

IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO. 30 OF 2019

- 1 Shri Hemant B. Pai Angle
Son of Late Shri Bhikoo Pai Angle
60 years, Retired
Indian National, PAN No. ABYPB7716M
Aadhar No.8172 5563 4585
Mobile No:9522018886
Resident of Laxmi, 110
Opposite Damodar Sal,
Abade Faria Road
Margao-Goa
- 2 Shri Manohar V. Borkar
son of Shri Vishnu N. Borkar
57 years of age, business
Indian National, PAN No.ACCPB6554E
Aadhar no.5578 1855 8212
Mobile No.9284660648
Resident of Sundar Vastu Apartments
Above Sony Showroom
Vidhyanagar, Margao
- 3 Shri Rajesh Vishnu Nanoskar
son of Shri Vishnu Nanoskar
37 years of age, service
Indian National, PAN No:ADWPN2565N
Aadhar No:2535 7441 0744
Mobile No:7507647407
resident of Kurtarkar Residency
Bldg A/2, Flat G/8
Borda, Margao-Goa.

- 4 Shri Dilip S. Naik
son of Shri Sonu Naik
52 years of age, Service
Indian National, PAN No:ABJPN2390L
Aadhar No:5355 1575 7894
Mobile No:9422740179
Resident of 404, Karkar Nest
Near Agali Estate, Fatorda-Margao.
- 5 Shri Pandharinath N. Parab
son of Narayan Parab
60 years of age, Retired
Indian National, PAN No: ADYPP0307Q
Aadhar No.9059 6560 6375
Mobile No.9689161466
Resident of T-4, B.B.-Bldg
Kurtarkar residency
Borda, Margao-Goa.

....Petitioners

V/s.

- 1) The State of Goa
Through Chief Secretary
Government of Goa
Secretariat, Legislative Assembly Complex
Porvorim, Panaji-Goa.
- 2) The Executive Director
Sports Authority of Goa
Shyamaprasad Mukharjee Stadium
Bambolim, Tiswadi-Goa
- 3) The Director
Department of Education
Porvorim, Bardez-Goa.
- 4) The Principal
Govt. Multipurpose Higher Secondary School
Borda, Margao-Goa.

- 5) The Chairman
Goa State Infrastructure Development
Corporation,
EDC building, Panaji-Goa.
- 6) The Collector
South Goa Collectorate
Mathany Saldanha Complex
Margao-Goa.
- 7) Secretary
Margao Cricket Academy
Shop No.241, C/o Sanjay Katkar
New Market, Margao-Goa.

...Respondents.

Mr. Shirin V. Naik, Advocate for the Petitioners.

Mr. Devidas J. Pangam, Advocate General with Mr. Pravin N. Faldessai, Additional Government Advocate for Respondents No. 1, 3 and 6.

Mr. Amey Kakodkar with Ms. Amanda Godinho, Advocates for Respondent No. 2.

Mr. Devidas J. Pangam, Advocate General with Mr. S. P. Munj, Additional Government Advocate for Respondent No.5.

Mr. Amey Prabhu Dessai, Advocate for Respondent No. 7.

***CORAM:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.***

Date:- 7th August 2019

ORAL JUDGMENT: (Per M.S. Sonak, J.)

Heard Mr. Shirin Naik, learned Counsel for the Petitioners,
Mr. Devidas J. Pangam, learned Advocate General appears for
Respondent no. 1, 3 and 6 alongwith Mr. Pravin N. Faldessai,

Additional Government Advocate, Mr. Amey Kakodkar alongwith Ms. Amanda Godinho, learned Counsel appears for Respondent No. 2, Mr. Devidas J. Pangam, learned Advocate General appears for Respondent No. 5 alongwith Mr. S. P. Munj, Additional Government Advocate and Mr. Amey Prabhu Dessai, learned Counsel appears for Respondent No. 7.

2. This petition has been instituted in purported public interest to seek the following reliefs:

- “(a) For a writ of Mandamus or an appropriate writ, order or direction in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India commanding the Respondents no. 1, 3, 4 and 5 to reconsider the plan and re-plan the structure to be built on the Northern side of the ground which area is unused.*
- (b) For a writ of Mandamus or an appropriate writ, order or direction in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India commanding the Respondents no. 1, 2, 3, 4 and 5 to make open the Cricket pitches which are closed with tin sheets to make rooms for the laborers.*
- (c) For a writ of Mandamus or an appropriate writ, order or direction in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India commanding the Respondents no. 1, 2, 3, 4 and 5 to retain the boundary fence wall and restrict them*

to extend the existing road to 6 meters.

