

IN THE HIGH COURT OF BOMBAY AT GOA.

**PUBLIC INTEREST LITIGATION WRIT PETITION
NOS. 15 AND 16 of 2014.**

**PUBLIC INTEREST LITIGATION WRIT PETITION
NO. 15 of 2014.**

- 1 Trajano D'Mello,
Social Activist, presently the
Vice President of the Goa Unit
of Congress National Party, r/o.
House No.186/B-4 Peddem,
Mapusa, Bardez, Goa.
 - 2 Peter Vincent Alfonso, r/o.
H.No.418/1, Sangolda Morod,
Bardez, Goa.
- **Petitioners.**

V E R S U S

- 1 State of Goa,
through the Chief Secretary,
Secretariat,
Alto Porvorim, Bardez, Goa.
- 2 Comunidade of Serula,
through its attorney, having its
Office at West Coast Residency,
1st Floor, Opp. Bank of India,
Porvorim, Bardez, Goa.
3. Administrator of Comunidades,
North Zone, Opp. Mapusa Civil
Court, Mapusa, Bardez, Goa.
4. Shri Dilip Parulekar,
major of age, Hon'ble Minister

for Tourism, State of Goa, with
Office at Secretariat, Porvorim,
Goa.

5. Shri Pramod D. Parulekar alias
Dabolkar, major of age, r/o.
House No. 710, Saligao, Bardez,
Goa.
6. Shri Luis Antonio Fernandes,
Shop No.G, in Survey No.379/1,
of Serula Comunidade, r/o.
Vaddem, Socorro, Bardez,Goa.
7. Shri Ashok Shirsat,
Shop No.G, in Survey No.379/1,
of Serula Comunidade, Dr. B.
Borkar Road, Bardez, Goa.
8. Shri Mariano Stephan do
Rosario Vaz, Shop No.A, in
Survey No.379/1, of Serula
Comunidade, r/o. Socorro,
Maina, P.O. Porvorim, Bardez,
Goa.
9. Shri Bosco Severino do Rosario
Vaz, Shop No.B, in survey No.
379/1, of Serula Comunidade,
r/o. Socorro, Maina, P.O.
Porvorim, Bardez, Goa.
10. Shri Sushant P. Narvekar,
Shop No.H, in survey No. 379/1,
of Serula Comunidade, r/o.
Chogam Road, Porvorim,
Bardez, Goa.
11. Shri Dayanand Harmalkar,
Shop No.D, in survey No. 379/1,
of Serula Comunidade, r/o.

Muddavaddo, Saligao, Bardez,
Goa.

12. Shri Manoj L. Chandelkar,
Shop No.E, in survey No. 379/1,
of Serula Comunidade, r/o.
Sangolda Road, Near Water
Tank, Alto Porvorim, Bardez,
Goa.
 13. Shri Stanley Vaz,
Shop No.I in Survey No. 379/1
of Serula Comunidade, r/o.
Socorro, Maina, Bardez, Goa.
 14. Shri Digambar Korgaonkar,
r/o. Verem, Bardez, Goa.
 15. North Goa Planning and
Department Authority, Panaji,
Goa.
 16. Village Panchayat of Socorro,
through its Secretary, having
Office at Socorro, P.O. Porvorim,
Bardez, Goa.
- **Respondents.**

Mr. Rohit Bras De Sa, Advocate for the petitioners.

Ms. P. Bhandari, Addl. Govt. Advocate for the respondent nos.1
and 3.

Mr. Y. V. Nadkarni, and Ms. D. Shirgam, Advocates for the
respondent no. 2.

Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar,
Advocate for the respondent no. 4.

Mr. D. Pangam, Advocate for the respondent no. 5.

Mr. Shivan Desai, Advocate for the respondent nos. 6 to 12.

Mr. A. D. Bhobe, Advocate for the respondent no. 14.

Mr. Shantaram Naik, Advocate for the respondent No.16.

**PUBLIC INTEREST LITIGATION WRIT PETITION
NO. 16 of 2014.**

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|---|---|-------|---------------------|
| 1 | Mr. Gabriel D'Souza,
age 44, Daily wage. H.No.41,
Socorro, P.O. Porvorim, Bardez,
Goa. | | |
| 2 | Mr. Yeshwant Shirodkar,
age 38, Driver,
H.No. 247/3, Savlem, Pilerne,
Bardez, Goa. | | Petitioners. |

V E R S U S

- | | |
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| 1 | State of Goa,
through the Chief Secretary,
Secretariat,
Alto Porvorim, Bardez, Goa. |
| 2 | Administrator of Comunidades,
North Zone, Opp. Mapusa Civil
Court, Mapusa, Bardez, Goa. |
| 3. | Comunidade of Serula,
through its attorney, having its
Office at West Coast Residency,
1 st Floor, Opp. Bank of India,
Porvorim, Bardez, Goa. |
| 4. | Mr. Ovriest D'Silva,
age 25, H.No.1157, Maina |

Socorro, P.O. Porvorim, Bardez,
Goa. **Respondents.**

Mr. Rohit Bras De Sa, Advocate for the petitioners.

Mr. P. Faldessai, Addl. Govt. Advocate for the respondent nos.1, and 2.

Mr. Y. V. Nadkarni and Ms. D. Shirgam, Advocates for the respondent no. 3.

Mr. V. A. Lawande, Advocate for the respondent No.4.

**Coram:-F. M. REIS,
K.L. WADANE,JJ.**

Judgment Reserved on: 16/03/2016

Judgment Pronounced on: 06/05/2016

JUDGMENT (Per F.M. REIS, J)

Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. The learned counsel appearing for the

respective respondents waive service.

4. At the request of the learned Counsel appearing for the parties and by consent, both the petitions were taken up together for final disposal.

