

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.8 OF 2017

- 1 Sateesh @Satish K. Azgaonkar
- 2 Mrs. Sneha Satish Azgaonkar

Both resident of Miraj,
Maharashtra
- 3 Sandhya @Suchitra Sameet
Patwardhan
- 4 Sameer Vijaykumar Patwardhan

Both resident of Mayuresh
Apartment, Near Sangli Bus
Stand, Sangli, Maharashtra.
- 5 Smt. Swapana Sanjeev
Azgaonkar
- 6 Mr. Sanket @ Digvijay Sanjeev
Azgaonkar
- 7 Mr. Sourab Sanjeev Azgaonkar
- 8 Mr. Sarvesh Sanjeev Azgaonkar

Resident of Brahmanpuri,
Shanivar Peth, Miraj,
Maharashtra – 416 410

For himself and Constituted
Power of Attorney for petitioner
Nos.1 to 7.

...Petitioners

Versus

- 1 State of Goa
Through the Deputy Collector
and Sub Divisional Officer,
Ponda – Goa.

- 2 Piyush Property
Citi Center, Patto
- 3 Prabhakar Nerulkar
Resident of House No.208,
Near Hanuman Temple
Reis Magos, Verem Bardez
Major of age,
- 4 Kundan Kumar
Resident of House No.136/A,
Abbekand, Verem, Bardez-Goa
Major of age
- 5 Jaspal Sinha
Resident of House No.136/A,
Abbekand, Verem, Bardez-Goa
Major of age
- 6 Nerraj Kankonkar
Resident of Kindlem, Canacona.
Major of age
- 7 Smita Krishnaji Azgaonkar @
Smita Suresh Naik
- 8 Shri Suresh Shankar Naik,
Both major

Both resident of Prabha
Apartment, Khandpabandh,
Ponda-Goa.
- 9 Village Panchayat of Panchvadi,
Through the Secretary
Panchvadi, Ponda – Goa. Respondents

Shri C. Padgaonkar, Advocate for the petitioners.

Shri Arun Talaulikar, Additional Government Advocate for the
respondent No.1

Shri S. Taleigaonkar, Advocate for the respondent No.9.

CORAM: NUTAN D. SARDESSAI, J.

RESERVED ON : 19th June, 2018.

PRONOUNCED ON : 4th July, 2018.

JUDGMENT:-

1. This petition takes exception to the impugned judgment and order passed by the Administrative Tribunal which dismissed the appeal preferred by the petitioners and upheld the judgment and order passed by the Deputy Collector and Sub-Divisional Officer exercising his powers under Section 33 of the Goa, Daman and Diu Land Revenue Code, 1968, 'the Code' for short hereinafter.

2. Heard Shri C. Padgaonkar, learned Advocate for the petitioners who contended that the order passed by the learned Deputy Collector under Section 33 of the Code was liable for reversal as it was passed in violation of the principles of natural justice. He adverted to the check list drawn by the Talathi pointing out the four allegations against the petitioners viz a viz developing the plots, hill cutting, construction of the road by rubble and laterite stones and cutting down trees. They had filed their reply in which it was clearly stated that there existed a Panchayat road in their property being situated on the Northern side of the Survey No.129 which was being cleared off

all the bushes as it was not maintained by the Panchayat and/or the PWD as being the only access to their property. Another plea was taken in the reply of some of the respondents that besides the Panchayat road shown on the survey plan, there was no other road at the site and the so called road shown on the plan by the Field Surveyor Mapusa as an illegal road constructed with laterite stones did not exist at the site and which could be verified by a joint site inspection.

3. He further contended that the petitioners had otherwise clearly asserted in their petition that there was no other road on the site besides the Panchayat road shown in the Survey Plan and the so called illegal road shown in the plan by the Field Surveyor as an illegal road did not exist at the site which could be verified by a joint site inspection. There was only one road in the middle of the property under Survey No.129 which was constructed with the pavers only because the terrain was sloppy and the trail was usually washed away during the monsoons. He next adverted to the inspection report drawn at the instance of this Court where there was a clear reference to the fact that there was no on going development work or machinery or labourers seen at the site to buttress his case that no activity

was carried out in the disputed property by the Petitioners. Besides the inspection report made a reference to a katcha road leading from the village road to the disputed property bearing Survey No.129/0, 130/0 and 131/0 which was unlike the statement of the Village Panchayat- respondent No.9 that there was no notified Panchayat road leading internally towards the said properties.

