

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 891 OF 2016

LA CITADEL COLONY RESIDENTS
ASSOCIATION, THR. MR. EMERICO
AFONSO AND ANR.,

... Petitioners

Versus

VILLAGE PANCHAYAT OF TALEIGAO,
THR. ITS SECRETARY/SARPANCH AND 4
ORS.,

... Respondents

Shri Devidas J. Pangam, Advocate for the petitioners.
Shri P. Dangui, AGA for the respondent nos. 4 and 5.
Shri H.D. Naik, Advocate for the respondent no.2.
Shri J.E. Coelho Pereira, Senior Advocate with Shri V.
Braganza, Advocate for the respondent no.3.

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

Date:- 14th February, 2017

P.C.

1. Heard Shri Pangam learned counsel appearing for the petitioners, Shri H.D.Naik, learned counsel appearing for the respondent no.2 and Shri Coelho Pereira, learned Senior Counsel appearing for the respondent no.3.

2. The challenge in the above petition is to the construction license produced at Annexure-D collectively being put up by the respondent no.3. Shri Pangam, learned counsel appearing for the petitioners points out that though the plot purchased by the petitioners discloses the area being 504 square meter

nevertheless the respondent no.3 obtained Conversion Sanad which suggests that only an area of 500 square meter was converted. The learned counsel further points out that in the residential prestigious colony at Dona Paula, the respondent no.3 in flagrant violation of the Building Regulations is putting up a hotel project. The learned counsel further points out that the petitioners filed an objection to such development permission before the North Goa Planning Authorities wherein an inspection was carried out and a report was prepared, which is part of the records of the above petition. The learned counsel further submits that on perusal of the report dated 25th of October, 2016 at Exhibit-B to the affidavit filed by the respondent no.2 it clearly shows that the setbacks mentioned therein are not in accordance with the Regulation. The learned counsel further points out that in terms of Clause 6A.3.1 the permissible use for a plot ad-measuring more than 500 square meters in S1 and S2 zones is clearly specify which include besides the residential purposes, a hotels, boardings etc. which are permitted only to the extent of 25% of the covered area. The learned counsel further points out that in view of the restricted clause existing in the sale deed by the original purchaser there is specific restriction to use the plot only for residential purpose. The learned counsel further points out that as the hotel project is not permissible in the residential colony, the development permission issued by the respondent no.2 deserves to be quashed and set aside. It is further

pointed out that as the plot area shown in the Conversion Sanad is only 500 square meters, it would clearly disclosed that the plot is not more than 500 square meters which would entitle the respondent no.3 to put up a hotel project in terms of said clause 6A.3.1. The learned counsel further submits that as the respondent no.3 has failed to maintain the setbacks and in fact has proceeded to put up a construction on the boundary of the property the development activity itself is in violation of the statutory Regulation which deserves to be quashed and set aside. The learned counsel further points out that as the permissions obtained by the respondent no.3 are tainted by illegalities, the construction license in favour of the respondent no.3 be quashed and set aside.

3. On the other hand, Mr. H.D. Naik, learned counsel appearing for the respondent no.2 submits that in terms of clause 6A.3.1 the only setback envisaged therein is to maintain the front setback of five meters. The learned counsel has thereafter taken us through the permissions issued by the technical approval granted to the respondent no.3 to point out that in fact such front setback is available on the site. The learned counsel further submits that there are conditions, imposed in the technical approval to the effect that the Conversion Sanad would have to be obtained before carrying out the development by the respondent no.3. The learned counsel as such submits that as the

development carried out by respondent no.3 is as per the statutory Regulations there is no case made out for any interference in the technical approval by the respondent no.2.