5. It is the case of the the petitioners that the respondent nos. 4 and 5, in violation of the various provisions of the Code of Comunidades, namely Articles 342, 326, 329, 334, 334-A have usurped the land belonging to the Comunidade of Serula without following the due process of law, nor the mandatory provisions as contemplated in the said Code. It is the case of the petitioners that they came to know about the usurpation of the land by the respondent no. 4 and the respondent no. 5 in survey nos. 376/6, 379, 379/1, 380/1, and 389/1 of the Comunidade, which according to the petitioners, is encouraged and supported by the Authorities as well as the State Government. In PIL Writ Petition 15/2014, the petitioners contend that the respondent no. 4 had usurped and illegally taken possession of the Comunidade land by

initially putting up a shed under the umbrella of a Resolution passed by the Comunidade, permitting an area of 9 X 11 Sq. mtrs in survey no. 376/6 for an annual rent of Rs.600/- and the respondent no.4, has leased an area of 111.97 sq. mts to use and utilise the property for an annual rent of Rs.75/- as per the Special General Body Meeting dated 22.2.2004. It is further their case that taking advantage of the judicial proceedings filed in a civil suit and an injunction in operation, the respondent No.4 (in PIL WP No.15/2014) had further encroached in an area of 599 sq. mtrs. The petitioners further state that the Respondents/State Authorities have not framed any guidelines or policy in the matter of regularisation of any encroachment in the Comunidade land and in the absence of such guidelines, an application for regularisation by the respondent No.4 was entertained by the respondents/State Authorities. It is further their case that the respondents/State Authorities are favouring the said respondents no. 4 and 5, as the respondent no. 4 occupies high Office. It is further their case that the entire process of regularisation of the illegal encroachments is illegal and

that such an application filed by the respondent No.4 in the year 2001 is patently arbitrary and in the absence of the policy being framed by the Government, does not have any legal effect. It is further the case of the petitioners that in the application of the respondent no. 4 for regularisation, it is briefly stated that the area of encroachment is 165 + 162 + 327 sq. mts., from survey no. 379 of village Socorro. It is further the contention of the petitioners that the respondent no. 5 has also illegally usurped the land from survey no. 376/6 belonging to the Comunidade of Serula. It is the contention of the petitioners that an illegal construction was put up by the respondent no. 5 admeasuring 10.20 mts X 11.20 mts and height approximately 3 mts. The respondent nos. 4 and 5, without following due procedure and the relevant provisions of Code of Comunidades, illegally grabbed the above mentioned lands. It is further the case of the petitioners that respondent no. 4 applied for regularisation with the respondents/State Authorities and that he is now seeking rehabilitation in the property Survey no. 379/1. It is also their case that they came to know about the

construction licence issued in the name of the Comunidade of Serula dated 13.2.2014 to carry out construction of residential/commercial buildings in the property surveyed under no. 379/1 and an amount of Rs. 56,700/- was paid in the name of the Comunidade on 13.2.2014 by the attorney of the Comunidade. It is further their case that no property of the Comunidade can be brought under construction unless and until a General Body Resolution is passed and thereafter due publication of the same in the official gazette, as well as in the local news papers and after securing government approvals. The estimated costs of the construction of the building was also required to be approved by the General Body of the Components of the Comunidade and the work of carrying out construction was required to be tendered by following the due process of tendering in terms of the Code. It is further their case that there is no approval granted by the Revenue Department and further more, no estimates have been approved by the General Body of the Components of the Comunidade. It is further their case that no tenders have been floated for the purpose of carrying out construction in the subject

property of Comunidade and, as such, the act of the Temporary Managing Committee is in defiance of the interim orders passed by this Court in Writ Petition No.17/2013. It is further the case of the petitioners that they also learnt that the Town and Country Planning clearance is taken for project of 11 shops, 10 flats and one office, claiming to be rehabilitation project in survey no. 379/1 for the encroachment of the Comunidade land. It is further their case that the respondents no. 4 and 5 are seeking to protect their encroachments in survey no. 376/6 by getting it regularised and at the same time are seeking to be rehabilitated in survey no. 379/1 of the same village. It is also their case that the respondents no. 4 and 5 are, in fact, financing the said project and that the said respondents, in collusion with the former office bearers of the Temporary Managing Committee of the Comunidade of Serula, have played a fraud on the Authorities, as well as the Components of the Comunidade. It is further their case that the respondent nos. 4 and 5 are sought to be rehabilitated in the said project and that the name of the respondent no. 4 is shown as being entitled to shop "J"

and the name of the respondent no. 5 is shown as being entitled to shop "K". Thus, the sum and substance of the allegations of the petitioners is that the respondent nos. 4 and 5, in collusion with the concerned authorities, have grabbed the valuable land of the Comunidade, without following due process of law and, as such, the petitioners have challenged the relevant order/letter dated 14.9.2012 and 15.10.2012, regularising/alloment/regularisation of the construction, together with other reliefs, which read thus :

- "A. That this Hon'ble Court may be pleased to issue a Declaratory Writ or any other, Order or Declaration that an application for regularization filed by Respondent no.4 in the absence of framing proper policy/guidelines in respect of regularization of an encroachment or rehabilitation without carrying out an amendment to Article 380 of the Code of Comunidade is unconstitutional and ultra vires the provisions of the Code of Comunidade, and further it violates Article 14 and 21 of the Constitution of India.
- B. For a Writ of Mandamus or any other Writ Order or Direction directing the State Government to frame policy/guidelines for the purpose of regularization of illegal encroachment in

comunidade lands and further on the policy/guidelines in respect to rehabilitation and further if need arises to carry out an amendment to Article 380 of the Code of Comunidade to permit regularization of encroachment and/or rehabilitation of the encroachers under the Code of Comunidade.

- C. For a Writ of mandamus or any other Writ, Order or direction in the nature of mandamus directing the Administrator of Comunidades to immediately seize and attach the flat, office, shops in survey no. 379/1, since the provisions of Article 334-A for allotment/auction flats, offices, shops have not been followed under the Code of Comunidade.
- D. For a Writ of mandamus of any other Writ, Order or Direction directing the Respondent State Authorities more particular the Administrator of Comunidades to immediately seize the flats, shops and godown in survey no.379/1.
- E. For a Declaratory Writ or any other Declaratory Order under Article 226 of the Constitution of India where the allotment of flats, offices and shops for the purpose of rehabilitation without following Article 334-A of the Code of Comunidades and is violative of the Constitution of India, more particularly Article 14 and 21 of the Constitution of India and violative of the

provision of Article 334-A of the Code of Comunidade.

- F. For a Writ of mandamus or any other Writ, Order or Direction in the nature of mandamus to the Respondent State Authorities to immediately withdraw the letter dated 14.9.2012 and the letter dated 15.10.2012, whereby plots have been handed over to Respondent Nos. 4 and 5 without following the procedure of auction as the same is violation of the provisions of the Code of Comunidades and violative of the Constitution of India, more particularly, Article 14 and 21 of the Constitution of India,
- G. For a Writ of Certiorari or any other Writ, Order or Direction calling for the proceedings from the Office of the Administrator and after considering its legality, propriety and correctness of the letter dated 14.9.2012 and the letter dated 15.10.2012, this Hon'ble Court may be pleased to quash and set aside the said letters as unconstitutional and violative of the Code of Comunidade.
- H. For a Writ of mandamus or any other Writ, Order or Direction directing the Respondent State Authorities to immediately conduct an investigation into the mismanagement and maladministration by the Administrator of Comunidade and the managing Committee of the

Comunidade of Serula, more particularly in respect of survey nos. 376/6,379,379/1,380/1, 389/1(part) of Comunidade of Serula.

