

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.306 OF 2009**

Pilerne Citizens Forum,
a Society registered under
the provisions of the
Societies Registration Act,
represented herein by its Secretary,
Mr. Aaron Paul Fernandes,
having its office at C/o. Rupesh Naik,
Laxmi Prasad, Next to Chandrageet Hotel,
Opposite Chodankar Nursing Home,
Porvorim, Goa.

.... Petitioners

V/s.

1. The State of Goa,
through the Chief Secretary,
Government of Goa, having
his office at Secretariat,
Porvorim, Bardez, Goa.
2. The Village Panchayat of Pilerne-Maria,
represented herein by its Secretary,
having his office at the Village Panchayat
of Pilerne-Marra, Pilerne, Bardez, Goa.
3. The Town & Country Planning Department
through the Chief Town Planner,
having his office at 2nd floor,
Dempo Towers, Panaji, Goa.
4. The Deputy Collector (North)
& Sub-Divisional Officer,
Sub-Division Mapusa,
having his office at Mapusa,
Bardez, Goa.
5. The Block Development Officer,
Mapusa, Bardez, Goa,
having his office at Mapuca,

Bardez, Goa.

6. Mr. Omprakash Singh,
having his office at C-1,
Ground Floor, Techno Park,
Chogm Road, Porvorim,
Bardez, Goa.
 7. M/s. Omprakash Singh Developers,
through Mr. Omprakash Singh,
having its office at C-1,
Ground Floor, Techno Park,
Chogm Road, Porvorim,
Bardez, Goa.
 8. The North Goa Planning
& Development Authority,
through its Member Secretary,
having his office at
Mala Link Road, Panaji.
 9. Mr. Bhogvonta X. Bhobe,
C/o. Mr. Uday Kamat,
C/o. F-1 Indira Apartments,
Caetano Albuquerque Road,
Panaji, Goa.
 10. Mr. Uday Kamat,
C/o. F-1, Indira apartments,
Caetano Albuquerque Road,
Panaji, Goa.
- Respondents

Shri Ryan Menezes, Advocate for the Petitioners.

Shri Pravin Faldessai, Additional Government Advocate for
Respondents No.1,3,4& 5.

Ms. D. Shirgam, Advocate for Respondent No.2.

Shri V.A. Lawande, Advocate for Respondents No.6 & 7.

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

Date:- 3rd MAY, 2016

ORAL JUDGMENT :

Heard Shri Ryan Menezes, the learned Counsel appearing for the petitioners, Shri P. Faldessai, the learned Additional Government Advocate appearing for the respondents no.1,3,4 & 5, Ms. D. Shirgam, the learned Counsel appearing for the respondent no.2 and Shri V.A. Lawande, the learned Counsel appearing for the respondents no.6 & 7.

2. The above petition takes exception to the conversion sanad granted by the respondent no.4 whereby the property surveyed under no.206/2 situated at Pilerne Village was permitted to be used for non-agricultural purposes pursuant to a sanad granted on 18/04/2002.

3. Shri Ryan Menezes, the learned Counsel appearing for the petitioners vehemently argued that the property surveyed under no.206/2 is not situated in the settlement zone and, as such, according to him the disputed sanad granted by the respondent no.4 stands vitiated and deserves to be quashed and set aside. The learned Counsel has thereafter taken us through the order granting such sanad to point out that such exercise was done based on the information sent by the planning Authority to the effect that the subject property was in the settlement zone in the ODP plan. The learned Counsel further points out

