

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WRIT PETITION NO. 6 OF 2015

AND

MISC. CIVIL APPLICATION NO. 256 OF 2016

Cavelossim Villagers Forum

A Society registered under the Societies

Act, 1860 bearing registration no.

196/Goa/2013,

H. No. 314/L IBR Plaza,

Patrecantem, Cavelossim,

Salcete, Goa 403 731

Through its President Mr. Iris Passanha,

r/o. H. No. 314/L, Patrecantem,

Cavelossim, Salcete, Goa,

Phone no. 9823214116

Annual Income 10,00,000/-

Fax no. NIL,

Pan Number: AHUPP7273

National Unique Identity Number : Nil

Email : cavelossimvillagersforum@gmail.com

... Petitioners

V e r s u s

1. The State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa.
2. The Village Panchayat of Cavelossim
Through its Sarpanch,
Cavelossim, Salcete, Goa.
3. The Senior Town Planner,
Town & Country Planning Department
South Goa District, Margao, Goa.
4. The Collector,
South Goa District,
Margao, Goa.
5. The Assistant Engineer,
Sub Division-I, Works Div. - II,
Water Resources Department,
Gogol, Margao, Goa.

6. M/s. Shree Balaji Concepts,
A Partnership Firm, having its registered
office at Kadar Manzil, 1st Floor,
Margao, Goa. 403 601
7. Mrs Radha Satish Timblo,
Wife of late Satish Timblo,
Partner of Respondent no. 6,
Major of age,
residing at Behind Hotel Majestic,
Porvorim, Bardez, Goa. ... Respondents

Mr. Nigel Da Costa Frias with Ms. Laxmi Sawant, Advocates for the
Petitioners.

Mr. D. Lawande, Addl. Advocate General with Mr. P. Dangui, Addl.
Government Advocate for the Respondent nos. 1, 3, 4 and 5.

Mr. Venkatesh Dhond, Senior Advocate with Mr. D. Pangam and Mr. H. D.
Naik, Advocates for the Respondent nos. 6 and 7.

Mr. Amit Palekar, Advocate for the Respondent no. 2.

Coram :- **F. M. REIS,**
NUTAN D. SARDESSAI, JJ.

Reserved for Judgment on : **11th August, 2016**
Judgment Pronounced on : **13th October, 2016**

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

Heard Mr. Nigel Da Costa Frias, learned Counsel appearing for
the Petitioners, Mr. D. Lawande, learned Addl. Advocate General appearing
for the Respondent nos. 1, 3, 4 and 5, Mr. Palekar, learned Counsel
appearing for the Respondent no. 2 and Mr. Venkatesh Dhond, learned
Counsel appearing for the Respondent nos. 6 and 7.

2. Rule. Heard forthwith. Learned Counsel appearing for the Respondents waives service.

3. The above Public Interest Litigation filed by the Petitioners, inter alia, prays for a writ of mandamus directing the Respondent nos. 2 to 5 to act and take necessary action against the Respondent nos. 6 and 7 with regard to the illegal development of the construction activity in the property surveyed under no. 90/1, 90/5, 90/6, 91/1, 91/3 to 91/10 of Village Cavelossim and also for a direction to the Respondent nos. 6 and 7 to stop all such activity in the property surveyed under no. 90/1, 90/5, 90/6, 91/1, 91/3 to 91/10 of Village Cavelossim.

4. Briefly, it is the contention of the Petitioners that in the year 2008, the Respondent nos. 6 and 7 applied to the Collector, South Goa, under Section 32 of the Goa Land Revenue Code for conversion of use of land admeasuring 15336 square metres bearing survey no. 90/1, 90/5, 90/6-E, 91/1, 91/4, 91/3, p1/5 and 91/6 of Village Cavelossim. The said application was forwarded to the Mamlatdar of Salcete on 04.11.2008 and the report was accordingly submitted. It is further contended that the Town and Country Planning Department (TCP) recommended conversion of the property forming part of the property surveyed under no. 90/1, 90/5, 90/6, and 91/3 to 91/10 of Village Cavelossim for residential use. The Collector,