- I. For a Writ of mandamus or any other Writ, Order or Direction in the nature of Mandamus directing the Respondent State Authorities to immediately initiate proceedings under Article 371 of the Code of Comunidade and under the Goa Land Prohibition Act to immediately remove the trespass into survey no.379, 379/1, 380/1 and 389/1(part) of Comunidade of Serula against Respondent nos. 4 and 5.”

6. In PILWP No. 16 of 2014, it is the contention of the petitioners that the respondent no.1 appointed a temporary Managing Committee to the Comunidade which was prohibited from taking any major financial decision or allotment of plots of the Comunidade. It is further their case that on 13.02.2014 the Panchayat issued construction licence in the name of the Comunidade in violation of the orders passed by this Court dated 07.05.2013 and 18.09.2013 in Writ Petition No. 74 of 2014 in the property surveyed under No.379/1. The petitioners thereafter made a representation on 12.08.2014 for investigation into the

illegal construction undertaking in survey No. 379/1. As no action has been taken, the petitioners filed the above petition inter-alia to conduct a thorough inquiry/investigation in respect of the illegal construction taken place in survey No.379/1 and also to issue a writ to immediately stop all the constructions in survey No.379/1.

7. We have heard the learned Counsel appearing for the respective parties and with their assistance, we have also gone through the records.

8. Mr. Rohit Bras de Sa, learned Counsel appearing for the petitioners, in the course of his submissions, has taken us through the provisions of Article 380 of the Code of Comunidade to point out that the proposed regularisation of the construction is not permissible in view of such provisions in the Code. It is further his case that the land belonging to the Comunidade cannot be transferred in favour of the respondents No.4 and 5 as the Third Party applied for conversion of land, which was refused. It is further submitted that the property Survey

No. 379/1 and 376/6 is in 'no settlement zone". He has further argued that the respondent No.4 is a Minister in the State Government and taking undue advantage of his position, the respondents, viz. respondents No.4 and 5 have grabbed the land of the Comunidade. The learned Counsel has further argued that the construction licence was taken in the name of the Comunidade and the construction licence fees were paid in contravention of the directions issued by this Court in Writ Petition No.74/2013. Mr. De Sa has also pointed out that no Occupancy Certificate is issued in favour of the respondents No.4 and 5, though they have already started occupying such premises. The learned Counsel further points out that no Conversion Sanad even has been obtained and, as such, the whole exercise which is resorted to by the respondents is wholly unsustainable in law. The learned Counsel further points out that a fraud is committed by the respondents No.4 and 5 not only on the Statute, but also on the Components of the Comunidade and have illegally usurped the land of the Comunidade. The learned Counsel has, thereafter, taken us through the relevant provisions of the Code of

Comunidades, as well as the material on record to point out that the whole action on the part of the respondents, at the instance of the respondents No.4 and 5, is wholly illegal and has no sanction in law. The learned Counsel has also doubted the authenticity of the purported resolution passed in the Comunidade Meeting as, according to him, the petitioners are not in a position to examine the veracity thereof as the books have been seized by the Enforcement Authorities. The learned Counsel further submits that this Court should direct production of such books to examine the correctness or veracity of the alleged resolution relied upon by the said respondents. The learned Counsel further points out that even though it is contended that the private respondents were allotted the land as part of the rehabilitation on account of the removal of their kiosk located on the road widening, the subject road has not yet been widened, besides, there is no scheme or power under the Code of Comunidades to direct any rehabilitation of the persons, carrying on business in the kiosks located in the property of the Comunidade, who are being displaced. The learned Counsel further points out that the

construction licence was obtained in the name of the Comunidade, and the action of the private respondents proceeding to arbitrarily and unilaterally putting up a construction, without taking the Comunidade into confidence, is wholly unjustified. The learned Counsel further points out that the malafide acts on the part of the respondents No.4 and 5 cannot be condoned and such construction put up by the said respondents deserve to be ordered to be demolished. The learned Counsel has further submitted that it is well settled that no person can occupy any premises without obtaining valid occupancy certificate and in the present case, no occupancy certificate has been obtained and consequently, the Authorities should be directed to seal the premises and not to allow the private respondents to perpetuate their illegalities. The learned Counsel further submits that the premises which are being occupied have electricity and such electric connections are to be issued based on the NOCs of the Panchayat. The learned Counsel further submits that the Panchayat has illegally granted such permission to release the electric connections which is wholly arbitrary and without any

sanction of law. The learned Counsel further submits that the whole exercise on the part of the respondents is a fraud on the Statute and the Components of the Comunidade, to grab the valuable land located in the prime locality, adjoining the highway, fetching huge value. The learned Counsel further submits that the respondents No.4 and 5 got regularised the encroachments, without following the due process though the said respondents were not entitled for any such benefit. The learned Counsel has, thereafter, extensively taken us through the relevant provisions, as well as the material on record to point out that the activities of the respondents No.4 and 5 are unjustified and directions need to be issued to demolish the premises.

9. On the other hand, Mr. Y.V. Nadkarni, learned Counsel appearing for the respondent No. 3/Comunidade of Serula has pointed out that the Comunidade is handicapped to take any action against the respondents No.4 and 5 and other private respondents as, according to him, all the relevant documents have been seized by the

police and, as such, are not in a position to verify or obtain any documents so as to enable the Comunidade to take action against the subject-construction to protect the land of the Comunidade. The learned Counsel further points out that according to him, there is no resolution passed to rehabilitate either the respondents No.4 and 5 or other private respondents. The learned Counsel further submits that even assuming that the respondent No.4 was using a small area of 25 to 30 sq. metres by putting up the kiosk, by itself would not give right to said respondents to get the benefit of the prime land to put up shops and flats. The learned Counsel further points out that the respondent No.5 has also illegally got the encroachment legalised when such malafide acts on the part of the respondent No.5 are totally illegal and without any justification. The learned Counsel further submits that the respondent Comunidade is prepared to take necessary action against said respondents and are awaiting decision in the present petitions, so that immediate action can be taken to protect the land of the Comunidade.

