



Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 397 OF 2023

Archdiocese of Goa and Daman, with office at Bishop's House, Altinho, Panaji, Goa, 403001, represented by its Financial Administrator/Procurator and Constituted Attorney Fr. Noel D'Costa, son of Natividade D'Costa, 47 years of age, ordained Roman Catholic Priest, residing at Bishop's House, Altinho, Panaji, Goa.

... Petitioner

V e r s u s

1. The Commissioner, Corporation of the City of Panaji (CCP), Having office at Corporation of the City of Panaji Building, Tiswadi, Ilhas, Goa.

2. Mr. Lambertino Armando Natividade Rodrigues, resident of House No. 237, Mitra Bazar, Caranzalem, Tiswadi, Ilhas, Goa.

3. Mrs. Celia Lazarina Marques, Resident of House No. 237, Mitra Bazar, Caranzalem, Tiswadi, Ilhas, Goa.

4. State of Goa, through Secretary (Urban Development) at Secretariat, Porvorim, Goa.

...Respondents

Mr. Vinod Korgaonkar, Advocate *with Ms. Kshama Naik, Advocate for the Petitioner.*

Mr. Somnath Karpe, Advocate *with Mr. Anand Shirodkar, Advocate for the Respondent No.1.*

Mr. Y. V. Nadkarni, Advocate *with Mr. Kunal Nadkarni, Mr. Nilay Naik and Mr. N. Noronha, Advocates for the Respondent Nos. 2 and 3.*

Ms. Sulekha Kamat, Additional Government Advocate *for the Respondent No.4.*

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 10th AUGUST 2026
PRONOUNCED ON : 17th AUGUST 2026

JUDGMENT

1. Rule. Rule made returnable forthwith. With the consent of learned Counsel appearing for the respective parties, the matter is taken up for final hearing at the admission stage.

2. The Petitioner impugns the Judgment and Order dated 15.05.2023 passed by the Secretary for Urban Development, Secretariat, Porvorim, Goa, in Municipal Appeal No. SEC/UD/126/2021, whereby the appeal preferred by Respondent No. 3 came to be allowed, setting aside the Order dated 07.09.2021 passed by Respondent No.1–Commissioner, in Case No. F6/CCP/ENG/PM/SG/2021-22/5337. By the said Order dated 07.09.2021, Respondent No. 1 had revoked Construction Licence No. 401/1/CCP/ENG/CONST-LIC-13/2020-2021/44 dated 25.01.2021 granted in favour of Respondent Nos. 2 and 3 and had further directed removal of the encroaching construction.

3. The brief facts giving rise to the present Writ Petition are stated as under :

On 15.10.1965, the Petitioner-Archdiocese of Goa, transferred 300.30 square metres (part of chalta Nos. 34, 35 and 36 of P.T. Sheet No. 164 of the City of Panaji) to Roguvira Narana Poi and his wife, retaining ownership of 80 square metres forming part of chalta No. 34 (admeasuring 207 square metres) as the 'Mitra-Archdiocese'.

On 16.04.1984, Roguvira Poi and his wife sold same 300.30 square metres to Estavao Eusebio Apolinario Rodrigues and his wife Francisca Ana Joaquim Rodrigues. The Deed's recitals also vaguely refers to 80 square metres additional land in possession of the vendors, on which basis the purchasers later claimed a total of 301 square metres along with excess 80 square metres.

4. Notwithstanding the fact that, under the Deed of Sale dated 16.04.1984, Mr. Estavao Eusebio and his wife, Francisca, acquired title to a plot of land admeasuring 300.30 square metres, surveyed under Chalta Nos. 34, 35 and 36 of P.T. Sheet No. 164 of the City Survey of Panaji, Respondent Nos. 2 and 3 (successors of Estavao & Francisca) sought approval for excess area from the Greater Panaji Planning and Development Authority ('**GPPDA**'). The said approval was granted vide Reference No. GPPDA/432/PNG/157/2020, wherein Respondent Nos. 2 and 3 represented themselves to be the owners of a plot of land admeasuring 371 square metres forming part of the property bearing

P.T. Sheet No. 164 of the City Survey of Panaji. According to the Petitioner, the approval accorded by Goa, Daman and Diu Town and Country Planning Act, 1974, (**TCP Act 1974**) and Construction Licence accorded by Corporation of the City of Panaji (**CCP**), glaringly fortifies the fact that it has been obtained by Respondent Nos. 2 and 3 by making misrepresentations that Estavao Eusebio and his wife, Francisca, were owners of the entire area under chalta nos. 34, 35 and 36 of P. T. Sheet No. 164 of City Survey. Even authorities neither verified nor ascertained the correct area within ownership of the Respondent Nos. 2 and 3. The development permission and construction licence is surreptitiously granted behind back of the Petitioner by asserting the area of 371 square metres of chalta No. 34 of P.T. Sheet No. 164 and in gross violation of the ownership right of Petitioner to area of 80 square metres. The Petitioner made complaint to the Respondent-authority. The notice was issued by Respondent No. 1 and upon hearing the Petitioner and Respondent Nos. 2 and 3, by Judgment dated 07.09.2021, Respondent No. 1 was pleased to revoke Construction Licence No. 401/ 1/CCP/ENG/CONST-LIC-13/2020-2021/44. Eventually, directions were given to remove the construction carried out within the encroached area.

