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IN THE HIGH COURT OF BOMBAY AT GOA

MISCELLANEOUS CIVIL APPLICATION NO. 44 OF 2023

IN

WRIT PETITION NO. 367 OF 2006

WITH

MISCELLANEOUS CIVIL APPLICATION NO. 261 OF 2021

IN

CONTEMPT PETITION NO. 20 OF 2019

WITH

MISCELLANEOUS CIVIL APPLICATION NO. 2706 OF 2022 (F)

IN

CONTEMPT PETITION NO. 4 OF 2022

MARGAO MUNICIPAL COUNCIL,

THROUGH ITS CHIEF OFFICER ... APPLICANT

VS

DOMINGOS BARRETTO ... RESPONDENT

WITH

CONTEMPT PETITION NO. 4 OF 2022

IN

CONTEMPT PETITION NO. 20 OF 2019

DOMINGOES BARRETTO ... APPLICANT

VS

MARGAO MUNICIPAL COUNCIL,

THROUGH ITS CHIEF OFFICER,

AGNELO FERNANDES & 3 ORS. ... RESPONDENTS

Mr Parag Rao with Mr Akhil Parrikar and Mr Ajay Menon,
Advocates for the Applicant in MCA Nos. 44 of 2023, 261 of
2021 and 2706 of 2022 (F) and Respondent No. 1 in CP No.
4 of 2022.

Mr S.D. Lotlikar, Senior Advocate with Ms Sailee Kenny,
Advocate for Respondent No. 1 in MCA Nos. 44 of 2023,
261 of 2021 and 2706 of 2022 (F) and for the Petitioner in CP
No. 4 of 2022.

Mr Vibhav R. Amonkar, Advocate for Respondent Nos. 2 and 3 in MCA No. 44 of 2023.

CORAM: **M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

RESERVED ON: **3rd OCTOBER 2023**

PRONOUNCED ON: **18th OCTOBER 2023**

ORDER: (per Bharat P. Deshpande, J.)

1. This order disposes of Contempt Petition No. 4 of 2022, Miscellaneous Civil Application No. 2706 of 2022 (F) filed therein, Miscellaneous Civil Application No. 44 of 2023 in Writ Petition No. 367 of 2006 filed on behalf of the Applicant-Margao Municipal Council (MMC) for modification of the order dated 30.04.2007 passed in Writ Petition No. 367 of 2006 and Miscellaneous Civil Application No. 261 of 2021 in Contempt Petition No. 20 of 2019.

2. Mr Lotlikar submitted that this was the fourth Petition for implementation of the order dated 30.04.2007 in Writ Petition No. 367 of 2006. Therefore, this time, the MMC must be directed to implement the 2007 order within a time-bound schedule. He submitted that the allegations of MMC about collusion between the Petitioner and the second and third Respondents in the Civil Application [MCA No. 44 of 2023] are objectionable. He submitted that such allegations are made to deflect the focus from the main issue of providing an asphalted road from stretch D to E as was directed. He, therefore, urged action under the Contempt of Courts Act against the MMC officials.

3. Mr Parag Rao submitted that asphaltting will be carried out, and the MMC made efforts to do the same. However, he pointed out that in terms of the various permissions issued to the second and third Respondents (original owners), such original owners were supposed to have constructed the road, including asphaltting of the stretch between D and E. He pointed out how the original owners had also held out that they had completed the construction of this road and, based upon this representation, even secured completion and occupancy certificates for their mega project.

4. Mr Rao submitted that now these owners were obstructing the asphaltting and insisting upon acquisition by payment of crores of rupees from the municipal funds. He submitted that all these factors were not brought to this Court's notice in the previous rounds of proceedings, and the MMC is enquiring into this matter. On instructions, Mr Rao submits that without prejudice to the issues between the MMC and the original owners, the MMC would asphalt the stretch between D and E.