10. Mr. S. D. Lotlikar, learned Senior Counsel appearing for the respondent No.4 vehemently argued that the resolution itself was passed 10 years' back and, as such, it is very late in the day for the petitioners to challenge such action before this Court. The learned Senior Counsel further point out that the petitioners have also no locus standi to file the present petitions and the present petition is not a public interest litigation, but a private interest litigation. The learned Senior Counsel further points out that the petition itself is barred by laches and, as such, on this ground alone the petition deserves to be rejected. The learned Senior Counsel further points out that the purported resolution would not find in the records as the books are not available with the respondent Comunidade. The learned Senior Counsel, as such, points out that the concerned Authorities be directed to furnish books to the Comunidade, so as to enable them to verify the records to take necessary action in this regard. The learned Senior Counsel further points out that there is inordinate delay in filing the above petition and the resolution passed in the year 2004 has not even been

challenged by the petitioners. The learned Senior Counsel further submits that the land still belongs to the Comunidade, and the structures on it belong to the private respondents who are beneficiaries pursuant to the decision taken in their favour by the Comunidade.

11. Mr. D. Pangam, learned Counsel appearing for the respondent No.5, has pointed out that this is a private interest litigation and not a public interest litigation. The learned Counsel further points out that the petitioner No.1 was an unsuccessful candidate in the last general elections to the Goa Assembly and, as such, has an axe to grind against the respondent No.4 on totally unfounded allegations. The learned Counsel further points out that there is a resolution passed in the year 1993 which clearly indicated that the private respondent was paying rent to the Comunidade. The learned Counsel further points out that when the said respondent received notice that the kiosk was being dismantled for road widening, the said respondent approached the Comunidade to give him adequate space to enable him to carry on his business. The

learned Counsel further points out that the respondent No.5 was occupying an old premises and based on the resolution passed in the year 1993 he pays rent to the Comunidade. The learned Counsel further points out that as per the provisions of Article 29 of the Code of Comunidades, the Comunidade has power to grant plots. The learned Counsel further points out that the land still belongs to the Comunidade and the respondents have only put up construction thereon for their occupation. The learned Counsel further points out that this land was sought to be earmarked by the petitioners herein and were seeking suitable date to carry out the exercise of verification. The learned Counsel further submits that it is well settled that the Courts should not encourage public interest litigations which are motivated and are filed by disgruntled elements. The learned Counsel has, thereafter, taken us through the relevant provision of law to point out that the regularization of the land in favour of the respondent No.5 has been duly carried out in accordance with law. The learned Counsel further points out that private respondents have already paid the rents to

the Comunidade and as such, are entitled to put up construction. The learned Counsel further points out that the Comunidade had allowed the private respondents ultimately to put up such constructions at their own costs and, as such, the question of interference of this Court at the instance of the petitioners would be wholly unjustified. The learned Counsel further points out that the petitioners are not entitled to any reliefs, as all the activates carried out by the respondent No.5 are based on the resolution passed by the Comunidade.

12. Mr. Shivan Dessai, learned Counsel appearing for the respondents No.6 to 12, Mr. A.D. Bhobe learned Counsel appertaining for the private respondent No. 14 (in PIL WP No. 15/14) and Mr. V.A. Lawande, learned Counsel appearing for the respondent No.4 (in PIL WP No.16/14) have pointed out that there is no substance in the above petitions which require to be rejected.

13. Mr. P. Faldessai, learned Additional Govt. Advocate has not taken any stand and has pointed out that

the State would abide by any directions issued by this Court.

14. Upon hearing the learned counsel, the first ground raised by the respondents to oppose the above petitions is with regard to the locus standi of the petitions. The main contention of the learned counsel appearing for the respondents is that the petitioner no.1 is a political opponent of the respondent nos. 4 and 5 and as he was defeated candidate in the election, he has resorted to file the above petitions on false and vexatious ground and as such, on this ground alone the above petitions deserve to be rejected. What remains uncontroverted however, is that the petitioner no.2 is a share holder of the Comunidade and as such, as far as the petitioner no.2 is concerned, it is not disputed that he has locus to file the above petitions. The Division Bench of this Court in the judgment reported in **(2014)5 Mah LJ 308** in the case of **Adv. Aires Rodrigues V/s Comunidade of Serula and others**, while dealing with the aspect of locus standi has observed at paras 33, 35 and 37 thus :

“**33.** This judgment has been aptly followed. The law of locus standi is well settled. It must be remembered that this was the case of Judges of this Country.

35. In the case of **Indian Banks' Association, Bombay and others vs. Devkala Consultancy Service and others**, (2004) 11 SCC 1, the Supreme Court even in commercial matters relating to the payment of interest tax, allowed a firm of Chartered Accountants to challenge higher amount of tax by way of interest to banks. The Court held that it would entertain a petition moved by a person having knowledge in the subject-matter of the lis and, thus having an interest therein in the welfare of the people as contradistinguished from a busybody. Consequently, a citizen of India can approach the Court to vindicate legal injury or legal wrong caused to a section of the people by way of violation of any statutory or constitutional right.

37. Therefore in every field and area of law a person bonafide litigating on behalf of others to bring before the Court a case of breach of public duty or injury to the

public by way of breach of any legal or constitutional right is allowed to file a PIL. In such a PIL, the merits of the matter would alone be considered. The Court would not turn a Nelson's eye to any dereliction of public duty or any collusion by any public authority which may be evidenced from the facts on record. The Court will be duty bound to right the wrong in the interest of larger section of public that would be harmed and injured if such a plea is not countenanced only because an unrelated, but bonafide citizen has brought it to its notice."

15. The Apex Court in the judgment reported in **(2004) 2 SCC 463** in the case of **Mehsana District Central Cooperative Bank Ltd and others V/s State of Gujarat and others**, has observed at para 16 thus :

"16. In the facts and circumstances stated above, the High Court by the impugned order issued a writ of mandamus, directing respondent Nos. 4 and 5 to take appropriate action against the appellants in accordance with the provisions

contained in the Gujarat Cooperative Societies Act and the Rules framed thereunder. We do not see any infirmity in the impugned order. The Acts and Rules are made to be followed and not to be violated. When the Statute prescribes the norms to be followed, it has to be in that fashion. Converse would be contrary to law. If there is any allegation of violation of statutory rules which have been brought to the notice of the authorities and if the authorities concerned do not perform their statutory obligation, as in the present case, any aggrieved citizen can always bring to the notice of the High Court the inaction of the statutory authorities and in such event it would always be open to the High Court to pass an appropriate order as deemed fit and proper in the facts and circumstances of the case. In the present case, the facts as alluded above, would clearly reveal that the High Court was clearly justified in issuing a writ of mandamus, which cannot be

faulted.”

