

**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
**CIVIL APPEAL NO.1645 OF 2020**  
**(Arising out of SLP (Civil) No.4577 of 2020**  
**Arising out of Diary No.2144 of 2020)**

**PRITIBEN S. PATEL**

**Appellant**

**VERSUS**

**PLANNING & DEVELOPMENT AUTHORITY, DAMAN & ANR.**

**Respondents**

**O R D E R**

Leave granted.

This appeal arises out of final judgment dated 15.01.2020 passed by the High Court of Judicature of Bombay, at Bombay in Writ Petition No.373 of 2020.

On 02.01.2020, a notice was issued to the present appellant asking her to furnish certain documents relating to construction permissions as regards land bearing Survey No.168/1 of village Janivankad, Nani, Vankad, Nani-Daman. This notice was followed by another notice dated 06.01.2020, which was to the following effect:

"To

Smt. Pritiben Sureshben Patel  
Kund Falia, Bhimpore,  
Nani Daman.

Sub:- Unauthorised construction on land bearing Survey No.168/1 at Village Janivankad.

WHEREAS during inspection, it has been noticed that the construction work is being going on land bearing survey No.168/1 of village Janivankad. As per this office record it is learnt that no such construction permission has been issued for this said construction. Therefore,

the said construction is treated as unauthorized construction and you are directed to remove the entire structure within 10 days failing which this would attract the action as per the provision of unauthorized construction mentioned under the Development Control Rules-2005 of Daman district."

These notices were challenged by the appellant submitting *inter alia* that the notices were not in accordance with Section 52 of the Goa, Daman and Diu Town and Country Planning Act, 1974 (for short "the Act"). Sections 51 and 52 are quoted hereinbelow for facility:

"Section 51. Penalty for unauthorised Development, etc.—  
(1) Any person who, either by himself or at the instance of any other person, commences, undertakes or carries out development of, or changes the uses of any land—

- (a) in contravention of any Development Plan; or
- (b) without obtaining a certificate regarding development charge under section 43; or
- (c) without the permission as required under this Act; or
- (d) in contravention of any condition subject to which such permission has been granted; or
- (e) after the permission for development has been revoked under section 50; or
- (f) in contravention of the permission which has been modified under section 50,

shall be punishable with fine which may extend to One lakh rupees and in the case of a continuing contravention with a further fine which may extend to ten thousand rupees for every day during which such contravention is continued after conviction for the first such contravention.

(2) Any person who continues to use or allows the use of any land or building in contravention of the provisions of a Development Plan without having been allowed under section 42, or where the continuance of such use has been allowed under the section, continues such use after the period for which the use has been allowed or without complying with the terms and conditions under which the

continuance of such use is allowed, shall be punishable with fine which may extend to ten thousand rupees, and in the case of a continuing contravention with a further fine which may extend to five hundred rupees for every day during which such contravention is continued after conviction for the first such contravention.

(3) An offence under this section shall be cognizable.

52. Power to require removal of unauthorised development.

-(1) Where any development or change of use of land has been carried out in any manner specified in clauses (a) to (f) of sub-section (1) of section 51, the Planning and Development Authority may, within four years of such development or change, serve on the owner a notice requiring him, within such period, being not less than one month from the date of service of such notice as may be specified therein, to take any of the following steps as may be specified in the notice, namely:-

(a) in the cases specified in clause (a) or clause (c) or clause (e) of the said sub-section to restore the land to its condition before the said development took place;

(b) in the cases specified in clause (d) or clause (f) of the said sub-section to secure compliance with the conditions subject to which the permission was granted or with the permission as so modified;

(c) in the cases specified in clause (b), to pay the development charge and such penalty, if any, as may be prescribed,

and in particular, such notice may, for any of the purposes aforesaid require-

(i) the demolition or alteration of any building or work;

(ii) the carrying out on land, of any building or other operations; or

(iii) the discontinuance of any use of land:

Provided that in case the notice required the discontinuance of the use of any land, the Planning and Development Authority shall serve a notice on the occupier also.

