

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.700 OF 2019

1. Gajendra Shenvi Desai,
son of late Krishnaji Shenvi Desai,
62 years, landlord,

2. Radhika G. Shenvi Desai,
wife of Gajendra Shenvi Desai,
31 years, housewife,
both residents of Deepshil
Apartments, Flat No.CTE,
3rd Floor, near Landmark
Supermarket, Duler,
Mapusa, Goa 403 507.

....

Petitioners.

Versus

1. The Chief Secretary,
State of Goa, Secretariat,
Alto-Porvorim, Goa-403 521.

2. The Secretary,
Town and Country Planning Department,
Secretariat, Alto Porvorim, Goa 430 521.

3. The Chief Town Planner
(Administration), Town and Country
Planning Department, 2nd Floor,
Dempo Tower,
Patto, Panaji, Goa 403 001.

4. The Chief Town Planner (Planning)
Town and Country Planning Department,
2nd floor, Dempo Tower,
Patto, Panaji, Goa 403 001.

5. The State Registrar cum
Head of Notary Services,
7th Floor, Shramshakti Bhavan,
Patto, Panaji, Goa 403 001,

6. The Civil Registrar and
Sub Registrar of Pernem,
Jawahar Path, 2nd Floor,
Govt. Bldg. Complex,
Pernem, Goa. 403 512.

.... Respondents.

Mr. Jagannath J. Mulgaonkar, Advocate for the Petitioners.

Mr. D. J. Pangam, Advocate General with Ms. Maria Correia,
Additional Govt. Advocate for the Respondents .

***Coram : M.S. Sonak &
Nutan D. Sardesai, JJ.***

Date : 6th August, 2019.

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

Heard Mr. Jagannath Mulgaonkar for the Petitioners and
Mr. D. J. Pangam, the learned Advocate General for the
Respondents.

2. Rule. Rule is made returnable forthwith with the consent
of and at the request of the learned Counsel for the parties.

3. The Petitioners, in their capacity as vendors, presented a draft sale deed for registration before the Civil Registrar and Sub-Registrar of Pernem-Respondent No.6. The sale deed pertains to sale of an undivided share in the property bearing Survey No.202/2 of Village Corgao, Pernem Taluka. The Petitioners have asserted that the sale is in respect of an undivided right of a plot which is as per the survey plan issued by the Survey Department. On this basis, it is the case of the Petitioners that there is no requirement of producing an NOC under Section 49(6) of the Town and Country Planning Act, 1974 (as amended) and Respondent No.6 was not at all justified in refusing to even consider the case of the Petitioners for registration of the sale deed, for want of production of an NOC under Section 49(6) of the Town and Country Planning Act, 1974 (said Act).

4. Mr. Mulgaonkar has referred to the clarifications issued by the Chief Town Planner on 23/04/2018 and on 16/07/2019, on this very issue, to submit that even the Chief Town Planner is quite clear that in the circumstances in which the Petitioners are placed, there is no necessity of obtaining any NOC under Section 49(6) of the said Act. Mr. Mulgaonkar also refers to the clarification issued by the Office of the State Registrar-cum-Head of Notary Services on 6th February, 2019, which also provides that for registration of a sale deed relating to undivided share in the land, NOC is not required, if

the plots are as per survey plan.

5. Mr. D. Pangam, the learned Advocate General for the State of Goa submits that if such sale deeds are registered, then, the objective for amending Section 49(6) of the said Act might be frustrated. He submits that by this *modus operandi*, the purchasers will seek to bypass the provisions relating to sub-division of plots. He submits that sub-division of plots is necessary before any permissions are issued for construction, as the sub-divided plots are required to maintain setbacks, open spaces, etc. in terms of law. He, therefore, submits that there is no error on the part of Respondent No.6 in refusing to register the sale deed, without NOC under Section 49(6) of the said Act.

6. Rival contentions now fall for our determination.

7. In this case, there does not appear to be any serious dispute that the sale deed of which the Petitioners seek registration is in respect of a plot which is as per the survey plan. Further, there is no dispute that the Petitioners only seek to sell or transfer their undivided right in the said plot. The issue, therefore, is whether in these circumstances, any NOC under Section 49(6) of the said Act is required for the purpose of registration of a sale deed.

