

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO. 11 OF 2019***

1. Shri Pravin S.P.Usgaonkar
son of Shri Shankar P.Usgaonkar,
47 years of age, businessman,
resident of Jivan Building,
Shanti Nagar, Ponda-Goa.
2. Shri Sudesh M. Parab,
son of Shri Madhukar Parab,
46 years of age, businessman,
resident of 154, Pancha Wada,
Usgaon, Ponda Taluka Goa.
3. Shri Dattu A. Prabhu,
son of Shri Atmaram Prabhu,
53 years of age, businessman
resident of 111, Gaonkar Wada,
Usgaon, Ponda Taluka -Goa. ... Petitioners

Versus

1. Comunidade of Usgao,
Near Adinath Temple,
Pancha Wada,
Usgaon, Ponda Taluka,
Goa,
through its Secretary/Attorney;
2. The Administrator of Comunidades,
North Goa,

Near E1-Capitan Center/Atria Building,
Mhapsa-Goa;

3. The Deputy Collector
Opposite Courts Building, Tisk,
Ponda – Goa;
4. Shri Sitaram R.Gaonkar
son of Shri Raghlo Gaonkar,
of full age,
resident of Plot no.211,
'Sapna Town'
Curti, Ponda-Goa 403 401. Respondents

Mr. Rui Alberto Gomes Pereira, Advocate for the Petitioners.

Mr. Shivan Desai, Advocate for respondent no.1.

Mr. P. Dangui, Government Advocate for respondent Nos.2 &
3.

Mr. Prasheen Lotlikar, Advocate for respondent no.4.

***Coram : M.S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 22 January 2019.

Oral Judgment (Per M.S.Sonak, J) :

Heard Mr. Rui Alberto Gomes Pereira, learned counsel for the Petitioners, Mr. Shivan Desai, learned counsel for respondent no.1, Mr. P. Dangui, learned Government Advocate for respondent nos. 2 & 3 and Mr. Prasheen Lotlikar,

Advocate for respondent no.4.

2. Rule. With the consent and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3. The main grievance of the petitioners, who claim to be Components of the Comunidade of Usgao (respondent no.1) is that respondent no.4 is undertaking illegal dumping of mud and encroachment activities on Comunidade's property bearing no.308/1 of village Usgao (said property). It is the case of the petitioners that despite their complaints to respondent nos.1, 2 and 3, no action is forthcoming. They allege that the said property is sought to be converted for non-agricultural purposes even though, there is no conversion Sanad granted by the Competent Authority.

4. Today, Mr.Dangui, learned Government Advocate, has produced on record a Stop Work Order Cum Show Cause Notice addressed by the Administrator of Comunidades (respondent no.2) to respondent no.4. The same is taken on record and marked as 'A' for the purpose of identification.

5. The Stop Work Order Cum Show Cause Notice dated 18.1.2019 reads thus:

“This office has received a complaint from Components of Comunidade of Usgao, regarding illegal dumping of mud/encroachment in the property under Survey No.308/1 of Village Usgao and belonging to Comunidade of Usgao of Ponda Taluka.

And whereas, after perusal of the report of Escrivao of Usgao, it prima facie appears that Shri. Sitaram R. Gaonkar, R/o Usgao Ponda – Goa, is carrying out illegal dumping of mud/encroachment in the land bearing Survey no.308/1 of Usgao village and belonging to the Comunidade of Usgao without following the procedure prescribed under the Code of Comunidade nor has obtained Government approval, thereby violating the provisions of Code of Comunidade.

Therefore I, Shri. Gaurish J. Shankhwalkar, Administrator of Comunidades of North Zone, Mapusa, Bardez-Goa, in exercise of powers delegated vide Article 371 and 372 of Code of Comunidade hereby order that illegal dumping mud/encroachment carried out by you be stopped forthwith and to remove the said illegal dumped mud from Comunidade property and further to appear before the undersigned on 25.01.2019 at 3.30 p.m. with all the documents and show cause why deemed fit action should not be taken against you for aforesaid illegal act.

Take notice that in case if you fail to appear on above mentioned date and time the matter shall proceed

in your absence.

*Given under my hand and seal of this office, on
18th January, 2019.”*

6. Mr. Prasheen Lotlikar, learned counsel for respondent no.4, states that respondent no.4 has not undertaken any illegal activities. He, on the basis of instructions from respondent no.4, however, states that in deference to the Stop Work Order dated 18th January 2019, respondent no.4 has stopped undertaking all activities on the said property. This statement is accepted. Mr. Lotlikar further states that respondent no.4 will file his response to the Stop Work Order Cum Show Cause Notice by 31st January 2019 before the Administrator of Comunidades.

7. Mr. Shivan Desai, learned counsel for respondent no.1, states that respondent no.1 should also be granted liberty to file a reply in the matter before the Administrator. Respondent no.1 is granted such liberty. In the reply, respondent no.1 to explain the basis on which 'No Objection Certificate' dated 6.4.2018 came to be issued. The 'No Objection Certificate' states that respondent no.4 is granted permission "to dump Leterite Stones in the said property".

From the photographs produced before us, it appears that respondent no.4 is not involved in simply dumping any laterite stones but, is involved in activities which transgress the no objection certificate. This is only a prima facie observation on the basis of photographs. The Administrator of Comunidades to seriously examine whether the Comunidade Authorities are entitled to permit such activities on Comunidade land merely on the basis of such no objection certificate. Mr. Desai, learned counsel states that respondent no.1 will not insist upon any fresh show cause notice in order to respond this aspect.

8. The Administrator of Comunidades i.e. respondent no.2 is directed to dispose of the Show Cause Notice in accordance with law and, on its own merits, as expeditiously as possible and in any case within a period of six weeks from today. The Administrator of Comunidades is directed to give personal hearing not only to respondent no.4 but also to the petitioners as well as respondent no.1, since respondent no.1 is admittedly the owner of the said property and is required to answer the basis on which it issued N.O.C.to respondent no.4.

9. In case, the Administrator of Comunidades decides to discharge the Show Cause Notice issued to respondent no.4, respondent no.4 shall nevertheless be restrained from undertaking any activities in the said property for a period of four weeks from the date of such discharge order is served upon the present petitioners.

10. The respondent no.4, in any case, is directed not to undertake any activities in the said property until the disposal of the Stop work Order Cum Show Cause Notice dated 18.1.2019 for a period of four weeks thereafter as indicated above.

11. The Deputy Collector, Ponda-Goa (respondent no.3) is directed to dispose of the petitioners' complaints dated 20.11.2018 and 30.11.2018 (pages 14 and 19 of the Paper Book) in accordance with law and on its own merits as expeditiously as possible and in any case within a period of six weeks from today.

12. The Deputy Collector to comply with the principles of natural justice and afford opportunity of hearing to respondent no.4 as well as the petitioners and respondent

no.1.

13. It is made clear that this Court has not adjudicated the rival contentions on merits and, therefore, all such matters are left for determination by the Administrator and the Deputy Collector respectively. Accordingly, all contentions of all the parties, are left open.

14. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

15. All concerned to act on the basis of an authenticated copy of this order.

Prithviraj K. Chavan, J.

M.S.Sonak, J.