South Goa, issued a conversion Sanad on 22.07.2009 to the Respondent nos. 6 and 7 for conversion of an area of 15336 square metres in the property surveyed under no. 90/1, 91/5 and 91/6 part, 91/1, 91/3 to 91/6 of Village Cavelossim for residential use. Thereafter, an application was forwarded to convert the land from residential to commercial which was recommended for an area of 15336 square metres by a report dated 24.08.2010 and a Sanad was accordingly issued on 03.10.2010. The Respondent nos. 6 and 7 also applied for permission from the Village Panchayat for construction of an access road in the property surveyed under no. 90/1, 90/5, 90/6 part, 91/1, 91/3 to 91/10 of Village Cavelossim and the application was forwarded by the Panchayat to the GCZMA on 08.01.2010. It is also pointed out that on 28.08.2009, an application was submitted by the said Respondents for permission for the construction of Resort and compound wall in respect of the said property and on 17.05.2010, the Town and Country Planning Authority issued its no objection certificate for the construction of the Resort and the compound wall in the said property. Based on such NOC, the Village Panchayat also granted the requisite permission to the said Respondents. The construction thereafter commenced and it is further alleged by the Petitioners that in September 2013, they complained to the Village Panchayat on 02.09.2013 that the Respondent nos. 6 was moving truck loads of mud into the property. A site inspection was conducted by the Panchayat on 18.12.2013 and noticed that the storm water drain existing in the property has been blocked and diverted

without any permission from the concerned authorities and that without permission from the Irrigation Department RCC walls were put up on both the sides of the drain. It is also pointed out that the water body (pond) was destroyed by filling with mud beyond the adjoining ground and that another pond is also being filled up. It is also pointed out that the nullah was being obstructed. It is also contended that there are CRZ and other violations noticed during the inspection which are subject matter of proceedings under Sections 14 and 15 of the National Green Tribunal Act of 2010 filed by the Petitioners before such Tribunal. It is also pointed out that during the site inspection conducted by the Agricultural Department on 24.06.2014 along with the Officers of the Goa Bio-Diversity Board, many illegalities were noticed. It is also pointed out that the water pond in the property surveyed under no. 91/1 has been filled up with mud and that a fraud is played on the authorities by the Respondent nos. 6 and 7 and the Petitioners have filed a complaint dated 22.09.2014 to the Collector, South Goa and the Senior Town Planner, Margao. It is further pointed out that Respondent no. 6 applied to the Executive Engineer, Works Division -II, Water Resources Department on 17.02.2014 for permission to divert some of the existing storm water drains in survey nos. 90 and 91 of Cavellossim Village. The Executive Engineer granted the permission on 23.05.2014 showing the relocation in the property surveyed under no. 91/1. It is further pointed out that the Petitioner accordingly filed the above Writ Petition disputing the correction of the permission granted by the Town and Country Planning Authority as well as

the permission to shift the pond issued by the Water Resource Department.

5. The Respondents have filed their objections. The authorities have pointed out that after the complaints were filed, actions were taken and after site inspection it was found that the violations pointed out by the Petitioners were not justified. It was pointed out that there is no low lying area which was filled up. The drains which were relocated were for the purpose of allowing the drainage of water to River Sal after obtaining the requisite permission under the Irrigation Act from the concerned authorities. It was also pointed out that the NOC was granted by the Town and Country Planning Authority much before the notification of the Regional Plan 2021 and, in any event, the effect has been kept in abeyance and the circular of the year 2012 clearly provides that it does not apply to pass permissions granted by the authorities. The Respondent nos. 6 and 7 have raised various grounds and pointed out that the requisite permission under the Irrigation Act has been obtained for shifting the alleged pond which admeasures only 400 square metres. It is further pointed out that it is a man made accumulation of water and not a water body as alleged by the Petitioners. It is further pointed out that while shifting, the Water Resource Department has permitted the shifting after examining the situation at loco and considering all the aspects as according to them it would be more beneficial for draining the water through the existing nullahs into the River. It is also pointed out that the Petition is malafide and barred by laches.

