

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 297/2009**

Colva Civic and Consumer Forum
with its Office at H.No.257/1,
Bagdem, Ward 3, Colva, Salcete, Goa,
through its authorised representatives

1) Mrs. Judith A.B. Almeida,
major, r/o. House No. 257/1,
Bagdem, Ward 3, Colva, Salcete, Goa

2) Mrs. Juliet L. Fernandes e Rodrigues,
major, r/o. H.No.96/1,
Grande Vanelim,
Colva, Salcete, Goa.

..... Petitioners.

V/s.

1. The State of Goa,
through its Chief Secretary,
Secretariat, Porvorim, Goa.

2. The Village Panchayat of Colva
Vanelim, Sernabatim & Gaundalim,
through its Sarpanch,
Colva, Salcete, Goa.

3. The Deputy Town Planner,
Town & Country Planning Department,
Margao, Salcete – Goa.

4. The Deputy Collector & SDO,
Salcete, Margao, Goa.

5. M/s. Akar Creations Pvt. Ltd.,
A Company registered under
the Companies Act, 1956,
having its Office at 5th Floor,

Lake Plaza, near Damodar Temple,
Fatorda, Margao – Goa.

6. The Goa State Pollution Control
Board, through its Member Secretary,
Panaji, Goa.

7. The Ministry of Environment
and Forest, Government of India,
through its Director,
Bharat Bhushan (LA-III),
Paryaran Bhawan Complex,
Lodhi Road, New Delhi – 110 003.

..... Respondents.

Mr. Nigel da Costa Frias, Advocate for the petitioners.

Mr. P. Faldessai, Additional Govt. Advocate for the respondents No.1,
3 and 4.

Mr. A.D. Bhole, Advocate for the respondent No.2.

Mr. S. D. Lotlikar, Senior Advocate with Mr. H. D. Naik and Ms. A.
Naik, Advocates for the respondent No.5.

Mr. J. Godinho, Advocate for the respondent No.6.

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

Date : - 16th July, 2015.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Mr. Nigel de Costa Frias, learned Counsel
appearing for the petitioners, Mr. P. Faldessai, learned Additional Govt.

Advocate appearing for the respondents No.1, 3 and 4, Mr. A. D. Bhobe, learned Counsel appearing for the respondent No.2, Mr. S. D. Lotlikar, learned Senior Counsel appearing for the respondent No.5 and Mr. J. Godinho, learned Counsel appearing for the respondent No.6.

2. The above petition, *inter alia*, takes exception to the NOC issued by the respondent No.3 dated 28/3/2007, as well as the construction licence dated 31/3/2007, issued by the respondent No.2 in favour of the respondent No.5. The petitioners have also sought a direction to quash the Certificate dated 2/3/2007, issued by the Deputy Collector/respondent No.4 with regard to the conversion of the subject land.

3. Mr. Nigel da Costa Frias, learned Counsel appearing for the petitioners, in support of his submissions, has pointed out that the respondent No.5 has obtained the certificate from the respondent No.4 in terms of the Land Revenue Code on the assumption that such land had structures, to avoid payment of conversion fees in respect of such properties. The learned Counsel has, thereafter, pointed out that on the basis of two mundkarial structures existing in the disputed property, the respondent No.5 has avoided paying conversion charges in respect of

the property admeasuring around 25,375 sq. metres. The learned Counsel further points out that this act on the part of the respondent No.4 in granting such certificate is totally erroneous and contrary to the circulars and, as such, deserves to be quashed and set aside. The learned Counsel further points out that merely because two mundkarial houses were located in the disputed land, it cannot be assumed that the whole property admeasuring around 30,000 sq. metres is non-agricultural. The learned Counsel, as such, submits that the said Certificate issued by the respondent No.4 deserves to be quashed and set aside and the conversion fees be rewarded to the respondent No.5 as it is a loss to the exchequer.

