



LEGISLATIVE ASSEMBLY OF GOA

**The Goa, Municipalities
(Seventh Amendment) Bill, 1987**

(Bill No. 4 of 1987)

(To be introduced in the Legislative Assembly of Goa)

**GOA LEGISLATURE DEPARTMENT
ASSEMBLY HALL, PANAJI**

JULY, 1987

The Goa, Municipalities
(Seventh Amendment) Bill, 1987

(Bill No. 4 of 1987)

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BILL

further to amend the Goa, Daman and Diu Municipalities Act, 1968.

Be it enacted by the Legislative Assembly of Goa in the Thirty-eighth Year of the Republic of India as follows:—

1. **Short title and commencement.**— (1) This Act may be called the Goa Municipalities (Seventh Amendment) Act, 1987.

(2) It shall come into force at once.

2. **Amendment of section 2.**— In section 2 of the Goa, Daman and Diu Municipalities Act, 1968 (Act 7 of 1969) (hereinafter referred to as the "principal Act"), after clause (1), the following clause shall be inserted, namely:—

"(1A). "Appellate Tribunal" means an Appellate Tribunal constituted under section 184 B;"

3. **Amendment of section 184.**— In section 184 of the principal Act, after sub-section (12), the following sub-sections shall be inserted, namely:—

"(13) Any person aggrieved by an order of the Chief Officer made under sub-section (8) may prefer an appeal against the order to the Appellate Tribunal within the period specified in the order for the demolition of the construction or work to which it relates.

(14) Where an appeal is preferred under sub-section (13) against the order of demolition, the Appellate Tribunal may, subject to the provisions of sub-section (3) of section 184 C, stay the enforcement of that order on such terms, and for such purpose, as it may think fit:

Provided that where the erection of any building or execution of any work has not been completed at the time of the making of the order of demolition, no order staying the enforcement of the order of demolition shall be made by the Appellate Tribunal unless security sufficient in the opinion of the said Appellate Tribunal has been given by the appellant for not proceeding with such erection or work pending the disposal of the appeal.

(15) Subject to any order made by the Government on appeal under section 184 D, every order made by the Appellate Tribunal on appeal under this section, and subject to the orders of the Government and the Appellate Tribunal on appeal, the order of demolition made by the Chief Officer shall be final.

(16) Where no appeal has been preferred against an order of demolition made by the Chief Officer under sub-section (8) or where an order of demolition made by the Chief Officer under that sub-section has been confirmed on appeal, whether with or without variation, by the Appellate Tribunal in a case where no appeal has been preferred against the order of the Appellate Tribunal, and by the Government in a case where an appeal has been preferred against the order of the Appellate Tribunal, the persons against whom the order has been made shall comply with the order within the period specified therein, or as the case may be, within the period, if any, fixed by the Appellate Tribunal or Government on appeal and on the failure of the person to comply with the order within such period, the Chief Officer may himself cause the erection or the work to which the order relates to be demolished and the expenses of such demolition shall be recoverable from such person as an amount due on account of property tax.

(17) If an order made by the Chief Officer under sub-section (8) directing any person to stop the construction is not complied with, the Chief Officer may in addition to any other action that may be taken under this Act, may require any Police Officer to remove such person or his assistants and workmen from the premises or to seize any construction material, tool, machinery,

scaffolding or other things used in the construction within such time as may be specified in the requisition and such Police Officer shall comply with the requisition accordingly.

(18) Any of the things caused to be seized by the Chief Officer shall be disposed off by him in the manner specified in section 156.

(19) After the requisition under sub-section (18) has been complied with, the Chief Officer may, if he thinks fit, depute by a written order, a Police Officer or a Municipal Officer or other Municipal employee to watch the premises in order to ensure that the construction is not continued.

(20) Where a Police Officer or a Municipal Officer or other Municipal employee has been deputed under sub-section (19) to watch the premises, the cost of such deputation shall be paid by the person at whose instance such construction is being continued or to whom notice under sub-section (8) was given and shall be recoverable from such person as an amount due on account of a property tax”.

4. **Insertion of new sections.** — After section 184 of the principal Act, the following sections shall be inserted, namely: —

“184A. *Power to seal unauthorised constructions.* — (1) It shall be lawful for the Chief Officer, at any time, before or after making the order of demolition or of the stoppage of the construction under section 184, to make an order directing the sealing of the premises in which such construction is being carried on or has been completed for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such constructions.

(2) Where any premises in which any construction is being carried on has been sealed, the Chief Officer may, for the purpose of demolishing such construction in accordance with the provisions of this Act, order the seal to be removed.

- (3) No person shall remove such seal except —
- (a) under an order made by the Chief Officer under sub-section (2); or
 - (b) under an order of an Appellate Tribunal or the Government, made in appeal under this Act.

184 B. *Appellate Tribunal.* — (1) The Government shall, by a notification in the Official Gazette, constitute one or more Appellate Tribunals for deciding appeals preferred under section 184.

(2) An Appellate Tribunal shall consist of one person to be appointed by the Government on such terms and conditions of service as may be prescribed by rules.

(3) A person shall not be qualified for appointment as the presiding Officer of an Appellate Tribunal unless he is, or has been, a District Judge or an Additional District Judge or has, for at least 10 years, held a judicial office in India, or has practised as an advocate for not less than 10 years in a High Court in India.

(4) The Government may, if it thinks fit, appoint one or more persons having special knowledge of, or experience in, the matters involved in such appeals, to act as assessors to advise the Appellate Tribunal in the proceedings before it, but no advice of the assessors shall be binding on the Appellate Tribunal.

