

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3062 OF 2007

Inacio Fernandes (Dead) by His Lrs. ..Appellants

versus

Gurudas G. Pai and others ..Respondents

O R D E R

JAGDISH SINGH KHEHAR, CJI

1. PIL writ petition no. 304 of 2004 came to be filed in the High Court of Bombay at Panaji, Goa, assailing building violations committed by Hotel Menino Regency. On 25.10.2005, a Division Bench of the High Court highlighted the construction violations committed in the above hotel, and in order to restore the building to the prescribed norms, the High Court inter alia passed the following order:

"6. As regards violation of fire norms and other breaches, we are of the view that these aspects shall be considered after the respondent no.4 removes the pillars from the front set back and restores the balconies as per the approved plan.

Hence the Order:

(i) As prayed, we grant 30 days time to the respondent no.4 for removal of pillars/columns and restoration of the balconies as per approved plan dated 1.3.2001.

(ii) We direct the respondent no.4 to file an undertaking within 3 days from today that within 30 days from today, the pillars/columns within the front set back shall be removed and the balconies shall be restored in accord with the approved plans.

(iii) The Member Secretary, Planning Development

Authority of Goa and the Corporation of the City of Goa shall pass an appropriate order pursuant to the show cause notice issued to the respondent no.4 after hearing him within one month from today. The said authorities shall also consider the application for regularisation made by the respondent no.4 within the afore-directed time and place the said orders on record before this Court.

(iv) The respondent no.4 may file his objections to the Site Inspection Report dated 15-2-2005 also within 30 days from today."

2. Consequent upon the liberty granted to the appellant, the appellant - Inacio Fernandes - the owner of hotel Menino Regency moved an application for regularisation of the unauthorised structures before the North Goa Planning and Development Authority. The said planning authority by an order dated 20.12.2005 passed the following regularisation order:

"With reference to the above referred application submitted for regularisation of unauthorised development, it is stated herewith that the application was placed before the Authority meeting held on 8.12.2005 and was decided to regularise the unauthorised development subject to levy of penalty of Rs.10,000/- (Rupees ten thousand only) and with condition that the portion shown for demolition i.e. columns mentioned as decorative columns on ground floor and six rooms on fifth floor are to be demolished within a period of sixty days from the date of issue of approval order, and the construction has to be strictly in conformity with the approved plans.

In view of the above, you are hereby directed to pay an amount of Rs.10,000/- (Rupees ten thousand only) as penalty fee for regularization and for further action."

3. On account of the afore-stated regularization/compounding order, the appellant did not remove the structures constructed on the balconies. This action at the behest of the appellant was, prima facie, treated as constituting a violation of the undertaking

given by the appellant to the High Court, to remove the balconies as per the approved plan dated 1.3.2001, within 30 days. It is therefore, that the High Court by the impugned order dated 22.2.2006 initiated suo motu contempt proceedings against the appellant. This was done by the High Court since the High Court refused to discharge the appellant for the undertaking given by the appellant to the High Court on 28.10.2005, despite the regularization/compounding order.

4. To assail the initiation of contempt proceedings by the High Court, the appellant approached this Court. On the first date, i.e., on 3.3.2006, this Court stayed the demolition of the construction on the balconies. On 24.03.2006, this Court, while issuing notice to the respondents, stayed the contempt proceedings initiated by the High Court against the appellant.

5. The issue canvassed at the behest of the appellant before this Court is, that for the violations in question, which he had undertaken to remove at his own within 30 days, the North Goa Planning Development Authority, by its order dated 20.12.2005, had allowed the appellant to retain the same, subject to the appellant's demolishing six rooms on the fifth floor, and by paying a penalty of Rs.10,000/-. This submission made at the behest of the appellant may well be justified, on account of the fact, that the High Court had, on its own, granted liberty to the appellant to seek compounding of the unauthorised construction, and since the appellant had obtained such compounding order on 20.12.2005, the appellant might have considered that it was no longer imperative for him to remove the construction on the balconies. As a matter of

fact, in continuation of his above understanding, the appellant had approached the High Court seeking exemption from the undertaking given by him - to remove the construction on the balconies within 30 days, since he had already obtained an order of compounding. This prayer made by the appellant was categorically declined, and the appellant was directed by the High Court, through the impugned order, to comply with the directions contained in the order dated 25.10.2005, within a period of 15 days.