6. Mr. Nigel Da Costa Frias, learned Counsel appearing for the Petitioners, has pointed out that as far as the CRZ violations, the Petitioners have also filed proceedings before the National Green Tribunal which are pending for consideration. The only grievance of the Petitioners in the present Petition is restricted to the permission granted for shifting of the pond and the diversion of the water drain/nullah as well as the permission granted by the Town and Country Planning Authority. The main grievance of the Petitioners is that the alterations and re-alignment of water bodies will severely affect the hydro-dynamics of the area and it would affect the Eco-sensitivity of the area. In this connection, learned Counsel has produced a report dated 01.03.2016 of a Retired Senior Hydro-geologist. It is further pointed out that the permission granted to the Respondent nos. 6 and 7 on 23.05.2015 is illegal, ultra vires the provisions of the Goa Irrigation Act, 1972 as the said provisions would not be applicable to the facts of the present case. It is further pointed out that the pond in the property under survey no. 91/1 is permitted to be relocated is zoned as eco sensitive in the Regional Plan of 2021 which has to be protected in view of the Circular dated 04.06.2012. It is further pointed out that the Sanad issued in favour of the Respondent nos. 6 and 7 dated 22.07.2009 and 03.10.2010 do not cover the existing pond in the property surveyed under no. 91/1. It is further pointed out that no permission to put up any construction in the water bodies could be granted without following the circular dated 17.05.2010. Learned Counsel

has further pointed out that as the relocation of the pond itself is illegal, the whole development activity of the Respondent nos. 6 and 7 deserves to be stopped and the licence granted be quashed and set aside.

7. On the other hand, Mr. Lawande, learned Addl. Advocate General, appearing for the Respondent nos. 1, 3, 4 and 5, in fact pointed out that the permissions under the Irrigation Act have been duly obtained and, as such, as far as the relocation of pond, the Petitioners do not have any grievance. It is further submitted that the alleged pond is only 400 square metres in a private property and not a pond used in any manner by the public and, as such, the relocation of such pond in question adjoining to the existing water drain would be more beneficial for the purpose of draining the water into the River Sal. Learned Addl. Advocate General further pointed out that after the complaints were lodged by the Petitioners, the site inspections were conducted and it was found that the alleged violations were not existing. It is further submitted that as such the grievance of the Petitioners with regard to the grant of permission or relocation of drains and the pond is not justified. It is further submitted that the NOC from Town and Country Planning Authority was obtained much before the circular of the year 2012 and, in any event, it does not effect the permissions which were already granted to the Respondent nos. 6 and 7.

8. Shri Dhond, learned Senior Advocate appearing for the

Respondent nos. 6 and 7 has pointed out that the Petition is motivated filed with malafide motives. It is further submitted that the Petitioners have already filed proceedings before the National Green Tribunal alleging violations of the CRZ Notification and environmental issues and, as such, the question of entertaining such Petition would not at all be justified. Learned Senior Advocate further pointed out that the Water Resource Department itself called upon the Respondent no. 6 to even construct a new water body at loco as shown in the plan which the Respondent nos. 6 and 7 accepted to bear on their own cost. It is further submitted that the pond located in the property surveyed under no. 91/1 is being shifted towards the River Sal. It is further pointed out that all the allegations with regard to filling up were found after inspections by the authorities were not at all correct. It is further submitted that as such the Petition deserves to be rejected with heavy cost.

9. We have considered the submissions of the learned Counsel and we have also gone through the records. It is not disputed that in the duly promulgated survey records, the land in question the property surveyed under no. 91/1 is shown as garden land. There is no reference to any existing pond in the survey records. But, however, it is pertinent to note that after the requisite permissions, the development activity commenced in the subject property. There is no material produced on record by the Petitioners though the present Petition was filed in the year 2015 that on account of filling of mud in the subject pond and relocating the water body, there was

any inundation of the surrounding land or that the drainage in the locality had been affected. It is an admitted position that as far as the alleged CRZ violations are concerned effecting the environment, proceedings have been initiated under the Green Tribunal Act, which are pending for consideration. In such circumstances, we are not inclined to examine the alleged contentions of the Petitioners with regards to the alleged destruction of the water bodies in the present Petition.

