

IN THE HIGH COURT OF BOMBAY AT GOA**PUBLIC INTEREST LITIGATION WRIT PETITION NO.8 OF
2015**

Moirra Action Committee

through its Members

(1) Mr. Nazar C. da Silva & Ors.

.... Petitioners.

V/s

The State of Goa & Ors.

.... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioners.

Mr. P. Dangui, Additional Government Advocate for Respondents
No.1,3,4 & 7.

Mr. A.F. Diniz and Ms. Gina Almeida, Advocate for Respondent No.5.

**Coram:- F. M. REIS &
C. V. BHADANG, JJ.**

Date:- 16th December, 2015

ORAL ORDER : (Per F.M. REIS, J.)

Heard Mr. Nigel Da Costa Frias, the learned Counsel appearing for the petitioners, Mr. P. Dangui, the learned Additional Government Advocate appearing for respondents no.1,3,4 & 7 and Mr. A.F. Diniz, the learned Counsel appearing for respondent no.5.

2. The above petition, inter alia, takes exception to the project put up by the respondent no.5 in the property surveyed under no.67/19 of Village Moira.

3. The main contention of Mr. Nigel Da Costa Frias, the learned Counsel appearing for the petitioners is that the development project is located in a hilly area which requires hill cutting and is being carried out by the respondent no.5 without obtaining the requisite permission and beyond the permissible limits. The learned Counsel has taken us through an inspection report submitted by the Town Planning Department dated 22/11/2012 wherein the Authorities have noted that they could not ascertain the extent of the hill cutting as there were shrubs, bushes and other trees in the subject property. The learned Counsel further submitted that without holding any further site inspection, the respondent/Town Planning Authorities have granted the permission under Section 17A of the Goa Town & Country Planning Act without ascertaining whether such hill cutting would exceed the permissible limits. The learned Counsel further submitted that the hill cutting is more than 25% which is not permissible under the relevant provisions. The learned Counsel further submitted that the averments in the affidavit filed by the Town Planning Authority to the effect that there is no objectionable hill cutting by the respondent no.5 cannot be accepted on the face of the inspection report referred to in the year 2012. The learned Counsel, as such, pointed out that action is to be taken against respondent no.5 for carrying out development without requisite

permission and, as such, the petition be accordingly considered for final hearing.

4. On the other hand, Mr. A.F. Diniz, the learned Counsel appearing for respondent no.5 has submitted that all the requisite permissions for development were obtained way back in the year 2008 and the completion certificate was issued to the respondent no.5 in the year 2014. The learned Counsel further points out that there are different occupants who are already occupying the subject bungalows and, as such, the petition deserves to be rejected on the ground of laches alone. The learned Counsel further points out that the requisite permission of hill cutting was obtained from the Town & Country Planning Authority in terms of Section 17A of the Goa Town & Country Planning Act, as according to him, hill cutting did not exceed 25% and that the affidavit of the Town Planner clearly discloses that the hill cutting carried on by the respondent no.5 in the course of the development in the subject property was within the permissible limits. The learned Counsel, as such, submits that the above petition is motivated petition and, as such, the petitioners are not entitled for any relief in the above petition.

5. Mr. P. Dangui, the learned Additional Government Advocate

appearing for respondents no.1,3,4 & 7 has pointed out that as per his instructions there is no breach committed by the respondent no.5 whilst carrying out development of the subject property and, in fact, the requisite permission in terms of Section 17A of the Goa Town & Country Planning Act was issued to the respondent no.5.

6. Mr. Nigel Da Costa Frias, the learned Counsel appearing for the petitioners, in reply, further pointed out that there is another grievance raised by the petitioners to the effect that the approach road to the subject property is not in terms of the licences issued to the petitioners. The learned Counsel further pointed out that as per the permissions granted to the respondent no.5, the width of the approach road has to be 6 metres and according to him file notings of the Town & Country Planning Department produced by the petitioner would disclose that such width is not maintained at the site. The learned Counsel further points out that the affidavit of the Town Planner discloses that only a proposed road is available at loco.

7. The learned Additional Government Advocate disputed the said contention and upon instructions of the Town Planner, who is present in Court submitted that presently at the site the width of the road is 10

metres on the southern side and 6 metres on the northern side.

