IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WP NO. 19/2013

Mr. Narayan Datta Naik,
son of Datta Naik,
resident of H.No.278/1(3),
Savorfond, Sancoale, Goa,
Mobile No. 9822100999
PAN Card Number ABDPN5752E
National Unique Identity No.nil
Email : narayan9909@gmail.com
Annual income : 4,23,732/- …..... **Petitioner**

V/s.

1. The State of Goa,
through its Chief Secretary,
having Office at Secretariat,
Porvorim, Bardez, Goa.

2. Directorate of Accounts,
Near Old Secretariat,
Panaji, Goa

3. Village Panchayat of Sancoale,
through its Secretary,
Sancoale, Mormugao, Goa,

4. Pedro Carmo Jaqus,
major, resident of H.No.8,
First Dando, Navelim, Goa.

5. Pradeep Tamankar,
major, resident of near
Sai Baba Temple,
New Vaddem, Vasco, Goa

6. Directorate of Panchayat,
having office at Directorate of Panchayat,
Junta House, Panaji, Goa

7. Block Development Officer,
Office of Block Development
Officer, Vasco-da-Gama,
Mormugao, Goa. …...... **Respondents**.

Shri Shivan Dessai, Advocate for the petitioner.

Shri P. Dangui, Additional Government Advocate for the respondents No.1, 2, 6 and 7.

Shri V.A. Lawande and Ms. P. Kaur, Advocates for the respondent No.3.

Shri Guru Shirodkar, Advocate for the respondent No.4.

Shri Ryan Menezes, Advocate for the respondent No.5.

CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.

Date : - 21/06/2016.

<u>ORAL JUDGMENT</u> : (PER F.M. REIS, J.)

Heard Shri Shivan Dessai, learned Counsel appearing for the petitioner, Shri P. Dangui, learned Additional Government appearing for the respondents No.1, 2, 6 and 7, Shri Guru Shirodkar, learned Counsel appearing for the respondent No.4, Shri V.A. Lawande, learned Counsel appearing for the respondent No.3 and Shri Ryan Menezes, learned Counsel appearing for the respondent No.5.

2. The above petition takes exception to the inaction by the respondents No.1, 2, 6 and 7 to take action in terms of Section 187 of the Goa Panchayat Raj Act, in connection with the Audit Reports submitted by the Director of Accounts, of the respondent No.3.

3. Shri Shivan Dessai, learned Counsel appearing for the petitioner has pointed out that while examining the audited accounts of the respondent No.3 for the year 2011-12, there were audit objections raised by the Directorate of Accounts which were intimated to the respondent No.3. The learned Counsel points out that no remedial measures were taken by the respondent No.3 in connection with such audit paras and, as such, the irregularities pointed out by the Directorate of Accounts remained unresolved. The learned Counsel further points out that even in respect of the audited accounts for the year 2012-13, some audit objections disclose that no remedial measures were taken by the respondent No.3 inspite of the directions issued by this Court in the order dated 13/10/2014, taking serious note of the irregularities in the audit report of the respondent No.3 and directing the respondent No.3 to take necessary remedial measures. The learned Counsel further points out that in terms of the provisions of Section 187 of the Goa Panchayat Raj Act, in case the respondent No.3 fails to

clear the irregularities, the Chief Executive Officer is bound to issue necessary directions and even proceed to hold an inquiry and thereafter direct the respondent No.3 to take necessary action and even proceed to collect the amounts as arrears of the land revenue. The learned Counsel further points out that in the present case, though the audit objections were brought to the notice of the respondent No.3 and though no remedial measures were taken by the respondent No.3, no further action in terms of Section 187 of the Goa Panchayat Raj Act was followed by the said respondent. The learned Counsel further points out that the irregularities pointed out in the audit objections are very serious which disclose wastage of public funds and, as such, the concerned Authorities have to be directed to take necessary action against the respondent No.3 and other concerned Officials, in accordance with law. Shri Dessai further submits that the petitioner had sought information under the Right to Information Act with regard to the criteria involved in charging house tax and on perusal thereto, it is found that there is no criteria fixed by the respondent No.3 in collecting the house tax. The learned Counsel further points out that though it is contended by the respondent No.3 that a lump sum payment is received towards house tax,there are no resolutions passed by the local Panchayat, nor any indication shown as to the manner in which such house tax has been assessed. The learned Counsel further points out that in this connection, the petitioner had lodged a complaint before the respondent No.6 which was thereafter forwarded to the respondent No.7 and no action was taken. The learned Counsel, as such, points out that necessary directions be issued to the concerned Authorities with that regard.

