

GOA STATE INFORMATION COMMISSION

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Shri. Sanjay N. Dhavalikar, State Information Commissioner

Appeal No. 240/2021/SIC

Shri. Bapu Yeso alias Yeshwant Virnodkar,
R/o. Girkarwada, Kepe,
Arambol, Pernem- Goa.

-----Appellant

v/s

1. Domiana Nazareth,
The State Public Information Officer/
Supdt. Of Survey & Land Records,
Panaji-Goa.

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

3. Public Information Officer,
Administrator of Comunidades,
North Zone, Mapusa, Bardez-Goa.

-----Respondents

Relevant dates emerging from appeal:

RTI application filed on	: 12/02/2021
RTI application transferred on	: 09/03/2021
PIO replied on	: 09/03/2021
First appeal filed on	: 23/03/2021
First Appellate Authority order passed on	: 09/08/2021
Second appeal received on	: 27/09/2021
Decided on	: 13/02/2023

ORDER

1. The second appeal filed under Section 19 (3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') by the appellant against Respondent No. 1, Public Information Officer (PIO) and Respondent No. 2, First Appellate Authority (FAA), came before the Commission on 27/09/2021.
2. It is the contention of the appellant that under Section 6 (1) of the Act he had sought certain information from the authority. PIO vide letter dated 09/03/2021 informed the appellant that the information is not available and transferred the applications to the PIO, Administrator of Comunidades of North Zone. Aggrieved by the said reply he filed appeal under Section 19 (1) of the Act before FAA, wherein FAA directed the PIO to furnish the requested information. It is the contention of the appellant that PIO did not furnish the information, on the contrary, gave false and misleading answers, hence, he appeared before the Commission by way of second appeal.

3. The concerned parties were notified and pursuant to the notice, appellant appeared in person and later appeared alongwith Shri. Jalesh Jivaji Kamat. PIO and FAA were represented by their respective authorized representatives. Appellant filed submission dated 05/01/2022, 10/11/2022, 06/12/2022, and 12/12/2022. Respondent No. 1, PIO filed reply on 08/12/2021, 10/11/2022, 07/12/2022 and 13/02/2023. FAA filed reply on 08/12/2021.
4. Appellant vide letter dated 25/02/2022 requested the Commission to admit PIO, Administrator of Comunidades of North Zone as Respondent no. 3, since the application was transferred to the Adminstrator of Comunidades of North Zone. Notice was issued to Respondent no. 3, pursuant to which Advocate Sanjiv S. Sawant appeared on behalf of Respondent no. 3, PIO and filed reply dated 18/10/2022.
5. Respondent no. 1, PIO stated that, as per the direction of the FAA inspection of the records was provided to the appellant, and further informed that there are 107 nos. of Alvara/ Title plantas available of Village Panchayat Arambol in Pernem Taluka, however, appellant did not approach PIO's office in response to the letter. PIO further stated that, on the receipt of the application search was conducted for the requested documents, yet the same could not be traced, therefore, the application was transferred to the Administrator of Comunidades of North Zone. After all the efforts, the requested documents were not found in the records and the request of the appellant could not be complied with.
6. Respondent no. 3, PIO, Administrator of Comunidades, North Zone stated that, title of the Alvara properties is not maintained by his office. No single piece of land under village Arambol comes under the purview of Administrator of Comunidades of North Zone and all lands under the ownership of Government of Goa situated in Village Arambol are Alvara properties, whose documents are available in the office of Directorate of Settlement and Land Records, the authority represented by respondent no. 1, PIO.
7. Respondent no. 2, FAA vide reply dated 08/12/2021 stated that he had heard the appeal and disposed by passing an order, directing the PIO to issue the requested information to the appellant.
8. Appellant submitted that, respondent no. 1, PIO was required to maintain the records sought by him, yet the PIO instead of tracing and furnishing the relevant documents, identified irrelevant

information with regard to some other properties of village Arambol in Pernem Taluka. The failure of PIO to furnish the correct information amounts to violation of proprietary rights of the appellant.

9. The Commission, after careful perusal of the replies and other records pertaining to the present matter has seen that the appellant had requested for some property documents like Decree No. 23.202 dated 04/11/1933, grant of Afforamento and Planta showing Lote allotted to Xencora Dondi Virnorcar, appellant's ancestors. The Commission finds that the said documents should be preserved by the Office of Respondent no.1, PIO, Office of Directorate of Settlement and Land Records, and not by Respondent no. 3, PIO, Administrator of Comunidades of North Zone. The said fact has been acknowledged by the appellant, hence, he is pressing for the information from Respondent no. 1, PIO.
10. As the records of the present matter indicate, Respondent no.1, PIO had undertaken detail search of the relevant records in the Office and informed the appellant that there are 107 numbers of Alvaras/ Title Plantas available of village Arambol in Pernem Taluka and the appellant may collect the said documents after payment of Rs. 5,350/-.
11. Appellant, not being sure whether the requested information is part of the above mentioned 107 Alvaras/ Title Plantas opted for the inspection of the said record, which was provided by the PIO. Later, during the proceeding of the second appeal, the Commission directed the PIO to provide for inspection of all relevant records in order to enable the appellant to identify the information he had sought vide application dated 12/02/2021. Accordingly inspection was provided on 18/02/2022, 21/10/2022 and 16/11/2022. Appellant, alongwith Shri. Jalesh Jivaji Kamat visited the office of the PIO and carried out inspection.
12. The Commission notes that, the available documents were provided for the inspection and the appellant, alongwith his representative inspected the document, yet could not identify the relevant information. Appellant claims that documents pertaining to his application were not provided for the inspection, on the contrary, PIO contends that every effort to trace the documents were made and all the available documents were provided for inspection. In such a situation the Commission is unable to arrive at a conclusion on whether the relevant documents are available in the records of the

PIO or whether the documents sought by the appellant are not available with the PIO or whether the relevant documents were not provided for inspection inspite of being available in the records of the PIO.

