

GOA INFORMATION COMMISSION

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

Complaint No. 20/2007-08/Mun.

Ms. Authilia I. A. R. Carvalho
Landlady, C/o Bar Carvalho,
Near Railway Overbridge,
Margao - Goa.

..... Complainant.

V/s.

The Public Information Officer,
Shri Y. B. Tavde
The Chief Officer,
Margao Municipal Council,
Margao - Goa.

..... Opponent.

CORAM:

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

(Per A. Venkataratnam)

Dated: 30/08/2007.

Mr. J. Barreto, authorized representative for the Complainant.

Adv. R. M. Lotlikar for the Opponent.

ORDER

This is a complaint against the Opponent that the order passed by the Director of Municipal Administration, the first Appellate Authority under the Right to Information Act, 2005 (for short the RTI Act) dated 2/4/2007 directing the Opponent to furnish the information to the Complainant within 7 days from the date of his order, was not complied with. In the normal course, the Complainant should have gone to the first Appellate Authority itself for enforcement of its order. However, as there is no specific provision for the execution of the orders of the first Appellate Authority, in the RTI Act, the Complainant approached this Commission with a complaint dated 28/6/2007. In the complaint, besides requesting for the execution of the orders of the first Appellate Authority (FAA), the Complainant requested to award compensation to her and to recommend disciplinary action against the Opponent and his predecessor in office.

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2. The brief facts are that the Complainant was owner of the property of Chalta No. 85, 104, 105 of P. T. Sheet No. 254 of the Margao town, by virtue of deed of Division and demarcation dated 18/3/1937 of their ancestral property. It is the contention of the Complainant that an old drinking water well exists in the Chalta No. 104 and there is a motorable access of 3 mts. width through the Chalta No. 104. However, it appears that both these details are not incorporated in the survey plans nor Form 'B' of the survey records of the property. As it happened, a property developer by name "Sweet Home Developers" applied for and got a construction licence to build a multistoried complex in Chalta No. 104. The Complainant was aggrieved that while granting the construction licence, the Opponent did not take into consideration the Appellant's easementary rights in the said property of the drinking water well and motorable access. As soon as she came to know of the grant of the construction licence, she approached the Municipal Council of Margao by her complaint dated 31/5/2001 not to issue the licence which appeared to have been ignored by the Opponent. The present status is that not only the licence was issued, the construction was completed but also the occupancy certificate was issued.

3. The Complainant though corresponding with the Municipal Council for a long time, made an application under the RTI Act, for the first time on 5/1/2007 demanding information on the action taken on her original complaint dated 31/5/2001. On 5/2/2007, the Opponent promptly replied to the Complainant to approach the court of law for obtaining relief. Feeling aggrieved, the Complainant approached the first Appellate Authority on 23/2/2007 with a request to direct the Municipal Council to furnish to her information on the action taken on her complaint dated 31/5/2001 and to revoke the licence already granted to M/s. Sweet Home Developers under Section 32(3) of the Goa Municipality Act, 1968. The learned first Appellate Authority by his order dated 02/04/2007 allowed the appeal and directed the Opponent to furnish the information to the Appellant within seven days. This having not been done, the present complaint is filed before us as mentioned already above.

4. On issuance of the notice, the Opponent has replied on 24/7/2007 to which the Complainant filed another rejoinder on 16/8/2007. The matter was thereafter argued by both Shri Barreto and Adv. R. M. Lotlikar. The case of the Opponent is that the licence was given to the developers initially based on the

plan approved by the SGPDA, Margao and Form 'B' of the property and also search report from Adv. Shri Prakash Prabhudesai. The learned Adv. Lotlikar argued that Municipal Council was prima facie satisfied that the developers could be granted the licence and it did so. The matter was thereafter re-examined and the complaint from the Complainant wherein the licensee produced the copy of the court order dated 20/8/2002 of the learned Civil Judge, Margao in Civil Misc. Application 347/2001/D dismissing the interim relief prayed by the Complainant against the licensee. It is the case of the Opponent that the inquiry to the existence or otherwise of the easementary rights of the Complainant is outside the scope of the RTI Act and the Complainant has to get a Civil Court order for the Opponent to take any further action in the matter. The RTI Act does not provide for inquiring into such matters of easementary rights. In any case, it is not possible for the Opponent to revoke licence and pull down the building without the Complainant establishing their alleged right over the property. The written statement of the Opponent also states that "the Opponent is ready and willing to provide the information available with him, but he is unable to provide moon to the Complainant under the garb of information under the Act".

5. Joining issue, Mr. Barreto stated that the survey records are only of presumptary value and are not final documents establishing the rights. In any case, the first Appellate Authority having already allowed the earlier application, it is incumbent upon the Opponent to furnish the action taken by them since the first complaint was made by them on 31/5/2001.

6. On perusal of the replies and other records produced before us, we find that the Opponent have issued the licence based on available records with them at that time. No doubt, the Opponent promptly disposed off the request for information by informing the Complainant to go to the court. However, the facts brought out in their reply before the Commission should have been informed to the Complainant in writing at the first instance. We do not see any reason for not informing them all the actions taken by the Opponent within the time allowed for them at least after directions given by the first Appellate Authority. On the other hand, their advice dated 5/2/2007 replying to the Complainant to approach the court of law and obtain the relief is not called for and is not a proper reply. There is no point in showing the willingness to part with the

information only if the Commission directs the Opponent to do so and not otherwise. Asking for the information is not asking for the moon. If the Opponent cannot restore the alleged easementary rights of the Complainant, he can inform him in as many words. We are, therefore, of the view that the Opponent should reply precisely the action taken by them since 31/5/2001 and their inability to agree to the Complainant request to revoke the licence or to demolish the structure. They should do this in next seven days from the date of this order. However, we are not in a position to agree to the request of the Complainant either to award compensation or take disciplinary action against the Public Information Officer.

Announced in the open court on this 30th day of August, 2007.

Sd/-

(A. Venkataratnam)

State Chief Information Commissioner, GOA.

Sd/-

(G. G. Kampli)

State Information Commissioner, GOA.

/sf.

sf./dk.