4. He next adverted to the Goa (Regulations of Land Development and Building Construction) Act, 2008 and the Goa Land Development and Building Construction Regulations, 2010 Act, 'the Act and Regulations' for short hereinafter and invited attention to Section 6A 2.1 which prescribed the uses prohibited except those permitted with restrictions in respect of Zones S1, S2, S3 and S4 and sub Section (g) which dealt with Zone A1 and A2 relating to all uses other than agriculture, horticulture, farming and allied operations. He next adverted to Section 6A.3.1 regarding the uses permitted with certain restrictions in respect of Zones S1, S2, S3 and S4 and sub clause (i) in particular relating to Zone A1 and A2 and submitted that the Petitioners property was primarily an orchard property. Any internal development was prohibited under the Act and the

Regulations framed thereunder. Proceedings initiated by the Deputy Collector under Section 33 of the Code was without any basis as there was no prohibition in law to carry out the internal development in terms of the Act and the Regulations thereunder. The Petitioners had obtained permission from the Deputy Conservator of Forests in the matter of tree cutting and even assuming without admitting that there was hill cutting, it was a cognizable offence of which cognizance could be taken under Section 18A by the Chief Town Planner under the Town and Country Planning Act, 1974. Besides, it was apparent from the evidence of the Panchayat respondent No.9 that an FIR was registered against the petitioners. The Petitioners had a good case and therefore the impugned judgment had to be quashed and set aside.

5. Shri A. Talaulikar, learned Additional Government Advocate for the respondent No.1 submitted that the petitioners had not obtained any permission and had still gone ahead with the construction activities in their property. He referred to the permissible uses in terms of Section 6A 3.1 but submitted that the permissions of the authorities was necessary which was not produced by the petitioners. There were two concurrent findings

by the two authorities against the petitioners and therefore the petition was not tenable and liable for dismissal. He placed reliance in **Agostinho Fernandes v/s. State the Mamlatdar of Salcete and anr** (WP No.295/2013) and pressed for the dismissal of the petition. Shri S. Taleigaonkar, learned Advocate for the Panchayat - respondent No.9 submitted that the petitioners had made plots and disposed off to various parties which was apparent from the mutation records forming a part of the records. He adverted to the order of the Town and Country Planning Department dated 15/09/2014 and submitted that the case of the petitioners could not stand the test of legal scrutiny.

6. Shri S. Taleigaonkar, learned Advocate next adverted to the report annexed to the Resolution adopted by the respondent No.9 alongwith the photographs and submitted that the case set up by the respondent No.9 about the illegality committed by the petitioners was not denied by filing any rejoinder. The plan to the checklist showed the existence of an illegal road which too was not denied on behalf of the petitioners. Last but not the least he referred to the inspection report drawn at the instance of this Court where there was a due reference to the road being

laid by the petitioners. There was no justification for interference and hence the petition had to be dismissed. It was the contention of Shri Padgaonkar, learned Advocate for the petitioners that the property was an orchard property and there was no prohibition to sell such property. There was no power in the Deputy Collector to initiate proceedings against the petitioners. No structures too were at site nor were there any averments in the reply or the Joint Inspection Report. The Show Cause Notice did not show any violation on the basis of the Building Regulations and therefore the impugned judgment be quashed and set aside.

7. i would consider their submissions, the relevant provisions of the Code, Act and Regulations and the judgment under challenge and decide the petitioner appropriately.

8. Section 30 of the Code provides that no land used for agriculture shall be used for any non-agricultural purpose and no land assessed for one non-agricultural purpose shall be used for any other non-agricultural purpose or for the same non-agricultural purpose but in relaxation of any of the conditions imposed at the time of the grant or permission for non-agricultural purpose, except with the permission of the Collector

under Section 32. Section 31 deals with the restrictions on the use and empowers the Collector or a Survey Officer to regulate or prohibit the use of land liable for the payment of land revenue as provided therein while Section 32 provides for the procedure for conversion of use of land from one purpose to another. Section 33 in particular prescribed the penalty for so using the land without permission and reads that if any land held or assessed for one purpose is used for another purpose without obtaining permission of the Collector under Section 32 or before the expiry of the period after which the change of user is deemed to have been granted under that Section, or in contravention of any of the terms and conditions subject to which such permission is granted, the holder thereof or other person claiming through or under him, as the case may be, shall be liable to the one or more of the penalties, as prescribed therein.

9. In other words, the powers of the Collector are quite vast insofar as imposing penalty for using the land held for a purpose other than the one for which it is granted. It is therefore to be seen whether there is basis in the contention of Shri Padgaonkar, the learned Advocate for the petitioners that

the Deputy Collector acted in violation of the principles of natural justice while taking resort to the provisions of Section 33 of the Act. Admittedly, the land of the petitioners was an orchard land as per the Certificate issued by the Town and Country Planning Department dated 06/05/2014. The learned Deputy Collector acting on the basis of the check list drawn by the Talathi and forwarded by the Mamlatdar of Ponda had issued a Show Cause Notice to the petitioners calling upon them to show cause on the unauthorised conversion of the use of land by illegally developing plots, hill cutting, constructing road by rubble and laterite stones and cutting trees in the said property without obtaining permission from the Competent Authorities. The petitioners herein had submitted their detailed reply spelling out that they were intended to carry out the development in the said property in the nature of dairy farming and that nothing could be done as the Town and Country Planning Department had refused permission by their letter dated 15/09/2014. However, besides the Panchayat road shown in the Survey Plan, there was no other road at the site and no illegal road as shown in the plan by the Field Surveyor existed at the site which could be verified by a joint inspection at loco. They had laid two other roads in the middle of Survey No.129

with pavers to take vehicles for the dairy farm and to reach to the sheds which were developed and all this was done on the assumption that since the Town and Country Planning Department had accepted their fees they would process their request.