8. We have considered the submissions of the learned Counsel and we have also gone through the record. The main grievance of the petitioners is that there is an infraction in carrying out the development of the subject property as hill cutting carried out whilst carrying out such development exceeded the permissible limits up to 25%. But, however, it is not disputed that the permission in terms of Section 17A was in fact obtained by the respondent no.5 from the concerned Department. The permission also suggested that the hill cutting permitted was within the permissible limits. On perusal of the affidavit of the Town Planner, the affidavit at paras 15,16,18 & 19 reads thus:

15. With reference to paragraph 23 of the petition, it is denied that the width of the existing access road abutting the northern boundary varies from 3.00 to 3.60 meters. I state that on the basis of the plans submitted by the Respondent No.5, the width of the proposed road on the southern side of the plot is 15 meters and 6 meters on the northern side of the plot which is in terms of the regulations in force and thereafter the technical clearance was issued by this Respondent.

16. With reference to paragraph 24 of the petition, it is denied that there is a gradient access across the middle of the entire property. I state that on the basis of the plans submitted by the Respondent no.5 except a small part of the land is a steep slope in the middle of the entire property from west to east and upon examination of the same proposal, permission under Section 17-A of TCP Act has been granted by

the Respondent No.3.

18. With reference to paragraph 25 of the petition, it is most respectfully submitted that the vide letter dated 26/12/2011, the office of this Respondent had forwarded the application pertaining to grant of permission under Section 17A along with the annexures to the office of the Chief Town Planner for being processed. I specifically state that the contour plans submitted by the Respondent No.5 were present in the reference file and it is unknown as to the then PIO had not disclosed the availability of the contour plans in the said file. I state that the office of this Respondent never approves contours plans rather the same plans are verified with the topo sheets available in the office of the Respondent No.3.

19. With reference to paragraph 26 of the petition, it is emphatically denied that the major part of the project constructed by the Respondent No.5 is in excess of the 25% gradient. I state that the Petitioner has arrived at a inference by merely relying on the survey report prepared by the surveyor which cannot be relied upon.

On perusal of the averments therein, we find that the concerned Authority upon inspection at the site and verifying the situation at loco has come to the conclusion that there is no illegal hill cutting beyond the permissible limits.

9. Mr. Nigel D. Csota Frias, the learned Counsel appearing for the petitioners however relies upon a private report in support of his contention that hill cutting is beyond the permissible limits. However, such report has been obtained based on the inspection in the year 2013 when admittedly the development of the subject property was already

completed and, as such, it would be very difficult for this Court, at this stage, to accept such report when the concerned Authority and the respondent no.5 strongly and seriously disputed the correctness of such report. The permission for hill cutting in terms of Section 17A of the Goa Town & Country Planning Act was issued in the year 2010. The Authority whilst granting such permission has examined the situation at loco and noted that hill cutting did not exceed the permissible limits. As such, there is no cogent and reliable evidence on record produced by the petitioners to substantiate their contention that hill cutting was beyond the permissible limits. Apart from that, on perusal of the photographs on record, we find prima facie that the slope shown therein would not suggest any hill cutting being done beyond the permissible limits. Mr. Nigel Da Costa Frias, the learned Counsel for the petitioner has sought permission to produce more photographs, when the matter was heard yesterday, which were taken before the year 2008 to substantiate his contention that hill cutting was more than the permissible limits. But however, when the matter was taken up for further hearing Mr. Costa Frias submitted that the petitioner has no other photographs taken in the year 2008 when the permission was granted and development was started by the the respondent no.5 to substantiate such contention. On the basis of the material on record and the documentary evidence filed

by the Town Planner, we find that there is no sufficient material on record to accept the contention of Mr. Costa Frias that the hill cutting was beyond the permissible limits. There is nothing on record to discard the averments in the affidavit of the Town Planner to the effect that the hill cutting was within the permissible limits.

10. Apart from that the construction was started in the year 2005 and the completion certification was obtained in the year 2014. The subject bungalows have already been constructed and the concerned occupants are already occupying the bungalows in the subject property. The petitioners contend that they are residents of the locality and there is no justifiable reason on record to show why the above petition came to be filed only in the year 2014. The inaction on the part of the petitioners in taking any recourse immediately with regard to the subject development would itself disentitle the petitioners for any relief in the above PIL on the ground of laches.

11. With regard to the contention of Mr. Costa Frias that the width of the access roads are less than the permissible limits, we find that based on the affidavit submitted by the Town Planner to the effect that the southern access is 10 metres and the northern access is 6 metres, there is

no material to disapprove the said contention. Prima facie, the statement of the Town Planner, who is present in Court, has to be accepted in the absence of any reliable evidence to the contrary.

11. In view of the above, we find that there is no case made out for interference in the above petition in the development carried out by the respondent no.5. The petition, as such, is devoid of any substance and hence rejected.

C. V. BHADANG, J.

F. M. REIS, J.

NH/-