

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 906 OF 2015**

1. Mr. Oswald Fernandes,
major, married,
owner of Casa J. D. Fernandes,
D'ogo De Couto Road,
Panjim Goa.
2. Mrs. Catherina Fernandes,
major, married,
owner of Splash & Blend,
Municipal Garden Area,
Panaji Goa.
3. Raj Vaidya,
major, married,
owner of Hindu Pharmacy,
Municipal Garden Area,
Panaji Goa.
4. Ashok Savaikar,
major, married,
owner of Parijat Cosmetic Shop,
Opp. Municipal Garden,
Panjim Goa.
5. Deepak Gopani,
major, married,
owner of M/s. Selection,
Opp. Municipal Garden,
Panjim Goa.

6. Chotu Veljee,
Major, married,
owner of M/s Mobile Choice,
Cunha Riveira Road,
Opp. Municipal Garden,
Panjim Goa.
7. Rodolfo Dias,
major, married,
owner of Frank Opticians,
Opp. Municipal Garden,
Panjim Goa.
8. Divya Rakyan Lania Gee Saa,
major, married,
owner of Gee Saa,
Opp. Municipal Garden,
Panjim Goa.
9. Govind Raikar,
major, married,
owner of M/s Raikar Sales,
Opp. Municipal Garden,
Panjim Goa.
10. Rohit R. Malgaocar,
major, married,
owner of Malson Shoes,
Opp. Municipal Garden,
Panjim Goa.
11. Judith A. Barreto,
major, married,
owner of M/s V. Paul de souza,

Velho Building,
Opp. Municipal Garden,
Panjim Goa.

12. Naresh Maganlal,
major, married,
owner of Maganlal M. Canji,
Opp. Municipal Garden,
Panjim Goa.

13. B. A. Wagle,
major, married,
owner of A. G. Vaglo,
Opp. Municipal Garden,
Panjim Goa.

14. Suresh V. Kavlekar,
major, married,
owner of M/s J. K. Kavlekar,
Near Municipal Garden,
Panjim Goa.

15. Jayesh Kalangutkar,
major, married,
owner of Casa Anjuncar,
Opp. Municipal Garden,
Panjim Goa.

16. Atchut G. Bharne,
major, married,
owner of Bharne Creations,
Near Municipal Garden,
Panjim Goa.

17. Luchi Veljee,
major, married,
owner of Mobile Choice,
Shop No.13, Riberio Building,
Opp. Titan Showroom,
Near Municipal Garden,
Panjim Goa.
18. Prakash Savaikar,
major, married,
owner of PVG Marketing Services,
Sony Exclusive,
Souza Towers,
Garden Square,
Opp. Municipal Garden,
Panjim Goa.
19. Tamara Fernandes,
major, married,
owner of Garden View Hotel,
Opp. Municipal Garden,
Panjim Goa.
20. Charlton Fernandes,
major, married,
owner of Toy Shoppee,
Opp. Municipal Garden,
Panjim Goa.
21. Prakash Pereira,
major, married,
owner of Champs Boutique,
Municipal Garden Area,
Panjim Goa.

... Petitioners

Versus

1. The Commissioner,
Corporation of the City of Panaji,
Panaji Goa.

2. The State of Goa,
Through the Chief Secretary,
Secretariat,
Panaji Goa.

... Respondents

Mr. V. A. Lawande, Advocate for the Petitioners.

Mr. Ashwin D. Bhobe, Advocate for Respondent No.1.

Mr. M. Salkar, Government Advocate for Respondent No.2.

**Coram:- M. S. SONAK &
C. V. BHADANG, JJ.**

Date:- 6th November, 2019

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

Heard the learned counsel for the parties.

2. The Petitioners, are the owners of the shops and establishments in the buildings located on Dr. Roque Souza road, De Cunha Reveira road and De Couto Road surrounding Garcia D'Orta garden also known as Panaji Municipal garden. The grievance raised by the Petitioners in this petition is that the Respondents i.e. Corporation of the City of Panaji and

the State of Goa since the year 2013, have been permitting holding of Samba Square festival at Panaji Municipal garden. The Petitioners point out that the holding of such a festival in the garden results in non availability of parking space, sound pollution, littering and other nuisance, rendering it virtually impossible for the Petitioners to undertake their business activities during three days when this festival is held. Further, the grievance of the Petitioners is that the roads which abut three sides of the Municipal garden are also closed for traffic thereby causing serious inconvenience to the Petitioners and members of the public.

