

GOA STATE INFORMATION COMMISSION

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Appeal No. 307/2021/SCIC

Minguel Fernandes,
H.No. 225/1, Sinquetim,
Navelim, Salcete-Goa. 403707.

.....Appellant

V/S

1. Public Information Officer,
Maya K. Amonkar,
Superintendent of Survey & Land Records,
Margao, South Goa.

2. The First Appellate Authority,
Mandar M. Naik,
Dy. Director (Admn),
Settlement & Land Records,
Panaji-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 28/12/2021

Decided on: 08/07/2022

FACTS IN BRIEF

1. The Appellant, Minguel Fernandes, r/o. H.No. 225/1, Sinquetim, Navelim, Salcete Goa by his application dated 21/09/2021 filed under sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought inspection of file No. 3/ISLR/154/2019 from the Public Information Officer (PIO), Land Survey Record Officer at Margao, Goa.
2. According to the Appellant, the PIO allowed him to inspect the file on 20/10/2021 and in consequence of that, he marked pages of five important documents mention as follows:-
 - a) Second time proceedings of site inspections copy
 - b) Second time Area adjustment statement copy
 - c) First time proceedings of site Inspections copy
 - d) First time Area adjustment statement copy
 - e) Sale Deed copy.

3. Further, according to the Appellant, he collected the information by paying requisite fee on 28/10/2021, however upon scrutinising the said information, he found that the information furnished to him was incomplete, as the copy of second time site inspection proceeding was denied by the PIO.
4. Feeling aggrieved and dissatisfied, he filed first appeal before the Deputy Director (Admn), Directorate of Settlement and Land Records at Panaji Goa, being the First Appellate Authority (FAA).
5. The FAA by its order dated 06/12/2021 allowed the first appeal and directed the PIO to furnish the documents of second time proceeding of site inspection to the Appellant within the period of 15 days from the date of order.
6. Since the PIO failed and neglected to comply the order of the FAA, the Appellant landed before the Commission by this second appeal under section 19(3) of the Act.
7. Notice was issued to the parties, pursuant to which the representative of the PIO, Shri. Sagar Navelkar appeared and placed on record the reply of the PIO on 09/03/2022, Shri. Babaji Parab representative of the FAA appeared on 28/01/2022, however opted not to file any reply in the matter.
8. It is a matter of fact that, the Appellant has received partial information on 28/10/2021 and dispute remains only with the information with regards to the proceeding of second time site inspection.
9. According to the PIO, the information sought was pertaining to the partition file No. 3/ISLR/154/2019, where he was the intervening party and while inspecting the said file on 20/10/2021, the copy of disputed document i.e proceeding of second time site inspection was available in the file.

Further, according to him upon his marking the purported documents, the PIO was agreed to furnish the copy of the same. Accordingly, the Appellant also made requisite payment to the public authority, however while scrutinising the information provided by the PIO on 28/10/2021, the Appellant realise that, the PIO did not provide the copy of proceeding of second time site inspection.

Further, according to the Appellant, the representative of the PIO, Shri. Sagar Navelkar also admitted before the FAA on 17/11/2021 that the said document was available in the records and that he agreed to furnish the copy of the same on next date of hearing. However, he failed to remain present for further hearings. The Appellant also alleged that the PIO intentionally withheld the said information with malafide object.

10. On the other side, the PIO through his reply contended that, the disputed document is not valuable document and its loss or damage would not cause any prejudice to any party as the said document is not prescribed document under the Land Revenue Code, 1968.
11. Considering the rival contention of the parties, the issue that arises for determination before the Commission that whether the information sought for by the Appellant can be denied by the PIO.
12. Perused the pleadings, reply of the PIO, scrutinised the documents on record and considered the submission of the Appellant.
13. On the perusal of the proceeding before the FAA dated 17/11/2021, reads as under:-

*"Appellant is present in person. Shri. Sagar Navelkar,
Supervisor of Inspector of Land Survey and Land*

Records, Margao is present on behalf of SSLR. Representative of SSLR South states that the document of proceeding sheet on site at time of demarcation was present in file. During proceedings the Supervisor, Shri. Sagar Navelkar in his individual capacity as Supervisor is instructed orally by the undersigned to trace the document today itself by 01:30 pm and bring the original document to the next hearing in this case for issuing that document to the Appellant. Matter is formally adjourned and fixed for reply of the respondent on 24/11/2021 at 11:30 am”.

From the bare reading of the above roznama sheet it reveals that the representative of the PIO, Shri. Sagar Navelkar admitted before the FAA that the disputed document was available in file till 17/11/2021.