6. The factual position depicted hereinabove, on being viewed conjointly, reveals the exact nature of the interference of this Court, while entertaining the instant civil appeal. Consequent upon the compounding order obtained by the appellant on 20.12.2005, this Court by its order dated 3.3.2006 merely stayed the demolition of the balconies. It is important to keep in mind, that it is the compounding order which prompted this Court to pass the above interim directions. In other words, the appellant was still obliged to comply with the terms and conditions of the compounding order dated 20.12.2005, namely, to remove the six rooms on the fifth floor, within sixty days and to deposit a penalty of Rs.10,000/-.

7. We are informed, that the appellant has till date not removed any of the rooms on the fifth floor. It is also apparent, that in view of the interim order passed by this Court on 3.3.2006, the unauthorised construction raised on the balconies, also subsists. In the instant understanding of the matter, the appellant has violated both orders, namely, the directions issued by the High Court on 25.10.2005, as also, the terms and conditions

of the compounding order dated 20.12.2005.

8. Even though, there may be merit in the contention of the learned counsel for the appellant, that it was not wholly proper for the High Court to have initiated suo motu contempt proceedings against him, we are satisfied, that the appellant has misused the judicial process, whereby the appellant neither complied with the undertaking given to the High Court, nor complied with the terms and conditions of the regularization/compounding order dated 20.12.2005. The appellant therefore used six rooms on the fifth floor for the last 11 years to his benefit, merely because this Court had protected the appellant from contempt proceedings, initiated against him by the High Court.

9. It is not possible for us to allow an individual to misuse the judicial process, for personal gains. We would venture an assessment, of the profits that might have been earned by the appellant, for the last 11 years. We would assume, that the daily rent of each room would be at least Rs.1,000/-. In such view of the matter, the appellant would have earned approximately Rs. 2,40,90,000/- (Rs.1000/- x 6(rooms) x 365 (days in a year) x 11 (years) = Rs.2,40,90,000/-) (Rupees Two crores, Forth lakhs, Ninety thousand only) . Since the appellant has been benefited to the above extent, he must reimburse the above amount, representing the profits earned by him to the Corporation of the City of Panaji, Goa. Ordered accordingly.

10. The appellant shall deposit a sum of Rs.2,40,90,000/- with the aforesaid Corporation, within two months from today, failing which, the aforesaid amount will be recoverable by the

Corporation as arrears of land revenue.

11. Similarly, for complying with the compounding order dated 20.12.2005, the appellant is permitted two months' time to deposit the penalty of Rs.10,000/-, and to remove six rooms on the fifth floor. In case of compliance, the contempt proceedings initiated by the High Court, against the appellant, shall be treated as dropped, and the rule issued to the appellant shall stand discharged. In case, the appellant does not comply with the above directions, the appellant will disentitle himself from any benefit of the regularization/compounding order dated 20.12.2005. In the latter eventuality, the appellant shall be proceeded against, in consonance with the impugned order.

12. The Registry of this Court is directed to furnish a copy of this order to the Commissioner, Corporation of the City of Panaji, Goa, forthwith. The Commissioner, Corporation of the City of Panaji will move an application before the High Court in Writ Petition No. 304 of 2004, informing the High Court whether or not the order passed by this Court has been complied with.

13. Disposed of in the aforesaid terms.

.....CJI
[JAGDISH SINGH KHEHAR]

.....J.
[Dr. D.Y. CHANDRACHUD]

NEW DELHI;
APRIL 18, 2017.

.....J.
[SANJAY KISHAN KAUL]

ITEM NO.101

COURT NO.1

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 3062/2007

INACIO FERNANDES (D) BY HIS LEGAL HEIRS

Appellant(s)

VERSUS

GURUDAS G. PAI & ORS.

Respondent(s)

Date : 18/04/2017 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SANJAY KISHAN KAULFor Appellant(s) Mr. Dhruv Mehta, Sr. Adv.
Mr. Yashraj Deora, Adv.
Ms. Priyadarshinee Singh, Adv.
for M/s Mitter & Mitter Co.For Respondent(s) Mr. Arjun Vinod Bobde, Adv.
Nos. 2 & 3 Ms. Sanya pawar, Adv.
Ms. Praneeta Sharma, Adv.
Mr. Santosh, Adv.UPON hearing the counsel the Court made the following
O R D E RThe appeal stands disposed of in terms of the signed
order.(Renuka Sadana)
Assistant Registrar(Parveen Kumar)
AR-cum-PS

[signed order is placed on the file]