

IN THE HIGH COURT OF BOMBAY AT GOA**PUBLIC INTEREST LITIGATION WP NO. 7 OF 2012**

1. Mr. Pedro Sebastiao Sequeira,
r/o H. No. 219,
Dando, Velsao,
P.O Cansaulim, Goa.

2. Mr. Bastisto D'Mello,
H. No. 218,
Dando, Velsao,
P. O. Cansaulim, Goa.

3. [Jose Maria Farias,
H. No. 215,
Dando, Velsao,
P. O. Cansaulim, Goa.]
(Deleted 10/6/2011)

.... Petitioners

V e r s u s

1. The Village Panchayat
of Velsao-Pale-Issorcim,
Through its Sarpanch,
Having its office at the
Village Panchayat of Velsao-Pale-Issorcim,
P.O. Cansaulim-Goa.
2. The Additional Director of Panchayats-I,
Having his office at Directorate of Panchayats,
Margao-Goa.
3. The Deputy Collector & S.D.O,
Having office at Mormugao,
Vasco-Da-Gama, Goa.
4. The Block Development Officer,
Mormugao Block,
Vasco-Da-Gama, Goa.

5. The Associate Town Planner,
Mormugao Taluka,
Town and Country Planning Department,
Mormugao, Goa.
6. The Mamlatdar,
Having Office at Mormugao,
Vasco-Da-Gama, Goa.
7. The Goa Coastal Zone Management Authority,
Through its Member Secretary,
Having office at Saligao,
Bardez-Goa.
8. The Police Inspector,
Verna Police Station,
Verna, Goa.
9. Mr. Pedro Sebastiao Goes,
Major of age,
Resident of H. No.173,
Dando, Velsao,
P. O. Cansaulim, Goa,
Presently staying at H. No.187,
Posrebhat, Amlai-Panchwadi,
Ponda, Goa.
10. Mrs. Maria Santana D'Costa e Goes,
Resident of H. No. 173,
Dando, Velsao,
P. O. Cansaulim, Goa.
Presently staying at H. No. 187,
Posrebhat, Amlai, Panchwadi,
Ponda, Goa.

**The Respondents 8 and 9 are represented
by their duly constituted attorney holder**
Mr. Vishal Singh,
Major of age, resident of 11,
Duplex flat, 1st floor,
Gurmandar, New Delhi.

AND

Mrs. Kamlesh Singh Bharaj,
Major of age,
Residing at Opp. Kamson Residency,
Alto, Porvorim,
Bardez, Goa.

11. M/s. Atex Overseas Pvt. Ltd.
Through its representative,
Mr. Atul Gulati,
Residing at H. No.173,
Dando, Velsao, Goa.

12. The State of Goa,
Through Chief Secretary,
Porvorim-Goa.

.... Respondents.

Mr. Nigel Da Costa Frias, with Mr. G. Malik, Advocates for the Petitioners.
Mr. Ryan Menezes with Mr. Nigel Fernandes, Advocates for Respondent no.1.

Mr. D. Pangam, Advocate General with Ms. Sapana Mordekar, Addl. Government Advocate for the Respondent nos.2 to 7.

Mr. S. G. Desai, Senior Advocate with Mr. H. D. Naik and Ms. S. Shelke, Advocates for the Respondent nos. 9, 10 and 11.

**Coram:- PRADEEP NANDRAJOG, CJ
M. S. SONAK, J.**

Date:- 9th October, 2019.

ORAL JUDGMENT (Per Pradeep NandraJog, CJ) :

It is stated that respondent No.9 expired about four months back. In view of the averments made in the writ petition, as per which respondent No.9 had transferred his interest to respondent No.11, noting the

fact of death of respondent No.9, we record that in the memo of parties entry made in red ink recording that no substitution is warranted for the reason the successor in interest would be respondent No.11.

2. The bonsai version of the facts could be stated thus:

The deceased respondent No.9 and his wife respondent No.10 acquired mundkarial rights in house bearing no.173 at Dando, Pale, Velsao Goa, which was part of survey no.15/2. They executed an irrecoverable Power of Attorney on 15/3/2007 in favour of one Vishal Singh, who, acting under the authority vested in him sought permission from the Village Panchayat to repair the house. The Panchayat accorded permission on 31/8/2007 and while so doing put a condition that the repair would be restricted to the existing house with existing plinth admeasuring 12.70 x 14.00 mtrs. which translates to 173.16 sq.mtrs. While effecting reconstruction the existing house was demolished and from the plinth, a new construction commenced. The Panchayat issued a stop notice on 21/9/2007 and passed an order on 28/12/2007, revoking the permission to repair the existing building.

3. The house fell within CRZ III area and as per the CRZ Regulations while effecting repairs, or after demolishing the existing structure and

reconstructing the same, had to restrict the construction to the existing plinth. The dispute falling in the lap of the Goa Coastal Zone Management Authority (GCZMA). It issued a show cause notice to the respondent No.9 as to why the existing structure be not demolished. In response thereto, respondent No.9 filed a reply justifying the existing construction on the plea that during repairs it was noted that so old was the previous construction that it required to be pulled down.

4. The Mamlatdar was required to carry out inspection at the site and with reference to the record, he informed on 9/5/2008 that the previous house had an area of only 66 sq.mts. at the plinth, and that the new construction was having plinth area of 164 sq.mtrs. Taking the matter forward and confronted with the fact that the house existed much before the CRZ Notifications were issued and as per law could exist at the site, the authority tried to resolve the issue in an equitable manner by passing the impugned order dated 29/1//2009 accepting the unconditional apology and permitting the existing house to be completed at the existing plinth level.

5. The grievance in the writ petition is that violation of law and in particular in the CRZ area cannot be condoned by accepting an apology.

6. Learned Senior Counsel for the respondent No.11 states that the report dated 9/5/2008 by the Mamlatdar referred to the existing house as per the survey plan covering 66 sq.mtrs area. The survey was carried out in the year 1972 and much water could have flown past. Learned Senior Counsel draws our attention to the permission granted by the Panchayat which records that the area of the existing house was 127 sq.mtrs x 14 sq.mtrs.

7. Since the permission granted by the Panchayat on 31/8/2007 pertained to a house having plinth 12.7 x 14 metres, equity and justice demands that said area be treated as the plinth area.

8. On the issue of the legality of the impugned order dated 29/1/2009, the position would be that under the permission granted by the Panchayat whosoever owned the house in question could have repaired the same with plinth of 12 x 14 sq.mtrs. While effecting repairs or perhaps deliberately demolishing the existing construction, the owner of the property cannot be visited with a penalty which would render the property sterile. As long as the reconstructed property conforms to the plinth utilized as per the permission granted by the Village Panchayat on 31/8/2007, there should be no objection thereto.

9. A Public Interest Litigation serves the public interest and the measure of the wrong would guide the Court what order needs to be passed in a petition espousing a public interest.

10. The above noted peculiar facts show that the impugned order has permitted reconstruction limited to a plinth area of 164 sq.mtrs. and thus, we find no infirmity in the impugned order dated 29/1/2009.

11. The order passed today would have no precedential value for the reason we have not interpreted the law. In the peculiar facts of the case, the instant decision has been rendered.

12. The petition is dismissed.

M. S. SONAK, J.
ap/-

THE CHIEF JUSTICE