

GOA INFORMATION COMMISSION

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

Complaint No. 64/2007-08/TCP

Shri. Antonio I. F. Barreto,
C/o Hotel 4 Pillars,
Rua de Ourem,
Panaji - Goa.

..... Complainant.

V/s.

Shri. Prakash Bandodkar,
Asst. Public Information Officer &
Dy. Town Planner,
Quepem – Goa.

..... Opponent.

CORAM :

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

(Per A. Venkataratnam)

Dated: 17/03/2008.

Complainant in person.

Opponent is also in person.

ORDER

On 11/10/2007, the Complainant approached the Opponent for information on two points. By his letter dated 29th October, 2007, the Opponent requested the Appellant to apply for zoning certificate alongwith cadastral survey plan, form I & XIV and ownership document directly with the office of the Senior Town Planner. Feeling aggrieved by this refusal to furnish information, the Complainant approached the first Appellate Authority. A copy of the first appeal is not before us. However, the order passed by the first Appellate Authority is submitted by the Complainant.

2. The first Appellate Authority by his order dated 2nd January, 2008 allowed the appeal and directed the Public Information Officer to give the information within 15 days. Thereafter, on 15th January, 2008, the information was given by the Asst. Public Information Officer. However, the Complainant found that the information given, though belatedly, by the Asst. Public Information Officer is incomplete and hence, has approached this Commission praying for a direction to the Opponent to give complete information and to start penalty proceedings against the Opponent for giving

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incomplete and false information. A further prayer was made for recommendation of disciplinary proceedings against the Opponent and to pay the Complainant a compensation of Rs.5000/- and to award costs to him.

3. Notices were issued to both the parties. The Opponent filed his reply and argued his case. The case of the Opponent is that according to the Citizen's Charter published by the Department, (a copy of the unattested relevant portion was submitted before us) the zoning certificates are to be issued by the Taluka/District offices of the Department after the applications are submitted in the prescribed format. It is his case that he informed the Complainant complete information as available on the records of his office.

4. We have held in a number of cases that the Asst. Public Information Officer designated under section 5(2) of Right to Information Act, 2005 (RTI Act for short) is only for the sake of the convenience of the citizens and the Asst. Public Information Officer does not have any powers of giving the information or rejecting the information under the RTI Act. It is his duty to forward the applications for information or the appeals under the RTI Act to the Public Information Officer or the Appellate Authorities respectively. His office is located at the sub-divisional level closer to the residence of the citizens. Apart from that, he has no other role. However, he is considered as the Public Information Officer only for the purpose of punishing under section 20 of the RTI Act if he does not forward his applications to the Public Information Officer or wrongly rejects the applications for information as it happened in this case. Further, he could also be considered as "deemed Public Information Officer" under section 5(5) of RTI Act if he refuses to render assistance to Public Information Officer when asked to do so.

5. The argument that according to the Citizen's Charter of the Department, it is only the Senior Town Planner who has to give the information requested and not the Opponent is also rejected. It should be remembered that the RTI Act overrides all other Acts in matters of disclosure of information even if there are provisions to withhold the information under any Act/Rule/Regulation or Departmental guidelines etc. Besides the Citizen's Charter is only a pamphlet of information about the duties of the Department prescribing various time limits for disposal of matters by the Departmental officers. It does not have the force of any law. While it has to be followed by the Departmental officers, it has no overriding effect over the provisions of the RTI Act though both of them deal with the transparency in the functioning of the public authorities.

6. In this case, it is a coincidence that the Public Information Officer and District Officer of the Town and Country Planning Department at Margao namely, the Senior Town Planner is the same official but still the Complainant cannot be compelled to apply in any prescribed format before the Senior Town Planner, Margao for getting the same information namely the zoning information in respect of properties mentioned by the Complainant in his original request for information. The State Government of Goa has not prescribed any format for applying for information. Hence, the Opponent, who is the Asst. Public Information Officer, is wrong in directing the Complainant to approach the Senior Town Planner, Margao with an application in the format prescribed under Citizen's Charter for obtaining this information. On the other hand, he being the Asst. Public Information Officer should have forwarded the same application to the Public Information Officer at Margao with the information available in his office for providing it to the Complainant, within 5 days of receiving the request for information. Even the first Appellate Authority has directed the Public Information Officer to give the information in his appellate order.

7. As far as incorrect reply to the query No. 2 furnished by the Asst. Public Information Officer is concerned, the Complainant has submitted that the information given by the Asst. Public Information Officer in a communication dated 15th January, 2008 consequent on the order of the first Appellate Authority is at variance with the information given earlier by another officer, namely, James Mathew who was the Junior Town Planner of Quepem by his letter No.TPQ/LA/Q-2/95/69 dated 19/01/1995. To prove his point, he has submitted a self-attested copy of the above letter dated 19th January, 1995 addressed to the Dy. Collector, Quepem and copy endorsed to the Chief Town Planner. He has, however, not explained how he has come into the possession of the said letter. The information given in respect of survey Nos. 38/15, 18/18, 38/24 and 45/1 of the village Avedem in Quepem Taluka in the letter dated 19/1/1995, the then Junior Town Planner, who is now known as Dy. Town Planner, Quepem stated that these four properties are zoned as "settlement zones" as per the Regional Plan of Goa 2001. However, the latest letter of the Dy. Town Planner of Quepem, the Opponent herein, who is also the successor of James Mathew, submitted that these properties are zoned as cultivable land and property No. 45/1 is partly settlement and partly cultivable land.

8. The Opponent submitted in his written statement before us on 18th February, 2008 that there are no zoning plans of 2001 or zoning plan of 2011. The Opponent stated further that, it is the Regional Plan 2001, which is still in force as the Regional Plan 2011 was withdrawn by the Government. Now it is the case of the Opponent that he gave information on 15th January, 2008 to the Complainant as per the records available in the office of the Quepem. That still does not explain how the zoning use of the properties has changed over a period of time, i.e. between 1995 and 2007. We understand that the use of land is changed from one use to other by the Government based on the recommendation by a State Level Committee called Town and Country Planning Board. The applicants request for and the Board recommends and Government approves the change of zoning of certain lands. It is always the experience in Goa that the land which is originally used as agricultural land is sought to be changed for residential/ commercial or other uses. Here in this case, the Commission has found that the land zoned earlier as settlement has been subsequently changed to that of agricultural use. There is no material before the Commission as to how this change has come about. Obviously, either the information given now by the Asst. Public Information Officer, is incorrect or the change of use has been approved by the Government in between 1995 till date.

9. The correct position should be investigated and informed to the Complainant in the next 15 days by the Public Information Officer, namely, Senior Town Planner at Margao. As neither the Public Information Officer nor the first Appellate Authority are parties before us, we direct copies of this order be sent to both of them. The Public Information Officer should file a compliance report on the next date of the hearing, namely, 3rd April, 2008. We also defer for the present our decision on the request of the Complainant for initiating action against the Opponent under section 20 of the RTI Act and the amount of compensation requested by him. However, his prayer for the grant of cost is rejected for want of any provision to that effect in the RTI Act.

Pronounced in the open court on this 17th day of March, 2008.

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

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

