

GOA INFORMATION COMMISSION

Ground Floor, "Shrama Shakti Bhavan", Patto Plaza, Panaji.

Appeal No. 65/2007-08/Commu.

Milagrina D'Souza,
H. No. 142, Carrasvaddo,
Mapusa, Bardez – Goa.

..... Appellant.

V/s.

1. The Administrator of Comunidades,
North Zone, Near Civil Court Junction,
Feira Alta, Mapusa, Bardez – Goa.
2. Shri. Michael Carrasco,
The Power of Attorney of the
Mapusa Comunidade,
R/o Carrasvado, Mapusa,
Bardez – Goa.
3. The first Appellate Authority,
The Additional Collector – I (North),
Office of the Collector,
North Goa District, Panaji – Goa.

..... Respondents.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner
&
Shri G. G. Kambli
State Information Commissioner

(Per A. Venkataratnam)

Dated: 07/03/2008.

Adv. Shri. V. S. N. Alornekar for Appellant.

Adv. Pranay Kamat for Respondent No. 1.

Respondent No. 2 absent.

Authorized representative Shri. Anand Gaude, U.D.C. represented Respondent
No. 3.

ORDER

This is about the request of the Appellant made on 3rd May, 2006 asking for a document called "Aforamento" granted to late Diogo Antonior DeSouza by Mapusa Comunidade in respect of the property called "Comannaikacho Soddo" located at Carraswado, Mapusa and surveyed under P.T.S. No. 60/Chalta No. 7 of City Survey of Mapusa alongwith some other documents. 5 documents were, in all, asked by the Appellant. By his reply dated 29/09/2006, the Respondent No. 1 informed that the documents were not transferred to his office and hence, did not supply them. The first Appellate Authority, Respondent No. 3 herein, has also disposed off on 28/05/2007 the first appeal dated 16/01/2007 stating that he was satisfied with the reply of the Public Information Officer that no documents were traceable and he relied on the affidavits

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filed by both the Respondent No. 1, Respondent No. 2 and also by the Registrar of Mapusa Comunidade. Against this "impugned order" the present second appeal is filed with a prayer that "the Appellant be ordered to furnish the required information and award compensation to her". We understand that the reference to the Appellant in the prayer to mean the Respondent No. 1. In the appeal, she has also made various allegations against Respondent No. 2, namely, Attorney of the Mapusa Comunidade Shri. Michael Carrasco. It is her allegation that Respondent No. 2 is himself involved in disposing some part of the land which was already allotted to Diogo D'Souza by aforamento, the copy of which is now asked by her. She has alleged previous enmity between her and Respondent No. 2 and expressed her apprehension that the documents were not being deliberately given on the plea that the "old file is not traceable".

2. Notices were issued to all the Respondents for filing their written statements. There is a letter dated 21/08/2006 exhibited by the Appellant at 'L' to the second appeal written to the Respondent No. 1 in which the Respondent No. 2 has mentioned that the files of the Comunidade are maintained by the Registrar of the Comunidade as per Article 88 (b) and Article 91 of the Code of Comunidades. He has also mentioned therein that the old records are transferred to the office of the Administrator of the Comunidades of the North Goa i.e. the office of the Respondent No. 1 and reminded him that all the files of the Comunidades taken over by the Administrator's office should be returned because the Comunidade work of recovery of the "foro" is affected.

3. The Respondent No. 3, the first Appellate Authority herein, has mentioned about the various hearings that have taken place before him and that as the records are not available, he has directed the Respondent No. 2 to investigate the matter of the disappearance of the file of the Appellant herein and connected records of year 1930 and file an FIR before Police in the matter. We are not aware of further action taken by the Respondent No. 1 on this order. The Respondent No. 1, on the other hand, has prayed that the second appeal be dismissed as barred by limitation. The Appellant has contended that though the first Appellate Authority's order is dated 28/5/2007, she has come to know of the order only on 21/6/2007 and the second appeal is filed on 10/9/2007 i.e. within 90 days from the date of the knowledge of the impugned order and hence, the second appeal is not barred by limitation.

4. We find that the first Appellate Authority has not pronounced his order in the open court. On the proceedings' sheet submitted before us, there is an entry dated 8/5/2007 to the effect that order is issued and the order should be communicated to both the parties. We, therefore, take that the appeal is within time and accordingly, reject the preliminary objection of the Respondent No. 1. On perusal of the various

statements filed by the three Respondents, it is very clear that certain old records of the Comunidade of Mapusa have been transferred to the Administrator's office, North Zone, Mapusa and that the Mapusa Comunidade were pursuing with him for return of the said files. However, it is not clear whether the old file No. 30 in which this aforamento is said to be existing has been sent to the Administrator's office or not. There is no specific mention in any of the statement to this effect. Similarly, it is also not known how and why the Administrator, Respondent No. 1 has taken possession of the current files of the Comunidade wherein the liability of the collections of the "foros" by the Comunidade from the allottees of land is not yet completed. Further, we are also not sure and nobody has mentioned anything in any of their statements whether the concerned aforamento has been converted into the permanent possession by collecting 20 times of annual foro in respect of the land granted to Diogo D'Souza and whether any title deed was given to said Diogo D'Souza in respect of the said land. If this is not so, the necessity of sending this file to the office of the Respondent No. 1 does not arise. It is, therefore, the matter of the disappearance or misplacement of the file has to be taken to its logical conclusion and only then can any application/appeal under the RTI Act can be disposed off. We have already noted that the Respondent No. 3, first Appellate Authority has given written directions to the Respondent No. 1 to lodge an FIR with the Police. We hope that after the investigation by the Police, the fact will come out and till such time this Commission cannot give the relief prayed for by the Appellant.

5. In view of the above, the second appeal is partly allowed. The Respondent No. 1 should file compliance report within one month as to whether or not he has filed the Police complaint about missing document. In view of the efforts made by the Respondent No. 1 to trace the records, the prayer regarding starting of penalty proceedings against him is dismissed.

Pronounced in the open court on this 7th day of March, 2008.

Sd/-
(A. Venkataratnam)
State Chief Information Commissioner

Sd/-
(G. G. Kambli)
State Information Commissioner