10. As far as the contention of the Petitioners that the Town and Country Planning Authorities could not grant the NOC for development on account of such water bodies, it is to be noted that an affidavit filed on behalf of the Respondent no. 3 states that after a complaint was lodged by the Petitioners with that regard, the Respondent nos. 6 and 7 had produced a letter dated 18.02.2014 of the Assistant Engineer of the Water Resources Department directing the Respondent no. 6 to stop the work affecting the area. It is further pointed out that the Respondent no. 3 issued a show cause notice dated 14.03.2014 directing the Respondent no. 6 to stop the on-going work. Thereafter, Respondent no. 6 filed a reply to the said notice with a copy of the NOC dated 23.05.2014 issued by the Executive Engineer Water Resources Department and, consequently, the show cause notice came to be dropped. It is also to be noted that the diversion of the water bodies to the nullah have been permitted vide letter 23.05.2014 issued by the Respondent no. 5. It is further pointed out that whilst issuing such

permissions, the Respondent no. 6 had been directed to comply with the directions in the said letter dated 23.05.2014 for diversion of water bodies. On perusal of the said letter, we find that the following conditions have been imposed :

- “1. The area of pondages/water bodies in the survey numbers should be maintained as per the drawings approved and should not be reduced.
2. Proper connectivity should be ensured to all the nallahs/drains entering in to the property to discharge storm water/any discharges into the river Sal.
3. Proper slopes and cross sections should be maintained as per approved drawings for the nallas/drains.
4. Other necessary permissions if any should be obtained by the applicant.
5. Seven (7) drawing copies showing lay out cross sections are approved and returned back.”

11. Taking note of the said conditions, we find that the contention of the Petitioners that such permission could not be granted by the Executive Engineer, cannot be accepted. Sections 75 and 76 of the Goa Daman and Diu Irrigation Act, 1973 reads thus :

“75. Limitation in respect of canals.- Except as may be prescribed, no person other than the Canal Officer shall-

- (a) interfere with or divert the course

of a natural stream, or

(b) construct any earthen or masonry bund or weir on any channel or stream, flowing above or below any water-course.

76. Interference with the functioning of cross drainage works.- No person, except with the written permission of the Canal-Officer shall obstruct the proper functioning of the various cross drainage works, such as culverts, aqueducts, super-passages, syphons, weirs and allied works constructed for the safety of the canals or channels.”

In terms of the said provisions, the permission granted to relocate drains as well as the pond close to such drain, cannot be faulted.

12. Apart from that, there is no material on record to show that the pond of 400 square metres is a public pond. In fact, as already pointed out herein above, the duly promulgated survey records do not disclose the existence of a pond. In this connection, this Court whilst disposing off Writ Petition no. 297 of 2009 by Judgment dated 16.07.2015, has observed at Paras 8 and 9 thus :

“8. As far as the next contention of Mr. Costa Frias that there was a Village Pond existing in the subject property, we find that on perusal of the survey entries in Form I & XIV, there is nothing to

point out about the existence of such a pond in such entries. But, however, on perusal of the survey plan, it is seen that there is a blue portion marked therein which according to Mr. Costa Frias is the Village Pond. Exercise of jurisdiction by this Court to protect a pond in a PIL has to essentially be in the context of maintaining a public pond. There can be no public interest to maintain a private water pond, put up in private property as the petitioners do not claim to have any access to such pond. In the present case, Mr. Costa Frias, learned Counsel appearing for the petitioners states that the pond was a private pond, located in the property of the respondent No.5. Apart from that, only when the ponds are natural ponds, which is a natural wealth, the Courts can take measures to protect such ponds. The material resources of the community like forests, tanks, ponds, hillocks, mountain, etc., are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is essence of the guaranteed right under Article 21 of the Constitution. In case, there was a pond on the subject site, it would have been the duty of the Authorities to develop the same which would, on one hand, have prevented ecological disaster and on the other, provided a better environment for the benefit of the public at large.

