

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 221 OF 2004

Shri Martin Fernandes,  
residing at House No.887,  
Bhaida Waddo, Korgao  
Pernem, Goa.

... Petitioner

versus

The Sarpanch  
Village Panchayat of Korgao  
Pernem, Goa.

... Respondent

Mr. Nigel Frias, Advocate for the Petitioner.

Mr. A. D. Bhobe, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 12TH MAY, 2004.

**ORAL ORDER**

The Petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution, for the second time.

2. The dispute is regarding the construction of a structure/store-room/hut admeasuring 7.9 x 5.1 meters in the property surveyed under No.393/2 belonging to Jaiwant Anant Lad situated at Bhaida Wadda, Korgao.

3. Shri Uday Dattaram Prabhudessai, claiming to be the Power of Attorney of the widow of the said

Jaiwant Anant Lad and caretaker of the said property filed an application dated 12th June, 2002, to the Village Panchayat, Korgao, the Respondent herein, with the allegation that the Petitioner had illegally constructed the said store-room/shed without his consent during the last Assembly Election period. As a result of the said complaint, the said Panchayat issued a notice dated 13th June, 2002, to the Petitioner directing the Petitioner to stop further construction and on 19th June, 2002, carried out the site inspection/panchanama, in the presence of the said Petitioner. The Petitioner was issued a notice to show cause dated 1st July, 2002, under Section 66 of the Goa Panchayat Raj Act, 1994 which was replied to by the Petitioner by his reply dated 12th July, 2002. The Petitioner was again called upon to produce documents by the Panchayat by letter dated 24th July, 2002, It appears that the Panchayat was not satisfied with the show cause notice as a result of which, the Panchayat issued an Order dated 17th August, 2002, under Section 100(1) of the said Act.

4. The Petitioner filed an Appeal against the said Order of the Panchayat, to the Director of Panchayats, who was pleased to dismiss the Appeal by his Order dated 22nd December, 2003, against which the Petitioner approached this Court in Writ Petition

No.21/2004 and this Court by Judgment dated 12th February, 2004, was pleased to set aside the Order of the Director of Panchayats with a further direction to the said Director to decide the matter afresh in accordance with law by taking into account the documents to be produced by the Petitioner and to give a finding whether there was an existing structure and whether any permission was required for repairs to an existing structure.

5. As a result of the said directions given by this Court, the Director of Panchayats by his Judgment dated 22nd April, 2004, has come to the conclusion that there was no hut in existence at all and that what was constructed was a store-room, erected without permission which was altogether a new structure. In coming to the said conclusion, the learned Director of Panchayats held a site inspection with consent of the parties, examined the survey plan produced by the Petitioner as well as the register of mundkars in Form XI produced by the Petitioner as well as other documents produced before the Village Panchayat.

6. I have heard Shri Nigel Frias, learned Counsel for the Petitioner and Mr. A. D. Bhobe, learned Counsel for the Respondent.

7. Mr. A. D. Bhobe, learned Counsel for the Respondent has submitted that the Petition ought to be dismissed, the Director of Panchayats having not been made a party to this Petition. Mr. Bhobe, learned Counsel for the Respondent has also taken me through the Judgment of the learned Director of Panchayats dated 22nd April, 2004, and has submitted that there is no error whatsoever apparent on the face of record in the said Judgment.

8. On the other hand, Mr. Nigel Frias, learned Counsel for the Petitioner has submitted that the learned Director could not have opined that the disputed structure was a new structure without any technical person having been examined by him. Mr. Frias, learned Counsel for the Petitioner has also submitted that it was for the said Director to have shown under what provisions of law the Petitioner was required to take permission.

9. In my opinion, since the present Petition has been filed against the Order dated 22nd April, 2004, of the Director of Panchayats, the said Director ought to have been made a party to this Petition and the said Director having not been made a party, the Petition is liable to be dismissed. In fact, even the said widow of the said Jaiwant Anant Lad who is the

owner of the said property in which the disputed structure has been constructed by the Petitioner ought to have been made a party to this Petition. On the very first submission of Mr. Bhobe, learned Counsel for the Respondent, the Petition deserves to be dismissed.

10. A perusal of the Order dated 22nd April, 2004 of the learned Director of Panchayats shows that he has considered all the aspects of the case in the light of directions given by this Court in its Judgment dated 12nd February, 2004 and there is no error whatsoever apparent on the face of record. The disputed structure is admittedly situated at a distance of about 54 metres from the residential house of which the mother of the Petitioner was shown to be a mundkar as per the register of Mundkars. The Petitioner failed to justify the existence of the said structure either with the help of the survey plan or the said register of Mundkars and, therefore, an inspection was also held with the consent of both the parties. The learned Director of Panchayats rightly observed that in case the structure was already existing for more than 40 years, it was for the Petitioner to produce at least one document like old cadastral plan or the survey plan to justify the existence of the same and that the Petitioner had

failed to produce any evidence to show that the said structure was existing earlier inasmuch as the Petitioner had also not produced any building permission or construction licence having been obtained in case the said construction was legally constructed by him in the year 1973. It is also to be noted that the Petitioner had not taken any plea of the existence of the said structure for 40 years at the time of inspection held by the Panchayat on 19th June, 2002 and, therefore, it was obvious that the said plea was taken by way of an afterthought and in fact had impliedly admitted at the time of site inspection that he had not possessed any valid permission issued by the Panchayat for the erection of the same.

11. In my opinion, there is no error apparent on the face of record in the Order of the learned Director of Panchayats dated 22nd April, 2004 inasmuch as there is no material illegality or irregularity in dismissing the Appeal filed by the Petitioner. In fact, no fault could be found with the impugned Order of the learned Director of Panchayats. Consequently, this Petition is bound to be dismissed with costs.

N. A. BRITTO, J.

RD.