(2) Any person aggrieved by a notice served under sub-section(1) may within such period and in such manner as may be prescribed-

(a) apply for permission under section 44 for the retention on the land of any buildings or works or for the continuance of any use of the land, to which the notice relates; or

(b) appeal to the Board."

Apart from challenging said notices, which challenge was negated by the High Court, the appellant also approached the appellate authority by filing an appeal under Section 52(2) of the Act. Rejection of challenge by the High Court is presently under appeal. While issuing notice, following directions were passed by this Court on 17.01.2020:

"Pending further consideration, the structure in question, shall not be demolished by the respondent herein subject to the condition that the petitioner shall not run any business including any Bar and restaurant in the structure in question."

We heard Mr. Huzefa Ahmadi, learned Senior Advocate for the appellant and Mr. Vikramjit Banerjee, learned Additional Solicitor General for the respondents.

In terms of Section 52(1) of the Act, a notice is required to be served on the owner of the structure "within such period, being not less than one month from the date of service of such notice".

In our view, the notice issued on 06.01.2020 which directed the appellant to remove the entire structure within 10 days, was not in conformity with Section 52 of the Act.

However, since the appellant was put to notice, in the facts and circumstances of the instant case, while allowing the appeal we pass following directions:

- (a) The appellant shall have further time of 10 days to respond to the notices which would sufficiently satisfy the statutory requirements;
- (b) The matter shall thereafter be considered and appropriate decision in terms of Section 52 of the Act shall be taken by the authority;
- (c) Pending such construction, the interim directions issued by this Court on 17.01.2020 shall continue to operate; and
- (d) The matter shall be considered by the concerned authority strictly in terms of law and without being influenced by any of the observations made by this Court and the High Court in the present proceedings.
- (e) Since we have given the additional period for the authorities to consider the matters, appeal preferred under Section 52(2) of the Act is disposed of as having become infructuous.

The appeal is allowed in aforesaid terms. No costs.

.....J.  
[UDAY UMESH LALIT]

.....J.  
[ANIRUDDHA BOSE]

NEW DELHI;  
FEBRUARY 17, 2020

ITEM NO.14

COURT NO.6

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

SPECIAL LEAVE PETITION (CIVIL) Diary No.2144/2020

(Arising out of impugned final judgment and order dated 15-01-2020 in WP No.373/2020 passed by the High Court Of Judicature At Bombay)

PRITIBEN S. PATEL

Petitioner(s)

VERSUS

PLANNING &amp; DEVELOPMENT AUTHORITY, DAMAN &amp; ANR.

Respondent(s)

(IA No.9846/2020 - FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT; IA No.14227/2020 - FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES; IA No.9847/2020 - FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES; and, IA No.9840/2020 - FOR PERMISSION TO FILE SLP WITHOUT CERTIFIED/PLAIN COPY OF IMPUGNED ORDER)

Date : 17-02-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT

HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Petitioner(s) Mr. Huzefa Ahmadi, Sr. Adv.  
Mr. Ninad Laud, Adv.  
Mr. Ivo D'Costa, Adv.  
Mr. Kamil Dalal, Adv.  
Ms. Anshula Vijay Kumar Grover, AOR

For Respondent(s) Mr. Vikramjit Banerjee, ASG  
Mr. S.K. Gupta, Adv.  
Mr. Anshul Gupta, Adv.  
Mr. B.K. Satija, Adv.  
Ms. Priya Mishra, Adv.  
Mr. Arun Kumar Yadav, Adv.  
Mr. Raj Bahadur Yadav, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Permission to file the special leave petition is granted.

Leave granted.

The appeal is allowed, in terms of the Signed Order.  
Pending application(s), if any, shall stand disposed of.

(MUKESH NASA)  
COURT MASTER

(SUMAN JAIN)  
ASSISTANT REGISTRAR

(Signed Order is placed on the File)