14. It has been consistent stand of the Appellant that disputed information is available with the public authority, however with evasive manner the said information was not disclosed by the PIO. The FAA also reiterated the said fact and directed the PIO to furnish the said information by its order dated 06/12/2021. The operative part of the said order reads as under:-

"As per the reply of the Appellant, the fact of the existence of the Second time proceeding document of site inspection copy is not given by the respondent PIO in Original application under Right to Information filed by the present Appellant. It is therefore directed that the PIO Superintendent of Survey and Land Records South Margao Goa must obtain and furnish the document of second time proceedings of site inspection to the Appellant within 15 days of this present order. In

case of failure, necessary penalties as applicable under the Right to Information Act, 2005 will automatically be imposed on the defaulting official.”

Instead of complying the order of the FAA, the representative of PIO, Shri. Sagar Navelkar appeared before the Commission with the cryptic reply dated 09/03/2022, with altogether different stand, which is fallacious and inappropriate.

Under the Act, the PIO is a forum with original jurisdiction and the FAA as an Appellate Authority. Thus, if information is denied by the PIO, there is Appellate Authority prescribed. However, thereafter the PIO shall be subjected to the order of the FAA. The FAA in its official designation is an officer senior to the PIO. In the present matter the act of the PIO is contrary to the judicial hierarchy and inconsistent with the provisions of law.

15. On perusal of the reply filed by the PIO dated 09/03/2022, it reveals that the information has been denied on the ground that the disputed document is not a prescribed document under Land Revenue Code, 1968 or secondly the loss or damage of the said document would not cause any prejudice to any party. From the above reply, the information was denied on wrong reason. The position taken by the PIO during the initial stage and at the time of responding this second appeal are different. The PIO, has taken different positions at different level and has substantially failed to justify the denial of the information which smells malafide.

16. Access to information under section 3 of the Act is rule. The purpose of this Act to promote transparency and accountability in working of the public authority. The PIO is duty bound to provide the information that is available in the official records of the public authority. The refusal of information has to be done only on one or more grounds mentioned in section 8 and/or section 9 of the Act.

The PIO cannot impose new set of non-existence exemption to deny the information. The High Court of Delhi in the case of **State Bank of India v/s Mohad. Shahjan (W.P. No. 9810/2009)** has held as under:-

"22. The very object and purpose of the RTI Act is to make the working of Public Authorities transparent and accountable. For the purpose of RTI Act, all information held by a Public Authority is accessible except to the extent such information is expressly exempted from disclosure as provided in the RTI Act itself. In other words, unless the Public Authority is able to demonstrate why the information held by it should be exempt from disclosure, it should normally be disclosed. The burden, therefore, is entirely on the Public Authority to show why the information sought from it should not be disclosed."

Therefore in my considered opinion, the PIO has denied the information without any basis in law. The Commission see no reasonable cause for denial of information. The Appellant is therefore entitled for the said information.

17. The High Court of Gujarat in the case **Urmish M. Patel v/s State of Gujarat (LNIND 2010 GUJ 2222)** has held that penalty can be imposed if order of the FAA is not complied with. The relevant para No. 8 is reproduced herein:-

"8.....Nevertheless, I cannot lose sight of the fact that the petitioner did not supply information even after the order of the appellate authority, directing him to do so. Whatever be the nature of the appellate order, the petitioner was duty bound to implement the same,

whether it was a speaking order or the appellate authority was passing the same after following the procedure or whether there was legal flaw in such an order, he ought to have complied with the same promptly and without hesitation. In that context, the petitioner failed to discharge his duty. "

18. Under section 19(5) and with the second proviso of section 20(1) of the Act, the burden lies on the PIO to prove that he acted justifiably, reasonably and diligently qua the application for information.
19. The defence taken by the PIO that disputed document is not prescribed document under Land Revenue Code 1968 is untenable by law as the said code cannot overrule the provisions of RTI Act, thus that cannot exonerate the PIO from providing the information.
20. Undisputedly, the information with regards to the second time proceeding site inspection was generated by the public authority as fulfilment of statutory requirement, therefore the said document ought to have been in the records of the public authority. The Act of the PIO by non-furnishing the same inspite of the order of the FAA, is wilful denial of the information. Consequently, it was inferred that the PIO has some ulterior motive.

Therefore, the Commission is of the view that, the PIO with malafide intention denied the information so also failed and neglected to appear for hearing on 11/05/2022, 17/06/2022 and 08/07/2022 and thus shown lack of concern to the process of the Commission and also failed to discharge his responsibility. Therefore the Commission is of the opinion that the Appellant deserves relief.

The appeal is therefore allowed with the following:-

ORDER

- The appeal is allowed.
- The PIO is directed to comply the order of the FAA dated 06/12/2021 and furnish the information to the Appellant within a period of **FIFTEEN DAYS** from the date of receipt of the order.
- The PIO, Mr. Patrick Gonsalves is hereby directed to show cause as to why penalty should not be imposed on him in terms of section 20(1) and/or recommend disciplinary proceeding against him in terms of section 20(2) of the Act.
- The reply to the show cause notice to be filed on **11/08/2022 at 10:30 am.**
- Appeal disposed accordingly.
- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner