

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 455 OF 2018

1. M/s. Ira Exotica Private Limited,
A company registered under the Indian
Companies Act, 1956 and
having its registered office at Reg. Off.
Flat No.301, Inika Residency,
Civil Lines, Nayapura, Kota (Raj.)
324001 and Branch Office:
Hotel Jaipur Palace, Tonk Road,
Jaipur- 302015,
Represented by its authorized
representative, Mr. Sandeep Sharma,
aged 41 years, son of Mr. Rameshwar
Lal Sharma, R/o 26 Mangar Vihar,
Ram Nagar Extn., Sodala,
Jaipur - 302019
under a board resolution of
the Company dated 26.03.2018.

2. Mr. Ramakant Sharma,
son of late Mr. Umakant Sharma,
major of age, resident of A-39,
Raj Bhavan Road, Civil Lines, Jaipur.

... Petitioners

Versus

1. State of Goa,
through Chief Secretary,
having office at Secretariat,
Porvorim, Bardez, Goa.
2. The Town Planner,
Town & Country Planning
Dept. Govt. of Goa,
Osia Complex, Margao, Goa.
3. The Senior Town Planner,
Town & Country Planning Dept.
Govt. of Goa, Osia Complex,
Margao, Goa.
4. The Chief Town Planner,
Town & Country Planning Dept.,
Govt. of Goa, Patto Complex,
Panaji, Goa.
5. The Principal Secretary,
Town & Country Planning Dept.
Govt. of Goa, Porvorim, Goa.
6. The Assistant Engineer,
Sub-Div II, Work Div VI,
Public Works Department,
Fatorda, Margao, Goa.
7. The Executive Engineer,
Sub-Div II, Work Div VI
Public Works Department,
Fatorda, Margao, Goa.

8. The Sarpanch,
Office of the Village Panchayat,
Curtorim, Salcete, Goa.

9. Curtorkaracho Ekvott,
C/o John Da Silva,
H.No.510/A, Fondegall,
Curtorim, Salcete, Goa.
Through its Secretary,
Mr. Ponciano Da Costa, near P O
Curtorim, Salcete, Goa.

... Respondents

Mr. S. Desai and Mr. V. Nayak Salatre, Advocates for the Petitioners.

Mr. P. Dangui, Government Advocate for the State.

Mr. K. Noorani holding for Mr. Amit Palekar, Advocate for
respondent No.8.

Mr. Nigel Da Costa Frias, Advocate for respondent No.9.

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

Date : 4th March 2019.

JUDGMENT

Heard Mr. Shivan Dessai for the petitioner. Mr. Dataprasad
Lawande, learned Advocate General for respondent nos. 1 to 7, Mr.

Nigel Da Costa Frias for respondent no. 9, Mr. Noorani who is holding for Mr. Palyekar, appearing for respondent no. 8.

2. Rule.

3. Taking into consideration the nature of the controversy raised and the order which we now propose to make, Rule is made returnable forthwith.

4. The challenge in this petition is to the order/communication dated 19.01.2018 addressed by the Town Planner to the petitioner, on purported compliance to the directions issued by this Court in its judgment and order dated 03.07.2017 in Writ Petition No. 778/2015.

5. The case of the petitioner is that, it is the owner of the property bearing survey no. 20/11 at Curtorim, Salcete, Goa. It is the case of the petitioner that several permissions were obtained by the petitioner for the purposes of construction of a hotel upon the said property. These permissions include N.O.Cs from Directorate of Health Services, approval from Electricity Department, appropriate construction licence from Village Panchayat, Curtorim, NOC from Deputy Conservator of Forest and even construction sanad issued by the Deputy Collector.

6. It is the case of the petitioner that the Town & Country Planning Department had earlier granted a technical clearance. However, by order dated 29.09.2015, this technical clearance was revoked on the ground that, the road serving the plot, was not having required width of 8 mts. for construction of a hotel, as required under the regulations and further, since the widening as proposed by PWD, was not practicable in the near future.

