

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
PUBLIC INTEREST LITIGATION WP NO.4 OF 2019
WITH
MISC. CIVIL APPLICATION NO.840 OF 2019

Manual Santana D'Souza & Ors. Petitioners.

Versus

State of Goa through Chief
 Secretary and others. Respondents.

Ms. S. Naik, Advocate for the Petitioners No.1, 4 and 6.

Ms. Susan Linhares, Addl. Govt. Advocate for Respondents No.1, 2, 3, 4 and 5.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. V. Braganza, Advocate for Respondents No. 6 to 8.

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

Date : 23rd September, 2019.

P.C. :

Heard Ms. S. Naik for the Petitions, Ms. Linhares, learned Addl. Government Advocate for Respondents No.1 to 5 and Mr. J.E. Coelho, learned Senior Advocate with Mr. V. Braganza for Respondents No. 6 to 8.

2. This Petition, purportedly instituted in public interest, had initially sought for the following reliefs :

"A. This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any

other appropriate writ, order or direction, commanding the Respondent No.1 to 5 to ensure that no event/meeting/feast be allowed to conducted in the vicinity of the protected monument namely "FRONTISPIECE OF SANCOALE" situated at survey No.266/2 of village Sancoale, Mormugao Taluka, Goa, without obtaining requisite permissions as required under law.

B. This Hon'ble Court be pleased to issue a writ of Mandamus or in the nature of Mandamus or any other writ or direction commanding Respondent No.1 to 5 to remove all the permanent construction, Pandals and erected poles, food stalls, which have been put up within 100 meters of the said protected monument.

C. This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the Respondent No.1 to 5 to take adequate steps and major to ensure protection of the protected monument.

D. This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the Respondent No.1, 2 to acquire the Protected Monument and Protected Area of 'Frontispiece of Sancoale', under the provisions of The Goa Ancient Monuments and Archaeological Sites & Remains Act, 1978 and Rules, 1980.

E. The Petitioner is entitled to a writ of Mandamus or in the nature of Mandamus or any other writ or direction commanding Respondent Direct the Respondent No.1, 2 to initiate appropriate action against the Respondent No. 6, 7 and 8 for illegal activities carried out in the vicinity of the protected monument.

F. Pending disposal and final hearing of the matter this Hon'ble Court be pleased to grant interim relief in terms of prayer clause (A).

INTERIM RELIEF :

G. Ex-parte ad-interim relief in terms of prayer clause (A)

H. For costs and for such other and/or further orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

3. After this matter was posted for final disposal and after several adjournments at the behest of the Petitioners were applied for and secured, the Petitioners have taken out Misc. Civil Application No.840/2019 on 21.08.2019, seeking amendment to the Petition. In effect, the Petitioners, in addition to the reliefs already prayed for in the Petition, seek a writ of mandamus to direct Respondents No.1, 2 and 3 to correct the survey numbers from 226/83 to 266/2 in the notification dated 4th March, 1983, issued under The Goa Ancient Monuments and Archaeological Sites & Remains Act, 1978 (said Act) and the Rules made thereunder. Without formally allowing the amendment, we propose to consider the grievance raised by the Petitioners in the amendment to the Petitioner, as well.

4. According to the Petitioners, the immediate cause of action for instituting the present Petition was the feast of St. Joseph which was to be celebrated around the Frontispiece of Sancoale, which is declared to be a protected monument in terms of the notification

dated 4th March, 1983, issued under Section 3(3) of the said Act.

5. On 15th January, 2019, we made the following Order :

"Heard Mr. Kantak, learned Senior Advocate for the petitioners. The learned Advocate General appears for respondent nos. 1 to 5 and Mr. Coelho Pereira, learned Senior Advocate appears for respondent nos. 6 to 8.

2. This petition concerns protection of "Frontispiece of Sancoale", which is declared to be a protected monument in terms of notification dated 04.03.1983, issued under Section 3(3) of the Goa Ancient Monuments and Archaeological Sites and Remains Act, 1978 (said Act).

