

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 332 OF 2022 (F)

Gautam Sabharwal, Preeti Infratech
LLP, C-27, II floor, Pamposh Enclave,
New Delhi – 110 048. ... PETITIONER

Versus

1. State of Goa, through its Chief Secretary, having office at Secretariat, Porvorim, Goa.
2. Real Estate Regulatory Authority, FRWM+7GW, Patto Centre, Panaji, Goa 403 001.
3. Arshi Singh and Others, 612, 6th Floor, Gera Imperium 1, Patto Plaza, Panaji North-Goa, Goa 403 001.
C201, Bella Casa, Madla Bhatt Road,
Siolim, North Goa. ... RESPONDENTS

Mr. Shivan Desai with Ms. Maria Viegas, Advocates for the
Petitioner.

Ms. Maria Correia, Additional Government Advocate for
Respondent Nos. 1 and 2.

Mr. Prashant Agarwal, Advocate for Respondent No. 3.

CORAM: A.K. MENON, J.

DATED: 29th MARCH 2022.

ORAL JUDGMENT:

1. Called for final disposal.
2. Heard learned Counsel for the parties.
3. Considering the nature and scope of this Petition, I am of the view that the Petition can be disposed at the stage of admission. Accordingly, I issue Rule. Rule made returnable forthwith. By consent taken up for hearing and final disposal.
4. The petitioner has approached this Court assailing an order dated 15.12.2021, passed by the Goa Real Estate Regulatory Authority, Panaji (Authority, for short), on a complaint filed by respondent no. 3 in relation to a real estate project known as Bella Casa, situated within the Panchayat of Siolim. The grievance of the petitioner is that while the complaint was being heard on merits, on 24.09.2021, the petitioner had filed a reply. On 14.10.2021, the case was heard partly and was adjourned to 08.12.2021 at 4.00 p.m. and on that day, the petitioner and his Advocate were absent. The Authority proceeded to pass an order on 15.12.2021,

disposing the Application on merits and issued certain directions vide paragraph 11. The directions include replacement of the Sewage Treatment Plant, increasing power load capacity and completion of Earthing works.

5. According to the petitioner, he ought to have been personally heard. It is submitted that the petitioner had filed a reply, but, the petitioner was not personally heard. It is submitted that there is no delay on the part of the petitioner. The learned Counsel for the petitioner submits that it is only on one day that the petitioner was absent. He submits that the petitioner, realizing that he could not remain present on the said date, had sent an e-mail dated 08.01.2022, requesting for some time for a personal hearing and further, making a request that the matter may not be decided ex-parte. Mr. Desai submits that the receipt of the e-mail is not disputed by respondent nos. 1 and 2.

6. Insofar as respondent no. 3 is concerned, the learned Counsel submits that a reply was already on record and all that the Authority has done is, decided the case of the respective parties on merits. The respondent no. 3 has opposed this Application and has submitted that the case on merits was already pleaded and the

petitioner having remained absent, the Authority proceeded to adjourn the matter on 08.12.2021 and passed the order on 15.12.2021. He also submitted that the e-mail was sent after the hearing.

7. The learned Additional Government Advocate for respondent nos. 1 and 2 and the learned Counsel for respondent no. 3 invited my attention to the fact that the e-mail was sent on 08.12.2021 at 9:36 p.m., although, the petitioner was aware of the date on which the hearing was scheduled. Although, it is submitted on behalf of the respondents that this is only an attempt to delay the disposal of the matter, the Roznama does not indicate any attempt on the part of the petitioner to delay hearing. Absence of the petitioner on one occasion and that too, for such absence, an e-mail was already received by the Authority, although belatedly and on having noted its contents, one opportunity could have been given to the petitioner to remain present. That is not done in the instant case. In my view, considering the fact that the order was passed on 15.12.2021 i.e. a week after receipt of the e-mail, it would be appropriate that the matter is remanded to the Authority for re-consideration, after giving an opportunity to the petitioner

to canvass his case after oral hearing. The impugned order dated 15.12.2021, therefore, needs to be set aside only to enable the petitioner to appear before the Authority.

8. In these circumstances, I proceed to pass the following order.

- (a) The impugned order dated 15.12.2021 is quashed and set aside.
- (b) In the event, if the petitioner seeks to rely on additional documents in support of his defence, the compilation of such documents shall be filed on or before 08.04.2022 with copies to the respondents, prior to the date of hearing. No extension shall be granted for filing additional documents, if any.
- (c) Parties shall appear before the Authority on 12.04.2022 at 10.30 a.m. so that the Authority can issue further directions as to the fixing of the date for further hearing.
- (d) If the petitioner does not remain present in person or through an Advocate engaged for that purpose before the Authority, the Authority shall proceed and decide the issue on merits.
- (e) There would be no occasion for the petitioner to seek any adjournment before

the Authority on the scheduled date fixed by the Authority.

- (f) Needless to mention, the Authority shall proceed to decide the complaint without being influenced by the observations made in this order.

- 9. Rule is made absolute in the above terms. No costs.

A.K. MENON, J.