

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 853 OF 2017**

M/s Talak Homes & Estates, A partnership firm duly registered under the Partnership Act, 1932, having its office at Ashiyana, Comba, Margao, Goa.

Through its partners:-

- (i) Shri Madhav Talak, son of Vishnu Talak, aged 60 years, business,
- (ii) Smt. Sheela Madhav Talak, wife of Madhav Talak (Petitioner No. i) aged 51 years,
Both residents of 'Sheeshmahal', Comba, Margao, Goa.
- (iii) Shri Arun V. Talak, son of Shri Vishnu Talak, aged 57 years, business, resident of Borda, Margao, Goa.

The Petitioner Nos. (ii) and (iii) are represented by their constituted Attorney, Shri Madhav Talak, the petitioner no. (i) herein

... Petitioner

Versus

The Village Panchayat of Curtorim, Through its Secretary, with its office at Panchayat Building, Curtorim, Salcete, Goa.

... Respondent

Shri Sudesh M. Usgaonkar with Ms. Rosette Pereira, Advocates for the Petitioner.

Shri Ryan Menezes, Advocate for the Respondent.

CORAM : C.V. BHADANG, J.

Reserved on : 21st MARCH 2018

Pronounced on : 28th MARCH 2018

JUDGMENT:

Rule made returnable forthwith. Shri Menezes, the learned Counsel for the respondent, waives service. Heard finally by consent of parties.

2. Apparently a simple issue of grant of construction licence has dragged on for nine long years, giving rise to this petition.

3. The petitioner being the owner of land Survey No. 440/1-H of village Curtorim of Salcete, Goa proposes to develop the said property by constructing a residential building/bungalows in the same. On 28.01.2008, the petitioner applied to the respondent-Village Panchayat of Curtorim, for obtaining a construction licence. In terms of the procedure prevailing then, the respondent, after scrutiny of the documents, was required to forward the petitioner's application to the Senior Town Planner, Town and Country Planning Department, for obtaining a No Objection Certificate (NOC) from the planning point of view and to the Public Works Department (PWD). The respondent however by its communication dated 06.02.2008, refused to forward the petitioner's application on the ground that the Members of the

Gram Sabha, had resolved not to grant permission and not to forward the petitioner's application to the concerned department.

4. The petitioner challenged the same before the Director of Panchayat, in an appeal, which came to be allowed. In spite of the order of the Director of Panchayat, the Sarpanch of the Village Panchayat refused to send the application of the petitioner to the concerned department. This was so informed by the Secretary of the respondent by a communication dated 22.08.2008. On 30.09.2009, the Sarpanch of the respondent was directed to hand over the file to the Appellate Authority. The file was accordingly handed over and eventually, the Secretary of the respondent forwarded the application to the respective departments.

5. On 12.08.2010, the Senior Town Planner granted the application of the petitioner, which was followed by the NOC from the Health Officer, Primary Health Centre, Curtorim on 20.10.2009. On 22.10.2009, the respondent received the technical approval from the office of the Assistant Engineer, PWD.

6. On 18.10.2010, the respondent asked the petitioner for a certificate about availability of water. The petitioner accordingly obtained the necessary certificate from the Executive Engineer, Works Division IX, Fatorda, Margao on 01.11.2010. On 08.11.2010, a certificate of availability of power supply was obtained from the Assistant Executive Engineer, Electricity Department. In spite of all these requirements being satisfied, the respondent failed to issue the construction licence and the petitioner was informed that the respondent-Village Panchayat had decided to place the petitioner's application before the Gram Sabha.

