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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 56 OF 2015

1. Smt. Dolorosa Luis,
wife of Shri Tony Luis,
age 43, occupation housewife,
resident of Conde,
Quepem Goa.
 2. Shri Jeetendra Gaonkar,
son of Ramdas Nilu Gaonkar,
age 37, resident of H.No.13,
Pirla, Quepem Goa.
Both represented by their
constituted power of attorney
Shri Madhav V. Talak,
son of Vishnu Talak,
major of age,
resident of Ashiyana,
Comba, Margao Goa.
- Petitioners

V e r s u s

1. State of Goa,
Through its Chief Secretary,
with office at Secretariat,
Goa Legislative Complex,
Porvorim Goa.
2. The Deputy Town Planner,
Town and Country Planning Department,
with office at 2nd Floor,
Government Building,
Quepem Goa.
3. The Chief Officer,
Quepem Municipal Council,
with office at
Municipal Building,
Quepem Goa.

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4. Additional Collector (I),
South Goa District,
with office at
Collectorate Building,
Margao Goa.

... Respondents

Mr. Sudesh Usgaonkar with Ms. A. Matondkar, Advocates for the petitioners.

Mr. M. Salkar, Government Advocate for respondent nos. 1, 2 and 4.

Mr. A. D. Bhobe, Advocate for respondent no.3.

**Coram:- F. M. REIS &
K. L. WADANE, JJ**

Date :- 5th May, 2015

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. Sudesh Usgaonkar, learned counsel appearing for the petitioners, Mr. M. Salkar, learned Government Advocate appearing for the respondent nos. 1, 2 and 4 and Mr. A. D. Bhobe, learned counsel appearing for the respondent no.3.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. The learned counsel appearing for the respective respondents waive service.

4. We have extensively heard Mr. Sudesh Usgaonkar, learned counsel appearing for the petitioners who has taken us through the records of the above Writ petition to point out that that requisite sanad from the Collector was obtained on 07.10.2008. The learned counsel has thereafter also brought to our notice that subsequently there were orders to keep the sanad in abeyance in view of some objections raised by the persons in the locality with regard to the claim of tenancy. The learned counsel thereafter pointed out that there was a Writ Petition filed in this Court being PILWP No. 17 of 2012 which was disposed of by judgment dated 18.11.2013. The learned counsel further pointed out that the said Writ Petition came to be dismissed. It is however pointed out that despite of the disposal of the said Writ Petition, an order dated 19.06.2012 of negative declaration of tenancy was obtained from the Mamlatdar and the sanction was not granted by the respondents. The learned counsel as such submits that there was no reason for further delay in refusing the construction licence as according to him despite of the orders of this Court, Town and Country Planning Authority-respondent no.2 has issued a letter dated 10.04.2014 giving directions to the Municipality – respondent no.3 not to issue the construction licence unless the conditions of the sanad are complied with.

5. Mr. M. Salkar, learned Government Advocate appearing for the respondent nos.1, 2 and 4 has pointed out that as far as the sanad is concerned, the objections raised by the respondent no.1 no longer survives in view of the letter dated 10.11.2014.

6. Upon hearing the learned counsel, the only issue remains with regard to the directions in the letter dated 10.04.2014 for a fresh clearance to be obtained from the respondent no.1. In this connection, Mr. Salkar, learned Government Advocate has pointed out that the subject property comes within the commercial zone in terms of the Regional Plan of 2001 but however, according to him as per the Regional Plan of 2021, the subject land is shown as cultivable land and, therefore, according to him the direction to seek a fresh clearance was issued by the respondent no.1. But however, it is not in dispute that the Regional Plan of 2021 is not yet in force and in fact, the permissions have been scrutinized and disposed of in terms of the Regional Plan of 2001. In the present case, it is not in dispute that the initial permissions were obtained by the petitioners before 07.10.2008 and the subsequent permission from the respondent no.1 on 22.02.2010. In such circumstances, examining the plan of the petitioners on the basis of the Regional Plan of 2021 is not at all justified. However, on perusal of the report of the respondent

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no.1 dated 18.07.2008, there is a specific mention therein that the subject land was located within the commercial zone. Mr. Salkar, learned Government Advocate however pointed out that all the conditions have been imposed while granting the development permission in the order dated 22.02.2010 which include the condition to obtain hill cutting permission or filling low lying land if at all necessary to be obtained by the petitioners before commencing of the development in the subject property. In such facts and circumstances of the case, we find it appropriate to dispose of writ petition by holding that the question of obtaining any fresh clearance based on Regional Plan of 2021 would not arise in the peculiar fact of the present case. But however, the petitioners would have to abide with all the directions and conditions imposed by the respondents while granting development permission by its order dated 22.02.2010.

7. Mr. Bhole, learned counsel appearing for respondent no.3 has pointed out that based on such clearance the Municipality would proceed in accordance with law. Mr. Salkar, learned Government Advocate states that he will examine the renewal in accordance with law as expeditiously as possible and submit the necessary clearance with that regard to the respondent no.3 who would act on such clearance and pass appropriate orders in

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connection with the suspension order dated 12.12.2011 in accordance with law. Rule stands disposed of in above terms. The petition stands disposed of accordingly.

K. L. WADANE, J

F. M. REIS, J

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