that at the relevant time the subject property was not in the ODP and as such the reliance of the respondent no.4 on this aspect itself would vitiate the sanad granted in respect of the subject property. The learned Counsel further submits that adjoining to such property there is a Savlem Lake and it is the concern of the petitioners to ensure the protection of such lake. The learned Counsel further submits that development being carried out by the respondent no.7 is adjoining such lake and, as such, according to him the sanad granted by the respondent no.4 deserves to be quashed and set aside. The learned Counsel further submits that at the relevant time the Regional Plan, 2001 was in operation and, as such, according to the learned Counsel as there is no indication of the survey numbers in the Regional Plan of 2001 the exercise had to be carried out to ascertain whether the property surveyed under no.206/2 falls in the settlement zone in terms of the Regional Plan of 2001. The learned Counsel further points out that though it was pointed out that there was an earlier conversion sanad granted in the year 1983, the relevant records to ascertain whether such sanad was granted based on the consent from the Planning Department were not available at the relevant time. The learned Counsel further points out that this Court by an order dated 19/07/2010 had directed the Committee of Chief Town Planner and the Deputy Town Planner to ascertain

whether the subject property surveyed under no.206/2 falls in the settlement zone in such Regional Plan. The learned Counsel further pointed out that the report was thereafter submitted by the Chief Town Planner inter alia holding that the subject land was located in the settlement zone in the Regional Plan of 2001. The learned Counsel has thereafter taken us through the affidavit as well as the report to point out that such exercise was carried out by the Chief Town Planner without visiting the site and, as such, according to him this itself would vitiate the report submitted by such Authority. The learned Counsel has thereafter taken us minutely through the report as well as the sanad attached to such report to point out that though an exercise has been carried out to allegedly locate the subject land, but however, such exercise is not in accordance with law as according to him the Chief Town Planner has not visited the property and considered the relevant material to come to such conclusion. The learned Counsel further points out that even the Chief Town Planner in the report has pointed out that the lake which is located adjoining to the subject property is a paddy fields though according to him the lake is still found at loco. The learned Counsel further points out that immediately after the petitioners learnt about the development activity being carried out by the respondent no.7 the above petition came to be filed to challenge the

conversion sanad granted by the respondent no.4 and stop any further development in the subject property. The learned Counsel further submits that the above petition has been filed in public interest to protect the lake as well as to ensure that the green area is not allowed to be converted for residential purposes. The learned Counsel, as such, points out that the petitioners are entitled for the relief in the above petition.

4. Shri P. Faldessai, the learned Additional Government Advocate appearing for the respondents no.1,3,4 & 5 has pointed out that as per the report of the Chief Town Planner, he has clearly come to the conclusion that the subject property is at the end of the settlement zone as depicted in the Regional Plan of 2001. The learned Counsel further submits that this finding has been arrived at based on the relevant material considered by the Authorities noted in the report.

5. Shri V.A. Lawande, the learned Counsel appearing for the respondent no.6 & 7 has submitted that the petition is barred by laches as according to him the conversion sanad was issued in the year 2002, and the present petition was filed in the year 2009 when according to him during the interregnum period substantial construction activity was carried out at the site. The learned Counsel further points out that even

the development which was started by the respondents no.6 & 7 in two of the plots of the larger property surveyed under no.206/2, a structure was already completed though the internal work was not completed. The learned Counsel further submits that on this ground alone the petition deserves to be rejected. The learned Counsel further submits that the petitioners have chosen to single out only the respondents no.6 & 7 when according to him there are other constructions put up in the remaining portion of the property who are not before the Court. The learned Counsel further pointed out that the first sanad was issued in the year 1983 based on which the development permissions were granted. It is further pointed out that as the sanad had lapsed the original owners sought for a fresh conversion sanad which came to be granted in the year 2002. The learned Counsel further points out that the petitioners are erroneously taking advantage of an error in the conversion sanad to the effect that the subject land was in the settlement zone in the ODP plan when according to him the subject land was not subject to such ODP. The learned Counsel further points out that at the relevant time the said land was subject to the Regional Plan of 2001 which clearly shows that such land was in the settlement zone. The learned Counsel further pointed out that once the Chief Town Planner has given a report to the effect that the subject land was in the settlement zone in the

Regional Plan of 2001, there is no reason for the petitioners to proceed with the above petition. The learned Counsel, as such, points out that the petition deserves to be rejected with costs as according to him the petition has been filed with malafide motive in private interest.