3. Mr. Kantak, learned Senior Advocate for the petitioners points out that in terms of the Goa Land Development and Building Construction Regulations (Regulations), any development of protected monument, within an area of the protected monument, as notified under the said Act, will require NOC from the Director of Archives and Archaeology or any other Authority constituted under the said Act. For this purpose, an application has to be made as prescribed for obtaining the NOC, which is a pre-requisite before making an application for development permission/licence under these Regulations.

4. Mr. Kantak points out that respondent nos. 6 to 8, since, last year are undertaking development activities, within 100 metres from the protected monument. Mr. Kantak, in fact, submits that upon a correct reading of notification dated 04.03.1983, it is apparent that the Frontispiece of Sancoale, includes not only the actual monument, but, also the sites. He submits that in the year 2017, heavy earth machinery like excavators were employed for undertaking development activities, within 100 metres from the protected monument and on the actual site in question. He

submits that even this year, respondent nos. 6 to 8 have undertaken development activities for purposes of celebrating the feast of St. Joseph Vaz. Mr. Kantak submits that until the year before last, such feast was never celebrated on this site, but, was celebrated at a site which was 5 kilometres away from this site. Mr. Kantak expresses serious concern about the impact of such activities on the protected monument and on the site. On these grounds, Mr. Kantak presses for interim relief.

5. The learned Advocate General has placed on record a report made by the Director/Directorate of Archives and Archaeology, which was in pursuance to our oral direction that the Authorities visit the site and make the report of the activities at the site. The report states that there are temporary installation of pandals for prayer services, flag post and stalls. However, no heavy machinery was seen at the site during the inspection. Photographs have been appended to the report. We take this report on record and mark the same as Annexure-A for convenience and reference.

6. Mr. Coelho Pereira, who appears for respondent nos. 6 to 8 makes a categorical statement that a temporary pandal has been erected close to the monument, which is 8 metres away from the monument for the purposes of celebrating the feast (novena). He states that no heavy earth machinery like excavator was used or is intended to be used at the site of the protected monument. He states that some temporary stalls have been put up, most of them are beyond the property bearing Survey No. 266/2. He states that even these stalls are purely temporary structures, which will be removed no sooner the feast is over. He states that the pandal as well as the stalls will be removed latest by 25.01.2019, if not earlier.

7. *Mr. Coelho Pereira also made a specific statement that the activities of putting up the pandal for celebrating the feast is all that is being undertaken. He states that there is no intention to undertake any development as such or any development which will include use of heavy earth machinery like excavator, without following the due process of law. All these statements, which Mr. Coelho Pereira has made on the basis of instructions from the respondent nos. 6 to 8, to whom he represent, are accepted as statements made to this Court.*

8. *On the basis of the report made by the Director of Archives and Archaeology as also the statements made on behalf of respondent nos. 6 to 8, we do not think that this is a fit case to grant any further interim relief or to stay the feast, which is already underway. However, we are concerned about the steps which the respondent nos. 1 to 5, including in particular respondent no. 2, are required to take in order to protect the protected monument. Therefore, we direct the respondent no. 2 to file a detailed affidavit on this aspect, within four weeks from today. The affidavit to also indicate whether there is necessity to construct some protective wall or fencing, so that no harm befalls the protected monument.*

9. *The issue as to whether the notification dated 04.03.1983 refers to the protected monuments or also includes an Archaeology site is kept open for determination.*

10. *Accordingly, we deny interim relief as prayed for because we are satisfied that the statements made by respondent nos. 6 to 8 for the present, would meet the interest of justice. In order to consider the issue in relation to protection of the monuments, we place the matter on 11.02.2019.*

11. In case, respondent nos. 6 to 8 desire to file any affidavit in reply, they may also do so by furnishing a copy to the learned Counsel for the petitioners."