8. Section 49(6) of the said Act, as amended in the year 2009 and 2017, reads thus :

“ 49. Sanction for sub-division of plot or layout of private street and restriction on registration of purchase, sale or transfer of immovable property.—

(6) Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of sub-section (1) of Section 29 of the Registration Act, 1908, purports to transfer, assign, limit or extinguish the right, title or interest of any person, in respect of plots which are not as per Survey Plan issued by Survey Department or plots which have no development permissions for such sub-division from Planning and Development Authority within a planning area, or from the Town and Country Planning Department within a area other than a planning area, no registering officer appointed under the Act, shall register any document, unless the owner of such plot produces a certificate of sanction or a certificate of “no objection” from the Planning and Development Authority exercising jurisdiction in respect of the planning area or from the Chief Town Planner (Planning) or such officer as may be authorised by him by notification in the Official Gazette, in respect of such other area:

Provided that no such certificate of sanction or “no objection” shall be required to be produced if the sub-division of land or the making or layout of any property results from the rights of inheritance within a family.

Provided further that no such certificate of sanction or no objection shall be required to be produced for the purpose of mortgaging immovable property in favour of any financial institution notified by the Government by a notification in the Official Gazette, for the purpose of this

Act.”

9. From a plain reading of the aforesaid provisions, it does appear that the NOC under Section 49(6) of the said Act is necessary where any document is required to be registered under Section 29(1) of the Registration Act, 1908, which purports to transfer, assign, limit or extinguish the right, title or interest in respect of the plots *which are not as per Survey Plan issued by the Survey Department or the plots which have no development permissions for such sub-division from the Planning and Development Authority within a planning area or from the Town and Country Planning Department within an area other than a planning area.*

10. In the present case, as noted earlier, the vendors seek to transfer a plot which is as per the Survey Plan issued by the Survey Department. Further, the vendors wish to transfer the only undivided rights in respect of such a plot. Therefore, on a plain reading of Section 49(6) as amended, there does not appear to be any requirement of producing an NOC under Section 49(6) of the said Act. In any case, the Chief Town Planner, by his communication dated 23/04/2018, addressed to the Civil Registrar-cum-Sub Registrar, Pernem, in the precise context of amendment to Section 49(6) of the said Act, has stated the following :

*“To,
The Civil Registrar-cum-Sub Registrar,*

*Office of the Civil Registrar-cum-Sub Registrar,
Jawahar path, 2nd floor,
Govt. Building Complex,
Pernem, Goa.*

*Sub.: Amendment to Section 49(6) of Town &
Country Planning Act.*

*Reg. : Your letter No.CRSR/PER/124/2018
dated 16/04/2018.*

Sir,

With reference to the above, it is to inform you that the intention behind amendment of Section 49(6) of the Act is to prevent unauthorized fragmentation of plots without adhering to sub-division rules and standards specified in the Goa Land Development and Building Construction Regulations, 2010.

*The cases wherein NOC from the Department is not required to be obtained, were covered in the order dated 28/03/2018 **under category No.1 transfer of undivided share of a land does not amount to subdivision of land and therefore it does not attract provisions of Section 49(6) of the Act.** Similarly, transferring the ownership rights of the entire property without sub-division by way of sale or gift deed of sale of the property, as it is, as per the survey plan entire survey) issued by the Directorate of Settlement and Land Records also does not require NOC from the Department.*

This is for your information.

Yours faithfully,

Sd/-

(James Mathew)

Chief Town Planner

(Administration)”

[Emphasis supplied]

11. The Chief Town Planner, by a further communication

dated 16/07/2019, has substantially reiterated the aforesaid position. In the ultimate paragraph of the communication dated 16.07.2019, the Chief Town Planner has stated that the amended provisions of the Act will have to be interpreted in the legal perspective and, therefore, the view taken by his office should not be taken as the final confirmation on the interpretation of the matter. According to us, these observations, in the last paragraph, are neither here, nor there. The Chief Town Planner, in the penultimate paragraph has, however, reiterated that undivided share of the land does not amount to subdivision of land. Therefore, if the registration is in respect of an undivided share of the land and in respect to the original property as per Survey Plan or of an approved plot, then, an NOC under Section 49(9) of the said Act may not be necessary.

