

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 807 OF 2017**

1. Mr. Milagres Moraes,
Major of age, R/o H. No.591,
Colmorod, Navelim,
Salcete – Goa.

2. Mrs. Ema Moraes,
Major of age,
r/o H. No.591, Colmorod,
Navelim, Salcete, Goa.

.... Petitioners.

V e r s u s

1. The State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim,
Bardez – Goa.

2. The Margao Municipal Council,
Through its Chief Officer,
Margao, Salcete, Goa.

3. The South Goa Planning & Development Authority,
Through its Member Secretary,
Margao, Goa.

4. The Goa Town & Country Planning Board,
Through its Member Secretary,
Town & Country Planning Department,
Patto, Panaji-Goa.

5. Mr. Piedade Moraes,
Through his Attorney,
Mr. Mohajam Shaikh,
Major of age,
r/o Aisha Apartments, B-Block,
Flat No. S-1, Navelim Road,
Margao-Goa.

..... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioners.

Mr. A.S. Talaulikar, Addl. Government Advocate for Respondent no.1 and 4.

Mr. C. A. Coutinho, Advocate for Respondent no.2.

Mr. S. Korgankar, Advocate for Respondent no.3.

Mr. P. Talaulikar, Advocate for Respondent no.5.

CORAM: C. V. BHADANG, J.
DATE: 12TH DECEMBER, 2017.

ORAL JUDGMENT

Rule, made returnable forthwith. The learned counsel for the respondents waive service. Heard finally by consent of parties.

2. The material dispute is between the petitioners and the fifth respondent, who is the defendant no.5 in a suit filed by the petitioners. The petitioners sought to place reliance on two inspection reports, namely, dated 23/10/2012 and 23/12/2014. That inspection was conducted by the respondent no.2/Municipal Council. The learned District Judge has by an order dated 10/7/2017 dismissed two applications, namely Exhibit 212 and 213 filed by the petitioners. The net result is that although the production and placing of reliance on the report dated 23/12/2014 is allowed, the learned District Judge has refused leave to the petitioners to place reliance and prove

the report dated 23/10/2012. The petitioners after examining two witnesses, have closed their side, subject to a challenge to the impugned order.

3. On hearing the learned counsel for the parties, I find that the petition could be disposed off on a short count. The limited issue is whether the petitioner can be permitted to produce the report dated 23/12/2012 of the technical section of the respondent no.2/Municipal Council on record. Without going into the rival contentions, it may be noted that in para 7 of the reply dated 23/6/2017 filed by the fifth respondent to the application filed by the petitioners, the respondent no.5 has also referred to and has produced the self same report dated 23/10/2012. It is also not in dispute that the petitioner and the respondent no.5 were personally present during the course of the said inspection. Once the respondent no.5, who is the contesting respondent/defendant has produced the said report on record, in my considered view the petitioner can be allowed to place reliance on the same and the same can be read in evidence subject to its proof in accordance with law, Ordered accordingly.

4. It would be open to the petitioner to give a notice to admit the said report to the respondent and prove the said report in accordance with law.

5. It is made clear that this Court has not examined the probative value to be attached to the said report and rival contentions in that regard are left open.

6. Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/