

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WRIT PETITION NO. 01 OF 2015

Shri Subhash G. Narvekar,
54 years of age,
son of late Ganesh Narvekar,
Advocate,
r/o. H. No. 164-V, 'Ganesh' Alto Dhuler,
Mapusa, Bardez, Goa.
Fax no. Nil,
Mobile no. 9423318989
PAN No. AAZPN4632J
National Unique Identity number:
410684491325
email add: officesubhash@yahoo.com
Annual income : 2,50,000/-

... Petitioner

V e r s u s

1. Chief Officer,
Mapusa Municipal Council,
Having office at Feira Alta,
Mapusa, Goa.
2. Member Secretary,
North Goa Planning & Development Authority,
Archdiocese Building, First Floor,
Mala, Panaji Goa.
3. Mr. Nauman Braganza,
Major of age, businessman,
r/o. 5th floor,
Siddharth Bandodkar Bhavanm,
Above Axis Bank,
Dr. P. Shirgaonkar Road,
Panaji Goa.
4. The Director
Directorate of Fire & Emergency Services,
St. Inez, Panaji, Goa.
5. The Chief Town Planner,
Town & Country Planning Department,
Dempo Towers, 2nd Floor,
Patto, Panaji, Goa.
6. State of Goa,

Through Chief Secretary,
having office at Secretariat,
Porvorim, Goa.

... Respondents

Mr. Ashwin D. Bhobe, Advocate for the Petitioner.

Mr. S. D. Padiyar, Advocate for the Respondent no. 1.

Mr. D. Lawande, Advocate for the Respondent no. 2.

Mr. A. F. Diniz and Mr. Ryan Menezes, Advocates for the Respondent no. 3.

Mr. Amogh Prabhudessai, Addl. Government Advocate for the Respondent nos. 4 to 6.

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

Date : **30th March, 2016**

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

Heard Shri A. D. Bhobe, learned Counsel appearing for the Petitioner, Mr. S. D. Padiyar, learned Counsel appearing for the Respondent no.1, Mr. D. Lawande, learned Counsel appearing for the Respondent no. 2, Mr. A. F. Diniz, learned Counsel appearing for the Respondent no.3 and Mr. Amogh Prabhudessai, learned Addl. Government Advocate appearing for the Respondent nos. 4 to 6.

2. The above Public Interest Litigation, inter alia, prays for a direction to the Respondent no. 2 to quash and set aside the Development Permission dated 13.03.2008, 02.03.2009 and 11.01.2013 issued by the Respondent no. 2. It also seeks a direction to Respondent no. 1 to quash and set aside the construction licences, renewals and revisions of the licences as well as the revised licence dated 24.12.2014.

3. Briefly, it is the case of the Petitioner that in the property bearing subdivision no. 3 of survey no. 3 of P. T. Sheet no. 155 of City Survey Mapusa, after the construction of building 'A' eastern side of the said property, the owner/developer is intending to build another building on the western side of the suit property and it is contended that the reserved parking area were being used for the proposed building. It is further pointed out that before grant of occupancy certificate to building 'A', licence no. 291 was revised by licence dated 05.05.2004. Prior to obtaining such revised licence, the Respondent no. 3 got the development permission revised from the Respondent no. 2 under Order dated 20.04.2004 and for the revised licence, the construction of the subject Building 'B' was dropped/cancelled and a strip of land admeasuring 46 x 4.5 mts on the south west side of such property was shown as reserved for open parking of the occupants of the building 'A'. It is further contended that such land admeasuring an area of 46 x 4.5 metres cannot be utilised for the construction of any other new building in the property either as set back, access or parking area. It is further submitted that the Respondent no. 2 whilst submitting the plan in the subject building 'B' in the year 2008 before the Respondent nos. 1 and 2 suppressed the fact that the strip of land admeasuring 46 x 4.5 mtrs on the south western side of the subject property was reserved for parking area. As the area reserved for parking was illegally utilised, the above Petition came to be filed for the aforesaid reliefs.

4. The Respondent no. 3 filed an affidavit inter alia contending that the Petition is barred by delay and laches and as the development permissions which are being challenged were granted in the year 2008 and the work had commenced

in April 2009 and has been completed on or about 14.06.2014. A completion certificate was issued on 06.06.2014. It is further contended that the Petition itself is not malafide and not in public interest and based on false facts. It is further submitted that at the instance of the Petitioner Regular Civil Suit no.180/2010 was initiated by Shri Pednekar, who was closely associated with the Petitioner. He has further pointed out that Advocate on record in the suit is the Junior of the Petitioner. It is also pointed out that the Petitioner has suppressed the fact that temporary injunction application in the suit was rejected by the learned Trial Judge and Appeal preferred was also rejected by the Appellate Court. The Respondents have denied that they had committed any illegality and further reiterated that the application for temporary injunction was even argued by the Petitioner himself. He has further pointed out that the Petitioner has tried every means possible to stop the construction of the building. It is further denied that the occupants of the building 'A' have a reserved parking area where building 'B' is constructed. He has further pointed out that the Petitioner has deliberately suppressed the Consent Decree dated 02.08.2003 passed in Regular Civil Suit no. 171/2001/C, whereby blocks 'D' and 'E' corresponding to the area where building 'B' is constructed were exclusively allotted to the Respondent no. 3 and, consequently, such area could never be shown as parking area as alleged by the Petitioner. It is further pointed out that the owner of building 'A' has filed an affidavit to the effect that building 'A' has an independent parking area and does not require parking area shown in the location of building 'B' and all the occupants of building 'A' would have independent parking area. It is further pointed out that the construction of building 'B' commenced in April 2009 and at one stage, the construction was also stopped pursuant to a stop work Order dated 01.02.2010 by a show cause notice and further thereafter upon

explanation provided to the show cause notice, the construction was allowed to be continued and the stop work order was revoked. It is also denied that the road includes any external set back or parking area as claimed by the Petitioner. It is also disputed that any inconvenience is caused to the occupants of the building 'A'.

