appointment on compassionate ground was secured by playing fraud. Fraud cloaks everything. In such admitted facts, there was no necessity of issuing now-cause notice to him. The view of the High Court that termination suffers from the non-observance of the principles of natural justice is, therefore, clearly erroneous. In our view, in the given facts of this case, no prejudice whatsoever has been caused to the respondent.

The respondent could not have improved his case even if a show-cause notice was issued to him."

30. In the case at hand, the plaintiff has admitted in cross examination that he did not have any document with

respect to the suit house of the property in which it was constructed. He admitted that he has not paid and is not paying any house tax for the suit house. He further admitted he did not obtain any license from any authority for constructing the suit house. There is no application made by the plaintiff to the Comunidade requesting to allot him the plot. In view of these facts and taking into consideration the Judgment of the Hon'ble Supreme Court as quoted above, I am of the opinion that even if the plaintiff was not given any such show cause notice, it would not be sufficient to declare as null and void either the Order dated 24.01.2011 at Exhibit 44 or Order dated 09.11.2010 passed by the Collector, North Goa.

31. In view of these facts, the plaintiff has totally failed to establish that the demolition notice/Order dated 24.01.2011 is arbitrary, biased and not sustainable in law. Accordingly, this issue is answered in the negative.

Additional Issue

32. It is the case of the plaintiff that assuming without admitting that his construction is illegal, then the same can be regularized under the Code of Comunidades, hence, the proceedings initiated for demolition are totally bad in law. It is further his case that that by way of abundant caution,

he filed a representation before the Collector in accordance with the amended section 372-A of the Code of Comunidades and till the above application is decided by the Collector, no proceedings for demolition can be initiated. During the course of this suit, the plaintiff filed an application, which is at Exhibit D-49, praying therein to refer this additional issue to the Collector for decision. By Order dated 05.09.2018 this Court took into consideration that it has been the case of the plaintiff that by way of abundant caution, he had filed a representation before the Collector in accordance with the amended Section 372-A of the Code of Comunidades (which provision deals with the aspect of regularization of unauthorized occupation, wrongful possession, etc.) and held that in view of this case of the plaintiff, the additional issue requires to be struck off. It will not be out of place, in addition, to state that the plaintiff has not pointed out to any provision under which either the Court had to refer such an issue to the Collector or this Court could issue directions to the Collector to consider the case of the plaintiff for regularization (as prayed for in this suit). It will not be out of place to state that in Writ Petitions 660 to 667 of 2018 filed before the Hon'ble High Court of Bombay at Goa the petitioners had challenged an Order dismissing an amendment sought by them in the suit by which they had

sought to incorporate a prayer to direct the Collector to consider their case for regularization of their structures in terms of Article 372-A of the Code of Comunidades. By an Oral Order dated 08.07.2018 the Hon'ble High Court held as follows:-

"It is evident that the petitioner cannot seek a direction to the respondent no. 2, to allow the application for regularisation, which is essentially to be decided by the respondent no. 2, in accordance with law. In any event, in my considered view, it would not be open to the learned District Judge to impinge on the power of the respondent no. 2 in deciding the application for regularisation, in accordance with law. The impugned order does not suffer from any infirmity, so as to require interference in the exercise of the supervisory jurisdiction of this Court."

33. This Order of the Hon'ble High Court will make it abundantly clear that no such direction can be given by this Court to the Collector to consider the application for

regularization. Accordingly, this issue is answered in the negative.

34. As far as the contention of the plaintiff that the Village Panchayat of Tivim, vide show cause notice dated 18.02.2011 in terms of Section 64 (j) of the Goa Panchayat Raj Act, has falsely initiated proceedings against him as the Collector had initiated action under the Code of Comunidades, it is to be stated that the construction carried out by the plaintiff would be an unauthorized construction in terms of the Goa Panchayat Raj Act, as admittedly the plaintiff had not obtained any license from any authority for carrying out the construction. The construction would also be unauthorized under the Code of Comunidades as the land has not been allotted to the plaintiff. As such, action against the plaintiff for the unauthorized construction could have been initiated by under the Code of Comunidade, as well as, under the Goa Panchayat Raj Act, the plaintiff not pointing out to any provision which would bar the Panchayat from initiating action. In view of all the facts as discussed above, the plaintiff is not entitled to any relief as prayed for. Accordingly, I pass the following Order:-

O R D E R

This suit stands dismissed with costs.

Panaji.

Dated:30.11.2019

(Sherin Paul)
District Judge-1, North Goa, Panaji.

ac