

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 33 OF 2014

MR. CRIZOL VAZ THROUGH HIS POWER
OF ATTORNEY MR. ORIENT D'SILVA., ... Petitioner

V e r s u s

STATE OF GOA THROUGH CHIEF
SECRETARY AND 3 ORS., ... Respondents

Mr. P. A. Kamat, Advocate for the Petitioner.

Mr. D. Lawande, Government Advocate for the Respondent nos. 1 and 2.

Mr. J. J. Mulgaonkar, Advocate for the Respondent no. 4.

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

Date:- 1st September, 2015

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

Heard Shri P. Kamat, learned Counsel appearing for the Petitioner, Shri D. Lawande, learned Government Advocate for the Respondent nos. 1 and 2 and Mr. Mulgaonkar, learned Counsel appearing for the Respondent no. 4.

2. The above Petition, inter alia, takes exception to the construction activity put up by the Respondent no. 4 in a property bearing survey no. 311/11-A and 311/17-A in the Village of Socorro, Bardez Taluka.

3. Shri P. A. Kamat, learned Counsel appearing for the Petitioner has raised three objections to the subject construction. Learned Counsel has firstly pointed out that the building put up by the Respondent no. 3 being building A and B, was carried out after the coming into force of the Goa Land Development and Construction Building, 2010 and, as such, in terms of the said Regulations Clause 6.1.1 clearly stipulates that FAR permissible as well as the height of such building, considers that the Village comes within classification VP2. Shri Kamat, learned Counsel, has thereafter taken us through the said Clause to point out that in terms of the said Regulations of 2010 which came into force on 04.08.2011, in respect of areas below 4000 square metres, the FAR permissible is 60 and the height of the building is 9 metres including the stilt. Learned Counsel further points out that the disputed construction put up by the Respondent no. 3 has availed of FAR 80 and the height is 14 metres which is in terms of the earlier Regulations which are not applicable to the subject construction. Learned Counsel further pointed out that the Respondents are justifying such construction activity by the Respondent no. 3 based on two circulars dated 05.08.2011 and 14.03.2012 to contend that any construction activity which has started before the cut off date were saved and were not subject to the stipulations of the Regulations of 2010. Learned Counsel further submits that these Circulars cannot override the said provisions and, as such, they have no sanctity in law. Learned Counsel thereafter has taken us through the said Circular to point out that they have been issued by the Chief Town Planner which has no

authority to issue such circular. The next contention is that Respondent no. 3 has put up a compound wall adjoining the property of the Petitioners which has not been authorised by the statutory authorities. Learned Counsel further submits that such compound wall is contrary to the height restrictions as provided in the said Regulations, and, as such, as no permission has been obtained, the compound wall itself is illegal.

4. The next contention of Mr. Kamat, learned Counsel is that there was earth filling carried out by the Respondent no. 3 without obtaining the permission in terms of Section 17-A of the Town and Country Planning Act from the Chief Town Planner and, as such, such activity is also illegal. Learned Counsel further submits that as the construction put up by the Respondent no. 3 is contrary to the statutory regulations, this Court should direct action against such subject construction by the statutory authorities.

5. On the other hand, Shri D. Lawande, learned Government Advocate appearing for the Respondent nos. 1 and 2, has pointed out that in terms of the proviso of the Clause 6.1.2, there is specific stipulation to the effect that in cases of any difficulty, the classification by authorities under the Town and Country Act would be treated to be part of such Regulations. Learned Government Advocate further pointed out that the Circulars referred to by the Petitioner were in fact part of the Regulations having been passed at the 140th as well as 137th meeting of the Town and Country Planning Board and such decision and/or classifications do form part of the Regulations of 2010.

Learned Government Advocate has taken us through the said Circulars to point out that the cut off date in the Circular dated 14.03.2012 and 05.08.2011 and submitted that admittedly the permission granted to the Respondent no. 3 were on the basis of applications filed by the Respondent no. 3 prior to the said date and, in fact, the permissions were granted on 18.08.2011 in respect of the disputed block A and B. Learned Counsel further pointed out that as such the contention of the learned Counsel appearing for the Petitioners deserves to be rejected.

6. With regard to the contention of the learned Counsel that no permission was obtained for the compound wall, Shri Lawande, learned Government Advocate, has taken us through the permission at page 44 along with the reply to point out that the height as well as the location of the compound wall was duly sanctioned by the concerned Authorities. Learned Counsel as such submits that such contention of the Petitioners also deserves no merit.