5. Mr Amonkar, appearing for Respondent Nos. 2 and 3 (the original owners), strongly objected to such a proposal on the ground that the owners are entitled to receive compensation as per the Act of 2013. He submitted that till the time the land is acquired, and the compensation is paid to the owners, the MMC cannot be permitted to asphalt the road. He further submitted that only after acquisition and paying compensation would the MMC be permitted to asphalt the said road. He submitted that all the conditions imposed on the original owners for the construction of the mega project were compiled and the MMC

even conformed to this position. He, therefore, submitted that the tentative compensation amount must be released to the original owners and, further, even the compensation in terms of the new Land Acquisition Act must be paid before any asphaltting takes place. He submitted that the Civil Application [MCA No. 44 of 2023] may, therefore, be dismissed.

6. Accordingly, we propose to dispose of the Contempt Petition No. 4 of 2022 and Miscellaneous Civil Application No. 44 of 2023 together along with Miscellaneous Civil Application Nos. 261 of 2021 and 2706 of 2022 (F).

7. The Petitioner, Mr Domingos Barretto, filed the said Petition against the MMC and the present Respondents with a prayer that the Respondents be directed to asphalt the portion of the road from point D to point E as shown in the plan on page 55 of the Petition. Baretto's main complaint was that the road from A to D had already been asphalted, but only the stretch from D to E leading up to Barretto's house was not. This Petition was disposed of based on the statement made on behalf of the MMC vide order dated 30.04.2007.

8. At the stage of making the order dated 30.04.2007, it was not pointed out by the MMC that permissions had been granted *inter alia* by the MMC and SGPDA to the original owners to put up a mega project and that one of the conditions was the construction of such a road, including the stretch between D and E. The SGPDA permission dated 24.02.2002 was not brought to the notice of this Court. Without such road access, the mega project could not have even come up at the site. Mr Rao pointed out how the original owners had also issued their NOC for the

asphalting and how the same was sought to be withdrawn at the prospect of receiving crores of municipal funds for works that they had at one stage claimed were already done or had no objection to do.

9. After some years, Petitioner-Barretto complained that there was no compliance, and the stretch continued unasphalted. Barretto's Petitions were disposed of by recording MMC's statements. At no stage was the Court apprised of the permissions issued to the original owners and the reports of the original owners about the construction of the road and the obtaining of the completion and occupancy certificates on such a basis. Based upon statements made on behalf of MMC, the contempt notices were discharged.

10. Barretto, by instituting the present Contempt Petition, once again complained about non-asphalting the stretch between D and E. Accordingly, this Court issued directions, *inter alia*, to deposit amounts in this Court to ensure compliance. Again, even at this stage, the Court was not made aware of the interactions between MMC, and the original owners now represented by Mr Amonkar. After initial resistance, the MMC deposited the amounts, and a Civil Application [MCA No. 44 of 2023] was filed to place on record the permissions, status of compliances, etc., and to seek modification of the order made in the Writ Petition.

11. Mr Rao submitted that while the asphalting from stretch D and E was not an issue, Barretto's insistence that the original owners be paid crores of rupees for the work which the original owners were supposed to have completed was most unfair and

could not be enforced in contempt proceedings. He submitted that municipal funds cannot be frittered simply because earlier, all these matters may not have been properly placed before this Court. He submitted that the import of the 2007 order was only to make available an asphalted road from stretch D and E to Barretto. He, therefore, submitted that leave may be granted to asphalt the stretch between D and E, and the amount of Rs. 2.73 crores deposited in this Court to show MMC's bonafide in the matter may be returned to the MMC. He pointed out how the original owners, who claimed to have themselves completed the works and had earlier given their NOCs, were now opposing the asphaltting on grounds urged by Mr Amonkar as aforesaid.

12. To consider the above stance of the original owners, our attention was drawn to the order passed by the South Goa Planning and Development Authority (SGPDA) dated 24.02.2002 in connection with development permission under Section 44 of the Town and Country Planning Act, thereby granting development permission in Chalta No. 45 of P.T. Sheet No. 306 to Mr Joao Noronha (Respondent No. 2 herein), wherein Condition No. 15 reads thus:

“15. The applicant should construct the road with drainage facilities from the main road upon the boundary before applying for the completion certificate.”

13. Mr Rao would submit that such permission clearly goes to show that the owners of the land were required to construct the road before applying for the completion certificate.

