

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WP NO. 1 OF 2016

MS.LUCIANNE FERNANDES AND 4 ORS., ... Petitioners
Versus
THE STATE OF GOA, THROUGH ITS
CHIEF SECRETARY AND 8 ORS., ... Respondents

Shri Ryan Da Piedade Menezes, Advocate for the petitioners.
Shri D. Lawande, Government Advocate for the respondent nos.1 to 5.
Shri Nigel Costa Frai, Advocate for the respondent no.6.
Shri A. D. Bhobe, Advocate for the respondent no.7.
Shri Devidas J. Pangam, Advocate for the respondents no.8 & 9.

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

Date:- 29th June, 2016

P.C.

Heard Shri R. Menezes, learned Advocate for the petitioners, Shri D. Lawande, learned Government Advocate for the respondent nos.1 to 5, Shri N. Costa Frai, learned Advocate for the respondent no.6, Shri A. D. Bhobe, learned Advocate for the respondent no.7 and Shri D. J. Pangam, learned Advocate for the respondent nos.8 & 9.

2. Shri Menezes, learned Counsel appearing for the petitioners submits that the petitioners have filed the PILWP challenging the permission granted for the installation of a petrol station in the property surveyed under No. 536/2 of Anjuna Village as according to him, such permissions are issued in violations of Regulation 8 of the Goa Land Development and Building Construction Regulations,

2010 ("the Regulation" for short). The learned Counsel has taken us through Regulation 8 of the Act to point out that it clearly provides that a distance of 45 mtrs has to be maintained from the tangent point of intersection of two roads from the petrol station. Shri Menezes, learned Counsel has thereafter taken us through the survey plan to point out that towards the eastern side of the property surveyed under No.536/2 there is a property surveyed under no.536/3 which is triangular in shape and according to hm, the distance from such intersection to the said triangle is about 20 to 25 mts and around 20 mts into the property surveyed under subject property no.536/2 where the petrol station has been put up. The learned Counsel thereafter has taken us through the sale deed executed whereby the respondent no.7 had purchased the subject property wherein the schedule clearly provide that the subject property is bounded towards the northern and southern side by a roads. The learned Counsel has further submitted that the contention of the respondents that the northern side road is not a road is totally fallacious, as according to the petitioners they have brought evidence on record to point out the existence of the road towards the northern side. The learned Counsel has thereafter taken us through the guidelines issued by the competent authority in connection with the erection of petrol pump to point out that it clearly provide that such permission should not be granted in habitable location. The learned Counsel as such submits that the technical approval granted by the respondent nos.2 and 3 are in violation of Regulation 8 of the Act.

3. Shri D. Lawande learned Government Advocate appearing for the respondent nos.1 to 5 submits that the contention of the petitioners that the northern boundary of survey no.536/2 is a road is erroneous, as according to him, there is no road towards the northern side. The learned Government Advocate points out that it is merely an access reserved for the inhabitants of the locality and there is no existing road at the site. The learned Government Advocate has taken us through the photographs produced by the petitioners itself at page 287 onward to point out that depiction therein clearly suggest that there is no road towards the northern side. The learned Government Advocate has also brought to our notice some additional photographs to point out the position at loco with regard to the alleged contention as no road is located towards the northern side of the subject property bearing no.536/2. The learned Government Advocate as such submits that as there is no intersection of the roads at the site, the question of invoking Regulation 8 of the Regulation would not arise.

4. Shri Nigel Costa Frias, learned Advocate for the respondent no.6 submits that the contention of the petitioners that there is a road is not correct, as according to him, there is no road towards northern side of the said property no. 536/2.

5. Mr. Pangam, learned Advocate for the respondent nos. 8 and 9 seriously disputed the existence of the road as contended by the petitioners.

6. Mr. Bhobe, learned Advocate also supported the contention of the

learned Counsel appearing for the respondents and further submitted that there is no road existing at the site towards northern side of the subject property no. 536/2 as alleged by the petitioners.

7. We have duly considered the submissions made by the learned Counsel appearing for the respective parties and we have also gone through the records. It is not in dispute that all the requisite permissions for the constructions of a petrol pump were obtained from the Town and Country Planning Department as well as the local panchayat and the District Magistrate in terms of the relevant provisions of law. It is also not disputed that the petrol pump was in existence atleast one and half years prior to the filing of the petition. In the background of such admitted position, we shall proceed to examine the contention of the petitioners that in view of an intersection of two roads, the petrol pump constructed by the respondent nos. 8 and 9 is in violation of Regulation 8 of the Regulation.

8. On perusal of the photographs as well as the material produced by the petitioners himself we find that the contention about the existence of the road on the northern side of the subject property is seriously in dispute. Prima facie the contention of the respondents that no such road is in existence at the site has to be accepted. Such disputed question of fact in the absence of any considerable material cannot be examined by this Court in a petition under Article 226 of the Constitution of India. Taking note of the fact that the petitioners have not produced any cogent evidence to conclusively establish the

existence of the road on the northern side of the subject property, we find that the exercise of jurisdiction under Article 226 of the Constitution of India would not arise at all. Even on perusal of the survey plan produced on record it clearly shows the existence of road only on the southern side of the property surveyed under no. 536/2. In such circumstances, though there is some land kept open towards the northern side of the subject property, this by itself would not lead this Court to come to the conclusion that the petitioners have established the existence of the road on the northern side. The petrol pump was also in existence for nearly 18 months before the filing of the petition. The permissions from the statutory Authority are also in the place and no infirmity can be found based on the material on record.

9. In such circumstances, we find that there is no case made out for any interference in the impugned decision taken by the statutory authority while granting permission for construction of the petrol pump. Consequently, petition stands rejected.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.