16. As pointed out in the petitions, the main grievance of the petitioners is that the whole exercise of putting up a construction is illegal in breach of the public duties and contrary to the statutory regulations which would affect not only the members of the concerned Comunidade but the public at large. Thus, the contention of the petitioners is that a legal wrong is caused to a distinct class of persons by reason of violation of their legal rights in contravention of the Code of Comunidade and without any legal authority and on account of the high handedness of the respondents, they have become helpless. Besides, it is their contention that the public authorities have not performed their functions expected of them in terms of the Statute and as such, we find that the contention of the learned counsel appearing for the respondents that the petitioners have no locus standi to file the above petitions cannot be accepted. In such circumstances, the judgment relied upon by Mr. S. D. Lotlikar, learned Senior Counsel appearing for the

respondent no.4 in the case of **Holicow Pictures Pvt. Ltd., Vs Prem Chandra Mishra and others**, reported in **AIR 2008 SC 913**, in the case of **State of M. P. and others Vs Nandlal Jaiswal and others** reported in **AIR 1987 SC 251**, and in the case of **Dattaraj Nathuji Thaware V/s State of Maharashtra and others** reported in **AIR 2005 SC 540** are not applicable to the facts of the present case. We do not find ex facie that the above petitions filed by the petitioners is to get any private interest decided in the present petitions.

17. Before we proceed to examine the rival contentions on merits, it would be appropriate to note that the ancient system of Village communities of Goa had a Code of Comunidades in which many of their practices came to be codified into clear provisions. The Comunidades are governed by its own laws i.e. Code of Comunidades. The Code is a compilation of customary laws codified from age old customs and usages and is the law of shareholders (Gaunkars) self determination and for development of common and joint welfare interests in the respective

localities. The Code of Comunidades is declared to be a Public Law by Diploma Legislative No. 2070 dated 15/04/1961. As such, the Code of Comunidades enacted in 1961, therefore, acknowledges that the properties of the Comunidade were their absolute properties and consequently, the Comunidade did not have the obligation to pay the ground rents to the State Government. The beauty of the Comunidades lies in its system of administration (governance). Thus, though the Comunidades are legalized and their activities codified, it had a tool by which they could function and survive in posterity. The Comunidade is large in system of administration and most of the decisions taken have to be by consensus. The Managing Committee of the Comunidade consists of Administrator, Attorneys and the Clerks. The elections are held periodically and the elected members are allowed to function only for specified terms and duration and they are not allowed to contest in all elections. The decisions taken by the General Body by proper quorum on any item or issue, is what is meant as the say of the respective Comunidade. This can only take

place by strictly following the procedure on any issue, within the scope and powers of the General Body. It becomes final only in case it is not contrary to the provisions of the Code. The Managing Committee cannot substitute the General Body and/or overrule the decision of the General Body. The say of the Managing Committee is not the say of the Comunidade to bind the Comunidade unless supported by the minutes of the appropriate General Body Meeting. The State continues to be under constitutional obligation to comply with the duty to provide the same tutelage and respect the "Code". The Administrator and the other staff of the administration are lawfully bound to give timely assistance and compliance to the provisions of the Code. The Comunidades are the absolute owners of the land. They reserved large tracks of land for grazing cattle in the village for the benefit of the farmers and cultivators and also reserved land for religious and festival purposes such as Temples and Churches, Crematoriums and Cemeteries besides other common benefits for the community. It also provides for health centres and shelter for needy villagers and farmers. The

income from the produce as well as the revenues generated are spent for the welfare of the people. Thus, we find that the activities of the Comunidade are regulated by the Code and it is the duty of the State to ensure that the provisions of the Code which have been enacted for the specific purpose are strictly followed.

18. Keeping all these in mind, we shall now proceed to examine the rival contentions raised in the above petitions. It is the contention of the petitioners that the provisions which govern the grant of the land by the Comunidade has not been followed in the present cases and that the subject structure put up by the private respondents is illegal and unauthorised, besides being contrary to the statutory regulations governing the development of the properties. On perusal of a letter dated 30.01.2010 addressed by the Comunidade of Serula to the Secretary of the Village Panchayat, we find that there is a specific statement therein that the said Comunidade is the actual owner of the subject property and the NOCs which were issued by the earlier Managing Committee have been

revoked by the General Body of the Comunidade. Accordingly, the Panchayat was asked not to issue any permission to carry out any construction in the property surveyed under Nos. 376 and 379/0 in the land of the Comunidade. On perusal of the averments made in the said letter, though the private respondents are relying upon a resolution which according to them permitted a scheme of rehabilitation nevertheless, there is no resolution produced on record passed by the General Body of the concerned Comunidade to that effect. It is sought to be contended by the private respondents that such meeting was called and in view of lack of quorum, the resolution was passed by the Managing Committee. This fact has been seriously disputed by the respondent no.2/Comunidade who have submitted that such resolution is ultra vires of the Code of Comunidade. But in any event, as noted herein above, the absolute powers concerning the affairs of the Comunidade are vested in the General Body and there is an express averment in the said communication that the General Body has revoked all previous NOCs issued by the Managing Committee. As the respondent no.2/Comunidade has stated

that they were not in a position to produce the records as they have been seized by the Investigating Agency, we called upon the learned Government Advocate to produce the relevant records specially the minutes of the meeting when the private respondents alleged that such resolution was passed as well as the period when the respondent no.2/Comunidade contended that all the previous NOCs were revoked. But surprisingly, when the books were presented, it was noted that the books for such relevant periods were found missing and no explanation on that count was forthcoming from the concerned authorities. This would itself create a suspicion into the conduct of the concerned authorities with the private respondents who have proceeded to put up a construction in the subject property without first establishing or legalizing their action in terms of the Code of Comunidade. In fact, on perusal of the letter dated 20.12.2012 addressed by the Revenue Department to the Collector, it clearly directs that the Administrator of Comunidade (North) should not process/forward any files pertaining to the allotment of land of Serula Comunidade and also to keep all such

