

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 276 OF 2015

MR. SANDEEP D. HIROJI AND ANR., ... Petitioners
Versus
NORTH GOA PLANNING AND DEVELOPMENT
AUTHORITY, THROUGH ITS MEMBER
SECRETARY AND 6 ORS., ... Respondents

Mr. Nigel Da Costa Frias, Advocate for the petitioners.
Mr. D. Lawande, Government Advocate for respondent no.1.
Mr. G. Panandiker, Advocate for respondent no.2.
Mr. P. Dangui, Addl. Government Advocate for respondent nos. 3 to 6.
Mr. S. D. Lotlikar, Senior Advocate with Ms. M. Furtado, Advocate for respondent no.7.

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

Date:- 1st October, 2015

ORAL ORDER :

We have extensively heard Mr. Nigel Da Costa Frias, learned counsel appearing for the petitioners, Mr. Lawande, learned Government Advocate appearing for respondent no.1, Mr. P. Dangui, learned Addl. Government Advocate appearing for respondent nos.3 to 6 and Mr. S. D. Lotlikar, learned Senior Counsel appearing for private respondent no.7.

2. Upon hearing the learned counsel appearing for the respective parties, the main grievances highlighted by Mr. Nigel Da Costa Frias, learned counsel appearing for the petitioners in challenging the grant of licence to the development being carried out by the private

respondent no.7 in the property surveyed under Nos.166/10 and 166/7 of village Calangute are that the proposed development by the private respondent no.7 is without maintaining a right of way having a width of 8 metres towards the western side of the proposed construction and that despite of the specific conditions in the development permission that no construction activities would be carried out without obtaining the requisite conversion in terms of the Land Revenue Code, the private respondent no.7 has proceeded to put up such construction.

3. With regard to the first grievance of Mr. Nigel Da Costa Frias, learned counsel appearing for the petitioners, it is not disputed that the width of such right of way towards the western side has to be 8 metres. But however, the learned counsel appearing for the petitioners has brought to our notice a private report from the surveyor to point out that the width of the right of way in some portion at the site ranges from 7.2 to 7.5 metres. The learned counsel has further submitted that as the right of way leading to the property under development does not meet the requirements of the Regulations which provides that such project should have a right of way having a width of 8 metres, the development itself is illegal and as such, unless such area is available at the site the private respondent no.7 should be restrained from proceeding with the development. It is pointed out by Mr. Lawande, the learned Government Advocate appearing for the respondent no.1 that as per the site inspection carried out by the Planning and Development Authority, the right of

way at the site has a width of 8 metres. In support thereof, a site inspection report from the Planning and Development Authority dated 14.08.2015 has been produced on record. On perusal of the averments made therein, the report suggest that though the right of way has a width of 8 metres, there is enough space to have a proposed road having a width of 10 metres. Even on perusal of the approved plan produced on record, we find that adjoining to such a right of way, there is a set back of nearly four metres left by the private respondent no.7 which could also be used to provide a right of way if it is so required. In such circumstances, the contention of Mr. Costa Frias that the subject development is illegal as the requisite right of way is not available at the site cannot be accepted.

4. Mr. Lawande, learned Government Advocate appearing for respondent no.1 also states that until and unless all the conditions as stipulated in the development permission issued by the respondent no.1 are duly complied with including the requisite right of way are verified and found at the site the completion certificate will not be issued to the respondent no.7 by the authorities of the Town and Country Planning Department.

5. Thus, considering the overall view of the matter prima facie the plan on record and the report submitted by the concerned authority suggest that the right of way at the site has a width of 8 metres. Apart from that, in terms of the Regulation 5(d) of the Goa (Regulation of Land Development and Building Construction) Act,

2008 the width of the right of way is 6 metres for residential projects and in terms of Regulation 6A.3.1(b) in cases in which the use is for commercial purpose such width has to be 8 metres. As a width of 8 metres is prima facie available at the site and as the learned Government Advocate has submitted that this aspect would be re-verified before granting the completion certificate, we find that the said grievance of the petitioners on that count would not survive.

