

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO.161 OF 2017***

Shri Digambar Krishna Naik
Son of Shri Krishna Naik, of major
age, Indian National, resident of
House No.141, Marade Road,
Bottonem, Dharbandora, Taluka
Dharbandora-Goa-403 406.

... Petitioner.

Versus

1. State of Goa, through the Chief Secretary, with his Office at Secretariat, Porvorim, Bardez-Goa.
2. The Deputy Town Planner, Town and Country Planning Department, Government of Goa, Quepem-Goa.
3. Village Panchayat Dharbandora, through its Secretary, having office at Dharbandora Sanguem-Goa. 403 406.
4. Shri Janardan V.V.Naik, Proprietor of Bhavesh Farms, Dharbandora-Goa.
5. Shri Kiran M.Naik, Engineer, Consulting Engineer, PWD. Registration No.11-83, Town & Country Planning Department Registration No. ER/0027/2011, having office at

`Madhukar' Santa Cruz, Ponda-Goa.

6. Deputy Director of Panchayat,
South Goa,
Mathany Saldanha Administrative Complex,
“C” Block Room No.227,
IInd floor, Margao-Goa.
7. Goa Pollution Control Board,
With its office at Patto,
Panaji, Goa.
8. Health Officer,
Government of Goa,
Primary Health Centre Sanguem,
Goa.
9. Additional Director of Panchayat-1
Margao-Goa,
2nd Floor, Collectorate Bldg.
Mathany Saldanha Administrative Complex,
Margao-Goa.

... Respondents

Mr. S.D.Lotlikar, Senior Advocate with Ms. A.Araujo, Advocate for the Petitioner.

Mr. D.Lawande, Advocate General with Mr. P. Dangui, Government Advocate for Respondent nos.1, 2, 6, 8 and 9.

Mr. S.S.Kantak, Senior Advocate with Mr. Abhijit Gosawi, Advocate for Respondent nos.4 and 5.

Mr. D.Lawande, Advocate General with Mr. P. Dangui, Government Advocate for Respondent no.7.

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

Date : 26 September 2018.

Oral Judgment (Per N.M.Jamdar, J.) :

1. Rule. Rule made returnable forthwith. The Respondents waive service. Taken up for disposal by consent.

2. By this Petition, the Petitioner has sought the following reliefs:

“(A) This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the Respondent Nos.2 and 3 to initiate proceedings against the Respondent No.4 for revocation of the No Objection Certificate dated 12 November 2010 issued by the Respondent No.2; repair/renovation licence granted by the Respondent No.3, pursuant to the said No Objection Certificate dated 12 November 2010 granted by the Respondent No.2; and the Completion Certificate dated 29 July 2013 granted by the Respondent No.3;

(B) For writ of mandamus or any other writ order or direction in the nature of mandamus commanding the respondent no.7 to forthwith withdraw the consent to operate granted by it vide its Order dated 6 February 2016 and take immediate action against the respondent no.4 for ensuring the stoppage of illegally run business of poultry farm in the property surveyed under survey no.186(3)B

and 186/3 (C) with immediate interim and effective measures to ensure that illegal business is immediately stopped.”

3. The core issue raised by the Petitioner is whether the Poultry which is being carried out by the Respondent no.4, can be permitted in terms of the Goa Land Development and Building Construction Regulations, 2010. It is the contention of the Petitioner that the Regulation 6A of the Regulations of 2010 does not permit a stand-alone Poultry, in the manner put up by the Respondent no.4. The Petitioner relies on the Regulations under 6A.1, 6A.2.1(g) and 6A.3.1(i) wherein certain Uses in the Orchard zone, where the Property admittedly falls, have been defined. It is the contention of the Petitioner that the Poultry cannot be a stand-alone activity and it must be an ancillary to the dominant use of agriculture. It is the contention of the Respondent no.4 that the poultry is in operation since 1987 much prior to the coming in force of the Regulations of 2010 and the Regulations of 2010 also contemplate running of the Poultry as stand alone activity.

4. We had called upon the State as regards the stand of the Planning Authorities in respect of the interpretation of the Regulations, the learned Advocate General contended that considering the Regulations, more particularly, where Uses Permitted and Uses Permitted with conditions, and Uses Prohibited have been

enumerated, they show that a Poultry, cannot be a stand-alone activity and must be an ancillary to the dominant activity of agriculture. The learned Advocate General submitted that even that activity is not permitted on the entire land, but only 20% thereof. Certain factual position was placed on record to demonstrate that the poultry of the Respondent no.4 does not exceed 20%.

5. During the course of the hearing, it was brought to our notice that the Respondent no.4 has applied for a revision and no decision thereupon is taken since last five years. As regards this position, a grievance is made by both the Petitioner and the Respondent no.4, to state that non-disposal of this application is causing prejudice to both the parties. Further, we noticed from the stand of the Planning Authorities themselves that they will have to undertake a factual adjudication as per their interpretation of the Regulations regard the dominant use and the ancillary use. Therefore, according to the Planning Authorities, after this factual adjudication is undertaken, a decision in respect of the Respondent no.4 will have to be taken. It also the contention of the State that it also will have to take a decision in view of the fact that the poultry of the Respondent no.4 is in existence since 1987.

6. Therefore, a decision making at the first instance by the State Government is not yet been complete. It is only after a decision

is taken by the State Government on the various issues raised by the Petitioner and the Respondent no.4 considering the factual position, that the decision can be tested.

7. In view of this position, we do not think it necessary to adjudicate on the various factual aspects as above including the legal aspects raised by the Respondent no.4, which can be considered after the decision is taken by the State Government.

8. Accordingly, we dispose of this petition by directing the Respondent-Authorities to take a decision on the pending application of the Respondent no.4 including the contentions raised by the Petitioner and the response of the Respondent no.4, within a period of eight weeks from today.

9. We keep the contentions of all the parties open, including that of the Respondent no.4 that factual adjudication is not necessary. We grant liberty to both the Petitioner and the Respondent no.4 to take further steps depending on the outcome of the decision so taken by the Respondent-Authorities.

10. Rule is made absolute in above terms. No costs.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.