proposals on hold wherein the Government approval is already conveyed with effect from 22.03.2011 till date until the issue in the Writ Petition is answered. This letter clearly points out that the Government had directed that no proposal of allotment of the land could not be examined even in cases in which the Government approval had already been obtained. Even if the construction licence dated 13.12.2014 which is disputed by the petitioners, is perused there is a specific condition that no construction/development shall be carried out unless and until the Conversion Sanad is obtained. On perusal of the technical clearance granted on 04.06.2013 by the office of the Senior Town Planning, Mapusa, we find that such permission which is otherwise disputed in the present case was issued to the Comunidade of Serula for the construction of residential/ commercial building. The Managing Committee of the respondent no.2/Comunidade have pointed out that no amounts referred to therein have been paid from the funds of the Comunidade. The approval was addressed to the Comunidade and we fail to comprehend how the licence which has been issued in

favour of the Comunidade could be utilized by the private respondents to put up the subject construction when there is no legal authority permitting the private respondents to put up such construction in the land belonging to the Comunidade, considering the fact that the original records have not been produced before this Court the authenticity of such documents cannot be verified. Besides there is a clear Government directions dated 20.12.2012 that even when the Government approvals have been obtained such allotments are to be kept on hold. We failed to understand how this permission could have been given in the hands of the private respondents who claim to be allottees of the land when there is no material on record to the effect that any grant has been made in their favour in terms of the Code of the Comunidade. The respondent no.4 has produced a letter addressed by the President of the Comunidade dated 14.11.2002 which clearly shows that the alleged accommodation was to the kiosk which was being demolished and the resolution was passed by the Managing Committee. As already pointed out herein above, the Code of Comunidade does not permit the

Managing Committee to take such decision. As such, the powers if any are to be exercised only by the General Body. Even on perusal of the letter dated 30.12.2002 the Village Panchayat has clearly stated that the kiosk which was put up would be allowed to be shifted in survey no.379/1 subject to obtaining permission from all the authorities. The contention of the respondents that the Managing Committee had taken the decision as there was no quorum when the meeting of the General Body was called upon to deliberate about the alleged rehabilitation, *prima facie* appears to be erroneous. Looking into the resolution dated 05.11.2003 it clearly shows that it is the Managing Committee which had taken such decision which they were not authorised to do. No minutes of the number of members who were present at the meeting have been produced nor does the alleged minutes indicate that the Managing Committee took any decision as the agenda was transferred to the Managing Committee. Even on perusal of the certificates dated 12.05.2004 and 06.06.2004, we find that only 40 and 60 square metres of the land was given to put up a shed. There is no provisions in the Code

of Comunidade to dispose of or grant such land in such a manner by the Comunidade. Even accepting the correctness of the said resolution, we find that the alleged construction in the subject property is totally contrary to the said purported resolution. Besides that all the private respondents have not produced any resolution to show that the erection of the kiosk in the property surveyed under No.376/6 is legal or that any amounts were being paid for such occupation to the concerned Comunidade.

19. It is also to be noted that the Attorney by a letter dated 13.08.2014 addressed to the Administrator of Comunidade has clearly brought to his notice that an illegal construction has been put up in the survey No.379/1 of the Comunidade without obtaining requisite sanction or authorisation from the Comunidade. It would also be material to note the averments made in the affidavit of the Attorney of the respondent no.2. He has reiterated that by an order dated 12.12.2013 this Court has accepted the statement by the learned Advocate General that the temporary committee would be appointed and further this

Court directed that such committee shall not take any major financial or policy decision including the allotment of the plots etc., and would only look after the day to-day affairs of the Comunidade. The said Attorney has also stated the manner in which the Managing Committee could not have approved the subject rehabilitation as even in case there was no quorum a fresh General Body meeting had to be called for the opinion sought. It is further pointed out that by a communication dated 02.07.2004 the Administrator of Comunidade had requested the Sarpanch to revoke the permission granted to the Comunidade of Serula as there was no Government approval obtained by such Comunidade. It is further pointed out that the proposal in any event was cancelled. It is also pointed out that the General Body has cancelled the proposal by a communication dated 30.01.2010. It is further pointed out that the temporary Managing Committee which was incharge at the relevant time had filed an application dated 04.06.2013 for technical clearance for residential complex in survey No.379/1. This exercise on the part of the temporary committee was in violation of the directions

issued by this Court referred to herein above. It is also not disputed that no Government approval was obtained for such activity and the disputed licence is for a residential/commercial complex which is not even found permitted by any of the resolution produced on record by the respondents which is otherwise alleged by the petitioners to be unauthorised and illegal. It is further averred that the Clerk placed before the Managing Committee a letter dated 25.07.2014 received from the Administrator of the Comunidade in respect of the subject rehabilitation project and the Managing Committee discussed on the said issue and inter-alia found that there is no previous general body resolution passed regarding the rehabilitation process and that such process was obtained by the temporary committee and that the project was run independently by Mr. D'Silva for his own interest. It is further pointed out that the committee has requested to inquire into the matter. It is further pointed out that with regard to the property surveyed under No.379, it is an open space and as such the regularisation of a structure in an open space encroaching an area of 162 square metres is

not permissible. The application for regularisation according to the said respondents filed by the respondent no.4 is still pending for consideration. It is further pointed out that with regard to the grant of consent in favour of the respondent no.5 in respect of the plot no.16 in the property surveyed under No.389/1(part), the respondent no.5 was asked to contact the Clerk and thereafter, the temporary possession of the said plot would be handed over to the respondent no.5. He has further pointed out that the said procedure is contemplated in the Code of Comunidade for allotment of land to any component or non component and that in respect of allotment of 380 square metres in survey No.389/1 to the respondent no.5 the procedure as prescribed under the Code has not been complied with.

20. What transpires from the aforesaid facts is that as far as the subject development in the property surveyed under No.379/1, prima facie, there is no resolution passed by the General Body permitting such rehabilitation. The Comunidades are institutions which have to comply with all the provisions of the Code.

21. Article 329 of the Code of Comunidade provides that an application for grant of land has to be addressed to the Governor General and presented in the Administration of the Comunidades. Thereafter, such desire for lease has to be notified in the Government Gazette. The detailed procedure is contemplated in the said Code as to the grant of such lease. Article 334 further provides that all the properties asked for in lease will be auctioned publicly subject to Article 327. Article 334A, inter-alia, provides that the Comunidade may subject to such guidelines as the Government may from time to time issue grant on lease not more than 10,000 square metres of land to the Educational Societies for construction of play grounds etc., and not more than 400 square metres of land for construction of houses and buildings without auction to any of categories specified therein. Admittedly, in the present petitions, the subject allotment to the private respondents do not come in any of the schemes or categories referred to therein. This is not an exercise to provide houses to economically weaker section or small scale industry or charitable institution or any category notified by the Government.

