

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 707 OF 2017

1. **ANTHONY MARCELINO BARRETO**,
of major age, Resident of House No 399
Behind Tita Maria, Mangor, Vasco da
Gama, Goa.
2. **ESMARALDA MARY BARETTO**,
of major age, Resident of House No 193
Dactolem, Down Mangor, Vasco da Gama,
Goa. ...Petitioners

~VERSUS~

1. **THE STATE OF GOA**
Through the Chief Secretary, Office of the
Chief Secretary, Secretariat, Alto
Porvorim, Bardez, Goa.
2. **THE CHIEF OFFICER**,
Mormugao Municipal Council,
A council constituted under the Goa
Municipalities Act 1968 having its office at
Municipal Building, Vasco da Gama, Goa.
3. **THE CHIEF ENGINEER**
Water Resources Department,
Government of Goa, Office of the Chief
Engineer, Water Resources Department,
Margao, Goa. ...Respondents

APPEARANCES

FOR THE PETITIONERS	Mr SG Dessai, Senior Advocate, <i>with Mr V Parsekar</i>
FOR RESPONDENTS NOS 1 AND 3	Mr Amogh Prabhudessai, Addl. <i>Government Advocate</i>
FOR RESPONDENT NO 2	Mr V V Pednekar, Advocate

**CORAM: G.S. PATEL &
NUTAN D. SARDESSAI, JJ**

DATED: 10th October 2017

ORAL JUDGMENT (per GS Patel J):

1. Rule. By consent, returnable forthwith. Respondents waive service of Rule. By consent, the Petition is taken up for hearing and final disposal.
2. We have now an affidavit in reply filed by one Deepali D Naik on behalf of the 2nd Respondent, the Mormugao Municipal Council. She is its Chief Officer.
3. The Petition relates to the strangest thing. The 2nd Petitioner is a widow. She is the sister of the 1st Petitioner. The 1st Petitioner owns Chalta No 74, PT Sheet No 149 of Vasco. This property originally belonged to one Maria Angelica Barreto. She bequeathed it to the 1st Petitioner by a Public Testament dated 27th December 1989. On Maria's death, a declaration of Succession dated 31st July 1990 was executed in favour of the 1st Petitioner. On this property there is a residential house No 193 that belongs to the 2nd Petitioner. There the 2nd Petitioner lives with her 14-year-old

daughter. The 2nd Petitioner pays house tax to the 2nd Respondent and also has utility connections.

4. In the eastern side of this property there is a culvert that is in the south-north direction. It begins south of the Petitioners' property, passes over it and then goes on to the properties to the north. To the east, beyond the culvert there is a property, Chalta No 84 of PT Sheet No 149. The area of the properties and the adjacent lands are known as Dactolem. To the north, there is an access of about three metres and this leads to a public tarred road, which in turn leads to Vasco. The Petitioners and the other people in the area use this road to go to Vasco or Mangor. There is also another access leading south in the area in question to the highway to the airport. To the south east of the Dactolem area is a colony/hutments known as Fakirgali. This has an internal road that connects to the Dabolim-Vasco highway.

5. The Petition states in paragraph 7 that on the portion of the culvert that ran through the property in question there used to be an old bridge or cement slab that dated back to the time when Maria was alive. It was only Maria, and after her, the Petitioners and their adjacent neighbours who used this slab to cross between their properties especially at the time of the coconut harvest. Overtime, many of these trees no longer exist and the bridge itself fell into disuse. The slab itself was placed by Maria, and most certainly in her lifetime. On 10th July 2017, during the rains, this cement slab collapsed. As we have noted, and this is not controverted in the least, the slab was really being used only by the Petitioner and their neighbour and was not a public access/way of any kind at any time.

6. It seems that on 10th July 2017, officers of the 2nd Respondent-Municipal Council took measurements and began construction of a new bridge and concrete culvert over this nallah. The Petitioners' subsequent representations were to no avail. She demanded justice but received none.

7. The affidavit of the 2nd Respondent is exceedingly curious. To begin with in paragraph 8, we are told that there is no record of the original construction. It mentions that there is a nallah passing and it is now argued that a local Councillor, one Henriques, has expressed the need of villagers to cross this nallah and hence the erection of this bridge. There is a sketch plan at page 36 of the Petition which is debunked by the Respondent saying that it is a private plan. That does not mean it is inaccurate. No inaccuracy is shown nor do the Respondents produce an alternative plan of their own.

8. What is not seriously controverted is that the old stone slab was laid by Maria and was between the Petitioner's property and that of the neighbours. We find no denial of this anywhere in the affidavit in reply. This is sought to be covered up by saying that it was Ms Naik who directed the Council Officials to "put up a temporary bridge for pedestrians" to facilitate commuting.

9. The difficulty in all of this is that the 2nd Respondent proceeds on the footing that the bridge, temporary or not, connects public access pathways. There is absolutely nothing before us to establish this. It is orally argued that there is a strip of land on either

side of the bridge that is now public land. How this came to pass is unstated. There are no details of acquisition or any Court Orders that would make it so.

10. Having regard to the overall conspectus of the matter, we are not inclined to accept that the 2nd Respondent could have possibly ordered the construction of a bridge in this fashion. It is not the construction of the bridge only that is objectionable, but its location too, for this is *prima facie* on private lands. The lack of any explanation in the affidavit in reply showing that the lands on either side of the bridge are public lands that vest in the Municipal Council is telling. It is inconceivable that a Municipal Council could create public pathways to and from private lands without permission of the land owners, without acquisition of the land and without appropriate orders of a Court. Whatever may be the demands of the local councillor Henriques or residents at some other location, the boundaries of a private owner's land must receive protection.

11. For want of any explanation, we make Rule absolute in terms of prayer clause (a), (b) and (c).

12. We clarify, however, that this will not restrain the 2nd Respondent Counsel from proceeding in accordance with law if it wishes to acquire any land or create any public access.

NUTAN D. SARDESSAI J.

G. S. PATEL J.