7. It appears that on 13.12.2010, the respondent addressed a communication to Town and Country Planning Department (TCP) stating that an organisation called "Curtorkarancho Ekvott" had raised certain objections to the grant of licence vide their representation dated 08.12.2010. The objection was primarily on the ground of the alleged violation of the minimum requirement of the road width and the height restrictions etc. The Village Panchayat in such circumstances, sought for an opinion of the Town Planner on these issues. On 17.11.2011, the Town Planner intimated the

respondent that there was no violation of the road width requirement, in as much as, 6 metres wide road was available as per the survey plan and only a part of it, namely, 3.2 metres was tarred and the untarred portion was shown as a shoulder. It appears that the issue about the width of the road was considered by the TCP Board (Board, for short) in its meeting held on 30.06.2011. The Board was also of the opinion that since the road is shown as 6 metres wide in the survey plan, which is an authentic document, the remaining portion after the tarred portion of the road, could be treated as shoulders. The officer of the Senior Town Planner sent a communication to the Sarpanch of the respondent on 17.11.2011, intimating the decision of the Board and also clarifying that at the time of grant of NOC dated 12.08.2010, the Department had followed the provisions of Regional Plan 2001 and the Planning and Development Regulation 2000, which permitted the maximum height of 11.5 metres, excluding the stilt floor. The letter notes that the NOC was granted for stilt + 3 upper storey construction and 1 villa of ground + 1 upper storey. The height recommended was approximately 9 metres, excluding the stilt. The letter specifically notes that the decision of the Board was approved by the Government.

8. Ultimately, the respondent in its meeting dated 16.12.2011, resolved to grant the construction licence to the petitioner's project, subject to various conditions as set out in the resolution. It was also decided to inform about the said resolution to the President of "Cutorkarancho Ekvott" and to call them for discussing further conditions, if any, to be imposed in the licence. In spite of the resolution by the Panchayat, the construction licence was not forthcoming, which led the petitioner to approach this Court in Writ Petition No. 459/2012, for a direction to the respondent-Village Panchayat to issue the construction licence on payment of necessary fees. The respondent, however, opposed the petition on the ground that the 'Gram Sabha', had opposed the development to be undertaken by the petitioner.

9. On 24.09.2012, this Court disposed of the Petition, directing the respondents to take decision on the petitioner's application dated 20.01.2008, as expeditiously as possible and within a period of twelve weeks from the date of the order. On or about 31.12.2012, the petitioner received an order rejecting the petitioner's application, which was apparently based on the resolution of the Gram Sabha, taken on 25.11.2012 and it was stated that the Gram Sabha was against such a large project,

which would create “environmental problems”.

10. Aggrieved by the said decision, the petitioner approached the Additional Director of Panchayat in Panchayat Appeal No. MAR-I/9/2013. The learned Additional Director of Panchayat, allowed the appeal by his order dated 17.09.2014, directing the respondent to issue the construction licence to the petitioner, on payment of necessary fees, within 30 days. The petitioner addressed a communication to the respondent on 04.10.2014, requesting to comply with the order of the Appellate Authority, which did not yield any desired results. The petitioner then informed about the non-compliance to the Appellate Authority on 11.11.2014.

11. Thereafter, the petitioner approached this Court by filing Writ Petition No. 4/2015, again seeking a direction to the respondent to grant the construction licence. In the said petition, the Sarpanch of the respondent filed an affidavit in reply, stating that the Panchayat had resolved to reject the licence vide resolution dated 06.12.2014, which was intimated to the petitioner vide communication dated 17.12.2014. The petitioner by virtue of an amendment, challenged the communication dated 17.12.2014 in Writ Petition No. 4/2015.

The said petition is pending before the Division Bench of this Court. The respondent in the meantime filed Civil Revision Application No. 26/2015, before the learned District Judge, challenging the order dated 17.09.2014, passed by the learned Additional Director of Panchayat.

12. The learned District Judge vide judgment and order dated 21.06.2017 partly allowed the civil revision application.

The operative order reads thus:

“The present Civil Revision Application is partly granted in as much as that the respondent be given an opportunity to comply/rectify the lapses by making the provisions as required and the petitioner shall look into the matter and take steps to act in accordance with the legal provisions/Acts within a period of 90 days from this order by issuing the construction licence. The impugned judgment and order dated 17.09.2014 of the learned Additional Director of Panchayats-I, Margao hence is partly upheld and confirmed.”

