

Amrut



IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.474 OF 2024

Mr Mahendra Kumar Gupta,
Major in age, 80 years,
Residing at 785, 'Shantam' Alto Betim,
Porvorim, Penha de Franca,
Bardez Goa 403521.

...Petitioner

Versus

1. State of Goa,
Through its Chief Secretary,
Having office at Secretariat,
Porvorim Goa.
2. The Mamlatdar & Revenue Recovery
Officer,
Tiswadi Taluka, Panaji Goa.
3. Shri Anirudh K. Agarwal,
Anand Bhavan, P.O. Box 107,
Old Station Road, Margao Goa- 403 601.
4. M/s. Ashvem Spa & Resort Pvt. Ltd.
H.No.102, General Bernard Guedes
Road, Opp. Forest Department Office,
Panaji Goa – 403 601.
5. M/s Adwalpalkar Construction & Resort
Pvt. Ltd.
Adwalpalkar Avenue, St. Inez,
Panaji Goa.

...Respondents

Mr Nilay Naik, Advocate for the petitioner.

Mr Deep Shirodkar, Additional Government Advocate for respondent Nos.1 and 2.

Mr Preetam Talaulikar, Advocate for respondent No.3.

Mr Aniroodh Sardesai, Advocate for respondent No.5.

**CORAM: BHARATI DANGRE &
ASHISH S. CHAVAN, JJ**

DATED : 20th SEPTEMBER 2025

ORAL JUDGMENT (Per Bharati Dangre, J.)

1. Our attention is invited to the order dated 10.05.2024, when this Court clearly expressed that, as far as the discord between the parties is concerned, it is worked out. However, in Para 6, it is observed thus:-

“6. Though the main dispute in both these petitions has been worked out, we post both these petitions on 14.06.2024 only with regard to the orders passed by the learned Administrative Tribunal since such order is going to affect the matters with regard to the execution of RERA and other special Acts matters, if such view is accepted or even not corrected.”

2. We have heard the learned counsel Mr Nilay Naik, for the petitioner, Mr A. Sardesai for respondent No.5 along with Mr Deep Shirodkar representing the respondent Nos.1 and 2.

The order passed by the Administrative Tribunal, Goa, Panaji Goa, in Land Revenue Appeals decide the maintainability of the appeals under Section 188 of the Goa Land Revenue Code, 1968.

The two appeals impugned the orders passed by the Mamlatdar and Recovery Officer, whereby the order of attachment of immovable property is confirmed, and by the appeals raised to the said order, an application for the stay was also filed. The Tribunal, prima facie, was of the view that the orders had been passed in connection with the matter of the Goa Real Estate Regulatory Authority (GRERA) and heard the respective parties on the issue of maintainability of the appeals.

Focusing its attention on Section 188 of the Goa Land Revenue Code, which contain the provision in form of an appeal, which shall lie from every original order, other than an interim order passed under the Code, the Tribunal expressed its view that the order shall lie against an “original order” being the final order passed under the Code in exercise of the original jurisdiction and therefore an appeal to lie under Section 188(1)(c) of the Code, it must be the final order passed by the Collector in exercise of its original jurisdiction. The aforesaid conclusion is reached on the basis that the impugned orders passed by the Mamlatdar in exercise of the delegated powers of the Collector are not “original orders” but they are orders issued pursuant to the notice of demand to the defaulter and the notice of demand, impugned order of attachment and impugned order speaks about the amount due from the defaulter and that the amount is to be recovered as arrears of land revenue

under the provisions of the Code in terms of Section 40(1) of the Real Estate (Regulation and Development) Act, 2016 read with Rule 3 of the Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable) Rules, 2017.

It is thus concluded by the Tribunal that the impugned orders and the notice of demand are in respect of the payment of interest under the RERA Act, since they are orders passed towards the recovery of interest and amounts ordered to be paid by the RERA as arrears of land revenue, in the opinion of the Tribunal, the amounts specified in the impugned orders are the amounts of interest and due amount and not land revenue in the first instance, but the interest and the amounts are only recoverable as arrears of land revenue. Therefore, in Paragraph 15 of the order, the Tribunal record its conclusion in the following words: -

“15. The impugned orders are not appealable under Section 188(1)(c) or any other provision of the Code as the same are not original orders passed under the Code or issued in pursuance of any original order passed under the Code but as observed earlier, the impugned orders have been passed for the purpose of enforcement of the order of the RERA directing the payment of money and interest under the RERA Act and the relevant Rules. The Appeals are not maintainable before this Tribunal.”

3. We have considered the said order in the wake of the provisions of the RERA Act, 2016, and the Goa Land Revenue Code, 1968, which contain a provision for appeal.

The Real Estate (Regulation and Development) Act, 2016 is an enactment for establishment of the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure that the sale of plot, apartment of building, as well as the sale of real estate project, is conducted in an efficient and transparent manner and protect the interest of consumers in the real estate sector. The Act also establishes an adjudicating mechanism for speedy dispute redressal and establishes the Appellate Tribunal to hear the appeals from the decisions, directions/orders issued by the Real Estate Regulatory Authority.

