

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 616 OF 2016

SHRI. TEODORIO CARLOS TRAVASSO.

... Petitioner

V e r s u s

THE STATE OF GOA, THR. ITS CHIEF
SECRETARY AND 3 ORS.

... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.

Mr. Pravin Faldessai, Addl. Government Advocate for the Respondent nos. 1 and 2.

Mr. Kaif Noorani, Advocate for the Respondent no. 3.

Mr. P. Prabhu, Advocate for the Respondent no. 4.

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

Date : **28th July, 2016**

ORAL ORDER (*Per F. M. Reis, J.*)

Heard Shri Nigel Da Costa Frias, learned Counsel appearing for the Petitioner, Mr. Pravin Faldessai, learned Addl. Government Advocate appearing for the Respondent nos. 1 and 2, Mr. Kaif Noorani, learned Counsel appearing for the Respondent no. 3 and Mr. Prabhu, learned Counsel appearing for the Respondent no. 4.

2. The above Petition takes exception to the technical clearance dated 21.10.2015 granted by the Respondent no. 2 as well as the licence dated 23.01.2016 issued by the Respondent no. 4 in the property surveyed under no. 58/3 of Village of St. Jose de Areal and plot no. F20 in the property surveyed under no. 58/2.

3. Shri Nigel Da Costa Frias, learned Counsel appearing for the Petitioner, has pointed out that the Petitioner is the owner in possession of plot bearing no. F19 located in the property surveyed under no. 58/2 which was a sub-divided plot duly approved by the Statutory Authorities. Learned Counsel has pointed out that Respondent no. 3 has also purchased a plot in such sub-division bearing plot no. F20. It is further pointed out that both the plots are surfaced and are adjoining a six metre wide road reserved on the northern side of the two plots. It is further submitted that the Respondent no. 3 has purchased the property surveyed under no. 58/3 on the southern side of plot no. F19 and F20 and in the process of its sub-dividing, the Respondent no. 3 has reserved part of plot no. F19 as a six metre wide access leading to the said plot surveyed under no, 58/3. Learned Counsel further pointed out that such road constructed in plot bearing no. F20 is illegal as no such road can be constructed without an amalgamation of the two properties. Learned Counsel further submits that by constructing such road, the plot belonging to the Petitioner bearing no. F19 would be subjected to further restrictions under the statutory Regulations as, according to him the plot of the Petitioner would now be surfaced by two roads one on the northern side and one on the western side, having a width of six metres. The learned Counsel further pointed out that among the restrictions in terms of the Regulations 4.3, there would be height restrictions in any proposed building by the Petitioner inasmuch as the Petitioner would have to maintain a height of 4.5 metres for the line of site as the roads would intersect one another. Learned Counsel has further taken us through different provisions of the Regulations to point out the grave prejudice which would be caused to the Petitioner by constructing such road on the western side plot belonging to the Petitioner. Learned Counsel further pointed out that the

Respondent no. 3 has not obtained permissions from the statutory Authorities to construct such road and, as such, the whole exercise and the permissions granted to the Respondent no. 3 in the property surveyed under survey no. 58/3 is illegal and deserves to be quashed and set aside. Learned Counsel further submits that by such illegal expedient showing the road through the plot bearing no. F20, the sub-division of the Respondent no. 3 could not be approved and, consequently, the technical approval deserves to be set aside. Learned Counsel has taken me through the different provisions of the Regulations as well as affidavits of the Respondents to point out that the averments therein do not find support in law applicable to any development in future if at all proposed by the Petitioner in their own plot. Learned Counsel, as such, pointed out that the impugned technical approvals be quashed and set aside.

4. On the other hand, Shri Pravin Faldessai, learned Addl. Government Advocate appearing for the Respondent nos. 1 and 2, pointed out that the plot of the Petitioner based on the proposed access reserved by the Respondent no. 3 would be considered as a corner plot and, consequently, benefits would accrue to the Petitioner in terms of the said Regulations. Learned Addl. Government Advocate further pointed out that there would be no further restrictions than the one already in place in the Regulations merely because the road is shown by the Respondent no. 3 in the plot bearing no. F20. Learned Government Advocate further submits that as per the statutory Regulations, from the edge of the boundary a set back of three metres is mandatory and, considering such aspect, according to him, there would be no further restrictions as far as any future proposed development by the Petitioner. The Learned Addl. Government Advocate

further submits that as the plot bearing F20 belongs to the Respondent no. 3, there is no impediment for the authorities to allow that part of such plot to be reserved as a six metre access for the sub-division proposed and approved by the authorities in the property surveyed under no. 58/3. Learned Addl. Government Advocate has also pointed out that even considering there is an intersection by the construction of the subject road, there would be no further restrictions considering the width of the road and the imaginary line to be drawn from such intersection. Learned Addl. Government Advocate has thereafter taken us through the relevant provisions of Regulation 4.3 relied upon by Shri Nigel Da Costa Frias, learned counsel appearing for the Petitioner to point out that such restrictions are not applicable to the Petitioner in the facts of the present case. Learned Counsel has thereafter taken us through the Schedule attached to the Regulations to point out that considering the width of the two roads and the intersection, there would be minimal restrictions in any proposed future development by the Petitioner. Learned Addl. Government Advocate further pointed out that to clear the doubts of the Petitioner, an affidavit has been filed by the Town Planner wherein he has categorically stated at para 13 that no additional restrictions would affect the plot of the Petitioner merely because of the construction of the six metre wide road.