13. Feeling aggrieved, the petitioner is before this Court.

14. I have heard Shri Usgaonkar, the learned Counsel for the petitioner and Shri Menezes, the learned Counsel for the respondent. With the assistance of the learned Counsel for the

parties, I have perused record.

15. It is submitted by Shri Usgaonkar, the learned Counsel for the petitioner, that the material objection was primarily, with regard to the violation of the minimum road width requirement and the violation of the height restriction, which were mentioned at Serial Nos. 1 and 3 of the letter dated 08.12.2010 from the "Curtorkarancho Ekvott". In this regard, it is submitted that as per the circular dated 03.07.2009, the TCP Authorities were required to grant NOC's, based on the provisions of Regional Plan 2001 and at the time of approval, a minimum of 6 metres right of way, was to be available at site, where the development is for a group housing society. It is submitted that in special case, where a dispute arises, was required to be referred to the TCP Board as per Section 8(1) of the Goa, Daman and Diu Town and Country Planning Act, 1974. It is submitted that the petitioner had offered its explanation, insofar as point nos. 1 and 3 are concerned and thereafter, the respondent-Village Panchayat, by a resolution dated 16.12.2011 had resolved to issue the construction licence, subject to certain conditions. It is submitted that the said approval was granted on the basis of the NOC from the TCP issued on 12.08.2010, following the provisions of Regional Plan 2001 and

the Planning and Development Regulations 2000. It is submitted that the NOC granted by the TCP has also been approved by the Government and thus, there was no occasion for the respondent, to have withdrawn the construction licence, on the basis of the decision taken by the Gram Sabha. It is submitted that the learned Additional Director of Panchyat after considering all the relevant circumstances, had rightly directed the respondent to issue the construction licence. It is submitted that the learned District Judge, without specifying as to the nature of the compliance or rectification of the lapses to be made, had partly allowed the civil revision application. The learned Counsel was at pains to point out that the order passed by the learned District Judge does not set out the lapses, which are required to be cleared or the compliance to be made. Thus, the order partly allowing the civil revision application, is bad in law.

16. On behalf of the petitioner, reliance is placed on the decision of this Court in the case of **Meenakshi Financial Consultants (P) Ltd. Vs. Village Panchayat of Orlim, 2009(4) Bom.C.R. 666** and **Smt. Dolorosa Luis Vs. State of Goa** (Writ Petition No. 56/2015, decided on 05.05.2015). He submits that the respondent has left no stone unturned to see

that the petitioner is deprived of the construction licence.

17. On the contrary, it is submitted by Shri Menezes, the learned Counsel for the respondent that the objection is on three counts, namely, (i) the width of the access road (ii) the non-compliance with the required FAR and (iii) the height restriction. It is submitted that as per the RPG 2021, the respondent is categorized at VP 2, where the FAR is reduced from 70% to 60% and the height is reduced from 11 metres to 9 metres. It is submitted that the TCP Authorities, without visiting the site and merely relying on the survey plan, had certified the existence of the road having 6 metres width. It is submitted that, out of the 6 metres road, only 3.2 metres is tarred portion and it is not in compliance with the requirements. The learned Counsel has referred to the order passed in Writ Petition No. 372/2009, in which, this Court had directed the authorities to visit the site and accordingly, a circular was issued on 28.01.2010. It is submitted that the TCP Authority, in breach of the said circular, had certified the road width. It is submitted that the building also does not comply with the height restrictions and therefore, acting on the resolution of the Gram Sabha, the respondent had revoked the construction licence. It is submitted that the learned District

Judge has upheld the order passed by the learned Additional Director of Panchayat, subject to opportunity being granted to the complainant to comply and rectify the lapses and as such, the order, does not call for interference.