4. On the other hand, Shri V. A. Lawande, learned Counsel appearing for the respondent No.3 has pointed out that the present incumbent in the Office of the Secretary is not in a position to examine the alleged irregularities which have taken place way back in the year 1983, as the records are not available. The learned Counsel further points out that after the audit paras were brought to the notice of the local Panchayat, necessary measures were taken to clear the irregularities and even the matter was placed before the local Panchayat which has resolved to drop some of the audit objections referred to by the petitioner. The learned Counsel further points out that the accounts of the Panchayat have not been audited for the last nearly 3 years as, according to him, all the Books of Account have been seized by the Vigilance Department. The learned Counsel further points out that in the additional affidavit filed by the present incumbent, it has clearly

disclosed all the measures which have been taken to clear off the irregularities pointed out in the audit paras and, as such, the contention of the petitioner that the Secretary of the Panchayat has not taken any steps with that regard, cannot be accepted. The learned Counsel further submits that it is very difficult for the respondent No.3 to now examine the alleged irregularities which had taken place in the year 1983 as neither the books, nor the other records are available with the local Panchayat. The learned Counsel further submits that as such, as the report with that regard was submitted to the respondent No.7, the compliance has been effected by the respondent No.3. It is further pointed out that along with the affidavit, the Secretary has also produced the compliance carried out by the earlier Secretary, which clearly discloses that there is no default committed by the respondent No.3 with regard to the alleged irregularities as mentioned in the audit paras. The learned Counsel further points out that it is for the concerned Authorities to take necessary decision with regard to the compliance carried out by the respondent No.3, in accordance with law. The learned Counsel has also highlighted the statements at page 321 of the paper book.

5. Shri P. Dangui, learned Additional Govt. Advocate

appearing for the respondents No.1, 2, 6 and 7 points out that the Directorate of Accounts has submitted the audit paras for compliance to the respondent No.3 and it is for the respondent No.3 to remove all the irregularities and submit the compliance report for consideration by the Chief Executive Officer. The learned Counsel further points out that the respondent No.3 has not carried out such an exercise and, as such, it is for the respondent No.3 to ensure that the irregularities pointed out are duly rectified.

6. We have considered the submissions of the learned Counsel and we have also gone through the records. It is undisputed that there were audit objections reflected in the Audit Reports prepared by the Directorate of Accounts in connection with the audited accounts submitted by the respondent No.3 in terms of the provisions of Section 187 of the Goa Panchayat Raj Act. It is also not in dispute that all such audit objections were brought to the notice of the respondent No.3 for further action in the matter. Though Mr. Lawande, learned Counsel appearing for the respondent No.3 has submitted that substantially all the audit objections have been cleared, nevertheless, we find that such clearance has to be accepted by the Chief Executive Officer in terms of Section 187 of the Goa Panchayat Raj Act. In terms of the

provisions of Section 187(6) of the Goa Panchayat Raj, on receipt of the audit report, the Panchayat shall either remedy any defects or irregularities which have been pointed out in the report and send to the Executive Officer within three months an intimation of its having done so, or shall within the same period furnish to the Chief Executive Officer any further explanation in regard to such defects or irregularities. In the present case, Mr. Lawande, learned Counsel appearing for the respondent No.3 has pointed out that the respondent No.3 gave their explanation with regard to the alleged irregularities to the respondent No.7. Such report, in terms of Section 187(6) of the Goa Panchayat Raj Act has to be submitted to the Chief Executive Officer. As such, we find that the respondent No.3 would have to submit such report, along with the explanation with regard to the audit objections accordingly. The Chief Executive Officer will, thereafter, proceed to examine the explanation and proceed to take necessary action in terms of the provisions of Section 187(7) of the said Act. Admittedly, the procedure as provided in Section 187 of the said Act has not been followed in connection with the irregularities pointed out by the Chief Accounts Officer and, as such, we find it appropriate to issue necessary directions to ensure that the procedure, as provided in Section 187 of the said Act, is duly complied with.

7. With regard to the contention of Shri Dessai, learned Counsel appearing for the petitioner disputing the criteria based on which the house tax has been assessed by the respondent No.3, we find that it is not disputed that a complaint was lodged with the respondent No.7, who shall proceed to examine such complaint, after hearing all the parties based on the material produced on record with that regard, in accordance with law.

8. In view of the above, we pass the following :

O R D E R

(I) The respondent No.3 is directed to submit the compliance report with regard to the audit objections for the year 2011-12 to the Chief Executive Officer, within two months from today.

(II) The Chief Executive Officer shall proceed to examine such report within six months from the date of receipt of such compliance report, in the light of the observations made herein above, in accordance with law.

(III) The respondent No.7 shall proceed to consider the Complaint of the petitioner dated 19/10/2012 in the light of the observations made herein above, in accordance with law

(IV) Rule is made absolute in the above terms, with no order as to costs.

NUTAN D. SARDESSAI, J. **F.M. REIS, J.**

ssm.