The special statute, enacted by the Parliament is thus intended to protect the persons involved in the real estate and the statement of objects and reasons of the said enactment would reveal that though the Consumer Protection Act, 1986 was available as a forum to the buyers in the real estate market, the said recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. In addition, the lack of standardisation was one of the constraints, it was realised for not having healthy and orderly growth of the real estate sector, and therefore, a need was felt

for regulating the said sector. The Bill introduced in form of the Real Estate (Regulation and Development) Bill, 2013, intended to impose certain obligations upon the promoter, and also make the registration of the real estate project compulsory so as to facilitate the sale or purchase of any plot, apartment or building, and by providing a mechanism of compulsory registration, the promoter was held liable.

4. The enactment, therefore, provides for registration of the promoters within the stipulated period from coming into force of the enactment and the obligation of the Authority consequent upon the lapse of or on revocation of registration. The functions and duties of the promoter are clearly set out in Chapter III of the Act, which includes the display of the details of the registration as well as the quarterly up-to-date list of numbers and types of apartments or plots as may be booked, as well as the quarterly up-to-date status of the project.

The promoter is made responsible for all obligations, responsibilities and functions under the provisions of the Act or the rules and regulations or to the allottees as per the agreement for sale, or to the association of allottees, as the case may, till the conveyance of all the apartments, plots or buildings, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be. It is the duty cast on the promoter to

adhere to the sanctioned plans and project specifications by the promoter and certain obligations are also passed in case of transfer of real estate project to a third party.

In contrast to Chapter III, the Chapter IV has set out rights and duties of allottee who is held to be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications etc., and the allottees also entitled to know the stage-wise time schedule of completion of the project, including the facilities like water, sanitation, electricity and amenities etc. The allottees are also entitled to claim the possession of the apartment, plot or building, within the timeline specified in the declaration by the promoter.

5. In order to have an authority, which shall impose the right of the allottees against the promoter, the Act of 2016 has constituted as the Real Estate Regulatory Authority under Section 20, with its constitution being provided under the said Chapter and this authority is authorised to deal with the complaints filed by him or any aggrieved persons for any violation or contravention of the provisions of this Act or the Rules and Regulations against any promoter allottee or real estate agent as the case may be.

The Authority, in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real

estate sector is empowered to make recommendations to the appropriate Government or the competent authority to protect the interest of the allottees, promoter and real estate agent. The powers of the authority are clearly set out in Section 38 of the Act, and it is empowered to impose a penalty or interest, in regard to any contravention of the obligation cast upon the promoters, the allottees and the real estate agents under the Act or the Rules and the Regulations made thereunder.

It is in consonance with this power, Section 40 of the Act of 2016 is the power for recovery of interest or penalty or compensation and enforcement of order etc. We deem it appropriate to reproduce Section 40, which reads thus:-

“40. Recovery of interest or penalty or compensation and enforcement of order, etc.- (1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.”

The aforesaid provision makes it clear that if any interest or penalty or compensation imposed is not paid as determined by the

Adjudicating Authority or the Regulatory Authority or Appellate Authority is not paid, it shall be recoverable from such promoter or allottee or real estate agent in such manner as may be prescribed as an arrears of land revenue.

6. From perusal of the scheme contained in the Act of 2016, including Section 40, it is evident that since no specific mechanism prescribed under the Act for recovery of payment of any interest or penalty or compensation imposed upon any stakeholder under the scheme and it is liable to be recovered in such manner as may be prescribed as arrears of land revenue.

The Goa Land Revenue Code has prescribed the mechanism for recovery of the amount as arrears of land revenue, and Chapter X of the Code has been prescribed for “realisation of land revenue and other public demands”.

Section 122 of the Code is a specific provision what would be arrear of land revenue and Section 123 has set out the procedure for recovery of arrears of the land revenue, which contemplate issuance of notice of demand, distraint and sale of the defaulter’s movable property as well as Section 126 where it is specifically provided that when the processes referred to in Section 123 are not sufficient for recovery of arears of land revenue then the Collector may resort to the processes referred to in Section 123.

The Code further permit sale of the defaulter's immovable property and also contain a provision for the arrest and detention of a defaulter. There is also a procedure prescribed for the sale of the property, movable or immovable, which is attached under the said Chapter by public auction held in accordance with the provisions of the succeeding sections. The said Chapter has also carved out a specific procedure to be followed when the sale of the property is to be undertaken, including an order confirming or setting aside of the sale.