13. It is seen that neither PIO nor appellant were able to identify the information sought vide application dated 12/02/2021, during the search and inspection respectively. However, the Act requires the PIO to maintain and preserve the information in the safe custody in order to facilitate the information seeker. The Right to Information Act is a Fundamental Right guaranteed to the citizen under Article 19 (1) (a) of the Indian Constitution. Similarly, the Act is concerned with Article 19 (1) (a) and Article 21 of the Indian Constitution which states Freedom of Expression and Speech and Right to Life and Personal Liberty, respectively. The Hon'ble Supreme Court has held this in several cases.
14. Appellant has stated on record that he requires the said information to apply for regularization of Government/ Alvara land under sub Section 4 of Section 37 A of the Goa Land Revenue Code (Amendment) Act 2017 (Goa Act 2 of 2018) and Rule 49 of the Goa Land Revenue (Disposal of Government Lands) (Ninth Amendment) Rules, 2018. That the failure of PIO to furnish the said information will prevent him from applying for the same due to the lack of documentary evidence and the appellant may be deprived of his right to apply for the same. Appellant also contended that non receipt of the requested information amounts to violation of his proprietary rights.
15. This being the case, the Commission holds that, the PIO has failed to furnish the information to the appellant as sought by him vide application dated 12/02/2021. However, it cannot be concluded that the PIO has not furnished the information deliberately. The Commission has seen the efforts taken by the PIO and her representatives to search the appropriate records in order to identify and furnish the information. Though the information could not be found in the records, the Commission notes that the said information was available in the records at some point of time, hence, the same is required to be maintained and preserved by the PIO.
16. The Hon'ble High Court of Delhi in Writ Petition (C) 3660/2012 of CM 7664/2012 (Stay), in the case of Union of India v/s. Vishwas Bhamburkar, has held in para 7 :

"This can hardly be disputed that if certain information is available with public authority, that information must necessarily be shared with the applicant under the Act unless such information is exempted from disclosure under one or more provisions of the Act. It is not uncommon in the government departments to evade disclosure of the information taking the standard plea that the information sought by the applicant is not available. Ordinarily the information which is at some point of time or the other was available in the records of the Government, should continue to be available with the concerned department unless it has been destroyed in accordance with the rules framed by the department for destruction of old record. Therefore, whenever information is sought and it is not readily available, a thorough attempt needs to be made to search and locate the information wherever it may be available. It is only in a case where despite a thorough search and inquiry made by the responsible officer, it is concluded that the information sought by the applicant cannot be traced or was never available with the Government or has been destroyed in accordance with the rules of the concerned department that the CPIO/PIO would be justified in expressing inability to provide the desired information".

The Hon'ble Court further held –

"Even in the case where it is found that the desired information though available in the record of the government at some point of time, cannot be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility of the loss of the record and take appropriate departmental action against the officers/official responsible for loss of the record. Unless such a course of action is adopted, it would be possible for any department/office, to deny the information which otherwise is not exempted from disclosure, wherever the said department/office finds it inconvenient to bring such information into public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act".

17. Para 8 of the Judgment (supra) reads –

"Since the Commission has the power to direct disclosure of information provided, it is not exempted from such disclosure, it would also have the jurisdiction to direct an inquiry into the matter wherever it is claimed by the PIO/CPIO that the information sought by the applicant is not traceable/readily traceable/currently traceable".

18. Subscribing to the ratio laid down by the Hon'ble High Court of Delhi and with respect to the findings of the Commission, it is held that the PIO was required to trace and furnish the information sought by the appellant and, if not traceable then the contention of the PIO needs to be verified by conducting an appropriate enquiry. PIO cannot be absolved from his responsibility under the Act, under which all relevant documents are required to be maintained, in order to facilitate the information seeker.
19. In the light of above discussion, the present appeal is disposed with the following order:-
 - a) Respondent No. 1, PIO is directed to undertake thorough search and trace the records sought by the appellant vide application dated 12/02/2021 and furnish the information within 20 days from the receipt of this order, free of cost.
 - b) In case the said records are not traced within 20 days, the Director, Directorate of Settlement and Land Records is directed to conduct an appropriate enquiry into the issue of the said records being not traceable in the office of the PIO.
 - c) Director, Directorate of Settlement and Land Records is directed to complete the enquiry and submit the copy of the report to the Commission within 120 days from today.
 - d) Registry is directed to send a copy of this order to the Director, Directorate of Settlement and Land Records, Government of Goa, for appropriate action.

Proceeding stands closed.

Pronounced in the open court.

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.

Sd/-

Sanjay N. Dhavalikar
State Information Commissioner
Goa State Information Commission
Panaji - Goa