

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.71 OF 2010**

Council of Scientific &
Industrial Research (C.S.I.R.)

with its registered office at

'Anusandan Bhavan',

Rafi Marg, New Delhi,

Represented herein by

Mr. M.G. Dalvi (Authorized Signatory),

& Controller of Administration of

National Institute of Oceanography,

Dona Paula-Goa.

....Petitioner

V/s

1. State of Goa,
through its Chief Secretary,
with his office at Secretariat Complex,
Porvorim, Bardez-Goa.
2. The Collector and District Magistrate
(North Goa District), Government of Goa,
Collectorate Building, Panaji-Goa.
3. North Goa Planning & Development Authority,
Represented by its Member Secretary,
With its office at Archdiocese Building,
1st floor, Mala Link Road, Panaji-Goa.
4. Village Panchayat of Taleigao,
Represented by its Secretary,
with its office at Taleigao, Ilhas-Goa.
5. Assistant Engineer,
Sub-Division I, Division-V (B-N),
Public Works Department,
Government of Goa, Panaji-Goa.
6. 'Sri Varasiddhi Vinayak Pratishthan',
C/o. Mr. M.V.S. Gupta, Secretary,

N.I.O. Colony, Dona Paula – Goa, 403 004.

7. Dr. Arvind Gajanan Untwale,
(Chairman of the Managing Committee of
'Sri Varasiddhi Vinayak Pratishthan'
Resident of House No.48,
'Sagar Society', Dona-Paula, Goa.
8. Mr. M.V.S. Gupta,
Major of age,
(President of Temple Management Committee),
Resident of Sagar Society,
P.O. Dona Paula – 403 004.
9. M/s. Environmental Planning &
Design Consultants, Represented by
Mr. S.P. Deshpande, with its office
at Sidharth Apartments,
Tonca, Caranzalem, Goa 403 002.
10. Mrs. S.Y. Karapurkar,
Contractor, Major of age,
Resident of T-6, Midastouch,
Opposite Hotel Navtara, Panaji-Goa.
-deleted
-Respondents

Shri S.D. Lotlikar, Senior Advocate with Ms. M. Furtado, Advocate for the Petitioner.

Mr. M. Salkar, Government Advocate for Respondent No.1.

Mr. H.D. Naik, Advocate for Respondents No.2 & 3.

Mr. N. Sardesai, Senior Advocate with Mr. D. Shirodkar, Advocate for Respondent No.6.

Mr. A.F. Diniz, Advocate for the intervenor.

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

DATE : 12th JANUARY, 2016

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

Heard Mr. S.D. Lotlikar, the learned Senior Counsel appearing for

the petitioner, Mr. M. Salkar, the learned Government Advocate appearing for respondent no.1, Mr. H.D. Naik, the learned Counsel appearing for respondents no.2 & 3, Mr. N. Sardessai, the learned Senior Counsel appearing for respondent no.6 and Mr. A.F. Diniz, the learned Counsel appearing for the intervenor.

2. The above petition, inter alia, seeks for relief commanding the respondents no.1,2,3 & 4 to demolish the illegal construction on the public land bearing Survey No.249 (part) of Taleigao Village.

3. Mr. S.D. Lotlikar, the learned Senior Counsel appearing for the petitioner has pointed out that the construction put up by the respondent no.6 is illegal as according to him such land belongs to the petitioner and, as such, such construction is to be ordered to be demolished. The learned Senior Counsel further pointed out that the land bearing survey no.249 of Taleigao Village belongs to the petitioner in view of the acquisition proceedings initiated by the State Government for the public purpose to carry out the activities of the National Institute of Oceanography in the State of Goa. The learned Senior Counsel further pointed out that the temple was existing in the portion of the said property and that the respondent no.6 without any right or justification

has on the garb of repairs and reconstruction put up an altogether new construction in the disputed portion of the property surveyed under no.249. The learned Senior Counsel further pointed out that the disputed land claimed by the respondent no.6 has an area of 657 square metres and such area forms part of the larger property surveyed under no.249 and, as such, the respondent no.3 was not entitled to grant any permission to the respondent no.6 to carry out any development without sub-division being carried out. The learned Senior Counsel further submits that the respondent no.6 has misrepresented the Planning Authorities and obtained the development permission initially on the premise that they are the owners of the disputed property and thereafter claiming that the respondent no.6 was only intending to reconstruct/repair the existing structure. The learned Senior Counsel further submitted that the respondent no.3 in fact sought clarification with regard to such development and inter alia called upon the respondent no.6 to establish their ownership over the disputed property as well as the sub-division of the existing property. The learned Senior Counsel further pointed out without complying with the requirements sought by the respondent no.3, the respondent no.6 filed an affidavit inter alia, along with an alleged permission from the Controller of the Administration to the effect that the permission was granted by such

