

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION 345 OF 2009

1. Shri. Antonio D. Diniz
of major age, resident
of H. No. 147, 2nd Ward,
Colva, Salcete, Goa. Petitioner.

V e r s u s

- 1 State Of Goa, through
its Chief Secretary,
having office at
Secretariat, Porvorim,
Bardez-Goa.
2. The Chief Town Planner,
Town and Country Planning
Department, Government of
Goa, Panaji-Goa.
3. The Town Planner,
Office of the Senior Town
Planner, Town and Country Planning
Department, Government of Goa,
Osia Complex, Margao-Goa.
4. Village Panchayat of Sernabatim,
Vanelim, Colva and Gandaulim,
through its Secretary, Salcete-
Goa- 403 708. Respondents.

Mr. Parag Rao with Mr. Vidyesh Naik, Advocate for the Petitioners.

Mr. E. Afonso, Government Advocate for the Respondent nos. 1 to 3.

Mr. C. A. Ferreira, Advocate for the Respondent no. 4.

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

Date : **4th March, 2015**

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

Heard Shri Parag Rao, learned Counsel appearing for the Petitioners, Shri E. Afonso, learned Government Advocate for the Respondent nos. 1 to 3 and Shri C. A. Ferreira, learned Counsel appearing for the Respondent no. 4.

2. The above Petition, inter alia, takes exception to the refusal of the construction technical permission by the Town and Country Planning Authority pursuant to the communication dated 18.02.2008.

3. Briefly, the facts of the case as pointed out by the Petitioners are that the Petitioners are owners in possession of a property situated at Colva, surveyed under no. 121/6 admeasuring 350 square metres. On 14.07.2007, the Petitioners filed an application for licence to construct a residential house in the said property to the Respondent no. 4. Thereafter, after complying with the requisite corrections to such application, the application was forwarded for technical approval before the Town and Country Planning Authority. It appears that on 29.09.2007, a neighbour of the Petitioners lodged a complaint alleging that no set back of six metres for a six metre wide road was maintained by the Petitioners. In view of such complaint, the application was not processed by the Respondent nos. 2 and 3. Thereafter some inspections were carried out and ultimately by the impugned Communication dated 18.02.2008 the technical approval was rejected by Respondent nos. 2 and 3, inter alia, on the ground that the set back maintained by the Petitioners is not a right of way for a road having a width of ten metres.

4. Being aggrieved by the said communication, the Petitioners preferred the above Writ Petition. The Respondents filed their affidavit in reply, inter alia, contending that the concerned Town and Country Planning Board had proposed that the road existing in front of the proposed residential house of the Petitioners should be ten metres wide road and, as such, according to the Respondents, the question of granting any permission to such construction without maintaining a right of way for such ten metres wide road would not arise on the northern side.

5. Shri Parag Rao, learned Counsel appearing for the Petitioners, has pointed out that in view of the provisions of Section 17(C), the regional plan as in force in the year 2001 is applicable and, as such, according to him, the width of the concerned road is six metres. Learned Counsel further pointed out that the material on record specially the communication from the Public Works Department as well as from the local Panchayat, shows that the land which was acquired for such road was having a width of six metres. Learned Counsel further pointed out that in the Regional Plan of the year 2001, the concerned road is shown as six metres. The learned Counsel further submits that merely because the future Regional Plan which has not been approved may disclose that such road is of ten metres would not at all justify the Respondent no. 3 to refuse the technical approval to the construction plan filed by the Petitioners way back in the year 2007. Learned Counsel further pointed out that Respondent no. 3 has acted arbitrarily without complying with the requisite provisions of law and, as such, the action of the Respondent no. 3 by the impugned communication refusing the sanction is not at

all justified. The learned Counsel further pointed out that the Respondents are only harassing the Petitioners by refusing such permission when, according to him, there is overwhelming evidence on record to establish that in the vicinity of the proposed construction of the Petitioners, licences were issued in the year 2006 in respect of adjoining plots on the basis that such road had a width of six metres. Learned Counsel further pointed out that the alleged complaint filed by the neighbour is only malafide as, according to him, the Petitioners have brought material on record to establish that even the permission in favour of such Complainant for his construction was issued on the basis that the subject road had a width of six metres. Learned Counsel as such submits that the impugned communication be quashed and set aside.