3. The Petitioners, in the context of the aforesaid, seek the following reliefs in this petition :

(A) Grant a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction in nature of mandamus commanding the Respondent Nos.1 & 2 to act and to ensure that no stalls are allotted or allowed to be erected on the said public streets or the footpaths around the said garden so as to block the free flow of pedestrians and continuous flow of smooth traffic, and further that the said public streets be kept open and unobstructed at all times for use of the public;

(B) This Hon'ble Court be pleased to issue necessary directions to the Respondents to set up the *Town Vending Committee* (TVC) in the manner and for the purposes laid down in the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and as has been mandatorily directed by the Hon'ble Supreme Court;

(C) This Hon'ble Court be pleased to issue necessary directions to the Respondent No.1 to demarcate Vending Zones as per the National Policy on Urban Street Vendors, 2009, which has been mandatorily directed by the Hon'ble Supreme Court;

(D) This Hon'ble Court be pleased to issue necessary directions to transfer the stalls and all such fairs and festivals to the open Campal grounds opposite Bal Bhavan in Campal;

(E) Pending the hearing and final disposal of this petition, this Hon'ble Court be pleased to direct the Respondent No.1 to refrain from closing off the said public streets surrounding the said garden and to refrain from obstructing the said public streets and the adjacent footpaths at all times, and especially during the said months of December and February/March;

(F) Ex-parte relief in terms of prayer clause (E) above.”

4. In the Civil Application No.14 of 2016 taken out in the present petition, certain interim orders were made by us, *inter alia* in the following terms :

“7. Considering the said aspect, it is not permissible for the respondents to cause any obstruction to the pedestrian movement and the customers to the business establishment of the applicants during such occasion. As such, we direct the respondent nos.1 and 2 to ensure that no footpaths abutting the business establishments of the applicants are in any way obstructed nor free movement of the pedestrian hampered in any way during such celebration.

8. *With regard to the obstruction of the public streets abutting the said garden, it is pointed out that only the main road towards the northern side and the eastern side as well as the internal road separating the two parts of the garden on the southern side are blocked essentially from 06.00 p.m. to 10.00 p.m. during the said festival to ensure that no untoward incident occurs during the ingress and egress of the public to the said garden. This aspect would have to be examined by the Collector while examining the grant of permission under Section 115 of the M.V. Act which the authorities are in the process of examining. Hence, we find that the question of passing any direction with that regard at this stage would not be appropriate. It is also to be noted that the celebration only starts from 6.00 p.m. to 10.00 p.m. and as such there is no blanket disturbance to the customers visiting the shops of the applicants during the other hours of the day.*

9. *With regard to the contention of Mr. Lawande, learned counsel appearing for the applicants in connection with noise pollution, we find that it cannot be disputed that quietness and freedom from noise are indispensable to the full and free enjoyment of an establishment/house. No proprietor has an absolute right to create noise upon his own land, because any right which the law gives is qualified by the condition that it must not be exercised to the nuisance of his neighbours or of the public and materially interfering with the ordinary comforts of life. Thus, with this in mind, there have been restrictions imposed even for bursting of fire crackers and other irritants between 10.00 p.m. to 6.00 a.m. In the present case, Mr. Bhobe, learned counsel appearing for the respondent no.1 has pointed out that the celebration has been allowed from 6.00 p.m. to 10.00 p.m. only and that there are conditions imposed to the effect that all permissions from the concerned authorities have to be obtained by the organizer. In*

such circumstances, we direct that the respondents shall ensure that there is no noise pollution beyond permissible limit as in force during such celebration and comply with all norms provided in law with regard to the noise pollution during such period. The respondent no.1 shall also ensure that all the conditions imposed in the permission including the time period specified therein as pointed out by the learned counsel appearing for the respondents are strictly complied with and in default, the authorities shall take necessary action in accordance with law. The above application stands disposed of by the aforesaid interim directions. Such directions would be subject to further orders which may be passed during the pendency of the above petition.”

5. Mr. Lawande, learned counsel for the Petitioners states that when this festival was held in the month of March, 2019, the problems highlighted by the Petitioners in this petition were substantially redressed. He points out that in particular, the roads abutting the garden were not closed and even proper steps were taken to ensure that there is no serious sound pollution during the festival.

