

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 455 OF 2016

1. SHRI ANTONIO D. DINIZ,
aged 76 years, Indian
National, resident of
House No. 147, 2nd Ward,
Colva, Salcete-Goa.

... Petitioner

V e r s u s

1. STATE OF GOA, through
its Chief Secretary,
having office at
Secretariat, Porvorim,
Bardez-Goa.
2. THE CHIEF TOWN PLANNER,
Town & Country Planning
Department, Government
of Goa, Panaji-Goa.
3. THE TOWN PLANNER,
Office of the Senior
Town Planner, Town &
Country Planning
Department, Government
of Goa, Osia Complex,
Margao-Goa.

... Respondents

Mr. Parag Rao, Advocate for the Petitioner.

Mr. S. D. Lotlikar, Advocate General with Ms. Susan Linhares, Additional
Government Advocate for the Respondent Nos. 1 to 3.

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

Reserved for Judgment on : 11th August, 2016
Judgment to be pronounced on : 25th November, 2016

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

Heard Mr. Parag Rao, learned Counsel appearing for the Petitioner and Mr. S. D. Lotlikar, learned Advocate General appearing for the Respondents.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Addl. Government Advocate appearing for the Respondents waives service on behalf of the Respondents.

3. The above Petition, inter alia, seeks for a writ or appropriate direction quashing and setting aside the communication dated 18.02.2016 and a further direction to the Respondent no. 3 to grant Technical Clearance to the Petitioner's plan for the construction of a residential house in the property bearing survey no. 121/6 of Village of Colva.

4. Briefly, it is the contention of the Petitioner that in the year 2007, the Petitioner filed an application for licence to construct a residential house in his property bearing survey no. 121/6 situated at Colva Village, Panchayat of Sernabatim. But, however, on 18.02.2008, the Respondent nos. 2 and 3 refused to grant Technical Approval to the Petitioner on the ground that the set back maintained by the Petitioner of three metres was not sufficient as the plot was abutted a ten metre wide road. The said Order was challenged

before this Court in Writ Petition no. 345 of 2009 which came to be disposed of on 04.03.2015 wherein it was held that the Respondent no. 3 was not justified to refuse such Technical Approval without taking into consideration that the Regional Plan of the year 2001 was not showing the road having a width of ten metres. Thereafter, on 30.11.2015, the Respondent no. 3 informed the Petitioner that his proposal for residential building was under consideration and that the Petitioner should demarcate his plot and building line at the site in order to verify the actual set back and the road widening area available and to assess the feasibility of the proposed construction as per the said plan. Vide Communication dated 01.02.2016, the Petitioner informed the Respondent no. 3 that he had already complied with the directions in the said letter dated 30.11.2015 as well as in December 2015 when an inspection was carried out. Subsequently, on 18.02.2016, for the first time, the Respondent no. 3 raised an objection to the set back on the ground that shops were being constructed by the Petitioner on the ground floor and also by raising an issue about an access to the neighbour whose house was situated behind the house of the Petitioner. It was also pointed out that the compound wall as proposed cannot be approved and that his application is required to be forwarded to the higher authorities for final decision in the matter. Being aggrieved by the said communication, the Petitioners have filed the above Petition.

5. Mr. Parag Rao, learned Counsel appearing for the Petitioner,

has pointed out that the Respondent no. 3 without any justification, has been raising irrelevant grounds without any basis to deprive the Petitioners from putting up a construction in the subject plot. Learned Counsel further pointed out that it is not the jurisdiction of the Respondent no. 3 to examine the rights, if any, of the neighbours to an access through the plot of the petitioner as, admittedly, no such right as such, has been reserved or established by any of the said neighbour. Learned Counsel further pointed out that the contention of the Respondent no. 3 that the set back is not in accordance with the Regulations, is misconceived as such allegation has been made without verifying the relevant provisions of the applicable Development Regulations. Learned Counsel further pointed out that the compound wall being constructed clearly shows an access reserved for the house which is situated behind the property of the Petitioner, though the Petitioner was not obliged to maintain such access. The learned Counsel further pointed out on harmonious readings of the relevant provisions of the Land Development and Building Regulations Act 2010 would indicate that the Petitioner's bungalow/Villa as proposed by the Petitioner can be constructed.

6. On the other hand, Shri S. D. Lotlikar, learned Advocate General appearing for the Respondents, has pointed out that the Petitioner is intending to put up a shop and the front set back is five metres. Learned Advocate General further points out that in case the Petitioner satisfies the Respondent no. 3 that the set back maintained by the Petitioner is in terms of

the said Regulations of 2010 or given up the construction of a shop in the proposed Villa, the Respondent no. 3 would re-examine the matter in accordance with law.

7. We have duly considered the submissions of the learned Counsel and we have also gone through the records. Whilst disposing off Writ Petition no. 345 of 2009, this Court by Judgment dated 04.03.2015, had examined the matter in the context of the width of the road abutting the said plot and found, considering that the application for Technical Approval was filed in the year 2007 and as there was no Notification to the effect that the concerned road has a width of ten metres, the communication to that effect dated 18.02.2008, cannot be sustained and deserves to be quashed and set aside. There were also directions issued to the Respondents to examine the Technical Approval afresh and take note of the legally available right of way at the site in respect of the concerned road in accordance with law. Though the Respondent no. 3 proceeded to examine the application filed by the Petitioner on the basis of the Regional Plan as in force, nevertheless, some new grounds were taken while examining the Technical Approval for the subject project. This conduct of the Respondent no. 3 is arbitrary and unfair to the Petitioner. The provisions of the Development Regulations of 2010, has to be harmoniously considered and the set backs referred to therein would have to be accordingly examined. The Respondent no. 3 ought to have as such examined the Technical Approval sought by the Petitioner in

terms of the directions issued by this Court and, consequently, the impugned communication dated 18.02.2016 cannot be sustained and deserves to be quashed and set aside.

8. With regard to the observations by the Respondent no. 3 in the impugned Communication that there is no sufficient access reserved for the neighbouring plots, we find that admittedly there is nothing on record produced wherein any such right of access has been adjudicated in favour of any of the neighbours of the plot of the Petitioner. In such circumstances, the observations to that effect by the Respondent no. 3 only discloses the arbitrary conduct on the part of the Respondent no. 3 in refusing to examine the Technical Approval sought by the Petitioner on unreasonable grounds. The Petitioner has maintained a two metre wide access and, as such, there is no reason to impose further restrictions on the right of enjoyment of the plot by the Petitioner by such arbitrary directions. The Respondent no. 3 has acted unfairly whilst examining the application filed by the Petitioner for putting up the residential house in their plot which is pending consideration since the year 2007.

9. In such circumstances, we pass the following :

ORDER

- (i) The impugned communication dated 18.02.2016 is quashed and set aside.

(ii) The Respondents are directed to take a decision on the said application for Technical Approval filed by the Petitioner as expeditiously as possible in any event within two months from today in accordance with law and file compliance report.

(iii) Petition stands disposed of.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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