

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 898 OF 2018**

Jitendra Janardhan Shinkre & 2 Others Petitioners
Versus
Naresh Khulu Gaude & 15 Others Respondents

Mr. Wilbur Menezes, Advocate for the Petitioners.

Mr. Nigel Da Costa Frias, Advocate for Respondent Nos. 1 to 15.

CORAM:- C. V. BHADANG, J.

RESERVED ON: 1st JULY, 2019.

PRONOUNCED ON: 3rd JULY, 2019.

ORDER:

The challenge in this petition is to the judgment and order dated 19.03.2018, passed by the Administrative Tribunal, Panaji (Tribunal, for short) in Land Revenue Appeal No. 25/2017. By the impugned judgment, the learned Tribunal while dismissing the Appeal, has confirmed the order dated 12.10.2017, passed by the Deputy Collector, Ponda in the matter of alleged illegal conversion of land bearing survey nos. 36 to 38 of village Veling-Priol-Cuncolem, Goa. That order is passed by the learned Deputy Collector in exercise of the powers under Section 33 of the Goa, Daman and Diu Land Revenue Code, 1968 (Code, for short).

2. The brief facts necessary for the disposal of the petition may be stated thus:

That the respondents complained to the learned Deputy Collector about the petitioners having undertaken illegal conversion of the aforesaid land by cutting of the hill, clearing of the bushes/trees and laying of more than 150 plots, having approximately an area of 250 square metres each in the aforesaid lands. The learned Deputy Collector, issued a show cause notice to the petitioners and one Gopal Naik on 04.04.2016. The petitioners filed their reply and denied of having done any hill cutting or clearing of bushes or trees. It was contended that the villagers of Cuncolem have constructed a road in their property. It was contended that the petitioners have not carried out any illegal conversion of the land.

3. The learned Deputy Collector after taking note of the letter dated 17.02.2016 of the Deputy Town Planner addressed to the Sarpanch/Secretary and a letter dated 04.04.2016 from the Town and Country Planning (TCP) Department to the Police Inspector of Ponda to stop the unauthorized development and further taking note of the report of the Sarpanch of Veling, Priol, Cuncolem dated 09.05.2017 and the report of the Talathi dated 18.10.2016 and certain other documents, confirmed the

show cause notice dated 06.04.2016 and has passed the following order:

“The show cause notice dated 06/04/2016 stands confirmed.

The respondents shall not carry out any further development in the property under Survey Nos. 36 to 38 and other properties belonging to them in the village of Cuncoleim, Ponda, Goa. Unless expressly permitted to do so by the appropriate authorities.

The respondents shall restore the land into its original position and undo the development undertaken in the properties under Survey Nos. 36 to 38 of village Cuncoleim of Ponda Taluka within a period of 30 days from the date of receipt of this order, failing which the Secretary of V.P. Veling-Priol-Cuncoleim shall with the help pf Demolition Squad execute the work of restoration of the land and recover the cost incurred from the respondents as arrears of land revenue.

The V.P. of Veling-Priol-Cuncoleim shall ensure that no NOC for the purpose of electricity and water connection is issued to any person even under the provision of the Health Act, who may approach for release of the same in the said property under Survey Nos. 36 to 38 of V.P. Veling-Priol-Cuncoleim or its sub-divisions which may arise in future.

The Secretary/Sarpanch of village panchayat Veling-Priol-Cuncolem shall

immediately file an FIR before Ponda Police Station if any even the present order is violated by anyone in future so that action u/s 188 of IPC can be initiated."

4. Feeling aggrieved, the petitioners approached the Administrative Tribunal in Land Revenue Appeal No. 25/2017. The learned Tribunal, by the impugned judgment, has dismissed the Appeal. Hence, this petition.

5. I have heard Mr. Wilbur Menezes, the learned Counsel for the petitioners and Mr. Nigel Costa Frias, the learned Counsel for the respondent nos. 1 to 15.

6. Mr. Menezes, the learned Counsel for the petitioners has made the following submissions:

(i) That, the petitioners have not carried out any unauthorized development in land survey nos. 37 and 38. All that the petitioners have done is to carry out "improvements" as permitted under the Code.