6. With regard to the second grievance raised by the petitioners, it is not disputed that as far as the property surveyed under No. 166/7 is concerned, a conversion sanad has already been issued by the concerned Collector in terms of the Land Revenue Code. But however, with regard to the property surveyed under No.166/10, it is pointed out by Mr. Lotlikar, learned Senior Counsel appearing for the private respondent no.7, that the application to that effect was submitted way back in the year 2009 and though all the formalities have been complied with and even the fees payable on that count have been assessed, the respondent no.7 was called upon to separate the the part of the land purchased by a mundkar in the holding of survey no.166/10. It is also pointed that the process to partition the holding have already been initiated and have reached at the stage of final disposal. The learned Addl. Government Advocate appearing for the respondent nos. 3 to 6 has pointed out that there are no legal impediments to grant such conversion sanad and only on account of such partition proceedings of the holdings of the property surveyed

under no.166/10, the grant of such conversion sanad has been kept in abeyance. The learned Addl. Government Advocate further pointed out that the conversion fees have already been assessed tentatively which works out to be a sum of Rs.21,07,600/-.

7. Mr. Nigel Da Costa Frias, learned counsel appearing for the petitioners has pointed out that in terms of the licence no construction activities could be started by the private respondent no.7 without obtaining such conversion sanad, but however, it is not disputed that two to three buildings have already been constructed by the private respondent no.7 in the subject land and the development has reached at the advanced stage.

8. Considering the contention of the learned Addl. Government Advocate that there are no legal impediments to grant such conversion sanad and as the learned counsel appearing for the petitioners has not pointed out that otherwise the subject land cannot be converted in terms of any provisions of Land Revenue Code on account of any specific statutory restrictions, we find that on that count there is no need to stop further development in respect of the disputed development. But however, it is clarified that any further action taken based on the development permission issued by the statutory authorities shall be subject to the grant of such conversion sanad by the Collector in terms of the Land Revenue Code. Needless to say that the conversion sanad would have to be issued by the

Collector in accordance with law. If any objections are raised to such conversion sanad, the same shall be dealt with in accordance with law.

9. Mr. Nigel Da Costa Frias, learned counsel appearing for the petitioners has also brought to our notice an order passed by the Division Bench of this Court dated 15.03.2011 in Writ Petition No.843 of 2010 in which one of us (F. M. Reis, J) was a party wherein this Court has observed that unless and until all the conditions imposed in the licence are complied with and verified by the Town and Country Planning Authority, the development should not be allowed to continue. But however, the said report produced on record by the learned Government Advocate appearing for respondent no.1 suggest that in fact the site inspection in terms of the directions issued by this Court in the said order were carried out by the concerned authority.

10. Mr. Nigel Da Costa Frias, learned counsel has also brought to our notice that on account of the basement construction by the private respondent no.7 the residential houses of the petitioners are gravely affected. The learned counsel has also brought to our notice the photographs to point out that on account of such activities, there are cracks to the walls of the houses of the petitioners. Mr. Lotlikar, learned Senior Counsel appearing for the private respondent no.7 however brought to our notice a letter signed by the residents of the

locality along with the petitioners to the effect that they would not raise any objection to the development intended to be put up by the private respondent no.7 but however, the learned counsel for the petitioners submits that the basement was not covered by the said letter. Such disputed question of fact would have to be adjudicated by initiating appropriate proceedings in accordance with law. The petitioners if so advised may resort to such remedy in accordance with law.

11. Considering that the amount of conversion fees has been tentatively assessed by the concerned Collector, we find it appropriate to direct the private respondent no.7 to deposit such amount with the concerned Collector within one week from today. Such amount would be subject to the final assessment which may be carried out by the concerned Collector while granting the conversion sanad to the private respondent no.7. Any further amount payable by the private respondent no.7 shall be duly paid by the respondent no.7.

12. Subject to the observations made herein above, the petition stands disposed of. Liberty to the petitioners to apply.

K. L. WADANE, J.

F. M. REIS, J.

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