7. With regard to the contention that there was earth filling of the low lying area, Shri Lawande, learned Government Advocate has pointed out that even in the technical report produced by the Petitioners, themselves, there is nothing to suggest that the report states that any earth filling was carried out by the Respondent no. 3. Learned Government Advocate further pointed out that the land of the Respondent no. 3 is at a higher level and,

according to him, such land was not low lying and, consequently, the question of seeking any permission in terms of Section 17-A would not arise at all. Learned Government Advocate as such submits that the Petition be accordingly rejected.

8. Shri J. J. Mulgaonkar, learned Counsel appearing for the Respondent no. 4, has adopted the contentions of the learned Government Advocate appearing for the Respondent nos. 1 and 2 and further submitted that the Occupancy Certificate in respect of the subject buildings itself was issued in the year 2013 and in fact the premises are being occupied and disposed off to different prospective parties and the Petition was filed only in the year 2014 and, as such, it is barred by laches. Learned Counsel further pointed out that the subject building consists of ground plus three floors and the Petitioners who claim to be adjoining owners did not raise any objections to such construction being carried out by the Respondent no. 4. Learned Counsel as such submits that the Petition be rejected.

9. Shri Kamat, learned Counsel appearing for the Petitioners, replied to the said submissions and pointed out that the application for the compound wall does not disclose all the particulars as contemplated under the said Regulations and as the application itself is defective, the question of granting any permission to the Respondent no. 4 for such compound wall is illegal.

10. We have given our thoughtful considerations to the rival contentions and we have also gone through the records. Clause 6.1.1 of the said Regulations of 2010, read thus :

"6.1.1 - The following Regulations shall be applicable in the respective zones :

(a) Regional Plan for Goa: The settlement zone areas which could be brought under development for various uses and the compatibility of the said uses/zones within the settlement level plans.

...

Any other provisions, the interpretation of which is not clear, shall be referred to the Chief Town Planner/Member Secretary, Town and Country Planning Board of Government of Goa and interpretation given by Town and Country Planning Board shall be treated as final and shall form part of these Regulations."

11. On plain reading of the said Clause, it clearly provides that when a clarification is issued by the Town and Country Planning Board, it has to be read as part of such regulation. In the present case, the clarification with regard to the on going constructions were duly issued by the Planning Board on 14.03.2012 and considering that it is not disputed that the construction

licence was issued prior to the stipulated date the contention that the construction activity put up by Respondent no. 4 is illegal, cannot be accepted. The construction of Block A-B was in terms of the Regulations of 2010 prior to the incorporation of the amendments in the year 2011. As such, the requirement as stipulated before the coming into force of the amendment would apply and it is not disputed that the said Block A and B meet the requirements of FAR and height restrictions as stipulated therein.

12. With regard to the contention of Mr. Kamat to the effect that the compound wall itself is illegal as rightly pointed out by the learned Government Advocate, the permission to that effect was issued by the concerned authorities as reflected in the plans at page 44. The statutory authorities have found that the Respondent no. 4 was entitled to carry out the construction of the compound wall considering that there was already an existing road at loco. As such, the contention of Mr. Kamat, learned Counsel appearing for the Petitioners, that the compound wall is without any permission of the statutory authorities, cannot be accepted.

13. With regard to the grievances of the Petitioners that there was earth filling of low lying area, we find no material on record produced by the Petitioners in support of such contention. On perusal of the technical report though it concludes that the construction activity put up by the Respondent no. 4 is illegal, nevertheless, the observations made therein do not disclose

that there was any filling up of low lying areas by the Respondent no. 4 during the course of putting up such construction. Hence, as prima facie, we find no material on that count, we are unable to accept the contention of Mr. Kamat, learned Counsel appearing for the Petitioners.

14. During the course of the hearing of the above Petition, Mr. Kamat, learned Counsel, has also pointed out that the Petitioners apprehend that the compound wall may collapse and that there is likelihood of rain water being released into the property of the Petitioners which is located towards the western side of the property of the Respondent no. 4. Respondent no. 4 has filed an additional affidavit dated 25.08.2015, inter alia, stating that no rain water from the property of the Respondent no. 4 is being drained from their property into the adjoining properties. Photographs supporting the said contention have also been produced. Considering the averments in the said affidavit, at this stage, the apprehension of the Petitioners cannot be said to be well founded. Nevertheless, in case there is any breach of such aspect, the Petitioners, if so advised, are entitled to take recourse in accordance with law to get such rights adjudicated.

15. Subject to the above, we find no merit in the Writ Petition which stands accordingly rejected.

K. L. WADANE, J.

F. M. REIS, J.

arp/*