18. On behalf of the respondent, reliance is placed on the decision of Supreme Court in the case of **Village Panchayat of Calangute Vs. Additional Director of Panchayat-II & Others, 2012(4) Bom.C.R. 481 (SC)**, in order to submit that while exercising powers under the Goa Panchayat Raj Act, the Village Panchayat was not acting as a subordinate to the Additional Director of Panchayat, but, as a body representing the will of the people and also a body corporate in terms of Section 8 of the Goa Panchayat Raj Act. It is submitted that thus, the Village Panchayat was entitled to take into account the will of the people i.e. of the Gram Sabha.

19. I have carefully considered the rival circumstances and the submissions made. The petitioner had obtained the technical approval from the PWD on 20.10.2009 and a NOC from the Health Department on 22.10.2009. The petitioner has also obtained a certificate as to availability of water on 01.11.2010 and about availability of power supply on

08.11.2010. It is at this stage that a group of villagers, "Curtorkarancho Ekvott", sent a letter to the Sarpanch on 08.12.2010, stating that the Gram Sabha had authorized the "Curtorkarancho Ekvott" to study the plan submitted by the builder and the NOC submitted by the TCP Department, in order to ensure that the legal requirements are met before issuance of the construction licence. "Curtorkarancho Ekvott" has then went upon recording it's observations regarding the plan. The respondent by a communication dated 13.12.2010, forwarded a letter received from "Curtorkarancho Ekvott" to the TCP Department, seeking a reply/opinion "specially pertaining to the items at serial nos. 1 and 3", which are the observations on the violation of the minimum road width requirement and the violation of the height restriction. There are also certain allegations on violation of FAR restriction. It would be apposite to reproduce them as under:

"1. Violation of minimum road width requirement: The existing road width of the access shown on the plans submitted by the builder and approved by the TCP Department is much less than the minimum requirement of 6 metres. Attached herewith is the circular from the Chief Town Planner to all TCP offices in this regard. It is obvious that the NOC given by the Town Planner, Margao is in blatant violation of the law as laid down by the said circular.

2. *Violation of FAR restriction: The RP 2021 has been partly notified on 24th November 2010. As you are well aware, any law comes into force immediately on being notified. All construction licences issued after 24th November 2010 must be in conformity with the regulations and restrictions imposed by the newly notified RP 2021. In particular, your attention is drawn to the fact that the notified RP 2021 gives Curtorim village VP-2 status. Further, VP-2 is defined to have a maximum limit of 50 FAR in cases of projects having an area more than 4,000 square metres and of 60 FAR in cases of projects having an area less than 4,000 square metres and more than 350 square metres. The subject mega-project is however proposed to have a FAR of 79.23, which is well in excess of the legally permissible limit of 50.*

3. *Violation of height restriction: As stated in previous paragraph, the RP 2021 notified on 24th November 2010 gives Curtorim VP-2 status. Further, the notification restricts height of structures in villages having VP-2 status to less than 9 metres, including stilts. In the case of the proposed mega-project by Talak Homes and Estates, the height shown on the plan is 11.6 metres from the ground level. It is therefore illegal to issue a licence to the subject project in view of the law in force."*

20. The TCP Department sent it's comments and it appears that the matter about the minimum road width and the height restriction was referred to the TCP Board and as per the

office circular dated 03.07.2009. The Board after deliberations was of the opinion that since, the road is shown as 6 metres wide in the survey plan, which is an authentic document and the remaining portion after the tarred portion of the road, could be treated as shoulders. The decision of the Board was communicated to the respondent by the communication dated 17.11.2011, from the office of the Senior Town Planner. It is apparent from the said communication that the Board was of the opinion that 6 metres wide road and the remaining portion after the tarred portion of the road would be treated as shoulders and it was decided that the South Goa District should consider the proposal. As regards the height restriction is concerned, it was observed that at the time of the grant of NOC dated 12.08.2010, the Department had followed the provisions of Regional Plan 2001 and Planning and Development Regulations 2000, as per which the maximum height permissible is 11.5 metres, excluding the stilt floor. It was observed that the NOC granted was for stilt + 3 upper storey buildings and one Villa of ground + 1 upper storey and the height permitted was approximately 9 metres, excluding the stilt. The communication specifically mentions that the decision of the TCP Board was approved by the Government.