5. Learned Counsel appearing for the Respondent no. 3 pointed out that the sub-division of the property belonging to the Respondent no. 3 is carried out based on the plan which have been duly approved and there is no infirmity pointed out by the Petitioner to such approval. Learned Counsel further pointed out that there is a due approval for the construction of the subject road in the plot bearing no. F20 from the Statutory Authorities in terms of the Regulations. Learned

Counsel further pointed out that as such, the Petition be rejected.

6. Learned Counsel appearing for the Respondent no. 4-Local Panchayat, supports the contention of learned Counsel appearing for the other Respondents.

7. We have considered the submissions of the learned Counsel and we have also gone through the records. The main concern raised by the Petitioner is the likelihood of additional restrictions which may accrue to him at the time of future development of the plot bearing no. F19. In this connection, the Town Planner has filed an affidavit and has stated at para 13 thus :

"13. With respect to contents at paragraphs no. 20 and 21, I say that although there is no road shown as per the approved sub-division passing through plot no. 20, however, on the sit plan approved 6.00 mts road along the eastern boundary of plot no., 19 has been proposed and the same has been indicated in the plans approved. I say that the apprehensions raised by the Petitioner are denied herewith with the reason that even if the plot no. 19 of the Petitioner becomes a corner plot, it will not cause the plot to become unviable for development in any manner. On the contrary the Petitioner will get the benefit of plot with double frontage as entry and exit to the plot can be derived from both the roads on two sides and access to the rear as required to be provided will not be applicable in this case. I say that as regards to the set backs in view of intersection of two roads as contended by the Petitioner, the same will neither

harm the Petitioner nor Petitioner will have to leave additional setback distance as per Regulation 4.3. I say that balcony/floor projection which are cantilevered are also permitted in the front set back areas along both the roads, as in the case of sides. I say that the construction in the plot of Petitioner that could be permitted in both the Scenarios i.e. as per the original layout with plot having only one access and the other with additional road being proposed through the Western boundary of the petitioner's plot is shown in the plan annexed herewith. Annexed hereto and marked as Annexure A is the plan. I say that the Respondent no. 2 being a planning body has to consider the issue on a larger scale for the overall integrated development. I say that the Technical Clearance issued was also on a similar line in order to provide access to the land locked property is not deprived of developing the property or putting up any construction.”

8. Taking note of the averments therein, substantially the apprehensions raised by the Petitioner does not survive. In any event, in terms of Regulations 4.7 of the Regulations of 2010 it, inter alia, clearly provides thus :

“4.7. Further restrictions/relaxations.-

(a) For original survey plots or mundkarial plots or plots of approved layout having frontage up to 13.00 meters, construction of siungle dwelling units may be permitted with side setbacks of 1.50 meters allowing normal light and ventilation, provided the construction is limited to ground and one upper floor only and that no projection shall be permitted except

of weather board, sun shades, roof projections or any architectural features not exceeding 30.00 cms. In case of multi-dwelling units, side setbacks can be relaxed to 1.50 meters on one side only with the above restrictions/control. Un-storied car porches of maximum length of 5.00 meters may be permitted to touch the boundary, provided rain water drain and disposal are within the plot.

(b) When the construction is permitted to touch the boundary under clause 4.4.2(b) in Municipal areas, the said setback shall be provided with a permanent wall/screen or any architectural feature, extending to the boundary, on the face of the building abutting the street, to maintain the continuity of the streetscape. An opening to serve as an emergency access only, may be provided in this wall/screen at the ground floor. This shall be applicable to any plot, irrespective of its size.”

9. On going through such provision, there is a procedure stipulated therein for providing an access. Regulations 4.11(d), specifies that when such access is not voluntarily obtained, there are powers to acquire such piece of land to provide an access by the Local Panchayat. In the present case, considering that plot F20 belongs to the Respondent no. 3, it clearly implies that voluntarily an access has been provided to the plot of the Respondent no. 3 himself. Taking note of such provisions, we find that the contention of Mr. Nigel Da Costa Frias, learned Counsel appearing for the Petitioner, that the technical approval granted to the Respondent no. 3 in respect of the property surveyed under no.58/3 of the said Village is ultra virus the statutory Regulations, cannot be accepted.

10. With regard to the contention of Mr. Nigel Da Costa Frias, that permission for a change of user would be required from the statutory Authorities, we find that the technical approval itself shows that permission has been granted to reserve a road through the plot bearing no. F20 belonging to the Respondent no. 3. As such, the said contention does not deserve consideration.

11. Apart from that, as stated above, all the substantial apprehensions that such sub-division would affect future development by the Petitioners of plot bearing no. F19, have been duly cleared based on the affidavits filed by the Town Planner. The learned Addl. Government Advocate has also stated that restrictions to put up a compound wall would be minimum even in case of an intersection at the site. In such circumstances, we find that there is no infirmity in the technical approval granted by the Respondent no. 2 to the Respondent no. 3 for the sub-division of the plot bearing no. 58/3 of St. Jose de Areal Village. Needless to say, that all the averments made in the affidavit stand accepted and any further development by the Petitioner in the plot bearing no. F19 located in survey no.58/2, would be accordingly considered.

12. The Writ Petition stands disposed of.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

arp/*