

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.748 OF 2016.

M/s. SWAPNA DEVELOPERS,

A registered Partnership Firm having
its Office at Osia Paradise,

Dawood Baug Road, Andheri West,

Mumbai – 400 058 and its Goa Office

at 2nd Floor, Osia Mall, SGPDA

Market, Margao, Goa – 403 601 and

represented herein by its Partner, Mr. ... Petitioner

Prakash Kapurchand Kothari, major

in age, residing at Reliance Park Co-

Operative Housing Society, Salcete –

Goa.

Versus

THE VILLAGE PANCHAYAT OF RAIA, ... Respondent

through its Secretary, having office

at Raia, Salcete – Goa.

Shri Yogesh V. Nadkarni, Advocate for the petitioner.

Shri C. A. Coutinho, Advocate for the respondent.

Shri Nigel Da Costa Frias, Advocate for the proposed Intervenor.

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

Date:- 18th August, 2016.

ORAL JUDGMENT : (PER F.M.REIS,J)

Heard Shri Y. V. Nadkarni, learned Counsel appearing on behalf of the petitioners and Shri Coutinho, learned Counsel appearing on behalf of the respondents.

2. Rule. Heard forthwith with the consent of the learned Counsel for the parties. Learned Counsel appearing for the respondent no.1 waives service.

3. Upon hearing the learned Counsel for the respective parties, the grievance of the petitioners is that the application for Occupancy Certificate and permission for revised plans submitted to the respondents are pending for the last one and half year. It was pointed out by Shri Nadkarni, learned Counsel appearing for the petitioners that in the impugned communication dated 22/02/2016 there were allegations that the Occupancy Certificate was kept pending in view of the pendency of the suit filed before the Civil Court in connection with the relocation of the chapel adjoining the subject property. It is further pointed out that though no relief has been granted in the said suit, the respondents are arbitrarily and without any justification keeping the grant of Occupancy Certificate in abeyance though the petitioners have all

the sanctions including the Completion Certificates from the Competent Authority. The learned Counsel for the respondents however submits that there was a condition imposed in the license condition no.41 to the effect that a specific part of the subject property would be left open to relocate the chapel located in the adjoining property. It is further pointed out that in breach of such terms the petitioners have erected a security cabin and as such the respondents are justified to keep the grant of occupancy certificate in abeyance. The learned Counsel further points out that it is recorded in the affidavit filed by the Sarpanch of the respondents that in case the security cabin is removed by the petitioners the issuance of the Occupancy Certificate would be considered by the respondents in accordance with the law. It is further submitted that there are no other impediment in granting an Occupancy Certificate by the respondent at present. Shri Nadkarni, learned Counsel for the petitioners upon instructions states that the security cabin would be removed within 24 hours.

4. In view of the said undertaking of the learned counsel of the petitioners to remove the security cabin which is accepted, the grievance of the respondents not to consider the grant of Occupancy Certificate to the petitioners would no longer survives. We find that the consideration to grant such Occupancy Certificate

for more than 1 year is not at all justifiable. The respondents are expected to act in fairness and promptly. It is further pointed out by Shri Nadkarni, learned Counsel that the petitioners would also honour the undertaking to the respondents dated 19/07/2010 to the effect that the petitioners would facilitate the relocation of the subject chapel as and when called upon by the respondent panchayat in terms thereof.

5. Shri Nigel, learned Counsel appearing for the proposed intervenor points out that he has filed an intervention application as according to him, the proposed intervenors are tenants of the adjoining properties which are paddy fields and according to him, waste water from the subject building constructed by the petitioners leads into such paddy fields causing inundation and inconvenience in cultivating the fields. It is further pointed out that the proposed intervenor have already approached the concerned authorities with their grievance. Considering that such grievance has no connection with issue raised in the present petition, we find that allowing the intervention at this stage is not at all be justifiable. But however all the contentions of the proposed intervenor as well as other remedies in law are left open.

6. Considering the above, we disposed off the above

petition by accepting the undertaking by the learned Counsel for the petitioners and directing the respondents to consider the application for occupancy certificate and revised plan filed by the petitioners in accordance with the law within a period of four weeks from today.

7. Rule stands disposed off accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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