4. Shri Dangui, learned AGA appearing for the respondent no.1 submits that as far as the dispute raised by the petitioners in connection with the Conversion Sanad issued by the Collector, an inquiry has already been initiated and the matter is still pending for adjudication. It is however pointed out that the conversion granted by the Collector is only to the extent of 500 square meters. Shri Coelho Pereira, learned Senior Counsel appearing for the respondent no.3 has vehemently argued to contend that the petition itself is barred by laches and delay, as according to him, the permission was obtained in the year 2014 and the petition is filed in August 2016. The learned Senior Counsel further points out that the averments made in the petition to claim knowledge of the subject construction is inconsistent with the complaint lodged by the petitioners in the year 2015 complaining of the development being carried out by the respondent no.3. The learned Senior Counsel as such points out that on this ground alone, the petition deserves to be rejected. The learned Senior Counsel further points out that this is a restricted clause of use of land in the agreement as claimed are matters which are to be adjudicated in the civil proceedings and not in a Writ Petition under Article 226 of the Constitution of

India. The learned Senior Counsel further submits that the Regulations require that the plot has to be more than 500 square meters and there is nothing shown therein that the conversion has to be obtained for the entire area of such plot. The learned Senior Counsel further points out that as such the contention of Shri Pangam, learned counsel appearing for the petitioners on that count deserves to be rejected. The learned Senior Counsel however submits that the respondent no.3 has maintained all the setbacks and according to him the report produced by the respondent no.2 itself suggests that besides the front setback of 5 meters, there is a setback maintained on all the remaining three sides of the plot which is more than three meters from the plot mark. The learned Senior Counsel points out that the contention of the petitioners as such deserves to be rejected.

5. We have considered the submissions of the learned counsel and we have also gone through the record. The grievances raised by the petitioners are essentially three fold;(i) that the Conversion Sanad is not in accordance with the area of the plot allegedly purchased by the respondent no.3; (ii) that the side setbacks have not been duly maintained by the respondent no.3 while putting up the subject construction and (iii) that in view of the restricted clause in the sale deed pursuant to which the original owner had purchased the subject plot, the question of using land for a hotel project is not at all justified.

6. With regard to the first contention of Mr. Pangam, learned counsel appearing for the petitioners that the conversion is only for residential purposes and the respondent no.3 is using land for hotel project and also with regard to the discrepancy in the area converted by such Sanad, we find that as the Collector has already initiated an inquiry with that regard, the question of considering such aspect in the present writ petition would be pre-mature. Keeping all the contentions of the parties open with regard to such objections raised by the petitioners before the learned Collector, we find that the question of examining the correctness or otherwise of such allegation would not at all be justified in the present writ petition.

7. With regard to the contention of Shri Pangam, learned counsel appearing for the petitioners that setbacks have not been maintained as provided under the statutory Regulation, we find on perusal of the report produced by the respondent no.2 which was prepared by the Member Secretary of the North Goa Planning Authority alongwith two officials, it clearly shows that there are setbacks maintained on all four sides of the plot. Though Shri Pangam, learned counsel appearing for the petitioners has disputed the correctness of the measurement mentioned therein, we find that such disputed question of fact cannot be examined in the present Writ Petition under Article

226 of Constitution. But however, taking note of the contention of Shri Coelho Pereira, learned Senior Counsel appearing for the respondent no.3 that the set backs as mentioned in the report prepared by the Member Secretary are available at the site, we find that the question of examining the correctness of the allegation made by the petitioner with that regard would not at all be justified. As such, as there is nothing placed on record to show that the setbacks as mentioned in the report are contrary to the statutory Regulation, we find that the contention of the petitioners to that effect has not been established.

8. As far as the contention of Shri Pangam, learned counsel appearing for the petitioners that the restrictive use of land for the residential purpose as mentioned in the agreement and the sale deed are being breached by the respondent no.3 by putting up a hotel project, these are contractual matters which cannot be dealt with in the writ petition under Article 226 of Constitution of India. The petitioners if so advised would have to take appropriate remedies in law in case any restrictive use of land for residential purpose as alleged by the petitioners exists in the sale deed executed in favour of the original owner of the subject property, in accordance with law.

9. At this stage, Shri Pangam, learned counsel appearing for the petitioners points out that no notice of the inquiry initiated

by the Collector has been received by the petitioners. The petitioners, if so advised are at liberty to file an intervention application in such proceedings which shall be examined after hearing the concerned parties in accordance with law by the Collector.

10. Considering the pendency of the inquiry before the Collector, there is no reason to interfere in the above petition under Article 226 of Constitution of India for the aforesaid reasons. The petition is accordingly disposed of.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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