

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 251 OF 2019**

1. Mr. Pedro Joao Rodrigues,
S/o late Rosario Martinho Rodrigues,
aged 67 years.
R/o House No.32/A Nuvem,
Salcette, Goa.

2. Mrs. Pobres Calista Rodrigues,
W/o Pedro Joao Rodrigues,
aged 63 years,
R/o H. No.32/A,
Nuvem, Salcette, Goa.

.... Petitioners

V e r s u s

1. State of Goa,
Through Chief Secretary,
2. Town and Country Planning Department
South Goa District Office,
Osia Commercial Arcade,
4th floor, B wing Margao, Goa.
3. Village Panchayat of Nuvem,
Nuvem, Salcette, Goa.
4. Mr. Fready Rodrigues,
S/o Mr. Salvador Rodrigues,
Aged 43 years,
R/o H. No.32, Gorvotti,
Nuvem, Salcete, Goa.
5. Mrs. Blanche Louis de Souza,

W/o Fready Rodgriues,
Aged, 36 years,
R/o H. No.32/C,
Gorvotti,
Nuvem, Salcette, Goa.

6. Mr. Vijay Sardesai,
Hon'ble Minister of
Town and Country Planning Department,
Secretariat, Panaji-Goa. Respondents.

Mr. Dharmanand R. Vernekar, Advocate for the Petitioners.

Mr. D. J. Pangam, Advocate General with Mr. S. Dhargalkar, Additional
Government Advocate for the Respondent nos.1 and 2.

Mr. J. Supekar, Advocate for Respondent no.3.

Mr. Almeida Coutinho Cleofato Garrett, Advocate for the Respondent
nos.4 & 5.

**Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.
Date:- 11th November, 2019.**

ORAL JUDGMENT (PER: M. S. SONAK, J),

Rule. Rule is made returnable forthwith taking into consideration
the order which is proposed to be made in the issue which is involved in
the matter.

2. Heard Mr. Vernekar, the learned counsel for the petitioners, Mr.
Pangam, the learned Advocate General along with Mr. S. Dhargalkar, the

learned Additional Government Advocate for the respondent nos.1 and 2. Mr. Supekar appears for Respondent no.3 and Mr. C. A. Coutinho appears for respondent nos. 4 and 5.

3. The challenge in this petition is to the order dated 16/7/2018 by which the technical clearance has been granted in respect of a wall constructed by respondent nos.4 and 5.

4. The record indicates that such technical clearance was denied on at least two occasions by the respondent no.2 on the basis that the construction of the wall was without leaving appropriate access. However, the respondent no.6, by order/Noting dated 16/7/2018 has now granted the technical clearance.

5. In this case, we do not propose to go into the various allegations made. However, we find that when the respondent no.2, on two occasions had already taken a view and despite the same, there was proposal to once again consider the application of respondents nos.4 and 5 for technical

clearance than the minimum that was required was that the petitioner who is the complainant in the matter, was atleast heard. Since this has not been done, the impugned technical clearance dated 16/7/2018 is required to be set aside.

6. Mr. Coutinho points out that there is necessary access /setback available at the site. The learned Advocate General also tried to point out that the view taken by the department on the previous two occasions may not have been right. The learned counsel for the petitioner, however, contests this position.

7. In this matter, we are really not concerned with the ultimate decision. We are more concerned with the decision making process. In the peculiar facts of the present case, the decision making process should have involved an opportunity of hearing to the petitioner as the petitioner, who is the complainant who is pursuing the matter in relation to the wall constructed by the respondent nos.4 and 5. Since the decision making process has been a casualty, we set aside the technical clearance dated

16/7/2018.

8. We, however, direct the concerned authorities to decide the application of respondent nos.4 and 5 for technical clearance once again on its own merits and in accordance with law without in any manner being influenced by the technical clearance already granted on 16/7/2018, which in any case, we have set aside.

9. Such application should be considered after giving an opportunity of hearing both to respondent nos.4 and 5 as well as the petitioner herein.

10. This application to be disposed of one way or the other, but in accordance with law on its own merits, within a period of three months from today.

11. All contentions of the parties are expressly left open.

12. We clarify that the fate of ultimate licence issued by the Village Panchayat will depend upon the issue of technical clearance. Therefore, for

the present, there is no question of any orders being passed. If ultimately the technical clearance is denied to respondent nos 4 and 5, then the construction licence issued by the panchayat will be of no avail and will not really survive.

13. Rule in this petition is made absolute in the aforesaid terms.
14. There shall be no order as to costs.
15. All concerned to act on an authenticated copy of this order.

NUTAN D. SARDESSAI, J.
ap/-

M. S. SONAK, J.