

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
PUBLIC INTEREST LITIGATION WP NO. 5 OF 2018

Gourav Jaswal and anr. Petitioners.

Versus

The State of Goa through Chief
Secretary and others. Respondents.

Ms. Anamika Gode, Advocate for the Petitioners.

Ms. Purna Bhandari, Additional Govt. Advocate for the Respondent
No.1.

Mr. Ashwin Bhobe, Advocate for Respondent No.2.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 4 September 2018.

P.C.:

This PIL Writ Petition pertains to a public garden near Shalom Residential Building, along the Dona Paula-Miramar Road, Panaji. It was the grievance of the Petitioner that even though the said garden is a public garden, it is usurped by Respondent No.3 and the general public is denied access to the garden.

2. When the Petition came up on board on 6 June 2018, the following order was passed:

“ Learned counsel for Respondent nos.2 and 3 seeks time to file reply. Learned counsel for Respondent no.3 states that the garden in question does not belong to Respondent no.3 but Respondent no.3 has spent certain amount for upkeep of the same. Learned Counsel for Respondent-Corporation seeks time to take instructions. The Corporation is directed to file an affidavit placing on record the steps the Corporation proposes to take steps to make the garden accessible to the public.

2. Stand over to 12 June 2018.”

Thereafter on 12 June 2018, following order was passed :

“ The Commissioner of the Corporation of the City of Panaji has tendered an affidavit in reply. It is stated by the Commissioner that the land on which the concerned garden stands does not belong to the Corporation of the City of Panaji nor it has been assigned to the Corporation. It is stated that this piece of land belongs to the Town and Country Planning Department.

2. The learned counsel appearing for the Corporation states that there will be administrative difficulty for spending funds on this garden since the land does not belong to the Municipal Corporation.

3. The learned Additional Government Advocate has shown us a copy of the order issued by the Chief Town Planner to the Deputy Collector dated 3 May 2018, whereby taking cognizance of the complaint, the Town Planner has written to the Deputy Collector that the illegal fencing has been erected on the said land which is in the ownership of the State Government and necessary action needs to be taken in the matter of encroachment.

4. *On the last occasion, we had recorded the statement of Respondent No.3 that the concerned land does not belong to Respondent No.3. Therefore, it is more than clear now that, either the Municipal Corporation or the State Government will have to take steps in this matter. The Deputy Collector has already been approached by the Chief Town Planner. The Deputy Collector will take necessary action in this regard within a period of two weeks.*

5. *The learned Additional Government Advocate seeks time to take instructions whether the garden in question can be maintained by the Forest Department since it stands on the Government property.*

6. *The Chief Town Planner and the Deputy Collector are directed to ensure that the garden will remain open to the public during the reasonable hours and they shall put the boards at the prominent places bringing to the attention of the general public that the garden is a public garden and it is open to the public. If there are any impediments in making the garden accessible, the Authorities will take necessary steps to remove such hindrances. The board shall specify the name and the contact number of the officer to be contacted in case for some reason the entry in this garden is restricted.*

7. *Stand over to 26 June 2018.”*

Further order was passed on 26 June 2018. Thereafter on 23 July 2018, we had passed the following order :

“ *The learned Additional Government Advocate has placed before us certain photographs which show the*

board placed on the compound stating that the garden in question is a public garden and also that the revolving gate has been put up. Revolving gate however does not appear to have been properly fixed.

2. As regards the second issue regarding maintenance of this public garden, the two communications have been placed before us, one addressed by Commissioner of City of Panaji and other by the Deputy Conservator of Forest, stating that they cannot maintain the garden. Such situation cannot be countenanced. This being a public garden, the State will have to look after the same. There must be an Authority/Department who is incharge of maintenance of public gardens in the State. We direct the said Authority to immediately take charge of the said garden for the purpose of maintenance and place the report before us by next date. The Registry to send the copy of the order to the Chief Secretary for him to look in to the issue of the proper department.

3. Stand over to 20 August 2018.

4. Memo of appearance on behalf of Respondent no.1 and Vakalatnama on behalf of Respondent no.3 to be filed before the next date.”

3. Since the issue was not clear as to who will be maintaining the garden, on 20 August 2018, the learned Additional Govt. Advocate submitted that directions have been issued to the Forest Department to take charge of the garden and it was stated that a revolving gate is fixed. The learned Additional Govt. Advocate had stated that an affidavit placing this position on record would be filed.

Accordingly, the learned Additional Govt. Advocate tenders an affidavit sworn by the Chief Town Planner. We have taken this affidavit on record. Following averments are made in the affidavit :

“2. I state that the said garden in question is a public garden. However, the said garden stands in the property acquired by the Town and Country Planning Department and vide letter dated 21.09.2018, the Principal Chief Conservator of Forests, Forest Department had been directed to maintain the park and it was also made clear that the cost involved in maintenance of the said Park shall be borne by the Town and Country Planning Department, Government of Goa. Annexed herewith and marked as Exhibit 'A' is the copy of the letter dated 21.08.2018.

3. I state that boards have been fixed at prominent places which make it clear that the said park in question is a public garden with timings specified on the board during which the said garden will remain open to the general public. I state that in addition thereto, contact number of the officer attached of the Town and Country Planning Department has been specified on the said Board in order to ensure that in case of any impediments in making the garden accessible, the concerned officer can be contacted. I state that the revolving gate has been fixed by the Department and this Respondent ensures that the said park will be maintained by the Forest Department. Annexed hereto and marked as Exhibit 'B' are the recent photographs of the Gate and the Board.”

The above statements made by the Chief Town Planner are accepted.

Needless to state that the position stated as above shall continue.

4. Since the grievances raised in this PIL Writ Petition have been sufficiently redressed and the State Government has undertaken the responsibility of ensuring that the Park will be maintained and made accessible to general public, we do not feel it necessary to keep the PIL Writ Petition pending. The Petition is, accordingly, disposed of.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.