6. On the other hand, Shri E. A. Afonso, learned Government Advocate appearing for the Respondent nos. 1 to 3, has pointed out that the Board has proposed that the concerned road should be ten metres and, as such, according to him, in the Regional Plan of the year 2021, such road is likely to be shown as ten metres. Learned Government Advocate further pointed out that the width of the road is maintained as ten metres in public interest and, as such, according to him, it is well settled that private interest should yield to public interest. Learned Government Advocate has thereafter taken us through the Minutes of the Board meeting wherein there was a proposal that the concerned road maintained as ten metres and, in fact, the inspection was ordered to be carried out by the concerned officials who gave a report to the effect that such road is to be maintained as ten metres. Learned Government Advocate further submits that the Regional Plan of

2021 is likely to be passed in the near future and as such the question of allowing the above Petition and permitting the construction licence on the basis that such road is six metres is not at all justified. Learned Counsel further pointed out that in case the Petitioners make some modification, the statutory authorities can examine the matter and grant the necessary technical approval. Learned Government Advocate as such pointed out that the Petition be rejected.

7. We have duly considered the submission of the learned Counsel and we have also gone through the records.

8. On the basis thereof, the short point for consideration is to whether the reasons given in the impugned communication dated 18.02.2008 are justifiable in terms of the legal provisions of law ?

9. It is not in dispute that the licence for construction are to be approved as of today in terms of the Regional Plan of 2001. The application in the present case for construction came to be filed by the Petitioners way back in the year 2007 and the same was rejected in the year 2008. As such, it is not disputed that as on that date the Regional Plan of 2001 was in place. Apart from that, the fact that the concerned road was shown as six metres in the Regional Plan of 2001, has also not been disputed by the learned Government Advocate appearing for the Respondents. In this connection, the letters produced by the Petitioners from the Public Works Department as well as from the local Panchayat would be relevant. The Public Works Department by letter dated 04.10.2007, inter alia, pointed out that

as per the land acquisition records, the width of the road ranges from four to six metres. The local Panchayat who is Respondent no. 4 herein, has stated that the existing road is having a width of 3.5 metres and that the land has been acquired for a road having a width of six metres by the Public Works Department. Apart from that, it is not disputed that in the Regional Plan of 2001, the width of the concerned road is six metres. There is no notification produced by the Respondents to substantiate their contention that the width of the road at the relevant time was ten metres. Taking note of the fact that the Regional Plan of 2001 is admittedly in force, the Respondent no. 3 was not justified to refuse the technical approval without taking into consideration that the Regional Plan of the year 2001 was not showing any road of ten metres as referred to in the impugned communication. Though it cannot be disputed that the private interest would yield to public interest, nevertheless, there is overwhelming evidence on record to show that the adjoining plots as well as in the plots opposite to the proposed construction of the Petitioners, the Statutory Authorities had approved construction licence on the basis that the concerned road was six metres wide. This act of the Respondents as such would, prima facie, show arbitrariness as it is well settled that the law should be applied uniformly to all the citizens and power vested in the authorities cannot be exercised contrary to the provisions of law.

10. In such circumstances, we find that considering that the application was filed in the year 2007 and up to this date, there is nothing on record to show that in fact there is any notification issued to the effect that the concerned road has a width of ten metres, the impugned Communication dated 18.02.2008 cannot be

sustained and deserves to be quashed and set aside. Needless to say, the Respondents have to examine the technical approval afresh and take note of the legally available right of way at the site in respect of the concerned road in accordance with law. All the contentions of both the parties are left open. The Respondent no. 3 shall consider the said application expeditiously.

11. Rule stands disposed of accordingly.

K. L. WADANE, J.

F. M. REIS, J.

arp/*