(ii) That, the inspection report submitted by the Talathi and the TCP Department in fact, discloses no violation of any of the provisions of the Code. In any event, these inspections were carried out behind the back of the petitioners.

(iii) That, the part of the land has been notified as a settlement zone, where laying of plots is permitted.

(iv) That, the impugned order violates the fundamental right of the petitioners as to property and in any event, the learned Deputy Collector acting under Section 33 of the Code had no power to direct the Village Panchayat not to grant any NOC for release of an electricity or water connection, even under the Health Act and that part of the order is clearly without jurisdiction.

7. The learned Counsel, however, did not dispute that the petitioners have sold approximately 250 square metres of land each to various persons vide about 80 sale deeds.

8. Mr. Costa Frias, the learned Counsel for the respondent nos. 1 to 15 has submitted that although, part of the land is notified as a settlement zone, the rest of the land is notified as an orchard and partly as no development zone, which basically comprises of hilly slope. It is submitted that the petitioners have not obtained any conversion sanad, even in respect of the land falling under the settlement zone nor has obtained any other permissions of the competent Authority and the hill cutting so also, the clearing of the trees/bushes is illegal

and unauthorized. The learned Counsel has placed reliance on the regulation no. 2(48) of the Goa Land Development and Building Construction Regulations, 2010 (Regulations, for short), framed under the Goa (Regulation of Land Development and Building Construction) Act, 2008 (Act, for short), which defines development and includes the sub-division of the land. Reliance is placed on regulation nos. 3.1 and 3.12 of these Regulations in order to submit that the act of the petitioners is clearly illegal, as has been held by the learned Deputy Collector, which order has been confirmed in Appeal. He submits that no case for interference is made out.

9. Mr. Menezes, the learned Counsel for the petitioners, in reply, submitted that the action by the learned Deputy Collector is not taken under the Act of 2008 or the Regulations, but, under Section 33 of the Code and therefore, the validity of the order has to be tested only in relation to the provisions of the Code.

10. I have considered the circumstances and the submissions made. It is not in dispute that the subject land is partly a settlement zone, partly notified as an orchard and the rest is the no development zone.

11. The learned Deputy Collector had initiated action under Section 33 of the Code for violation of Sections 30, 31 and 32 of the Code.

Section 30 of the Code provides that no land used for agriculture shall be used for any non-agricultural purpose and no land assessed for non-agricultural purpose shall be used for any other non-agricultural purpose, except with the permission of the Collector under Section 32 of the Code.

Section 31 of the Code provides for restriction on the use of the land. Admittedly, there is no permission obtained under Section 33 of the Code in this case. The report of the Talathi dated 10.02.2016 shows that the bushes have been cleared and there is demarcation of more than 150 plots having an area of 250 square meters each. The Talathi also found that there is a katcha road layed in the said property. There is a report dated 17.02.2016 of the Town Planner, which reads thus:

“Based on complaint, the site under reference was inspected by officials of this office on 16/02/2016 and it was noticed that the land has been illegally levelled and developed into plots by cutting of trees and development of illegal kutchra roads of 8.00 & 10.00 metres wide road.

It may be noted that the property under reference is earmarked as partly natural cover zone and

partly no development slope as per the Regional Plan for Goa 2021 wherein no development is permitted in the said property."

12. Then there is a letter by the Mamlatdar dated 18.10.2016, which is as under:

"Sub:- Regarding illegal hill cutting and illegal development of plots in survey nos. 37 and 38 of village Cuncoleim.

Sir,

With reference to the above cited subject, it is revealed from the report of Talathi of Veling-Priol-Cuncolem that illegal hill cutting and illegal development of plots in survey nos. 37 & 38 of village Cuncolem by Shri Hitendra Shinkre r/o Ponda, Shri Ashok Gaude, R/o Narayanwada, Cuncolem and Shri Gopal Naik. He has further reported that more plots have been developed in addition to his report dated 05/04/2016.

The details of the above have been already submitted to your office by the Talathi on 10/02/2016.