The next grievance of Mr. Nigel da Costa Frias is that the survey plan in respect of the disputed property surveyed under No.40/0 of Vanelim shows an area in blue colour which, according to the learned Counsel, was an existing pond. The learned Counsel has, thereafter, taken us through the plan submitted to the Authorities for obtaining permissions, to point out that in the said portion of the property where such pond was located, the respondent No.5 has misled the Authorities by making a note that the structures existing therein are being demolished. The learned Counsel has, thereafter, taken us through the photographs produced on record to point out that the

existing pond was being filled up by the respondent No.5 which, according to him, is contrary to the provisions of the Town and Country Plan Act, which *inter alia* provides that for filling up any low lying land permission is required to be obtained. The learned Counsel further points out that this act on the part of the respondent No.5 would lead to degradation of environment at the site, as natural source of water in the pond would be gravely jeopardized. The learned Counsel has, thereafter, taken us through the report prepared by the local Panchayat to point out that the existence of the pond was, in fact, noticed at the time of the inspection. The learned Counsel as such, submits that the Authorities have to be directed to take necessary action against the respondent No.5 for filling up such a pond.

The learned Counsel has, thereafter, pointed out that this Court, by an order dated 22nd March, 2010, had permitted the petitioners to make a representation to the respondent No.2 and respondent No.3 with regard to the grievances raised in the above petition. The learned Counsel further points out that as no decision was taken with regard to such representations, the petitioners have also amended the petition to place on record the said aspect. The learned Counsel further points out that there is also a retaining wall constructed by the respondent No.5 which, according to him, has been constructed

without obtaining any permissions under the Town Planning Act nor under the Village Panchayat Regulation. The learned Counsel as such, submits that the retaining wall deserves to be demolished, as it is constructed without any permission.

4. Shri P. Faldessai, learned Additional Govt. Advocate appearing for the State and its Authorities, disputes the existence of the retaining wall. The learned Counsel further points out that at the place where the alleged pond is stated to be existing, there were structures as reflected in the affidavit filed by the respondent No.4. The learned Counsel, as such, submits that there are no illegalities committed by the respondent No.5.

5. Mr. A. D. Bhobe, learned Counsel appearing for the respondent No.2 joins issue with the contention of Mr. Costa Frias, learned Counsel appearing for the petitioners, by submitting that no pond was existing at the site. The learned Counsel further points out that merely because there was a pool of water, that by itself cannot suggest that a public pond was located at the site. The learned Counsel further points out that there is no natural water body at loco to show the existence of any natural pond. The learned Counsel further points

out that in case there was any public pond, the Panchayat would have taken all measures to protect such pond by taking appropriate measures with that regard. The learned Counsel further submits that as there was no such pond, the Panchayat had not taken any measure on that count. The learned Counsel further points out that there was a licence issued to the respondent No.5 with regard to the construction of the wall and, as such, the contention of Mr. Costa Frias that an illegal retaining wall has been constructed by the respondent No.5 is totally erroneous. The learned Counsel further points out that as far as the representation is concerned, the decision on the representation was sent to the petitioner on 24/10/2010. The learned Counsel further submits that the activities of the respondent No.5 are in accordance with the sanctioned plan. The learned Counsel as such, submits that there is no question of any interference in the disputed constructions.

6. Mr. S. D. Lotlikar, learned Senior Counsel appearing for the respondent No.5 submits that the respondent No.5, according to him, is not liable to pay any conversion fees and it is only to avoid any discussion, the respondent No.5 shall pay the amount as determined by the respondent No. 4. The learned Senior Counsel further points out that the respondent No.5 has not committed any breach of any of

the terms of the statutory licences, and, as such, the contention of the petitioners is totally erroneous. The learned Senior Counsel further points out that the environmental clearance issued in favour of the respondent No.5 was, in fact, challenged by the petitioners before the National Green Tribunal which dismissed the appeal preferred by the petitioners. The learned Senior Counsel further points out that the respondent No.5 has not constructed any retaining wall, but only the compound wall in terms of the licence issued by the Statutory Authorities. The learned Senior Counsel further submits that there was no pond existing at loco when the construction was started by the respondent No.5 and to that effect, the learned Senior Counsel has taken us through the entries in the survey records Form I & XIV to point out that existence of such a pond is not reflected in such records. The learned Senior Counsel further submits that the contention of the petitioners about the existence of the pond is totally false as, according to him, there was no pond as alleged by the petitioners. The learned Senior Counsel has, thereafter, taken us through the permissions issued by the Statutory Authorities to point out that all the formalities, as provided under the Statutes, have been duly complied with by the respondent No.5 whilst putting up the construction in the subject property. The learned Senior Counsel as such submits that the petition

be rejected.