6. In short, our anxiety was to see that the protected monument is not harmed in any manner on account of the feast at the site. However, we declined any interim relief on the celebration of the feast, at the site in question, after satisfying ourselves that such celebration will not harm the protected monument itself or precincts of the protected monument.

7. At that stage, the Director of Archives and Archaeology, Government of Goa had submitted a report dated 11.01.2019, along with photographs. The report had clearly stated that a Conservation Assistant, along with the Director inspected the site of Frontispiece of Sancoale and upon inspection it was noticed that there were temporary installation of pandals for prayer services, flag post and stalls. However, no heavy machinery was seen at the site in the course of inspection.

8. Although the feast was celebrated on the appointed date, we kept the Petition pending because, we were desirous of ensuring that even in future no harm befalls the protected monument. In fact, on 20th March, 2019, we had recorded and accepted the statement made by the learned Advocate General appearing for the State that the Government proposes to carry out structural audit of the

protected monument and file a report within three weeks. On that occasion, the learned Senior Advocate, who was then appearing for the Petitioners had even offered to consider the structural audit report as and when the same was filed and thereafter to make appropriate statement whether anything would survive in this Petitioner thereafter.

9. Finally, the structural audit report was placed on record by the Government. This was recorded by us in the order dated 26th June, 2019. On this date, the learned Counsel for the Petitioners in fact submitted that having regard to the report, in case the grievances of the Petitioners are redressed adequately, the Petitioners would withdraw the Petition.

10. However, on the next date i.e. 4th July, 2019, the Counsel appearing for the Petitioners sought for discharge, which was granted. Thereafter, the matter was adjourned from time to time, in order to enable the Petitioners to make arrangement to appear through another Advocate. Ultimately, Ms. Naik has filed her appearance and made her submissions on behalf of the Petitioners.

11. In this case, the Director of Archives and Archaeology, Government of Goa (Respondent No.2) has filed a detailed affidavit. In this affidavit, she has confirmed that Frontispiece of Sancoale is indeed a protected monument in terms of the notification dated 4th

March, 1983, issued under Section 3(3) of the said Act.

12. In paragraphs 5, 6 and 7 of the Affidavit, the Director has listed the steps taken by her Department for protection and care of the protected monument. Paragraphs 5, 6 and 7 of the affidavit, read as follows :

"5. I state that the vegetation clearance of the State Protected Monuments/Sites is carried out twice a year on the surface of the monuments and in the area surrounding the monuments in order to prevent deterioration of the structure due to overgrowth of vegetation. Minor repairs, white wash and conservation/restoration of monuments is also undertaken by the Department as and when required.

6. I state that the site is owned by the Archdiocese of Goa and has religious significance. The Church of Our Lady of Health, Sancoale was built in 1606. The Deed of Bondage in 1677 was made by Fr. Joseph Vaz in this Church. It was at this Church that St. Joseph Vaz, the Patron Saint of Goa used to pray and the Church was destroyed by a fire in 1834. Today only the facade/frontispiece of the Church survives. A small shrine also exists near the monument.

7. I state and submit that this Respondent looks after maintenance of Frontispiece and keeps the precinct clean in presentable condition. I state that following steps have been undertaken in this regard in the recent :

i. Vegetation clearance is carried out at this Monument twice in a year - on the surface of the monument and in the area surrounding the monument in order to prevent deterioration of the structure due to overgrowth of vegetation.

ii. Minor repairs are undertaken as per requirement at the site.

iii. White wash and painting is undertaken as routine maintenance work.

iv. There is an existing rubble compound wall around the monument and the Department has installed pedestrian fabricated hand rail to facilitate the access of public to the monument and a gate for security purpose.

v. Information board has been installed at the site for visitors to know more about the archaeological significance of this monument.

vi. Direction boards have been installed at various traffic junctions to show the direction leading to this monument.

vii. Expenditure to the tune of Rs.9.60 lakhs has been incurred towards the maintenance of the aforesaid State Protected Monument from 2014 till date.