10. The other set of the petitioners too had asserted that there was a Panchayat road in existence in the property situated at the Northern side of the Survey No. 129 which was being cleared off all the bushes as it was not maintained by the Panchayat – respondent No.9 and/or the PWD and which was the only access to their land. The reply given by them had apparently not found favour with the learned Deputy Collector who vide his judgment dated 16/11/2015 and on the basis of the various inspections carried out by the local body came to a conclusion that the petitioner had not obtained conversion as required under Section 32 of the Code, had carried out haphazard development in the land and in view thereof confirmed the notice, directed them to restore the land and undo the development undertaken in the properties failing which the respondent No.9 was directed to execute the work of restoration of the land with the help of the demolition squad

and finally a direction to the respondent No.9 to file an FIR at the police station in case there was a violation of the order.

11. The Deputy Collector had not examined the aspect that the petitioner's land was an orchard land and instead in his wisdom proceeded on the premise that it was an agriculture land and proceeded under Section 32 of the Act. Insofar as the development of the land was concerned, the petitioner would be guided by the Act and the Regulations framed thereunder, insofar as the allegations of hill cutting is concerned, the petitioners would be liable for penal action under Section 18A of the Town and Country Planning Act, 1974, insofar as tree cutting was concerned it was shown that the petitioners had obtained appropriate orders from the Deputy Conservator of Forests for tree felling and therefore it was not open to the learned Deputy Collector to proceed to take action in accordance with Section 33 of the Act. However, the contention of Shri C. Padgaonkar, learned Advocate for the petitioner that there was a violation of the principles of natural justice does not stand the test of scrutiny when notice was given to the petitioners and the order in question was passed giving rise to the appeal before the learned Administrative Tribunal.

12. The learned Tribunal considered all these aspects of the matter while dealing with the appeal at the petitioners instance and ultimately held that there was no cause for interference with the order of the Deputy Collector and dismissed the appeal. What however is material is that there has been no rebuttal at the instance of the petitioners that they had demarcated the plot and sold them to different persons as evident from the mutation records produced on behalf of the respondent No.9. The site visit report and the inspection report ordered by this Court alongwith the photographs otherwise showed that hill cutting was done apart from levelling of the area and laying of the road at the instance of the petitioners and who had otherwise also laid the pavers for the roads. Moreover, from the Inspection Report itself it was apparent that the property was developed by hill cutting, felling of trees, levelling the area in the residential plots by fixing laterite stones and internal katcha road of the width road of 8 meters were laid in the property in question. It is another matter that at the time of inspection carried out at the instance of this Court no further on going development work or machinery, trucks or labourers were seen at the site but the fact remains that there was development carried by the petitioners including levelling

and felling of trees.

13. Agostinho (*supra*), had challenged in the petition the judgment passed in the Land Revenue Appeal whereby the appeal preferred by the petitioner challenging the judgment of the Deputy Collector was dismissed and as authorities below had come to the conclusion that he had carried out illegal construction without obtaining the requisite conversion in terms of the provisions of the Code. It was contended on behalf petitioner that the construction was in existence over a period of time and much prior to the coming into force of the Code and therefore the conversion was not required. Quite on the contrary, it was contended on behalf of the respondent No.2 that the construction put up by the petitioner was illegal, without conversion and liable for demolition and therefore no question arose of granting any relief to the petitioner. The learned Single Judge of this Court (F.M. Reis, J.) on considering the contentions and perusing the records apart from the impugned judgment concluded that the construction put up by the petitioner was without obtaining the conversion sanad in terms of the Code and that no interference was called for in the petition under Article 227 of the Constitution. This judgment

clearly substantiates the case of the respondent No.1 against the petitioners. On a consideration of the material and in exercise of the powers of superintendence under Article 227 of the Constitution of India no case has been made out for interference with the impugned judgment and in view thereof, i pass the following :

O R D E R

The Writ petition is dismissed.

NUTAN D. SARDESSAI J.

Mv

12. Shri C. Padgaonkar, learned Advocate for the petitioners seeks leave to move an application for regularisation of the development, leave granted.

13. The authorities to desist from acting on the basis of the order dated 16/11/2015 till such an application is moved within four weeks from today.

NUTAN D. SARDESSAI J.

Mv