184 C. *Procedure of the Appellate Tribunal.* — (1) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order or notice appealed against or may refer the case back to the authority or officer against whose order or notice the appeal is filed, for a fresh order or notice, after taking additional evidence, if necessary, or such other action as the Appellate Tribunal may specify.

(2) The Appellate Tribunal shall send a copy of every order passed by it to the parties to the appeal.

(3) No Appellate Tribunal shall, in any appeal pending before it in respect of any order or notice under this Act, make an interim order (whether by way of injunction or stay) against the Municipal Council or against any officer or servant of the Municipal Council acting or purporting to act in his official capacity, unless an opportunity is given to the Municipal Council or its officer or servant to be heard in the matter:

Provided that the Appellate Tribunal may without giving an opportunity as aforesaid, make an interim order as an exceptional measure, if it is satisfied for reasons to be recorded by it in writing that it is necessary so to do for preventing any loss being caused to the person filing the appeal which cannot be adequately compensated in money:

Provided further that every such interim order shall, if it is not vacated earlier, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless before the expiry of that period, the Appellate Tribunal confirms or modifies that order after giving to the Municipal Council or its officer or servant an opportunity of being heard.

(4) Subject to rules that may be made by the Government in this behalf, the awarding of damages in and the cost of, and incidental to, any appeal before an Appellate Tribunal, shall be in its discretion and it shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such damages or costs are to be paid and to give, in its order disposing of an appeal, necessary directions for the purpose aforesaid.

(5) An order of the Appellate Tribunal made under this section may be executed or caused to be executed by it on the application of the person in whose favour the order has been made.

(6) In hearing and deciding an appeal or in the execution of an order, the Appellate Tribunal shall follow such procedure as may be prescribed by rules.

(7) Every Appellate Tribunal shall, in addition to the powers conferred on it under this Act, have

the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely: —

- (a) summoning and enforcing the attendance of persons and examining them on oath;
- (b) requiring the discovery and inspection of documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public records or copies thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents; and
- (f) any other matter which may be prescribed by rules; and every proceeding of an Appellate Tribunal in hearing or deciding an appeal or in connection with the execution of its order, shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (Central Act 45 of 1860), and every Appellate Tribunal shall be deemed to be a Civil Court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

184D. *Appeal against order of Appellate Tribunal.* — (1) An appeal shall lie to the Government against an order of the Appellate Tribunal, made in an appeal under section 184 confirming, modifying or annulling an order made or notice issued under this Act.

(2) The provisions of section 184 and the rules made thereunder, shall, so far as may be, apply to the filing and disposal of an appeal under that section.

(3) An order of the Government on an appeal under this section, and subject only to such order, an order of the Appellate Tribunal under section 184, and subject to such orders of the Government or an Appellate Tribunal, an order or notice referred to in that section, shall be final.

184 E. *Bar of jurisdiction of Civil Courts.* — No Court shall entertain any suit, application or other proceedings in respect of any order or notice appellable under section 184 and no such order or notice shall be called in question otherwise than by preferring an appeal under that section.”.

5. **Insertion of new section.** — After section 290 of the principal Act, the following section shall be inserted, namely: —

“290 A. *Certain offences to be cognizable.* — The Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall apply to an offence under sub-section (7) of section 175 or sub-section (3) of section 176 or sub-section (6) of section 178 or sub-sections (9) and (10) of section 184, as if it were a cognisable offence —

- (i) for the purpose of investigation of such offence;
- (ii) for the purposes of all matters other than —
 - (a) matters referred to in section 42 of that Code, and
 - (b) arrest of a person, except on the complaint of, or upon information received from, such officer of the Council, not being below the rank of a Chief Officer, as may be appointed by the Government:

Provided that no offence of the contravention of any condition subject to which sanction was accorded for the erection of any building or the execution of any work shall be cognizable, if such contravention relates to any deviation from any plan if such erection or execution sanctioned by the Council, is compoundable on payment of an amount under the bye-laws relating to buildings made under this Act.”.

Statement of Objects and Reasons

The existing provisions under the Goa, Daman and Diu Municipalities Act do not empower the Municipalities to take immediate action towards demolition of any illegal construction within the Municipal area and hence the Municipalities cannot take stringent action against illegal constructions, as the persons immediately move the Court, and obtain stay order. Thereafter the procedure for disposal of the Court case takes many years.

This Bill, therefore seeks to amend section 184 of the principal Act and also to insert a new section 290 A in the principal Act so as to empower the Municipalities to take stringent action against illegal construction.

Financial Memorandum

The Section 184 B provides for the constitution of one or more Appellate Tribunals for deciding appeals preferred under section 184. The aforesaid provision would require creation of an Office for the Appellate Tribunal. The creation of Office would also involve contingent expenditure for salaries, fees, finding suitable office accommodation, purchase of office furniture etc. Tentatively this expenditure may work out to Rs. 1.00 lakh approximately.

Panaji,
23rd June, 1987.

DR. LUIS PROTO BARBOSA
Minister for Urban Development

Assembly Hall,
Panaji,
3rd July, 1987.

M. M. NAIK
Secretary to the Legislative
Assembly of Goa

Governor's recommendation under clause (1) of Article 207 of the Constitution of India.

In pursuance of clause (1) of article 207 of the Constitution of India the Governor of Goa, has recommended to the Legislative Assembly of Goa for the introduction and the consideration of the Goa, Municipalities (Seventh Amendment) Bill, 1987.