Annexed hereto and marked as Exhibit 'B' Colly are the photographs of the State Protected Monument of the Frontispiece of Our Lady of Health Church, Sancoale"

13. In paragraph 8, the Director has referred to the steps which her Department will undertake in near future from the point of view of protection and conservation of the protected monument. Paragraph 8 of the affidavit reads as follows :

"8. I further state and submit that, following steps will be undertaken in near future from the point of view of protecting and conservation of this Archaeological monument.

(i) Structural Audit will be conducted in order to understand physical strength of this monument. Appropriate steps will be undertaken based on the report of Structural Audit for preservation and conservation of this monument for posterity.

(ii) Regular vegetation, minor repairs whenever required. White wash and painting will be undertaken as a routine maintenance work at the site.

(iii) Lightning Arrester will be installed in order to secure this monument from lightening."

14. In paragraph 9 of the affidavit, the Director, in general context of maintenance and conservation of the protected monuments/sites, has stated that the following measures have been undertaken :

"9. I state and submit that for the maintenance and conservation of Protected Monuments/Sites following measures have been undertaken:

"(i) Conservation Architects have been empanelled to undertake restoration/conservation of State protected monuments/sites.

(ii) Structural consolidation of Jain Temple at Bandora (Annexed hereto and marked as as Exhibit "C" is the copy of photograph) and restoration of the Adilshahi Mosque at Tar Surla (Annexed hereto and marked as Exhibit "D" is the copy of photograph) has been completed.

(iii) 90% of the restoration work of the Fort of Alorna, Pernem has been accomplished (Annexed hereto and marked as Exhibit 'E' is the copy of the photograph) and the restoration of Saptakoteswar temple and its tank at

Naroa is in progress (Annexed hereto and marked as Exhibit 'F' is the copy of photograph). The process of the restoration of the Fort of Chapora and Fort of Khorjuvem has also been initiated.

(iv) The process of land acquisition has been initiated to facilitate access to the State protected monument of St. Jerome Chapel at Chodan. In the recent past the Department has restored the Fort of Reis Magos and the Fort of St. Estevam.

(v) Monument Attendants are posted at some of the State Protected Monuments/Sites and the officers periodically visit the monuments/sites.

(vi) The restoration of the Cabo da Rama Fort, Khola is being undertaken by the Department of Tourism in collaboration with the Directorate under Adarsh Sansad Gram Yojana Scheme.

(vii) Vegetation clearance - on the surface of the monuments and area surrounding the monument is carried out at regular intervals in order to prevent deterioration of structures due to over growth of vegetation.

(viii) Minor repairs/debris clearance is carried out as and when required.

(ix) Information boards have been installed at the site for the visitors to know about the archaeological importance.

(x) Direction boards have been installed at various traffic junctions to direct the movement of the visitors to the monuments/sites.

(xi) We are also in the process of installing security cabins for attendants and dustbins at protected monuments/sites.

(xii) Printing of pamphlets, brochures and mapping of the monuments/sites is in progress."

15. In paragraph 11 of the affidavit, this is what the Director has stated in the context of the protected monuments, which is subject matter of the present Petition.

"11. I state that 'Frontispiece of Our Lady of Health Church' in Sancoale is a Protected Monument of this Directorate as per the Goa, Daman and Diu Ancient Monuments and Archaeological Sites and Remains Act 1979 and Rules 1980 declared vide Notification No.9-4-79-WET dated 4th March 1983 published in the Official Gazette Series - I, No.50 dated 10-3-1983. I state that the monument is being maintained by the State Government under the said Act. It is most respectfully submitted that Section 4(5) of the Act provides that "nothing shall affect the use of any protected monument for customary religious observances." Further, Section 15(1) of the Act reads that "a protected monument maintained by the Government under this Act which is a place of worship or shrine shall not be used for any purpose inconsistent with its character."