5. Aggrieved by the Order dated 07.09.2021 passed by Respondent No.1, Respondent Nos. 2 and 3 preferred an Appeal before the

Secretary for Urban Development, the Appellate Authority, being Municipal Appeal No. SEC/UD/126/2021, *inter alia*, seeking to quash and set aside the said Order. The Petitioner vide his reply before the Secretary, have supported the Order passed by Respondent No.1. However, the Secretary for Urban Development, by the impugned Order, allowed the Appeal preferred by Respondent Nos. 2 and 3 and quashed and set aside the Order dated 07.09.2021 passed by Respondent No. 1, *inter alia*, on the ground that the Sale Deed dated 16.04.1984 continues to remain in force and, unless the said Sale Deed is challenged and set aside by a competent authority, the Construction Licence cannot be revoked. Further, there is serious dispute of title which cannot be decided by Municipal Authorities. Parties may approach Civil Court.

6. The learned Advocate appearing for the Petitioner submitted that the Construction Licence issued by Respondent No.1 and Development Permission issued by GPPDA, was based on misrepresentations and false declarations. However, while passing the impugned Order, the Secretary for Urban Development, shut its eyes to the patent clout played by Respondent Nos. 2 and 3. It has been erroneously observed that the Municipal Authorities did not have power or jurisdiction to adjudicate upon the disputed questions of fact between the rival parties, particularly when the title of the Petitioner

itself was not in dispute. Learned Advocate further submits that such an observation is wholly erroneous and proceeds on an incorrect appreciation of the nature and scope of jurisdiction exercised by Municipal Authorities. In fact, it was for the Respondent Nos. 2 and 3 to demonstrate their ownership and possession over the area of 371 square metres for which they sought permission for construction.

7. *Per contra*, learned Counsel appearing for Respondent Nos. 2 and 3, would submit that the Sale Deed dated 16.04.1984 itself stipulates that Estavao and his wife Francisca were in possession of the plot admeasuring 300.30 square metres along with land in excess of 80 square metres, which has been transferred to them by their vendors under Sale Deed of 1965. There cannot be dispute that the Respondent Nos. 2 and 3 were in authorised occupation of the entire property including 80 square metres out of chalta no. 34 and accordingly, the approval and Construction Licence came to be issued. The Sale Deed dated 16.04.1984 has never been challenged by the Petitioner and continues to remain valid and subsisting as on date. Even otherwise, the Respondent Nos. 2 and 3 have acquired the title for entire additional area in their possession by way of adverse possession or otherwise. The Petitioner could not produce any document of title in respect of 80 square metres from chalta no. 34.

8. Having considered the submissions advanced by learned Advocates appearing for the respective parties and on perusal of the documents tendered into service, this Court finds that Petitioner-Archdiocese of Goa and Daman, had transferred 300 square metres and 30 square decimeters plot in favour of Roguvira Poi and his wife Sumanbai Poi. They transferred said plot under Sale Deed dated 16.04.1984 to Estavao and his wife Francisca. It is true that sale deed refers to 80 square metres of land which is in possession of Roguvira Poi and his wife Sumanbai Poi. However, there is nothing to demonstrate that the title of 80 square metres excess area in their possession was transferred to them. The title of 80 square metres area from chalta no. 34 remained with the Petitioner. The Respondent Nos. 2 and 3 obtained Construction Licence for 370 square metres area claiming title on the basis of the Sale Deed of 1984. A perusal of contents of Sale Deed of 1984 depicts that the vendors claimed their ownership over 300 square metres area but they claimed that 80 square metres excess area is in their possession. The schedule of the property in sale deed nowhere refers transaction property more than 300 square metres. The Goa Land Development and Building Construction Regulations, 2010 (**‘Regulations of 2010’**) framed by Government of Goa in exercise of powers conferred by sub-section (1) and (2) of Section 4 of the Goa Act of 2008, prescribes procedure for

securing development permissions. Regulation 3.1 provides that every development shall conform to provisions of the relevant Acts, Rules and Regulations and no development shall be carried out without obtaining prior permission. Regulation 3.2A prescribes Appendix A1, an Application format, for development permission under Section 44 of the TCP Act, 1974. The appendix A-1 indicates that the application is to be made by the owner of the land along with drawings and documents duly authenticated/signed and prescribed. Subsection (d) of Clause 2 of appendix A-1 imply that a document showing ownership of land are to be duly authenticated, signed, as prescribed and affidavit from owner to be forwarded along with application form for development permission. Regulation 2(95) defines the term ‘owner’ which suggests that a person/persons who holds sufficient interest or title in such land or premises by virtue of being the holder of a title deed or Government/Court declaring him/ them by owner. Sub-clause (a) of Regulation 3.2D, reads thus :

“(a) The right of ownership or interest in the land sufficient to enable the applicant to carry out the intended development supported by the following documents (wherever applicable).