12. The State Registrar-cum-Head of Notary Services had also issued a Circular dated 6.2.2019 on the aspect of NOC under Section 49(6) of the said Act, when it comes to registration of documents such as lease deeds, gift deeds, and sale deeds of undivided share. The State Registrar, after referring to the clarification received from the office of the Chief Town Planner in this context, has observed as follows :

“ Registration pertaining to Sale Deeds of undivided share in the land :- NOC not required if the plots are as per survey plan and plots approved by the Town and Country Planning Department and Planning and

Development Authorities as per section 49(6) of the Town and Country Planning Act 1974.”

13. Upon commutative consideration of the aforesaid material placed on record by the Petitioners, as also upon looking to the provisions of Section 49(6) of the said Act as they stand, we are quite satisfied that in the facts of the present case, Respondent No.6 could not have refused to register the Petitioners' sale deed for want of an NOC under Section 49(6) of the said Act. In the peculiar facts of the present case, we are satisfied that the said NOC was not required for registration of the sale deed in respect of the undivided share in the plot which is as per the Survey Plan maintained by the authorities.

14. If there is no ambiguity in the text of the legal provision, then, ordinarily it is not open for the Courts to look to the intention of the legislature or to seek to interpret the plain and unambiguous words by reference to the alleged object of the legislation. In ***Kanai Lal Sur vs. Paramnidhi Sadhukhan***¹, the Hon'ble Supreme Court has held that if the words used are capable of one construction only, then, it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. According to us, since there is no ambiguity in the text of Section

¹ AIR 1957 SC 907

49(6) of the said Act, there is no question of resorting to any other interpretative technique to interpret the same and to apply the same for registration of sale deeds in respect of plots, which are as per the Survey Plan issued by the Survey Department for sub-division from the Planning and Development Authority within a planning area or from the Town and Country Planning Department within an area other than a planning area.

15. The clarifications issued by the Chief Town Planner referred to earlier, at least, express the manner in which the officers of the Planning Department have understood the provisions of Section 49(6) of the said Act, all this while. It is true that the understanding of the officers or the interpretation suggested by them, is not entirely relevant, when it comes to a court of law interpreting a legal provision. However, in the present case, upon analysis of the provisions in Section 49(6) of the said Act, we too are satisfied that the said provision does not apply to the registration of a sale deed in respect of undivided rights in a plot which is as per the Survey Plan, issued by the Survey Department of the plots which have development permissions for such sub-division from the Planning and Development Authority, within a planning area or from the Town and Country Planning Department within an area other than a planning area.

16. In these circumstances, we find ourselves unable to agree with the contrary interpretation suggested by the learned Advocate General by reference to the alleged object of the provisions in Section 49(6) of the said Act, as amended.

17. In any case, we do not see how the objective projected by the learned Advocate General will, in any manner, stand frustrated, merely because a sale deed in respect of transfer of an undivided right in a plot as per Survey Plan issued by the Survey Department, or the plots which have development permissions for sub-division from the Authority or the Department, as the case may be is permitted to be registered without NOC under Section 49(6) of the said Act. If, as contended by the learned Advocate General, sub-division of a plot is necessary before any permission is granted for development or construction on a plot, then, such a requirement will continue to apply even after registration of the sale deed. Even the clarification issued by the Chief Town Planner only states that transfer of an undivided share in a plot as per Survey Plan, does not amount to its sub-division. Therefore, even if the sale deed of an undivided share in respect of a plot as per the Survey Plan is ordered to be registered, that, by itself will not amount to sub-division of such a plot. If, therefore, as contended by the learned Advocate General, sub-division is indeed necessary before permissions are granted for construction or development of such plots, then, such requirement,

if any, will continue to operate notwithstanding the registration of such sale deed without any NOC under Section 49(6) of the said Act.

18. Accordingly, we direct Respondent No.6 not to insist upon an NOC under Section 49(6) of the said Act for registration of the Petitioners' Sale Deed at Annexure 'C' (page 25 of this paper book). This means that if the Petitioners have complied with all other legal formalities as may be prescribed, then, Respondent No.6, cannot refuse registration of the sale deed only for want of an NOC under Section 49(6) of the said Act. We direct accordingly. Respondent No.6 is directed to act within a period of two weeks from the date of receipt of an authenticated copy of this order.

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

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

Nutan D. Sardesai, J.

M.S. Sonak, J.