Hence, on going through the provisions of the Code there is nothing to show that the Comunidade could have granted such land without following the provisions of the Code. As pointed out herein above, the whole exercise of allowing the alleged rehabilitation is not a situation which is recognized under the Code of the Comunidade. This will have to be examined in the context that way back in the year 2010, the committee has informed that the General Body had revoked the alleged allotment/permission granted to the subject activity by the Managing Committee. In such circumstances, the question of relying upon the earlier resolution by the private respondent no.4 onwards which is disputed by the petitioners is not at all justified.

22. During the course of the hearing, we had also inquired from the learned counsel appearing for the respondent no.2 as to why action was not taken against the respondents who according to them are illegally occupying the subject building. The learned counsel submitted that as the records were not available they were handicapped to take any legal action though a complaint was lodged before

the Administrator. We find no justification in such explanation by the learned counsel appearing for the respondent no.2. The duly elected body of the respondent no.2 is bound to protect the assets of the Comunidade and look into the welfare on behalf of the share holders of such Comunidade. This appears to be a pretext to shy away to protect the interest of the Comunidade.

23. Prima facie, we find that as the records have not been produced and looking into the different aspect which can be culled out based on the records produced before us, we find that the conduct of the respondent nos. 4 to 14 is high handed and an unlawful intrusion into the property of the Comunidade. The properties of the Comunidade cannot be allowed to be illegally usurped without following the due process of law. There is a specific procedure provided in the Code to legalise an encroachment if at all such encroacher is so entitled. Any grants by the Comunidade have to be by a public auction unless clearly exempted in terms of the said Code. Admittedly, no approval of the Government has been obtained for the

alleged allotment of the land to the respondent nos. 4 to 14. In such circumstances, we are of the view that the whole conduct of the respondents is an illegal expedient to usurp the land of the Comunidade without sanction of law. The respondent nos.2 and 3 are duly bound to take necessary action to protect the land belonging to the Comunidade. Such respondents are vested with powers to take action in terms of Article 371 of the Code as well as under the Goa Land (Prohibition on Construction) Act and other relevant laws.

24. We would also note that it is not disputed that no completion certificate nor occupancy certificate has been issued by the concerned Panchayat nor the office of the Collector. The learned counsel appearing for the Panchayat/respondent no.16 only pointed out that in case directions are issued by this Court, action would be taken though clearly admitting that the respondent nos.4 to 14 are occupying the subject premises without obtaining the occupancy certificate. We also failed to understand as to how the concerned authorities have granted the essential

services such as electricity etc., to the concerned construction when admittedly there was no occupancy certificate granted by the Panchayat. The respondent no.15 has apparently not issued a completion certificate, which clearly shows that the occupation of the premises is in contravention of the statutory regulations.

25. It is also not disputed that the Conversion Sanad has not been issued by the Collector. In fact, an order has been produced on record dated 18.02.2016 issued by the Dy. Collector, Mapusa to the effect that no conversion sanad has been granted to the subject land. As pointed out herein above, no development could have started without first obtaining Conversion Sanad. All these facts clearly point out that the occupation of the respondent nos. 4 to 14 is unauthorised and they have no right to carry out any business therein as admittedly the Conversion Sanad has not been granted nor the occupancy certificate or completion certificate in respect of the subject premises. The learned Division Bench of this Court in the judgment reported in **2008(6) BCR 177** in the case of **Jamuna**

Sagar Co-op. Housing Society Ltd. vs. Municipal Corporation for Greater Bombay and ors., has clearly held that a person cannot occupy the premises unless he obtains an occupancy certificate.

26. It is now well settled that though the right to property is no longer a fundamental right it is otherwise a zealous possession of which one cannot be divested save by the authority of law as is enjoined by Article 300A of the Constitution. In the present case the respondent no.2 cannot be deprived of their land without following the due process of law. The amount of the purported rent fixed by the impugned resolution is illusory and cannot be justified to deprive the respondent no.2 of their ownership right to their valuable property apart from the fact that the alleged resolution itself is contrary to the provisions of the Code. It is incumbent upon the State to ensure that the Comunidade functions in accordance with the Code. We have already pointed out the breach of the provisions of the Code while taking a decision on the activities of the respondent nos. 4 to 14. The concerned authorities have

failed in their statutory duties to ensure that the law is above all, else as it is for them to ensure that the provisions of law are duly followed in all circumstances. The Apex Court in the judgment reported in **(2010) 2 SCC 27** in the case of **Priyanka Estates International Private Limited and others V/s State of Assam and others** has observed at paras 59, 60 and 61 thus :

“59. It is a sound policy to punish the wrong-doer and it is in that spirit that the courts have moulded the reliefs of granting compensation to the victims in exercise of the powers conferred on it. In doing so, the courts are required to take into account not only the interest of the petitioners and the respondents but also the interest of public as a whole with a view that public bodies or officials or builders do not act unlawfully and do perform their duties properly.

60. In the case in hand, admittedly, at no point of time Appellant No.1- Priyanka Estates International Pvt. Ltd. was able to show to its prospective purchasers the Occupancy Certificate or Completion

Certificate issued by the authorities concerned. The same could not even be shown to us and without it, Appellant No.1 could not have embarked into sale of flats as it was mandatorily required.

61. The instant case is not a case of breach of contract. It is a clear case of breach of the obligation undertaken to erect the building in accordance with building regulations and failure to truthfully inform the warranty of title and other allied circumstances.”