9. A pond is a body of standing water, either natural or artificial. They may arise naturally in floodplains, as part of a river system, or there may somewhat be situations where there are isolated depressions, which cause water accumulation. Usually, such natural ponds contain shallow water with marsh and aquatic plants and animals. There are also ponds which are frequently human-constructed on country side by farmers and villagers by digging in their backyard. Some ponds are created specifically for habitat restoration, including water treatment. In the present case, considering the photographs produced on record and the location, there is no material to suggest that any natural body was existing at the site. Mere accumulation of water which is stored for consumption of the animals, cannot by itself be the natural pond for the benefits of the Villagers/public at large. As has been pointed out hereinabove, it is always an endeavour of the Court to ensure that ponds for the benefit of the public are protected to maintain the environment and ecological balances.

13. Though it is contended by the Petitioners that such pond which admeasures 400 square metres was used for fishing by the public, the fact remains that there is no material on record to substantiate such contention. The pond in question is admittedly located in a private property and the

relocation of such pond as pointed out herein above, cannot be faulted. There is nothing on record to show that such relocation would affect the environment. In such circumstances, we find that there is no infirmity in the grant of permission to the Respondent no. 6 for relocating the drains and the pond in the property surveyed under no. 91/1 of Village Cavelossim.

14. As far as the contention of the Petitioners based on the Order dated 04.06.2012 that the development would have to maintain the user as provided in the Regional Plan for Goa 2021 though it has been kept on hold, we find that the said Order itself states at clause (d) thus :

“(d) All applications/proposals decided prior to the issuance of directions dated 9/4/2012 shall be allowed to be executed, as per the approvals.”

15. In the present case, the permission from the Town Planning Authorities was obtained on 17.05.2010 much before the said Order was issued and, as such, the contention of the Petitioners that the user, the FAR, etc., would have to be in conformity with the Regional Plan 2021, cannot be accepted. Similarly, the contention of the Petitioners that the said area is shown as eco sensitive area, is based on the Regional Plan 2021 which is admittedly not notified and is not in operation. In any event, the property of the Respondent nos. 6 and 7 is shown in the Regional Plan as settlement area and, as such, we find that there is no case made out by the Petitioners

to challenge the NOC granted by the Town and Country Planning Authority in the year 2010 by filing the Petition in 2015 when admittedly the development had already started by the Respondent nos. 6 and 7.

16. The Petitioners have sought leave to produce a report of the Senior Hydrogeologist (Rtd.) Water Resources Department, Government of Goa to claim that the paddy fields and other areas around the property in question would be affected in case drainage system as found at loco is modified. But, however, as pointed out herein above, the Water Resources Department has granted the permission which is at Exhibit 'C' to the affidavit filed by the Executive Engineer dated 07.09.2014 in accordance with law. The diversions or the locations of the drainage system have been duly approved after examining the situation at loco. The report sought to be produced lacks particulars and does not disclose that any scientific investigation has been carried out in the subject property before coming to such conclusions. Admittedly, the said expert has not visited the site where the water bodies allegedly were located to examine the underground conditions to draw the conclusion therein. But, however, prevention of any inundation of the paddy fields would be examined by the Court whilst issuing directions in the above Petition as the learned Counsel appearing for the Respondent nos. 6 and 7 pointed out that all steps would be taken to ensure that there is no water logging or inundation of the surrounding land on account of the development carried out by the Respondent nos. 6 and 7. As

such, the production of such report after the matter was extensively argued would not at all be justified and, in any event, are not relevant for deciding the matter in issue in the above Petition. As already stated herein above, the environment degradation, if any, is under consideration before the National Green Tribunal and not examined in the present Petition.

17. As far as the other contentions raised in connection with the destruction of water bodies and/or other deficiencies in a development activities being carried out by the respondent nos. 6 and 7 is concerned, we find that the Petitioners have initiated proceedings before the National Green Tribunal which are pending decision and, as such, it would not be appropriate for this Court to examine such issues raised therein. Needless to say, all the conditions imposed in the permission dated 23.05.2014 by the Executive Engineer, Water Resources Department would have to be strictly followed and the respondent nos. 6 and 7 shall also take all the necessary steps to ensure that the development carried out by them would not cause any inundation or water logging in the properties adjoining to the subject properties belonging to the Petitioners and the other Villagers.

18. With the aforesaid observations, the Petition stands disposed of.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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