- (d) For a writ of Mandamus or an appropriate writ, order or direction in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India commanding the Respondents no. 1, 2, 3, 4 and 5 to rebuild the walking track destroyed by them for the construction of new building without taking permissions from the Respondent no. 6.*
- (e) A writ in nature and directions be given to the Respondents no. 1, 2, 3, 4 and 5 to maintain the status quo for both the grounds.*
- (f) For a writ of Prohibition or an appropriate writ, order or direction in the nature of Prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India prohibiting the Respondents no. 1, 3, 4 and 5 their agents, members, representatives and/or any other person acting on behalf of any of the Respondents no. 1, 3, 4 and 5 be restrained from interfering with the suit grounds in any manner whatsoever and be restrained from excavating the suit grounds.*
- (g) For a writ of Prohibition or an appropriate writ, order or direction in the nature of Prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India prohibiting the Respondents no. 1, 3, 4 and 5 from carrying any construction of the building on the cricket ground.”*

3. In this petition, the Petitioners claim to be residents of Margao and Fatorda who are interested in ensuring that playgrounds,

which are already scarce in the city are preserved and maintained. In particular, the Petitioners in this petition are concerned about the maintenance and preservation of the Multipurpose School Complex at Borda Margao Goa.

4. It is the case of the Petitioners that the buildings which the Respondents propose to set up on the ground are so poised, that they will destroy the utility of the entire ground, which is the only playground available for sports at Margao and Fatorda.

5. Mr. Shirin Naik, learned Counsel for the Petitioners has pointed out that no less than 2200 residents of Margao and Fatorda have petitioned the Respondents to refrain from taking any measures that will destroy the utility of this ground. He refers to the plans at pages 203 and 204 of the paperbook to point out that in terms of the plan at page 204, which is the plan proposed by the Respondents, the utility of the entire ground will be totally compromised. He submits that instead, if the plan as proposed by the Petitioners at page 203 is adopted, then, buildings can come up in the northernmost corner and the ground can still be utilised for sports and recreational activities. He submits that it is in this context that the Petitioners have prayed for issue of writ of mandamus to the Respondents to reconsider and re-plan the structure proposed to be built on the northern side of the ground, which area, even today remains unutilised.

6. Mr. Shirin Naik also points out that there is a jogger's track on the circumference of this ground, which is being systematically destroyed. He points out that this joggers track was established under the MPLAD Scheme and therefore it should be considered as durable community asset. He submits that this asset is now sought to be destroyed, inter alia, by its surrender to the municipal authorities. Mr. Shirin Naik submits that if the plan at page 203 as proposed by the Petitioner is accepted, then, the joggers track will also be saved and the residents of Margao and Fatorda will be in a position to make use of the same.

7. Mr. Shirin Naik submits that maintenance of public grounds and providing recreational facilities is now a part of right to life as guaranteed under Article 21 of the Constitution of India. He therefore submits that the reliefs as prayed for in this petition are required to be granted.

8. Mr. Devidas J. Pangam, learned Advocate General appearing for most of the Respondents submits that this is not at all a genuine public interest litigation, but this is a private interest litigation. By way of elaboration he points out that the Petitioner No. 1 is the father of the Secretary of Margao Cricket Academy, which is being impleaded as Respondent No. 7 to this petition. He points out that

Respondent No. 7 had, in fact, instituted Civil Suit No. 2 of 2019 in the Court of Adhoc District Judge FTC-1, South Goa, seeking substantially the same reliefs as have been sought for in the present petition. In the Suit, the Plaintiff applied and obtained ad-interim injunction restraining the construction. He points out that after reply was filed and the matter was heard, the learned District Judge by detailed order dated 29.04.2019 has vacated the ad-interim injunction so granted. He submits that no sooner ad-interim relief was vacated on 29.04.2019, this petition came to be instituted on 10.06.2019 purporting to invoke public interest. He points out that the factum of institution of this Civil Suit and the vacation of injunction order was totally suppressed by the Petitioners in the petition. He submits that by such suppression the Petitioners succeeded in obtaining ad-interim order in this petition as well.

9. Mr. Devidas J. Pangam, learned Advocate General further points out that the Petitioner is in fact running a coaching class on the ground and it is this personal interest which the Petitioner seeks to protect by instituting this so called public interest litigation. He therefore submits that this petition is nothing, but abuse of process of public interest litigation and, therefore, same should not be entertained.