Yours faithfully,

Sd/-

(Joao B. Fernandes)

*Mamlatdar of Ponda Taluka,
Ponda - Goa.*

It can thus clearly be seen from the material on record that there is a layout of plots, admeasuring about 250 square metres each, demarcated in the property.

13. The learned Counsel for the petitioners produced a copy of the sale deed dated 13.04.2016 between the vendors, namely Jitendra Shinkre and others (the first part) and Mr. Dilip Vasant Naik, which is the purchaser of one of the plots being plot no. 82 admeasuring 286.30 square metres. The purchaser is designated as a party of the second part. One Ganga Gawde and others, who are designated as first confirming parties are the parties of the third part and M/s Sneha Real Estate Developer, which is the second confirming party is designated as a party of the fourth part. The description of plot no. 82 is set out in Schedule-III to the sale deed, which also shows a 8 metres wide road to the west. The learned Counsel has also produced the application by one of the other purchaser, namely, Pravin Raikar, who is the purchaser of plot no. 48, admeasuring 225 square metres, who has sought permission for conversion of the said plot for residential purpose. Clause 5 of the application states that there is an existing 10 metres wide road and internal 8 metres wide road as an access to plot no. 48. What is

necessary to emphasize is that there is enough material on record about demarcation of various plots in the form of a layout and it is also not disputed that there are more than 80 sale deeds executed in favour of third parties in respect of different plots. This entire exercise is conducted without obtaining any permission under the Code or the Regulations. It is thus clear that the learned Deputy Collector was within his jurisdiction to act under Section 33 of the Code.

14. Mr. Menezes, the learned Counsel for the petitioners has relied upon the definition of “improvement”, as contained under Section 2(18) of the Code. “Improvement” within the meaning of Section 2(18) of the Code, in relation to any land, means any work, which materially adds to the value of the land and which is suitable to the land and consistent with the purpose for which it is held.

It can thus be clearly seen that “improvement” should be consistent with the purpose for which the land is held, which is sine qua non for a particular development activity being marked as “improvement”. In the present case, a part of the property is a no development zone, a part of it is an orchard/natural cover. It is thus difficult to see as to how laying of the plots along with the roads in the property can be an

“improvement” as the said activity, cannot be said to be consistent with the purpose for which the land is held. Thus, the contention on behalf of the petitioners that the petitioners have only carried out “improvements” cannot be accepted.

15. This takes me to the last contention that under Section 33 of the Code, the Collector cannot direct the Village Panchayat not to issue any NOC for the release of water/ electricity connection, even under the Health Act. I have considered the said submission.

16. Under Section 33(1) of the Code, the learned Collector can impose one or more of the following penalties:

- (i) to pay non-agricultural assessment on the land with reference to the altered use;
- (ii) to pay such fine not exceeding the market value of the land as the Collector may, subject to rules made by the Government in this behalf, direct;
- (iii) to restore the land to its original use or to observe the conditions on which the permission is granted within such reasonable period as the Collector may by notice in writing direct; and such notice may require such person to remove any structure, to fill up any excavation or to take such other steps as may be required in order that the land may be used for its original purpose or that the conditions may be satisfied.

17. There is a serious doubt as to whether, in the exercise of the power under Section 33 of the Code, the Collector could have directed the village Panchayat not to issue any NOC for release of electricity or water connection, even under the Health Act. These are essentially statutory powers governed by the relevant Act and the Rules framed thereunder. At the same time, it cannot also be lost sight of the fact that the petitioners in total violation of the relevant provisions of the Code have demarcated the plots and have executed more than 80 sale deeds, without obtaining any permission whatsoever.

18. In my considered view, the part of the order passed by the learned Deputy Collector, directing the Village Panchayat, not to issue the NOC for release of water/electricity connection even under the Health Act, can be appropriately modified. Instead, the Village Panchayat of Veling, Priol, Cuncoim shall take note of the order passed by the learned Deputy Collector (taking action under Section 33 of the Code), while considering the application, if any, for grant of NOC for release of water/electricity connection including under the Health Act.

Subject to this, no case for interference is made out. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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