21. The respondent after considering the opinion of the Board, decided to grant the construction licence to the petitioner vide resolution dated 16.12.2011. Normally, this should have been the end of the matter, as the objections were looked into by the competent authority and after considering the opinion of the expert authority, namely, the TCP Board (which was also approved by the Government), the Village Panchayat had granted the construction licence. In spite of such a resolution, the construction licence was not forthcoming and the petitioner was required to approach this Court in Writ Petition No. 459/2012, wherein the respondent was directed to take a decision on the application of the petitioner, within a period of twelve weeks.

22. The respondent, by a communication dated 31.12.2012, unanimously resolved to reject the proposal, which resolution was contrary to the earlier resolution taken on 16.12.2011. The communication dated 31.12.2012 shows that the Village Panchayat had acted on the minutes of the meeting of the Gram Sabha held on 25.11.2012 and thus, essentially, on the basis of certain reasons, expressed in the resolution of the Gram Sabha, the respondent had decided to reject the proposal.

23. The petitioner challenged this before the learned Additional Director of Panchayat, who by order dated 17.09.2004, had directed the respondent to issue the construction licence. While doing so, the Additional Director of Panchayat has considered the powers of the Gram Sabha in the matter of construction activities namely, the grant/revocation of the construction licence or interference with the construction licence granted by the Panchayat. The learned Additional Director has referred to the decision of the Division Bench of this Court in the case of **Meenakshi Financial Consultants** (supra) in which, the Division Bench has held that there is no provision in the Goa Panchayat Raj Act, 1994, permitting the Gram Sabha to grant permission to construct or to revoke or to interfere with the permission granted by the Panchayat. The learned Additional Director of Panchayat has held that the decision of the respondent, rejecting the construction licence based on the resolution of the Gram Sabha was clearly illegal and arbitrary.

24. The respondent persisted further and challenged the judgment and order of the learned Additional Director of Panchayat before the District Judge, who has partly allowed the

civil revision application. At the outset, it is necessary to mention that the learned District Judge has not set out any specific lapses, which need to be rectified or complied by the petitioner. The operative part of the impugned judgment in fact shows that the order of the learned Additional Director of Panchayat has been “partly upheld and confirmed”. A bare perusal of the order shows that the respondent (petitioner before the learned District Judge), has also been directed to issue the construction licence within a period of 90 days from the date of the order. I am constrained to say that the order passed by the learned District Judge is totally ambiguous, as to what are the compliances or rectifications to be made. On one hand, the learned District Judge has upheld the order passed by the learned Additional Director of Panchayat and on the other hand, has directed the petitioner to make some compliances, without stipulating which are the compliances to be made and last but not the least, has also directed the respondent to issue construction licence within a period of 90 days. In my considered view, once the objection raised by the “Curtorkarancho Ekvott” were looked into by the TCP Board, which is an expert body and the opinion of the TCP Board having been approved by the Government, on the basis of which the respondent had acted and had granted the construction

licence on 16.12.2011, it could not have again rejected the proposal on the basis of the resolution by the Gram Sabha. The learned Additional Director of Panchayat, in my considered view, after taking note of the decision of this Court in the case of **Meenakshi Financial Consultants** (supra) has rightly come to the conclusion that it was not open to the respondent-Village Panchayat to have refused to grant the construction licence, based on the resolution of the Gram Sabha. In the given circumstances, in fact, it is not necessary to go into the question of compliance to the various complaints/ objections raised by "Curtorkarancho Ekvott". However, a brief reference may be made to the same.

25. Insofar as the first objection is concerned, it is with regard to the minimum width of the road, which has to be 6 metres. The TCP Board has observed that the survey plan shows the width of the road as 6 metres, out of which 3.2 metres is tarred portion and the remaining can be shown as shoulders. It was not disputed during the course of the arguments at bar that the width of the road is 6 metres. Just because the tarred portion is 3.2 metres, it cannot be accepted that there is any breach as to the minimum width requirement.