7. Aggrieved by the revocation order dated 29.09.2015, the petitioner instituted Writ Petition No.778/2015 before this Court. The said Writ Petition was disposed of by judgment and order dated 03.07.2017. The operative portion of the said judgment and order in para 6 reads thus:-

“6. In view of the above, we dispose of the above petition by granting liberty to the petitioner to file an application in terms of clause 6A.4(16) of the Goa Land Development and Building Construction Regulations, 2010 which the respondent no. 2 shall examine with all other issues concerning the technical approval on its own merits in the light of the observations made herein above after hearing the parties in accordance with law within three months from

today. All contentions of parties with that regard are left open to be examined on its own merits. Rule is made absolute in the above terms. The Petition stands disposed of accordingly.”

8. In pursuance of the aforesaid order, the petitioner addressed a detailed representation to the Town & Country Planning Department/Town Planner dated 08.07.2017 pointing out that the road width of 8 mts. may not have been available atleast on certain stretches of the road on account of illegal structures having been put up thereon. In the alternative and without prejudic, the petitioner pointed out that they were willing to fund the acquisition cost to the authorities besides, acquire private properties so that, the Regional Plan road of 8 mts. is maintained at the site. By the impugned order/communication dated 19.01.2018, the Town Planner has purported to dispose of the representation dated 08.07.2017, as directed by us in para 6 of our judgment and order dated 03.07.2017.

9. On perusing the communication/order dated 19.01.2018, we noted that the Town Planner has recorded that from the site inspection carried out and as per the documents provided by the Village Panchayat, it has been seen that the compound walls have been

constructed illegally without approval or in violation to the approved plans, by not maintaining the road widening area.

10. However, thereafter, there is absolutely no consideration as to whether or not the petitioner is entitled to or can be granted the exemption as contemplated under Clause 6 A.4 (16) of the Goa Land Development and Construction Regulations, 2010 which is precisely what we had required the Town planner to consider and decide.

Clause 6A.4 (16) of the aforesaid Regulations reads thus:-

“(16) Permission for construction shall be granted to all projects based on proposed road widths as per the prevalent ODPs/RP. Further, at the time of approval of development plans, minimum 6 meters wide right of way should be available on the site. This shall be applicable only for multi-family dwelling units and not for single family dwelling units. While computing the width of the right of way available at the site the following structures shall not be considered as reducing the available access; illegal structures, religious structures, illegal encroachments, culverts, trees, public utility installations and the like. In case the proposed development is affected by any bottlenecks such as an existing compound wall and

old structures which do not exceed 75 meters in length at any given point, permission may be granted.”

11. According to us, there is absolutely no consideration of the aspect as to whether the petitioner can be granted any exemption under the aforesaid clause or not. This is despite the fact that our previous direction while disposing the Writ Petition No. 778/2015 was quite clear. However, as a last chance, we once again grant opportunity to the Town Planner to decide the aforesaid issue.

12. Accordingly, we set aside the impugned communication/order dated 19.01.2018 and direct the Town Planner to once again comply with our direction in the order dated 03.07.2017. The Town Planner to decide this issue within six weeks from today.

13. Further the Town Planner to decide the matter in accordance with law and in particular with reference to Clause 6A.4(16) of the aforesaid regulations. The Town Planner to afford opportunity of hearing to the petitioner and representative of respondent no. 9 as well as concerned Panchayat. The Town Planner to communicate the decision taken, to the parties within a period of one week from the date same is taken.

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

15. The learned Advocate General submits that this Court, may right now, fix the date for hearing, so that the Town Planner is in a position to dispose off the matter within a period of six weeks from 11.03.2019 at 11.00 a.m. Accordingly, the concerned parties are directed to appear before the Town Planner on 11.03.2019 at 11.00 a.m. on which date, the Town Planner may fix a further date for hearing as per his convenience.

PRITHVIRAJ K. CHAVAN, J.

M.S. SONAK, J.