16. According to us, the affidavit filed by the Director indicates that her Department is quite conscious of the requirement of protecting the protected monument and site, which is subject matter of the present Petition. The affidavit also indicates that proper steps are being taken by the Directorate in order to protect and conserve the protected monument.

17. On behalf of Respondents No.6, 7 and 8 Fr. Noel D'Costa

has filed an affidavit in this Petition. He has stated that he himself is a Civil Engineer and he is conversant with the facts of the present case. The affidavit questions the bona fides of the Petitioners.

18. However, we do not wish to go into the issue of bona fides, because what we are primarily concerned with is the protection of the protected monuments. In this regard, we note the statement made on behalf of Respondents No.6, 7 and 8 that Respondents No.6, 7 and 8 have no intention to undertake any development as such or, in any case, any development which will include use of heavy earth machinery, like excavators, without following the due process of law. This statement has already been accepted by this Court as a statement made to this Court. This is recorded in our order dated 15th January, 2019 and the same is once again reiterated.

19. Ms. Naik, learned Counsel for the Petitioners submits that henceforward, no feast should be allowed to be celebrated at the site, without obtaining due permission from the Directorate of Archaeology. According to us, there is no case made out for issuance of any such blanket direction, particularly because we were not convinced that mere celebration of the feast at the site will pose any danger or harm to the protected monument. Besides, we have already recorded the statement made on behalf of Respondents No.6, 7 and 8 that there will be no question of using heavy earth machinery, like excavators, etc., without complying with the due

process of law, which will obviously include, obtaining of permissions, where such permissions are required in terms of law. Therefore, on the basis of the Petitioners' apprehension, we do not deem it appropriate to issue some blanket directions in the context of celebration of the feast at the site.

20. Our main concern in this matter was to see that effective steps are taken for conservation and protection of the protected monument, which is subject matter of this Petition. Taking into consideration the affidavit filed by the Director, as also the assurances given by and on behalf of Respondents No.6, 7 and 8, we are quite satisfied that proper steps are being taken to conserve and protect the protected monument.

21. In so far as other issues between the Petitioners and Respondents No.6, 7 and 8 are concerned, we do not think that such issues fall in the arena of any public interest. If at all the Petitioners have any dispute with Respondents No.6, 7 and 8, it is obviously open to the Petitioners to take out appropriate proceedings before appropriate forum to agitate their grievances. However, we are afraid we cannot entertain such grievances in this Petition, which is purportedly instituted in public interest.

22. In the course of arguments, Ms. Naik even attempted to make submissions in relation to some chapel or some other structure

in the vicinity. According to us, this Petition was restricted to the protection of the protected monument. Once we are satisfied that the Directorate is taking proper steps towards protection and conservation of this protected monument, it is really not necessary for us to make any further orders in this Petition or to advert to certain other issues, for which there are no proper pleadings in this Petition.

23. In so far as the grievance which is sought to be raised by amending the Petition, we direct the Respondent No.2 to dispose of the Petitioners' application dated 9th February, 2018 for correction of the survey numbers in the notification dated 4th March, 1983. This application must be disposed of one way or the other, as expeditiously as possible and, in any case, within a period of two months from today. In fact, Ms. Linhares, learned Additional Govt. Advocate has stated that Respondent No.2 has already taken cognizance of the Petitioners' letter dated 9th February, 2018 and the matter is being processed for taking appropriate action in accordance with law. We direct that this process to be expedited and concluded within a period of maximum two months from today.

24. Accordingly, we accept the statements made by the Director, as well as the statements made by and on behalf of Respondents No.6, 7 and 8 in this Petition and by accepting such statements as

undertakings given to this Court, we dispose of this Petition. We also direct the Respondent No.2 to dispose of the Petitioners' application dated 9th February, 2018 as expeditiously as possible and, in any manner, within two months from today.

25. This Petition and Misc. Civil Application No.840/2019 are disposed of on the aforesaid terms. There shall be no order as to costs.

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

Nutan D. Sardesai, J.

M.S. Sonak, J.