26. Insofar as the violation of FAR is concerned, it appears that there is a letter dated 13.12.2010 from the respondent addressed to the TCP Department, thereby soliciting opinion only on point nos. 1 and 3, the objection as to FAR violation, being at serial no. 2. The communication dated 17.11.2011, from the office of the Senior Town Planner also does not show that the issue of FAR was ever referred. In this regard, it would be further significant to note that according to the objection raised by the "Curtorkarancho Ekvott", the FAR as per the Regional Plan 2021 was 60% for the respondent (which is belonging to the VP-2 category), while the FAR of the project of the petitioner was 79.23%. Similarly, insofar as the height restriction is concerned, it is reduced from 11 metres to 9 metres.

27. A useful reference in this regard may be made to the order dated 04.06.2012, passed by the Chief Town Planner. A perusal of the said order shows that the Government had issued certain directions on 09.04.2012 as regards RPG 2021, whereby all projects/proposals, which are based on RPG 2021, were to be kept in abeyance, with effect from 20.03.2012, till the Government takes appropriate decision in the matter. The Government examined the matter further and has decided to

issue following directions on 04.06.2012:

- a) *Pending drafting and notification of fresh plan, the Regional Plan 2001 shall be used as a reference plan for the purpose of determining the land use but with the FAR policy and height of buildings, categorization of Village Panchayat (VP1 & VP2) etc. as per Regional Plan 2021.*
- b) *In additional to the above, eco-sensitive zoning of RPG-2021 shall also be strictly adhered to while deciding on the permissions to be issued.*
- c) *Land use contrary to RPG-2021 shall not be permitted.*
- d) *All applications/proposals decided prior to the issuance of directions dated 9/4/2012 shall be allowed to be executed, as per the approvals.*

28. It can thus clearly be seen that all applications/proposals decided prior to 09.04.2012, were allowed to be executed as per the approval. In the present case, the Village Panchayat had approved the grant of the construction licence on 16.12.2011, which is prior to 09.04.2012. Thus, the objection based on RPG 2021 cannot be considered.

29. Insofar as the height restriction is concerned, the TCP Board has found that at the time of grant of NOC dated 12.08.2010, the Department has followed the provisions of the Regional Plan 2001 and the Planning and Development

Regulations 2000, as per which, the maximum height permissible was 11.5 metres excluding the stilt and the NOC was granted for stilt + 3 upper storey buildings and 1 villa of ground + 1 upper storey and the height restriction was approximately 9 metres excluding the stilt. The decision of the TCP Board has been approved by the Government. It is thus difficult to accept that the Village Panchayat could have again gone into the said question and that too, on the basis of the resolution passed by the Gram Sabha and could have refused to grant the construction licence.

30. The question in the case of **Village Panchayat of Calangute** (supra) was whether, the Village Panchayat can challenge the order passed by the Additional Director of Panchayat or the order passed by the BDO in respect of an unauthorised construction of a wall creating blockage to water drains. The High Court had dismissed the Writ Petition as not maintainable. The Supreme Court has held that the Village Panchayat as a body representing the will of the people and also a body corporate in terms of Section 8 of the Goa Panchayat Raj Act, has locus standi to challenge the order passed by the Additional Director of Panchayat. It is difficult to see as to how the said decision can come to the aid of the

respondent in the present case, where inspite of all necessary compliances, the Village Panchayat had refused to grant the construction licence and that too, contrary to the earlier resolution, unanimously approving the proposal for grant of the construction licence.

31. In the result, the following order is passed:

O R D E R

- (a) The petition is allowed.
- (b) The impugned order, to the extent it interferes with the order of the learned Additional Director of Panchayat, is hereby set aside.
- (c) The order passed by the learned Additional Director of Panchayat on 17.09.2014, is hereby restored.
- (d) The respondent shall grant the necessary construction licence, to the petitioner, within a period of 45 days from today.
- (e) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.