6. We have considered the submissions of the learned Counsel and we have also gone through the records. This Court by order dated 19/07/2010 had directed the Committee consisting of the Chief Town Planner and Deputy Town Planner to carry out the exercise to ascertain whether the subject property under Survey No.206/2 falls within the settlement zone in terms of the Regional Plan 2001. Accordingly an affidavit along with the report has been submitted by the Chief Town Planner categorically stating that the subject land was in the settlement zone. Whilst coming to such conclusion the Chief Town Planner has also enlarged the Regional Plan of 2001 besides a village map and the survey record. It is the contention of Shri R. Menezes, the learned Counsel appearing for the petitioners that such report has no value as there was no site inspection carried out by the Chief Town Planner. The directions issued by this Court in the order dated 19/07/2010 are specific to the effect that the Chief Town Planner was called upon to disclose as to whether the subject property surveyed under no.206/2 falls within the

settlement zone in the Regional Plan 2001. There is no reason not to accept the said report through Shri R. Menezes, the learned Counsel appearing for the petitioners otherwise strenuously argued to point out that such report has no value as it has not considered the relevant aspects including carrying out of site inspection and, as such, cannot be accepted. But however, we find that the report has been prepared after considering the relevant material including the village map, survey records and the Regional Plan of 2001. Shri R Menezes, the learned Counsel appearing for the petitioners fairly accepted that the petitioners have not produced any material to rebut the said report filed by the Chief Town Planner though the learned Counsel disputed the correctness based on the boundaries. We are afraid that this contention cannot be accepted in the present petition. Once this Court has directed the Chief Town Planner to carry out such exercise unless the petitioners bring forth any conclusive and cogent material to dispute the correctness of such report there is no reason to reject the report of the Chief Town Planner by re-appreciating the material relied by the Committee. As such considering the report filed by the Chief Town Planner, we find that there is no infirmity in the sanad granted in favour of the respondents no.6 & 7. On perusal of the said report the location of the subject property has been depicted and it has further noted that the land

is located in the settlement zone in the Regional Plan of 2001.

7. With regard to the contention of Shri V. Lawande, the learned Counsel appearing for the respondents no.6 & 7 that the petitioners have singled out only the respondents no.6 & 7, we find that though it was so contended by the learned Counsel appearing for the respondents no.6 & 7, we find that there is no material on record to examine such aspect. However, Shri R. Menezes, the learned Counsel appearing for the petitioners has submitted that the petitioners have restricted their claim only with regard to the two plots belonging to the respondents no.6 & 7 which admeasures around 900 square metres in aggregate. On perusal of the averments in the petition, we find that there is nothing to suggest that it is the case of the petitioners that part of the property surveyed under no.206/2 falls in the settlement zone whereas the portion purchased by respondents no.6 & 7 was beyond such settlement zone in the Regional Plan of 2001. The relief sought by the petitioners was with regard to the whole property surveyed under no.206/2. In these circumstances, we find that the contention of Shri R. Menezes, the learned Counsel appearing for the petitioners that the above petition is only restricted to plots purchased by the respondents no.6 & 7 cannot be accepted. The petitioners are not justified to file the above petition

without making all the other plot owners of the subject property as party respondents to the above petition. On this ground alone the petition deserves to be rejected for non-joinder of necessary parties.

8. Be that as it may, as based on the report of the Chief Town Planner, we find that there is no merit in the above petition to the effect that the disputed sanad granted in the year 2002 stands vitiated as the subject land does not fall in the settlement zone, we find that there is no question of interfering in the impugned sanad granted by the respondents. Hence, accepting the report of the Chief Town Planner pursuant to the direction of this Court in the said order dated 19/07/2010, we find there is no merit in the above petition. The petition stands accordingly rejected. Rule stands discharged.

NUTAN D. SARDESSAI, J.
NH/-

F. M. REIS, J.