7. In the said scheme of the Goa Land Revenue Code, there is a provision for appeal in form of Section 188, which reads thus:-

“188. Appeals.— (1) Save as otherwise expressly provided, an appeal shall lie from every original order, other than an interim order passed under this Code—

(a) if such an order is passed by an officer subordinate to the Sub-Divisional Officer, to the Sub-Divisional Officer;

(b) if such an order is passed by the Sub-Divisional Officer, to the Collector;

(c) if such an order is passed by the Collector, to the Tribunal;

(d) if such an order is passed by an Assistant Survey and Settlement Officer, to the Survey and Settlement Officer or to a revenue officer notified by the Government in the Official Gazette to be the appellate authority;

(e) if such an order is passed by a Survey and Settlement Officer, to the Director of Settlement and Land Records or to a revenue officer notified to be the appellate authority; and

(f) if such an order is passed by the Inspector of Surveys and Land Records, to the Superintendent of Surveys and Land Records.

(2) A second appeal shall lie against any order passed in first appeal:

(a) if the first appeal was filed under clause (a) of sub-section (1), to the Collector;

(b) if the first appeal was filed under clause (b) of sub-section (1), to the Tribunal;

*(c) if the first appeal was filed under clause (d) of sub-section (1), to the Director of Settlement and Land Records or to a Revenue Officer notified by the Government in the Official Gazette to be the second appellate authority; and
(d) if the first appeal was filed under clause (e) or (f) of sub-section (1), to the Tribunal.”*

8. Undisputedly, the provision prescribed that an appeal shall lie from every original order other than an interim order passed under the Code, and specific instances are therefore set out as to which order shall be appealed.

The Administrative Tribunal has found itself to be restrained in exercising the jurisdiction over the order of the Mamlatdar on account that the order passed by the Mamlatdar is not an “original order” and Section 188 contemplates the appeal shall lie only against the original order.

A careful reading of the order which discloses the mind of the Tribunal, would reveal that the Tribunal is of the view, that the order passed do not emanate originally from the proceeding under the Land Revenue Code but only because there is a provision in the RERA Act 2016 which has relegated the execution of the order passed thereunder to the provisions under the Goa Land Revenue Code, it is not an order passed in original. Apart from this, it is also attempted to suggest the order is one which is not passed by the Collector but passed by the Mamlatdar who acts as delegate of the Collector and therefore the said order is not an “original order” as contemplated under Section 188(1)(c) of the Code.

9. We are unable to subscribe the view expressed by the Tribunal for the very simple reason that the RERA authority has left the task of recovering the amount of penalty, interest or compensation if it is not at all deposited as directed by the authority under the said statute by following the procedure prescribed under the Goa Land Revenue Code i.e. recovering the amount as if the authority is recovering it as arrears of land revenue. The function is thus delegated to the Mamlatdar who acts as an officer competent to recover the amount as arrears of land revenue as contemplated under Chapter X of the Goa Land Revenue Code and when the statute by a Parliament has prescribed that amount shall be recovered as arrears of land revenue, the parties are then taken to the provision of the Goa Land Revenue Code and in specific Chapter X and this power to be exercised by the Collector to be delegated any officer subordinate to him and is expected to follow the procedure prescribed under the said Code. We have no doubt in mind that a remedy that could be available is also the one which is available in the Code itself. Further, if we have turned the attention to the rules formulated in exercise of the powers conferred by sub section (2) of Section 199 of the Goa Land Revenue Code in the form Goa Realisation of Land Revenue Rules, 1969, which has also provided the guidelines to be followed while recovery is made under Chapter

X, as it is specifically provide that the provisions of Rules 46 to 53 of Order 21, to the first Schedule of the Civil Procedure Code regarding the attachment of movable property shall as far as may be apply to the restrain of movable property made under the Code.

Therefore, in our considered opinion, when Section 40 specifically provide that in order to recover the amount payable under the Act, the procedure prescribed under the Goa Land Revenue Code shall be followed, and that is how the parties are relegated to the remedy available under Chapter X of the Goa Land Revenue Code, 1968 which comes as an entire Code which include remedy of appeal which is clearly stipulated.

We therefore do not subscribe to the observations of the Tribunal that the said order passed by the Mamlatdar is not an order of “original” as we find that the Mamlatdar is only directed to execute the order which is passed by the authority under the RERA Act, including the Appellate authority. In the wake of the aforesaid, we clarify that the opinion expressed by the Administrative Tribunal that it do not have jurisdiction to entertain an appeal against the order passed by the Mamlatdar emanating and exercising the powers for enforcement of the orders passed under the RERA Act, 2016 is an unacceptable proposition and we set aside the said judgment by holding that the appeal is very much maintainable.

As far as factual aspect is concerned, since the parties have already settled the dispute between themselves, however we deemed it necessary to deal with the impugned order passed by the Tribunal as the view taken by the Tribunal would have been otherwise implemented in others.

By setting aside the impugned judgment, we declare that in case of an order passed by the Mamlatdar in order to implement the order passed under the RERA Act of 2016, against any such order, an appeal shall lie, as if it is an appeal under Section 188 of the Goa Land Revenue Code.

With this conclusion being drawn, we dispose of the writ petition.

ASHISH S. CHAVAN, J

BHARATI DANGRE, J