The learned Senior Counsel has also pointed out that the petition deserves to be dismissed on the ground of laches as well, as such a petition was filed only after substantial activity was carried out by the respondent No.5. The learned Senior Counsel also pointed out that the grievance raised in the petition was essentially with regard to the environmental degradation, which has been rejected by the learned National Green Tribunal.

7. We have given our thoughtful consideration to the rival contentions and we have also gone through the records. As far as the contention of Mr. Costa Frias, learned Counsel appearing for the petitioners that no conversion fees have been paid by the respondent No.5 and as such, respondent No.5 has caused loss to the public exchequer, we find that the respondent No.5 has agreed to pay the requisite fees and accordingly, the grievance of the petitioners on that aspect would not survive. The learned Additional Government Advocate stated that in case the respondent No.5 pays such amount, the concerned Authority will accept it with that regard.

8. As far as the next contention of Mr. Costa Frias that there

was a Village Pond existing in the subject property, we find that on perusal of the survey entries in Form I & XIV, there is nothing to point out about the existence of such a pond in such entries. But, however, on perusal of the survey plan, it is seen that there is a blue portion marked therein which according to Mr. Costa Frias is the Village Pond. Exercise of jurisdiction by this Court to protect a pond in a PIL has to essentially be in the context of maintaining a public pond. There can be no public interest to maintain a private water pond, put up in private property as the petitioners do not claim to have any access to such pond. In the present case, Mr. Costa Frias, learned Counsel appearing for the petitioners states that the pond was a private pond, located in the property of the respondent No.5. Apart from that, only when the ponds are natural ponds, which is a natural wealth, the Courts can take measures to protect such ponds. The material resources of the community like forests, tanks, ponds, hillocks, mountain, etc., are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is essence of the guaranteed right under Article 21 of the Constitution. In case, there was a pond on the subject site, it would have been the duty of the Authorities to develop the same which would, on one hand, have

prevented ecological disaster and on the other, provided a better environment for the benefit of the public at large.

9. A pond is a body of standing water, either natural or artificial. They may arise naturally in floodplains, as part of a river system, or there may be situations where there are isolated depressions, which cause water accumulation. Usually, such natural ponds contain shallow water with marsh and aquatic plants and animals. There are also ponds which are frequently human-constructed on country side by farmers and villagers by digging in their backyard. Some ponds are created specifically for habitat restoration, including water treatment. In the present case, considering the photographs produced on record and the location, there is no material to suggest that any natural body was existing at the site. Mere accumulation of water which is stored for consumption of the animals, cannot by itself be the natural pond for the benefits of the Villagers/public at large. As has been pointed out hereinabove, it is always an endeavour of the Court to ensure that ponds for the benefit of the public are protected to maintain the environment and ecological balances.

10. In the present case, there is no material on record to

establish the existence of a public pond. Admittedly, it was not maintained by the local Authority, nor visited by any Villagers and, therefore, directing the respondent No.5 to restore such a pond would not at all be justified. But, however, considering the directions issued by this Court, permitting the petitioners to file a representation to the respondents No.2 and 3 with regard to the existence of such a pond, on examining the reply produced by Mr. Bhobe, learned Counsel appearing for the respondent No.2, we find it appropriate that such Authorities take a decision with regard to the existence or otherwise of a public pond at the site before proceeding to take any further action, in accordance with law. However, on the basis of the insufficient material on record to suggest the existence of any public pond, or a natural water body, we are not in a position to examine such a dispute in the present petition under Articles 226 and 27 of the Constitution.

9. With regard to the contention of Mr. Costa Frias, learned Counsel appearing for the petitioners about the existence or otherwise of the retaining wall, we find that there are already permissions issued by the Statutory Authorities, including a permission to put up a compound wall. In such circumstances, we find that in case there is any breach of the terms of the permissions, the Authorities will be at

liberty to take appropriate action, on this aspect, in accordance with law.

10. Subject to the aforesaid direction to examine the representation in the context of the existence of a public pond and action in accordance with law, in case of violation of any of the terms of the licence granted by the Statutory Authorities, we find no substance in the above writ petition, which stands disposed of accordingly. Rule stands disposed of accordingly. Respondent No.5 is permitted to pay the charges to the respondent No.4 in the sum of Rs.6,34,375/- as worked out by the petitioners, within a period of six weeks.

K.L. WADANE, J.

F.M. REIS, J.

ssm.