14. Mr Amonkar, for the owners, while not disputing the fact that the above permission pertains to the same road of which asphaltation is sought, firstly contended that the owners complied with all the conditions of the order dated 24.02.2022, i.e. the development permission, including Clause 15. On further queries, Mr Amonkar, without mincing words, claimed that there is “no non-compliance of Condition No. 15 on the part of the owners”. We found that the first statement of Mr Amonkar, that there is compliance with all conditions of the development order dated 24.02.2022 and the second statement, that there is no non-compliance of the said order, means one and the same thing. But still, we got the position doubly clarified from Mr Amonkar lest there remained any ambiguity on the status of compliance.

15. In the affidavit filed by the third Respondent, there is a clear statement that the conditions imposed in the SGPDA permission were fully complied with. It was categorically denied that there was any non-compliance with the conditions set out in the permission. Thus, on the one hand, full compliance, which would include asphaltting the stretch from D to E, is claimed. On the other hand, there is no explanation about the status of the allegedly completed road and its asphaltting from points D to E.

16. Mr Amonkar’s statement, made on instructions, and the statement in the third Respondent's affidavit, therefore, clearly shows the original owner’s stance that they had complied with Clause 15 of the condition as quoted above, wherein it was directed that the owners should construct the road with drainage facilities from the main road upto the boundary before applying for the completion certificate. In other words, it also means that

when the completion certificate was applied and granted, the said road was constructed by the original owners, and it is only based upon such a stance that the completion and occupancy certificates were issued for the owner's mega project.

17. Be that as it may, the fact remains that the Petition was filed in the year 2006 by Mr Domingos Barretto vide Writ Petition No. 367 of 2006 with the only prayer that the MMC be directed to asphalt the portion of road from points D to E in the said properties as shown in the plan. The order begins with “ *The only prayer of the petitioner is that the respondents be directed to asphalt the portion of the road from point “D” to point “E” shown in the plan at page 55 of the petition.*”

18. The fact that a condition was put in the permissions granted to the owners to provide and asphalt the road, including from points D to E, was not earlier brought to the notice of this Court. Now, the owners, represented by Mr Amonkar, solemnly say that this condition was complied with. He also relies on the MMC documents to say that this condition was complied. The original owners also do not dispute the NOC granted by them for asphaltting this stretch. However, without the NOC saying so, in the affidavit filed, the contention now raised is that the same was subject to payment of compensation. Another plea raised in the affidavit is that the NOC given by the mother, Amelia Noronha, does not bind the second and third Respondents.

19. The Contempt Petitioner, in his original Writ Petition, had only raised a grievance about the non-asphaltting of the road from points D to E. Therefore, one of the questions which arises is

what happened to the road, including from points D to E, which both the owners and the MMC claim was provided as a part of the compliance with the permissions granted to the owners. Based upon such alleged compliance, even a completion certificate was granted by the Authorities for the construction project of the owners.

20. From the material on record, we gather that though compliance was reported by the owners, factually, no road was provided from points D to E, which is the only stretch with which the original Petitioner was concerned. Besides, the original Petitioner was concerned with the asphaltting of the stretch between points D and E. The stretch from points A to D is asphalted. Baretto's complaint in the Writ Petition was that the stretch up to his house from D to E was not asphalted. In the Contempt Petition, the MMC, at one stage, even offered to asphalt this stretch. But strangely, the owners represented by Mr Amonkar, who claimed that they had already provided this road, objected to such asphaltting.

21. Further, we also got the impression that though the main grievance in the original Writ Petition was about the non-asphaltting, the focus now shifted to payment of compensation to the owners for asphaltting, which exercise the owners claimed was already carried out by them in the past. The focus of these proceedings cannot be permitted to be diverted either by the owners or the MMC. Neither the original Writ Petition nor these Contempt proceedings are or can be converted into proceedings to enable the original owners to insist upon payment of crores of municipal funds for the works they claim they have already

carried out or should have carried out. The owners have already reaped benefits based upon alleged compliance. A mega project with increased FAR is already put up. Neither the Court's order in the main Writ Petition nor the subsequent orders in the Contempt Petitions be read or construed in that manner.

