

GOA STATE INFORMATION COMMISSION

'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Appeal No. 115/ 2016

Avinash Mahadev naik,
H.No. 185,Deul Wado,
Borim Goa

..... Appellant

V/s.

1. Public Information Officer(PIO),
Administrator of Comunidades,
Panaji Goa.

2. First Appellate Authority,
Additional Collector –II,
North Panaji Goa .

..... Respondents

CORAM:

Smt. Pratima K. Vernekar, State Information Commissioner

Filed on: 06/06/2016

Decided on: 15/09/2017

ORDER

1. The appellant Shri Avinash M Naik by his application dated 3/8/2016 filed as per section 6 (1) of RTI Act 2005, sought from the respondent No.1 PIO of Administrator of comunidade , Panaji, goa certified copy of the total area of sq. mts of property known as " Renda do Terreno ocupado denominado Deul Codil Bhumi desta comunidade "situated in survey No. 127 Deulwada, Borim, Ponda, Goa .
2. The said application was responded by the PIO on 28/8/15 thereby providing him copy of the resolution of managing committee of comunidade of Borim dated, 27/8/15 which was furnished to him by the clerk in charge of Borim comunidade vide his letter dated 27/8/15 .
3. Being not satisfied with the information provided to him , the appellant filed first appeal on 28/9/15 before the Additional collector , being first appellate authority who is the respondent no.2 herein .

4. The respondent no.2 FAA by an order dated 7/4/16 allowed the appeal of the appellant and directed respondent no.1 PIO to furnish the said information immediately .
5. It is the case of the appellant that since did not receive the information despite of order of respondent no.2 , he made letter to the respondent no.1 on 26/4/16 requesting him to furnish the information .
6. The Respondent no.1 PIO vide letter dated 3/5/16 informed him that the clerk of said comunidade has informed him vide letter dated 2/5/16 that efforts were being made to trace the records from the archives of the Borim comunidade but the same cannot be provided in absence of records viz Livro Tombo, Livro Agrimensor ,*Livro varzca, Tomnacao planta* . The copy of the said letter dated 2/5/2016 by which such an fact was informed by clerk of Borim comunidade was enclosed by the PIO in support of his contention.
7. Being aggrieved by such an response from respondent no.1 PIO, the appellant approached this commission by way of second appeal on 6/6/16 filed u/s 19(3) of the Right to information Act ,2005 thereby seeking relief of furnishing him the required information and also for invoking penal provisions for not furnishing him the information despite of the order of FAA.
8. In pursuant to the notice of this commission, the appellant was present along with his advocate B. Herekar .Respondent No.1 was represented by advocate Kishor Bhagat .
9. Reply filed by the respondent no.1 PIO on 11/8/17 reiterating the facts as stated by him in his earlier reply given u/s 7(1) of the RTI Act . the said reply was also supported by the Affidavit dated 26/7/2017 of Shri Anil Salgaonkar clerk incharge of Comunidade of Borim duly sworn before Notary .
10. The Re-joinder was also filed by the appellant on 1/9/17 .

11. Arguments were advanced by the parties .
12. The Advocate for the appellant submitted that since the order of the respondent no.2 was not challenged by the respondent no.1 ,as such it is incumbent upon PIO to comply with the order of FAA . It is his second contention that raising the defence of non availability of public records without any proof itself shows that there is an mal-intention on the part of the PIO .It is further contention of the appellant that without the existence of the survey no.127 , no subdivision of the said survey can come in the records of rights. It is further contention that the NOC dated 4/11/2009 has been issued by the comunidade of Borim for construction of crematorium in comunidade land bearing survey No. 127 as such the contention of Respondent PIO is false and the affidavit given by Shri Anil Salgaonkar clerk incharge of comunidade of Borim is contrary to their own documents. He substantiated his case by relying upon form I & IV of Survey No. 127 sub Div. I and NOC issued by the Comunidade of Borim dated 4/11/2009.
16. The Advocate for respondent contended that in absence of records viz Livro Tombo, Livro Agrimensor ,*Livro varzca, Tomnacao planta, it is not possible for PIO to locate the said* the information and furnish the same. Further it was submitted that the clerk of the Comunidade had thoroughly gone through the archives of Comunidade of borim but he could not find the information sought by the appellant. It was further contended that the NOC referred by the appellant issued by the attorney of the Comunidade of Borim in the year 2009 and not by the then PIO .
17. I have perused the records available in the file and also considered the rival contention of both the parties.
18. From the inception, the respondent PIO has showed their inability to furnish the information. On going through the application filed u/s 6(1) of the RTI Act 2005, it is seen that the applicant wanted to know the area of property pertaining to **survey No. 127** of Deul

wada Borim Ponda Goa obviously the information regarding the survey numbers are maintained by the respective offices of the Department of Land and Survey records and not by Comunidade. As such the information pertaining to said survey number "**survey No. 127** of Deul wada, Borim, Ponda Goa". Will be available with the concern office of the said Department .

19. I feel the ends of justice will meet with directions to Respondent No. 1 PIO to transfer the said application dated 3/8/16 u/s 6(3) of the RTI Act to the concerned public authority

With the above directions the appeal stands disposed .

Notify the parties.

Authenticated copies of the Order should be given to the parties free of cost.

Aggrieved party if any may move against this order by way of a Writ Petition as no further Appeal is provided against this order under the Right to Information Act 2005.

Pronounced in the open court.

Sd/-

(Ms.Pratima K. Vernekar)
State Information Commissioner
Goa State Information Commission,
Panaji-Goa

Ak/-