10. Without prejudice, the learned Advocate General submits

that the Respondents are not at all destroying the ground as has been vaguely alleged by the Petitioners. He submits that this is a ground for the benefit of not less than 5 educational institutions which have their premises in the very complex. He submits that as per the proposed and approved plans there is every intention to maintain the grounds and in particular, to maintain both, football and cricket ground. He points out that statements to this effect have been made in para 36 of the affidavit filed by Mr. Nagaraj Ganapati Honnekeri, Director of Education who is the Respondent No. 3 in this petition. He submits that the Petitioners' proposal for construction of the buildings at one corner cannot be accepted. He submits that if the buildings are constructed as per proposed plan, there will be no destruction of the ground as projected by the Petitioners. He submits that in the absence of legal provision being pointed out by the Petitioners, this Court should not interfere in matters which pertain entirely to the realm of policy and planning. He submits that this is yet another reason as to why this public interest litigation should not be entertained.

11. Learned Advocate General submits that the joggers' track will also be maintained and the residents of the area will be in a position to use the same. He submits that even presently the joggers' track is being used by the residents. He submits that if at all there is any obstruction on account of any construction activity, the same will

be eventually restored, so that the joggers track will be available for the residents. Learned Advocate General points out that at the highest, there will be re-alignment and will not be as if there will be no joggers' track at the site for the use of the Respondents.

12. According to us, there is something to be said about the institution of this petition as a public interest litigation. In any case, Petitioners should have at least disclosed the factum of institution of the Civil Suit and the vacation of the interim order therein. Nevertheless, we do not propose to non-suit the Petitioners only on such ground.

13. According to us, the issue as to whether and where the building are to be constructed is essentially an issue which is in the realm of policy and planning. Despite repeated queries, Mr. Shirin Naik, learned Counsel for the Petitioners was unable to point out any provision of law which bars the construction at the site as proposed by the Respondents. His only submission was that the construction at the site, proposed by the Petitioners, is better or that it will serve the purpose of having both, the construction, as well as the ground better. On such basis, we are afraid we cannot, in exercise of our extraordinary jurisdiction, interfere in such matters. Ultimately, these are matters of policy and planning. As long as no infringement of any

legal provision is pointed out, it will not be proper for us to interfere in such matters, based upon vague premises pleaded and urged by the Petitioners.

14. Besides, this is not a case where the entire playground, which was being used by the members of the public or by the students of the institutions for all these years, is sought to be completely destroyed or done away with. This is not a case where the building will completely deprive the residents and the students of the facility of a playground which they have been using all these years.

15. From the plan at page 204, we find that even this plan contemplates having one football ground and one cricket ground, on the two sides of the building which is proposed. In para 36 of the affidavit filed by the Director of Education, it is clearly stated that the approved plan and the master-plan of the project clearly shows the plan of the school building to be constructed and the margin of the cricket and football grounds is maintained in the plan. Learned Advocate General also made a statement that the cricket as well as football ground as indicated in the plan at page 204, will be maintained.

16. The learned Advocate General has also made a statement before us that even the joggers track will be provided, though in a

slightly re-aligned form. Learned Advocate General has pointed out that timings and entry to the joggers track are otherwise regulated because there are schools in the vicinity. He submits that this position will substantially continue. He has made a statement that even if there is some obstruction to the use of joggers track on account of construction activity, the joggers track will be completely restored and this facility will be made available to the residents and the members of the public. According to us, the aspect of public interest in this petition stands suitably redressed by this assurance. We accept the assurances given by the Respondents through the learned Advocate General to this Court. On this basis, we are satisfied that there is really no further issue of public interest involved in this matter.

17. Therefore, without going into the issue as to whether or not this is a genuine public interest litigation or whether it is a private interest litigation, we feel that even otherwise the issue of public interest is sufficiently redressed. The issue as to whether the building should be at a particular place or not is really not an issue which we can go into in exercise of extraordinary jurisdiction. In any case, now that the two grounds as well as the joggers track are going to be maintained, we feel that no useful purpose will be served by entertaining this petition any further. For all the aforesaid reasons we do not entertain this public interest litigation. We dispose it of by accepting the assurances given to us with regard to maintenance of

cricket ground, football ground and the joggers track.

18. In the facts of the present case, we refrain from imposing any costs. However, we make it clear that in future if we find that petitions are being instituted without being candid about disclosing the correct facts or in order to promote private interest in the garb of public interest, we will be constrained to consider whether institution of such petitions constitutes abuse of the process of the Court and impose exemplary costs upon such Petitioners.

19. This petition is, accordingly, disposed of in the aforesaid terms. Ad-interim order granted earlier, is hereby vacated.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

msr.