

GOA STATE INFORMATION COMMISSION
 'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

Appeal No: 88/2018/SIC-I

Mathew Cardoz,
 H.No. 1016, Perodem,
 Benaullim, Salcete, Goa – 403 716

..... **Appellant**

V/s

- 1) The Deputy Collector and SDO,
 Mathany Saldanha Administrative Complex,
 Margao, Goa – 403601
- 2) The Additional Collector – I,
 First Appellate Authority,
 South Goa District,
 Margao, Goa – 403 601

..... **Respondents**

CORAM: Smt. Pratima K. Vernekar, State Information Commissioner.

Filed on: 13/04/2018

Decided on: 13/06/2018

ORDER

1. The brief facts leading to the present appeal are as under :-

- a) The appellant Shri Mathew Cardoz herein by his application dated 03/10/2017 filed under section 6(1) of Right to Information Act, 2005 sought certified copies of the documents from file No. LRC/PART/353/2012/I, from the file no. LRC/PART/292/2011/III and also of file No. LRC/PART/737/2011/III from the Respondent No. 1 Public Information Officer (PIO) of the Office of Deputy Collector and SDO Margao-Goa.
- b) The said application was responded by Respondent No. 1 PIO on 23/10/2017 interalia informing the appellant to collect the information pertaining to file no. LRC/PART/353/2012, after making due payment and it was further informed that file LRC/PART/292/2011 and file no. LRC/PART/737/2011. cannot be located and the efforts are being made to trace the same.
- c) The appellant being not satisfied with the said reply received from Respondent No. 1 PIO, preferred first appeal on 10/11/2017 u/s 19(1) of Right To Information with Collector and District Magistrate, South Goa, Margao being the First

Appellate Authority (FAA) who is the Respondent No. 2 herein.

d) According to the appellant Respondent No. 2 First Appellate Authority (FAA) by an order dated 6/03/18 directed the respondent No. 1 PIO to obtain the said information from the Department of Inspector of Survey and Land Records and furnish the same to the appellant.

e) As no full and complete information is received by the appellant and being aggrieved by the action of both the Respondents, the appellant approached this commission on 13/04/2018 by way of second appeal filed u/s 19 (3) of the RTI Act, 2005 on the grounds as raised in the memo of appeal.

f) Vide present appeal the appellant has sought direction as against PIO for furnishing him complete information, for ordering inquiry and for invoking penal provisions.

2. In pursuant to the notice of this commission the appellant was represented by advocate Vidhya Dessai and the Respondent PIO was represented by Abhishekh Naik and Respondent No. 2 FAA was represented by Bhiku Dessai.

3. The PIO on 13/06/2018 filed his reply to the appeal alongwith the information obtained from land and survey records. The Respondent No. 2 First Appellate Authority (FAA) failed to file any reply.

4. Arguments were advanced by the advocate for the appellant. Representative of the Respondent PIO submitted to consider reply of PIO to be his arguments.

5. The Advocate for the appellant submitted that the appellant had filed case for partition of his land holding, which could not be completed as the land was not available at loco according to the report of the survey authority. She further submitted that the partition case filed by the neighbor of the appellant subsequent to the application of partition filed by the appellant, was allowed

by the Deputy Collector, Margao. It was further submitted that since the appellant wished to challenge the sale deed, of the said Shri Lavande, sought the information pertaining to the files of partition cases of him and of the said Shri Lavande under section 6 of RTI Act. She further submitted that claim of file missing or not traceable has no legality as it is not recognised as exception under the RTI act and therefore public authority has a duty to initiate action for this kind of loss of public records. It was further submitted that the information which is furnished alongwith reply is not complete information and this is only part of the information of the said files. She further contended that there are more documents in respect to the said partition cases as such it is her contention that she has received the incomplete information.

- 6.** According to the PIO the part of the information that is the certified copies of documents in file no. LRC/PART/353/2012/I since available with the Public Authority was furnished to the appellant and the information pertaining to file no. LRC/PART/292/2011/III and also of file No. LRC/PART/737/2011/III could not be furnished on account of non traceability of those files. It is also submitted that concerned dealing clerk handling partition matters has made several efforts to trace file in question however the same is not traceable. It was further submitted that in compliance to the order of First Appellate authority (FAA) dated 06/03/2018 , they have obtained the information from the Department of Inspector of Survey and Land Records and the same is provided to appellant vide reply dated 13/06/2018.
- 7.** I have perused the records available in the file and also considered reply and submission made by both the parties.
- 8.** It is admitted fact that the appellant was furnished part information i. e. at serial No. 1 earlier and the information at point No. 2 and 3 was not furnished earlier on account of non-traceability and now have been furnished after collecting the same from the Land and Survey Department, which according to the appellant is incomplete.

