

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 532/2015**

1. Ramanand P. Raicar,
son of late Parisram Raikar,
aged 54 years, married,
Indian National, resident of G-3,
“Mahalaxmi Apartments”,
Near Vithal Mandir, Comba,
Margao, Goa.

2. Gourish P. Raicar, Son of late
Parisram Raikar, aged 53 years, married,
Indian National, resident of G-1,
“Pearl Apartments”,
Damodar Nagar, Fatorda, Salcete, Goa.

3. Damodar Purshottam alias
Ladu Raicar, son of late Purxotoma
Damodar Raicar, aged 69 years,
married, Indian National,
Residents of SF-4, Block 8,
“Prabhakar Apartments”,
Opp. P.W.D., Fatorda, Salcete, Goa.

Petitioner Nos. 1 to 3 are
represented by their Power of
Attorney Holder
Yogesh Yeshwant Naik, son of
late Yeshwant Naik, aged 42 years,
married, Indian National,
Resident of Comba,
Margao, Goa.

..... Petitioners.

V e r s u s

1) State of Goa,
through Water Resources Department,
Government of Goa,

Porvorim, Bardez, Goa.

2) Additional Collector-I,
Office of the Collector &
District Magistrate,
South Goa District, Matanhy Saldanha,
Administrative Complex,
Room No.415, Margao – Goa.

3) Under Secretary (Revenue),
Government of Goa,
Porvorim, Bardez, Goa.

..... Respondents.

Mr. Shivan Desai, Advocate for the petitioners.

Mr. A. N. S. Nadkarni, Advocate General with Mr. D. Lawande,
Government Advocate for the respondents.

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

Date : - 21 October 2015.

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

Heard Shri Shivan Desai, learned Counsel appearing
for the petitioners and Mr. A. N. S. Nadkarni, learned Advocate
General appearing for the respondents.

2. Rule. Heard forthwith, with the consent of the learned
Counsel. Mr. D. Lawande, learned Government Advocate appearing
for the respondents waives notice.

3. We have heard Shri Shivan Desai, learned Counsel appearing for the petitioners and Mr. A. N. S. Nadkarni, learned Advocate General appearing for the respondents. It was pointed out by Mr. Shivan Desai, learned Counsel appearing for the petitioners that the petitioners had filed an application for conversion of their land bearing Survey No.67/11 of Revenue Village Navelim, Salcete, Goa, admeasuring an area of 10,450 sq. metres. But, however, by communications dated 9th June, 2014 and 7th May, 2015, the respondent No.2 refused to examine their applications stating that the conversion could not be considered as there was a piece of land admeasuring 180 sq. metres, which was acquired by the State Government for the construction of a road and the partition of the property in terms of the Land Revenue Code, would result in fragmentation of land of an area less than 200 sq. metres and consequently, in view of the Circular dated 7th March, 2007, such an application could not be considered.

4. Learned Advocate General appearing for the respondents, however, points out that there is another Circular dated 18th November, 1997 whereby it has been brought to the notice of the concerned

Collector that no fragmentation can be permitted in respect of plot of land having less than 400 sq. metres area.

5. Upon hearing the learned Counsel appearing for the respective parties, we find that taking note of the fact that the land of the petitioners admeasures about 10270 sq. metres, the question of making applicable the Circular dated 18th November, 1997 or the Circular dated 7th March, 2007, to the facts of the present case would not arise at all. The area of the plot sought to be converted is more than 200 sq. metres and the remaining area i.e. the acquired land, does not constitute a plot as referred to in the said circular. In such circumstances, the impugned orders passed by the respondent No.2 cannot be sustained and deserve to be quashed and set aside. Needless to say that the respondent No.2 shall have to examine the application for conversion of the petitioners on its own merits and the reasons given in the impugned communications cannot come in the way of the respondent No.2 in deciding the application, in accordance with law.

6. In view of the above, we pass the following Order :

(I) The impugned communications dated 9th June, 2014 and 7th May, 2015 are quashed and set aside.

(II) The Respondent No.2 shall proceed to examine the application filed by the petitioners for conversion of the land use in the light of the observations made herein above, in accordance with law.

(II) Rule is made absolute in the above terms.

K.L. WADANE, J.

F.M. REIS, J.

ssm.