22. On the holistic reading of the original Writ Petition, the reliefs prayed for therein, and the grievance projected therein, we are clear that the original Petitioners' interest was to have the asphaltting of the road stretch between points D and E. This relief was granted based on MMC's statement. Therefore, this Court's order disposing of the main Writ Petition means that the MMC must asphalt the portion of the road from points D and E. Incidentally, even this direction was issued without the Court being informed about the SGPDA's permission dated 24.02.2002. With this clarification, there is no necessity for any modification of the original order. The Application [MCA No. 44 of 2023] for modification can thus be disposed of.

23. Regarding the Contempt Petition, the MMC must asphalt the stretch of the road from points D and E within a maximum of two months from today. Although the original owners were responsible for such asphaltting, MMC was also not diligent in ensuring compliance. Therefore, MMC is directed to complete this asphaltting. There is no question of the original owners represented by Mr Amonkar objecting to such asphaltting because it was their case that they had already provided for this road, including the stretch between points D and E, in compliance with the conditions in the permissions granted to them.

24. If, curiously, the road or asphalting has disappeared or is now not found at the site, it only means that the road was never provided, and the MMC officials certified it was provided without any verification or collusion or that the road which was provided strangely disappeared by the time Barretto petitioned the Court in 2007. In either of the situations, the MMC cannot avoid asphalting the stretch from D to E, and the original owners cannot object to MMC undertaking this exercise. The Court's orders must not be construed as pretexts for parting with crores of municipal funds to the original owners for works which they claimed to have already carried out and even benefited by way of FAR, completion certificates, occupancy certificates, etc.

25. For all the above reasons, MMC must now, at its cost, asphalt the stretch from points D and E within two months, and the owners, represented by Mr Amonkar or the beneficiaries of the permissions based upon which the construction project has come up, cannot object to such asphalting. This is because it was the duty of such owners/beneficiaries to have provided the asphalted road in the first place. They solemnly claim that they had provided such a road. However, when questioned where such a road has now gone or how such a road is not traceable at the site, the owners point out to the MMC and say that the MMC must explain this. Neither is willing to offer any credible explanation about how the completed road has disappeared.

26. At one stage, Mr Rao for the MMC did urge nexus between the owners represented by Mr Amonkar and the original Writ Petitioner. However, we do not propose going into this issue. Mr Lotlikar denied the nexus on behalf of the original Petitioners.

As long as the original Petitioners get asphaltting of the stretch between points D and E, they cannot be concerned with the disputes or the collusion, if any, between the original owners and the MMC. In particular, the original Petitioners cannot be concerned with the issue of the payment of compensation to the original owners to provide for the asphaltting of the road or otherwise from the public or municipal funds particularly since they claim no nexus with the original owners.

27. Accordingly, we dispose of the Application [MCA No. 44 of 2023] for modification now that we have clarified the import of our order dated 30.04.2007. Further, we also dispose of the Contempt Petition by directing the MMC to asphalt, at its cost, the stretch of the road between points D and E within two months. We have already clarified above that the original owners or anyone claiming through them cannot object to or obstruct the MMC undertaking this exercise since this exercise was supposed to have been undertaken by the original owners. The original owners solemnly claimed that they had already undertaken the exercise of the construction of the road, including the stretch between D and E.

28. The amount of about Rs.2.73 crores deposited by the MMC can be withdrawn by the MMC only after it asphalts the stretch of the road between points D and E and files a compliance report with photographs in this Court. The MMC will, therefore, have to apply for the withdrawal of this amount after filing the compliance report.

29. The Miscellaneous Civil Application No. 44 of 2023 and Contempt Petition No. 4 of 2022 are disposed of in the above terms.

30. Accordingly, Miscellaneous Civil Application Nos. 261 of 2021 and 2706 of 2022 (F) do not survive and stand disposed of.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

ORDER CONTINUED ON 18.10.2023

31. At this stage, Mr Amonkar, the learned Counsel for the original owners seeks a restraint of four weeks on the MMC asphaltting the road from points D to E.

32. As noticed earlier, the owners have solemnly claimed even before this Court that such a road was provided by them. In such circumstances, their request for stay cannot be entertained.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

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