- 9.** The PIO is required to provide the information as it exist on the records of the Public Authority and cannot be expected to create the same for the purpose of furnishing him to the information seeker. This observation of mine is based on the ratio laid down by the apex court in civil Appeal No. 6454 of 2011 Central Board of Secondary Education V/s Aditya Bandhopadhaya and incase of Peoples Union for Civil Liberties V/s Union of India AIR Supreme Court 1442.
10. Be that as it may, the information sought pertains to year 2011 of judicial proceedings conducted before the public authority concerned herein and the same is sought in the year 2017 by the appellant It is not the contention of the PIO that the said information is destroyed based on any order, or as per the law or the records are weeded out. On the contrary it is the contention of the PIO that though the information is held by it the same is presently untraceable as it is misplaced. The appellant herein has not disputed that the files according to PIO is missing and hence the same is not in existence now. The same therefore cannot be ordered to be furnished now.
11. In this case it is only the lapse and failure of the authority to preserve the records which has lead to non traceability of those files. It appears that the authority itself was not serious in maintaining and preservation of records. Such an attitude would frustrate the objective of the Act itself. As such it is the need of hour to appoint record officer who should be held responsible for proper maintaining and preservation of records. So that right of citizen/information seeker should not be defeated on such grounds henceforth.
- 12.** Nevertheless since whatever information available with the PIO have been furnished to the appellant, I find no intervention of this commission is required there too for the purpose of furnishing the information. However, that doesnot absolve the PIO or the public authority to furnish the complete information to the appellant hence the right of the appellant to seek any additional information in respect of the same files is kept open after the same files are traced.

13. With regards to missing documents/files not traceable; the Honble High court of Delhi in writ petition © 36609/12 and CM 7664/2012 (stay) in case of Union of India V/s Vishwas Bhamburkar has held ;

“It is not uncommon in the Government departments to evade the disclosure of the information taking the standard plea that the information sought by the applicant is not available. Ordinarily, the information which at some point of time or otherwise was available in the records of the government should continue to be available to the concerned department unless it has been destroyed in accordance with the rules framed by the department for destruction of old records. Even in the case where it is found that desired information though available at one point of time is now not traceable despite of best efforts made in the regards, the department concerned must fix responsibility for the loss of records and take action against the officers /official responsible for the loss of records unless such a course of action is adopted, it would not be possible for any department /office, to deny the information which otherwise is not exempted from the disclosure “.

14. By considering the ratio laid down incase of Union of India (supra) and as per the reply of PIO the said files at point no. 2 and 3 are still not traceable, an appropriate order is therefore is required to be passed so that the liability is fixed and records are traced.

15. From the records it is seen that the PIO was diligent in his duties under the RTI Act, 2005 and has responded the application well within stipulated time in terms of section 7(1) of RTI Act and provided the information at point no. 1 as available on the records. Further he also complied the order of FAA and furnished the information at point no. 2 and 3 after obtaining the same from the Department of Survey and Land Records. As such I do not find any malafide on the part of PIO and hence I

am decline to grant relief (b) and (d) sought by the appellant in his memo of appeal.

- 16.** In the above given circumstances and in the light of the discussion above I dispose off the appeal with the following:

Order

- i) The appeal partly allowed.
- ii) The Collector of south Goa District at Margao-Goa or through his representative shall conduct inquiry regarding the said missing namely file No. LRC/PART/292/2011/III and also of file No. LRC/PART/737/2011/III and fix the responsibility for missing said files. The Collector of South Goa shall complete such inquiry within 4 months from the date of receipt of this order by him. The collector of South Goa shall also initiate appropriate proceedings against the person responsibility as per his service conditions. The copy of the report of such inquiry shall be sent to the appellant and the right of the appellant to seek the said information from the PIO free of cost is kept open after the said files are traced.
- iii) The Public authority concerned herein shall take appropriate steps for appointment of Record Officers for proper preservation of their records.
- iv) Rest prayers are not granted.

Notify the parties. Copy of the order should be also sent to collector for the South Goa District at Margao for information and action.

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