authority to repair the existing temple provided the plinth area was maintained. The learned Senior Counsel has thereafter taken us through the site plan produced on record at page 31 to point out that the new structure put up by the respondent no.6 is on the garb of the permission which otherwise has no sanctity in law. The learned Senior Counsel has further pointed out that the petitioner being a Government Organization cannot transfer the land merely on the basis of alleged permission granted by the Controller of Administration who has no authority to transfer any land. The learned Senior Counsel further points out that in any event in case such permission is acceptable the disputed structure put up by the respondent no.6 far exceeds the alleged permission granted by the Controller of the Administration. The learned Senior Counsel further pointed out that altogether strangers are entering the disputed property causing grave prejudice and inconvenience to the activities of the petitioner and, as such, considering that public land cannot be used for religious purposes the disputed structure put up by the respondent no.6 deserves to be demolished. The learned Senior Counsel has thereafter taken us to the affidavits filed by the petitioner as well as the respondents to point out that despite of acting upon the permission granted by the Controller of the Administration, the respondent no.6 in his affidavit went to the extent of disputing the

ownership and title of the petitioner, when in fact the disputed construction was put up based on the alleged permission granted by the Controller of the Administration of the petitioner. The learned Senior Counsel further pointed out that considering such abusive conduct of the respondent no.6 in disputing even the ownership and the title of the petitioner the subject structure deserves to be demolished and the land be handed over to the petitioner.

4. On the other hand, Mr. N. Sardesai, the learned Senior Counsel appearing for the respondent no.6 has pointed out that the construction put up by the respondent no.6 is pursuant to the development permission granted by the respondent no.3 in terms of the provisions of Section 44 of the Town & Country Planning Act and, as such, the contention of the petitioner to the effect that the disputed structure is without permission cannot be accepted. The learned Senior Counsel further pointed out that the temple was already existing and according to him the repairs and renovation of the temple were carried out pursuant to the licences obtained from the statutory authority including respondent no.3 and, as such, the activities carried out by the respondent no.6 cannot be said to be illegal. The learned Senior Counsel pointed out that though the respondent no.6 is not in a position to produce any title documents with

regard to the disputed property, nevertheless, according to him as the respondent no.6 was managing the temple existing in the disputed property, the respondent no.6 was entitled to carry out renovation and repairs of the temple. The learned Senior Counsel further pointed out that in fact by the new construction the plinth area has been reduced from 365.98 to 275 square metres built up area. The learned Senior Counsel, as such, pointed out that the contention of Mr. S.D. Lotlikar, the learned Senior Counsel appearing for the petitioner to the effect that the respondent no.6 has misused the permission granted by the Controller of the Administration cannot be accepted. The learned Senior Counsel further pointed out that the development permission was obtained in the year 2007 and the construction was put up in the year 2008 and it was completed immediately thereafter. The learned Senior Counsel further submits that the petition came to be filed only in the year 2010 and, as such, according to him the petition is barred by delay and laches. The learned Senior Counsel further points out that the construction has already been completed and, as such, according to him unless there is a final adjudication of the rights of the respective parties the question of directing any demolition of the structure would cause gave prejudice to the respondent no.6 and, as such, the question of examining the allegations of the petitioner to the effect that respondent

no.6 has misused the permission granted by the Controller of the Administration cannot be considered in the present Writ Petition. The learned Senior Counsel further points out that there are disputed questions of fact about the existing area of the temple as well as the alleged extended area of such temple and, consequently, the question of granting any relief sought by the petitioner in the above Writ Petition is not at all justified. The learned Senior Counsel further pointed out that though the respondent no.6 has acted upon the NOC granted by the Controller of the Administration of the petitioner, nevertheless, according to him there is documentary evidence produced at the instance of the intervener which would suggest that the area where the disputed structure is located is not delivered to the petitioner. The learned Senior Counsel further pointed out that as the petitioner has already completed the construction work and the alleged dispute raised by the petitioner is to an encroached area, it would not be justified for this Court to exercise extraordinary jurisdiction under Article 226 of the Constitution of India to direct demolition of such structure which is used by the public at large for religious activities. The learned Senior Counsel further pointed out that the contention of the petitioner that the disputed structure was put up without proper sanction from the statutory authority, as such, deserves to be rejected. The learned Senior Counsel,

as such, submits that the petition be rejected.

5. Mr. H.D. Naik, the learned Counsel appearing for respondent no.3 has submitted that the circumstances in which the respondent no.3 has issued the sanctions to the respondent no.6 have been elaborately disclosed in the affidavit in reply namely at paras 4,5 & 6. The learned Counsel further points out that though otherwise sub-division would be required in cases in which a portion of the land is being developed which does not have a separate survey holding, nevertheless, in the present case as the temple was already existing at the site such sub-division plan was not necessary. The learned Counsel further pointed out that the permission itself imposes a restriction that the existing plinth area would not be exceeded and, as such, unless there is conclusive evidence to establish that such plinth area has been exceeded the question of directing any demolition would not arise. The learned Counsel further submits that if any illegal activity is carried out by the respondent no.6 necessary action in accordance with law can always be taken by the respondent no.3. The learned Counsel, as such, submits that the petition be rejected.