(i) Original Survey plan of the land from the Directorate of Land Survey/City Survey Office. For plots which are result of approved sub- division, a copy of the approved sub-division plan and/or reference number of the said approval from the Competent Authority including

Technical Clearance,

(ii) Copy of Index of Land in Form-III/Form-I & XIV of Records of Rights or any forms of City Survey Register,

(iii) Copy of Sale/Gift/Lease/Mortgage deed and/or any other instrument or assignment:

Provided that the Competent Authority may, if satisfied with other documents submitted, waive the production of any of these documents.”

9. A careful scrutiny of the aforesaid documentary requirements to be furnished along with application for development, would show that a person must hold title or ownership or sufficient interest in the land to be developed. The term ‘*sufficient interest*’ cannot be loosely held. The sufficient interest may be the interest under long term lease, development agreement, etc., derived from the original title holder.

10. In present case, the Respondent Nos. 2 and 3 could not demonstrate their title or sufficient interest over the disputed 80 square metres of area by any means. However, they projected themselves to be owners of the land or authorities have erroneously presumed them to be owners or authorised interest holders while granting development permission. On complaint made by Petitioner, Respondent No.1 verified title of the Petitioner over the property and after satisfying that the permission was wrongly granted, on incorrect information supplied along with the development application, revoked development permission.

11. The Division Bench of this Court in the case of **Jhalak Constructions vs. Ulhasnagar Municipal Corporation¹**, observed that when Petitioners have misled Corporation and has obtained permissions fraudulently, Municipal Authority being guardian of the City and its planned development, owe a duty of removal of all unauthorized or illegal constructions .

12. Similarly, Division Bench of this Court in case of **Imelda Dias Souza E Silva vs. State of Goa, through Chief Secretary & Ors.²**, cancelled the development permission that was granted on ignoring the right of the true owner by observing as under: -

“... In the case at hand, the respondent no. 4 is claiming a “sufficient interest” in the land and not in the “premises”. Sub-clause (1), (2) and (3) sub-clause (ii) of Regulation 2(95) refers to “premises” and not land. Therefore, Confraria of Chapel-respondent no. 4 was not qualified “person” to seek development permission in terms of Section 44 of the Act of 1974 read with Regulations of 2010. As a matter of fact, the PDA misdirected itself by relying on the Regulation 3.2D which prescribes documents to be submitted alongwith the Application seeking development permission. One of the documents, is copy of index of land in Form-III/Form-I & Form XIV of record of rights or any form of City of Survey register. Thus, it appears that the PDA inadvertently or otherwise held the property extracts of chalta nos. 16 and 18, were demonstrating “sufficient interest” of the Confraria of Chapel, in the said lands and thereby committed a mistake in

1 2026 SCC OnLine Bom 2790

2 (2022) 4 Bom CR 478

granting the development permission, which is clearly visible from record.”

13. A perusal of the impugned order depict that the Secretary for Urban Development was of the view that there is dispute as to title between the parties and that the Petitioner ought to have approached the Civil Court and not the Municipal Authorities. This Court finds that the aforesaid approach is fallacious, particularly when the development Rules and Regulations requires the Municipal Authorities to satisfy themselves as to the title or sufficient interest of the development of the property. The person in unauthorised possession of the property cannot seek development permission without securing sufficient interest from the true owner. The Municipal Authority is therefore required to ascertain the right of Applicant in property sought to be put under development.

14. In the present case, the Respondent Nos. 2 and 3 may be in possession of the property, however, their long standing possession, would not authorise them to carry development over property owned by Petitioner. In fact, it was incumbent for the Petitioner to establish or assert declaration of his ownership or any claim by way of adverse possession, if any. The Petitioner’s ownership over 80 square metres land is reflected in property card of P. T. Sheet No. 164 in chalta No. 34, which has not been disputed by the Respondents.

15. In aforesaid backdrop, impugned Order cannot be sustained in law. Hence, Writ Petition is allowed in terms of prayer clause (a) which reads thus :

“(a) for a writ of Certiorari and/or any other appropriate Writ, direction and/or Order ordering the quashing and/or setting aside of the Impugned Judgment and Order dated 15.05.2023, passed by the Secretary for Urban Development, at Secretariat, Porvorim, Goa, in Municipal Appeal no. SEC/UD/126/2021 and thereby the complaint dated 30.06.2021 of the Petitioner be allowed.”

16. The petition is disposed of.

17. Rule stands discharged.

S. G. CHAPALGAONKAR, J.