27. Looking to the conduct of the Statutory Authorities, as well as the private respondents No.4 to 14, we find that the whole exercise apparently appears to be to hold the property of the respondent No.2 in contravention of the provisions of the Code of Comunidades, as well as the statutory regulations. It is to be noted that no person can occupy a building, unless the occupancy certificate has been granted by the concerned Authorities, in accordance with the relevant provisions of law. When asked as to whether completion certificate has

been issued by the concerned Authority, the learned Counsel appearing for the respondents No.15 and 16 fairly stated that no such Certificates have been issued. Before any person occupies a building, it is his duty to ascertain as to whether or not, the concerned Authority has granted the requisite permissions under the relevant development Regulations. There is no justification on the part of the respondents in not complying with the terms of the licence and the provisions of the Statute before occupying the subject premises. The Statutes are meant to be followed and not to be disregarded and flouted. It is also the duty of the concerned Authorities to ensure that provisions of law are duly complied with. As the private respondents No. 4 to 14 are not in a position to produce the Occupancy Certificate, such occupation is in contravention of the statutory provisions of the laws. It is the duty of the Authorities to uphold the laws in all circumstances as law is above all else. In the present case, we find that considering the stand taken by the Statutory Authorities, this is followed more in default than in compliance. In such circumstances, we find from the material on record that

the occupation of the respondents No.4 to 14 of the subject-premises without Occupancy Certificate, nor the Conversion Sanad, cannot be protected and the Authorities are duty bound to take necessary action, in accordance with law. As pointed out herein above, the licence clearly stipulated that no development could be commenced without obtaining a Conversion Sanad. In the present case, the respondents No.4 to 14 have detracted the law in going ahead with the development, though there was no allotment of land legally granted in favour of the said respondents to put up such construction. The alleged allotment in favour of the respondents No.4 to 14 is in gross violation of the relevant provisions of the Code of Comunidades. The activities carried out by the respondents No.4 to 14 in contravention of the provisions of the Code would clearly defeat the purpose and objects of the relevant provisions of law. The objects of the Code of Comunidade have been enumerated herein above and on account of total inaction on the part of the authorities and the malfunctioning of the then Managing Committee which attained the ends beyond the sanction purpose of power

has resulted in a situation whereby the objectives of creating the Comunidade have been defeated. The authorities which are the custodians of power cannot be influenced by considerations other than that for which the power is vested in them in the first place. Authorities cannot be swayed by any other motive other than in exercise of its power in accordance with law. The inaction on the part of the respondents is not for the purposive compliance of the provisions of the Code. The conduct of the authorities appears to be aimed solely to attain a designed end to enable the respondents no. 4 to 14 to perpetuate their illegal expedient and put up the disputed construction, without following the relevant provisions of law. The then Managing Committee of the respondent no.2 has acted in bad faith which invalidates the exercise of power.

28. The Apex Court in the Judgment reported in 1980(2) SCC 471 in the case of ***State of Punjab and another V/s Gurdial Singh and others*** has held at para 9 thus:

“9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power — sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions — is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by

considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat . . . that all power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict

or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.”

29. In such circumstances, we find that the respondent Nos.2 and 3 are bound to protect the properties and estates of the Comunidades and as such are bound to take action, in accordance with law, against the respondents No.4 to 14. Apart from that, the Statutory Authorities, namely, respondents No.15 and 16 would have to forthwith take action to ensure that the respondents No.4 to 14 do not occupy the subject premises without obtaining an occupancy and completion certificate in accordance with the relevant provisions of law.

30. In view of the above, we shall now examine the relief which can be granted in the present petitions. In the judgment reported in **2000(4) ALL MR 510** in the case of **Sadanand S. Varde and others V/s State of Maharashtra and others**, it has been observed at para 24 thus :

“24. Before we take up the specific contentions urged by the petitioners, it is necessary to chalk out the compass within which this Court exercises jurisdiction under Article 226 in such matters. Doubtless, judicial review has been held to be a basic feature of the Indian Constitution and the power of the constitutional Courts, whether they be High Courts exercising jurisdiction under Article 226, or the Supreme Court under Article 32, is virtually limitless except for self-imposed limitations in the interest of administration of justice and the dictates of prudence. A public interest litigation is not adversary in nature, but is intended to focus the public interest aspect before the Court. If the Court is apprised of substantial injury to public interest, the Court is empowered and duty bound to interfere to do justice to the inarticulate public whose interest is projected as affected. Despite the awesome powers available in writ jurisdiction, the Courts have

constructively bridled this power and deferred to experts in matters of public interest where, in view of the amplitude of complexity and technical nature involved, a judicial proceedings in the nature of a writ petition would be wholly inappropriate for determination of the issues thrown up. Policy matters have also been rightly left for the public authorities to decide and the final say in such matters should normally not come within the purview of judicial review.”

31. Considering the said observations, we find that the respondent nos. 2 and 3 would have to take immediate legal action to protect the subject property of the Comunidade. The subject disputed structure was put up during the pendency of the above petitions. The private respondents were very well aware that the licences were issued in the name of the Comunidade/respondent no.2. The Managing Committee of the respondent no.2 which was duly elected had not consented or permitted the construction activities which started in the year 2014. The

permission for technical approval was obtained prima facie in breach of the directions issued by this Court to the temporary Managing Committee not to take any major decision nor proceed in allotment of the plots. There were specific directions issued by the State Government on 20.12.2012 to the Administrator of the Comunidade/respondent no.3 not to process or forward any files pertaining to any allotment even in cases where the approval of the Government was obtained. Admittedly, in the present petitions, there is nothing on record to point out that the Government approval was obtained. The licences were granted inter-alia stating that no development could be started without obtaining the Conversion Sanad. As pointed out herein above, no Conversion Sanad has been obtained. The respondent nos. 4 to 14 have no legal right to put the subject construction as they have no allotment in accordance with the said Code. In such circumstances, we find that the occupation by the respondent nos. 4 to 14 prima facie, is unauthorised and the local Panchayat/respondent no.16 as well as the Collector should immediately take steps to stop the

occupation by the respondent nos. 4 to 14 unless the completion and occupancy certificate is issued to the subject construction. The question of directing any inquiry would not arise as it was submitted that the investigations are already pending before the concerned Investigating Officer.

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

O R D E R

(i) The respondent no.1 through the Collector and the respondent nos. 15 and 16 are directed to immediately take action to stop the unauthorized occupation of the subject premises by the respondent nos. 4 to 14 in accordance with law and file compliance report.

(ii) The respondent nos. 2 and 3 are directed to take action in accordance with law against the respondent nos. 4 to 14 to restore the subject property.

(iii) Rule is made absolute in above terms.

(iv) Both the petitions stand disposed of accordingly.

K.L. WADANE, J.

F.M. REIS, J.

JUDGMENT CONTINUED :

33. At this stage, learned Counsel appearing for the respondents No.4 to 14 are praying for stay of the operation of the directions in the above Judgment. The learned Counsel for the petitioners opposes such request. In the peculiar facts and circumstances of the case, operation of the Judgment is stayed for a period of 8 weeks, subject to the respondents not creating any third party rights, nor carry out any construction activity of any nature in the subject property.

K.L. WADANE, J.

F.M. REIS, J.

SSM/at*