6. Mr. A.F. Diniz, the learned Counsel who has filed an application

on behalf of the intervenor has pointed out that the intervenor has produced documents to establish that the title of the disputed property has not vested on the petitioner and, as such, the question of examining the alleged encroachment at the instance of the petitioner would not at all arise. The learned Counsel further pointed out that what was acquired on behalf of the petitioner was plot no.1 as shown in the plan and according to him the disputed structure is not located in plot no.1. The learned Counsel further pointed out that the land which has been delivered to the petitioner is surveyed under no.260 whereas the disputed structure is located in the property surveyed under no.249. The learned Counsel, as such, pointed out that the application for intervention be allowed and the petition be rejected.

7. We have given out thoughtful consideration to the rival contentions and with the assistance of the learned Counsel we have also gone through the records. The basic submission of Mr. S.D. Lotlikar, the learned Senior Counsel appearing for the petitioner is that the alleged permission granted by the Controller of the Administration dated 13/12/2004 was by a person who was not empowered to grant such permission. But, however, the fact remains that the respondent no.6 had acted upon such permission and in fact acquired benefits thereof. The

development permission issued by the respondent no.5 was based on such permission. It is also not disputed that when the petition was filed the construction by respondent no.6 had already started. There are also averments in affidavit to the effect that one of the Directors of NIO had also laid the foundation, though Mr. S.D. Lotlikar, the learned Senior Counsel pointed out that the Director was misled to be present for such foundation laying function. In such circumstances, it is sought to be contended that the said authority did not have the requisite authority to grant such permission. We find that it cannot be disputed that initial entry of the respondent no.6 to put up the disputed construction was at least on the basis of a colour of authority. Whether respondent no.6 has misused such permission and whether there is substantial encroachment in the property of the petitioner is a disputed question of fact which cannot be decided or adjudicated in the Writ Petition under Article 226 of the Constitution of India. No doubt, Mr. S.D. Lotlikar, the learned Senior Counsel for the petitioner has submitted that the disputed structure is altogether a new structure and, as such, this Court can direct the demolition of such structure, but however, ultimately, the respondents are also raising a dispute with regard to the actual location of the structure and alleging that the disputed structure is in fact in accordance with the existing plinth area of the temple. The fact that

there was a Temple in the subject property has not been disputed. In such circumstances, whether the extension to such Temple is contrary to the authorisation granted pursuant to the said letter is a matter which is to be adjudicated in a Civil Court as the facts are disputed. Even on perusal of the allegations of the petitioner as well as the material on record there is no cogent and conclusive material on record to establish the actual area and the existing plinth area of the Temple and the extent of the alleged extension. Considering that there are disputed questions of fact which are to be examined after proper adjudication in the civil proceedings, we find that the question of exercising extraordinary jurisdiction under Article 226 of the Constitution of India and directing the demolition of existing structure would not at all be justified.

8. No doubt, we do not at all appreciate the manner in which the respondent no.3 has proceeded to examine the development permission to respondent no.6. It is expected that the respondent no.3 has to proceed in accordance with law. At the initial stage, the respondent no.3 had in fact rightly sought called upon the respondent no.6 to establish their ownership as well as their right to carry out such construction. But however, based on an affidavit the respondent no.3 proceeded to forget the requisitions sought in the earlier interrogatories submitted by the

respondent. But however, considering that development permission was granted in terms of Section 44 of the Town & Country Planning Act and as the respondent no.6 has acted upon such permission and put up a construction thereto, we find that it would not be appropriate at this stage to exercise jurisdiction under Article 226 and direct the demolition of such construction unless there is conclusive material on record to establish the extent of the alleged encroachment into the property of the petitioner.

9. Apart from that, it is not open to the respondent no.6 to now dispute the ownership and title of the petitioner over the disputed property. Admittedly, based on the authorization which was acted upon by the concerned authority the respondent no.6 has benefited and put up a Temple in a portion of the property. Apart from that, on perusal of the site plan produced on record by the respondent no.6 themselves, we find that on the Eastern side of the disputed Temple there is a club house which admittedly belongs to the petitioner. On the Southern side of such area there is a childrens park which also belongs to the petitioner. It is also not in dispute that there is a compound wall which encompasses even the disputed structure of the petitioner. In such circumstances, it is very late for the respondent no.6 to now contend or

resile from their original stand that the disputed property was the part of the property belonging to the petitioner. In the peculiar facts and circumstances of the case and keeping the dispute of the alleged encroachment and the construction of the structure to be decided in a proper civil suit, we find that there is no case for any interference in extraordinary jurisdiction under Article 226 of the Constitution of India to demolish the disputed structure. The petitioner, if so advised, can avail of such alternate remedy and in case any such proceedings are initiated the concerned Court shall dispose of such dispute on its own merits without being influenced by any observations herein above. Subject to the above, the petition stands rejected.

K.L. WADANE, J.
NH/-

F.M. REIS, J.