5. The Respondent no. 1 has also filed an affidavit. He has stated that for abundant caution, the Member Secretary of NGPDA was asked for some clarification and by letter dated 16.12.2009, the Respondent no. 1 was informed that the proposal of the Respondent no. 3 was approved by the NGPDA as per the old regulations of the Planning and Development Authorities. It is also pointed out that the Respondent no. 1 was informed that the permission was granted for block 'B' on the basis of the regulations of the Planning and Development Authorities and that the car parking proposed is more than the requirements and it was further clarified that the FAR and access for the building block 'B' were within the permissible line as per the Planning and Development Regulation. Further clarification was sought which was replied on 25.01.2011 by the Member Secretary. He has also pointed out that the Respondent no. 3 has also submitted the survey report in respect of the plot bearing survey no. 3/3 of P.T. Sheet no. 155 and requested the Respondent no. 1 to withdraw the stop work order which was issued and upon inspection and examining the records, the stop work order was withdrawn. An affidavit in rejoinder was also filed by the Petitioner disputing the contentions raised in affidavit in reply filed by the Respondents. A sur-rejoinder was also filed to the said rejoinder filed by the Petitioner. The Member Secretary of the NGPDA also filed an affidavit and disputed that the land where building blocks 'A' and 'B' are located, is a narrow strip of land and pointed out that it has a width of

more than 15 metres. He has further pointed out that initially the development permission was issued with common parking for both the building blocks 'A' and 'B' as per the PDA Regulations 1989. Subsequently, in the year 2004, renewal of the development permission was issued for block 'A' but, however, maintaining the area as shown in the earlier plan. A development permission was also issued on 20.04.2007 for building 'B' and, subsequently, the said permission was granted as per the post facto approval as approved in the meeting of the said Respondent held on 15.10.2007. It is also pointed out that the development permission for building 'B' was based on all earlier development permissions issued as per the PDA regulations of 1989. He has further pointed out that there is sufficient parking shown for building blocks 'A' and 'B' and, consequently, the revised plans were approved in the year 2008. The said Respondents have also reiterated the clarification issued to the Respondent no. 1 referred to herein above. He has further pointed out that as per the PDA, Regulations of 1989, building 'A' required 13 number parking spaces and building 'B' required 9 number of parking spaces and the total parking spaces required were 22. He has also submitted that in the plan submitted by Respondent no. 3, there are 37 parking spaces shown which were 15 more than the requirements as per the old Regulations. He has further pointed out that even assuming building Regulation of 2010 would be applicable, the parking space required for building 'B' would be 27 and, as such, at the most there would be deficit of not more than 2 or 3 parking spaces than what is required under the 2010 Regulations.

6. From what transpires from the aforesaid narration of the relevant facts, we find that the subject revision of plans was issued in the year 2008 and the

Petition came to be filed in the year 2015. The completion certificate was issued admittedly in the year 2014. There are specific averments in the Petition to point out that the petition itself is motivated and further issues sought to be raised in the above Petition, were also examined in the Court of the learned Civil Judge at Mapusa. The temporary injunction came to be dismissed and such Order was upheld by the Lower Appellate Court. In such circumstances, the question of exercising extraordinary jurisdiction under Article 226 of the Constitution of India would not be justified considering that there are disputed questions of facts in the present Petition. The affidavit of the NGPDA clearly specifies that the parking spaces as required in terms of the relevant Regulations, have been duly provided. The learned Counsel appearing for the Petitioner was unable to point out any provision in the Regulation which would be contrary to the stand taken by the statutory authorities. The records further reveal that there was a Consent Decree whereby the area where the subject building 'B' is under construction, was allotted to the Respondent no. 3. All these facts would reveal that the development carried out by the Respondent no. 3 is based on the permission issued by the statutory authorities which cannot be prima facie faulted.

7. Indisputably, the Petitioner states that he is a resident of the locality and in such circumstances, he was very well aware when the construction activity started in the year 2009 and waited only after the construction was completed to file the present Petition. This inaction on the part of the Petitioner itself would suggest that the Petition is barred by gross delay and laches. Apart from that, as already pointed out herein above, prima facie, it has been disclosed that the requisite parking spaces are available at loco based on the revised plan which

came to be approved by the NGPDA. No doubt, in case the NGPDA find that there is deficiency in the parking spaces, action can be taken in accordance with law. In the present case, based on the averments in the affidavit, prima facie, there is no case made out for interference in the development permissions granted by the statutory authorities.

8. Subject to the above, there is no case made out for any interference exercising our extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. As such, the Petition stands accordingly rejected.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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