6. Today, the affidavit has been filed by Mr. Sanjit Rodrigues, the Commissioner of Corporation of the City of Panaji alongwith a copy of order dated 1st March, 2019 has been enclosed. This is the order by which Panaji Carnival Committee was granted permission to hold Samba Square festival. Mr. Bhobe, learned counsel for the Corporation states that in future if any permissions are applied for to hold Samba Square festival, the

same will be granted on the terms and conditions similar to those set out in the order dated 1st March, 2019. This statement is accepted as the statement made to this Court.

7. We further note that in paragraph 4 of the affidavit filed by the Commissioner, the statement has been made that certain additional conditions will also be incorporated in the permissions. This means that the permissions will be granted subject to additional conditions set out in paragraph 4 of the affidavit.

8. Paragraph 4 of the affidavit filed by the Commissioner reads thus :-

“4. I say that in the event the Panjim Carnival Committee henceforth applies for the permissions, the Respondent No.1 will consider imposing the following conditions:

(a) Segregation of waste in two fractions i.e. dry and wet waste.

(b) Ban on single use plastics.

(c) No washing of utensils.

(d) Obtaining of the necessary consent/N.O.C., from the other authorities under the law which includes the office of the Collector, Police Department, Directorate of Food and Drugs Administration, Directorate of Fire Services etc.

(e) The footpaths would be maintained free for the use of the pedestrians during the entire course of the said event and ensure access to all establishments/residents in the area.”

9. Again, we accept the aforesaid statement made by the

Commissioner in the affidavit as statement made to this Court. Mr. Bhobe points out that paragraph 4 of the affidavit, *inter alia* includes the conditions which were already incorporated in the order dated 1st March, 2019 referred to by us earlier.

10. The affidavit filed by the Commissioner further states that the Account Taxation Officer of the Corporation with the assistance of the enforcement squad as constituted in Contempt Petition No.33 of 2018 in PILWP No.20 of 2007 will supervise the event so as to ensure that there is necessary compliance with the terms and conditions as may have been imposed.

11. According to us, the aforesaid substantially redresses the grievance raised by the Petitioners in the present petition.

12. Mr. Lawande, however submits that some directions be issued to the Respondents not to permit the closure of roads abutting the Panaji Municipal garden when Samba Square festival is held for three days in a year. The record indicates that it is not the Corporation which grants such permissions but it is the Collector of North Goa who is prescribed Authority who is competent to grant such permissions for closure of the roads for temporary period.

13. There are statutes as well as the rules and the regulations which govern the issue of permitting the closure of the roads for limited period. From the material on record before us, it appears that the closure of roads is between 6.00 p.m. and 10.00 p.m. on the days of the festival. According to us, it will not be appropriate to issue any blanket directions prohibiting the Authorities from exercising their statutory functions as and when any requests for closure of the roads are made. However, we are confident that such requests will be considered in reasonable manner by keeping in mind the interest not only the organizers of the festival but also the interest of the general public as well. However, it will not be appropriate in these proceedings to make any blanket order as requested by the Petitioners on the issue of closure of roads.

14. Mr. Lawande relied upon *Green Goa Foundation Vs The Municipal Council, Margao & Ors*¹ to submit that in the said matter the directions were issued for relocation of certain fairs which were held in Margao and directions were also issued for restraint upon the closure of roads during the conduct of such fairs.

15. We have perused the said decision and we find that the directions are peculiar to the fact context which was involved in the said matter. In fact, the Council had come up with an alternate proposals and

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those proposals were accepted by this Court with some modification. It is true that in relation to some of the roads, the directions were issued with regard to restraint upon closure. However, the said order also permitted the closure of some other roads during holding of fairs. Therefore, based upon the decision in *Green Goa Foundation* (supra) it is not possible for us to accede to the prayers made in the present petition that the blanket directions be issued to restraint the closure of the roads for temporary purpose when Samba square festival is held.

16. We accordingly dispose of this petition by making absolute the interim order granted by us on 4th February, 2016 in Civil Application No.14 of 2016 as well as by accepting the statements made before us by Mr. Bhobe on behalf of the Corporation and the statements made in the affidavit filed by Mr. Sanjit Rodrigues, the Commissioner of Corporation of the City of Panaji on 6th November, 2019.

17. The Rule in this petition is disposed of in the aforesaid terms. There shall be no order as to costs.

C. V. BHADANG, J.

M. S. SONAK, J.

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