

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.117 OF 2013

Shri. Shailesh Vernekar,
major, married,
s/o. Narayan Vernekar,
Chaudi, Canacona, Goa.

.... Petitioner.

V/s.

1. Canacona Municipal Council,
through its Chief Officer,
having Office at Municipal Building,
Canacona – Goa.

2. Town and Country Planning
Department,
through Deputy Town Planner,
having Office at First Floor,
Municipal Complex,
Opposite Canacona Municipal
Council Office, Chaudi,
Canacona – Goa.

.... Respondents

Mr. S.S. Kantak, Senior Advocate with Mr. Preetam Talaulikar and
Mr. D. Vernekar, Advocates for the petitioner.

Mr. Sudesh Usgaonkar with Ms. R. Pereira, Advocates for the
respondent no.1.

Ms. Priyanka Kamat, Additional Government Advocate for the

respondent no.2.

**Coram : M. S. SONAK &
SMT. M.S. JAWALKAR, JJ.**

Date : 17th January, 2020.

Oral Judgment: (Per M.S. Sonak, J.) :

Heard Mr. S.S. Kantak, the learned Senior Advocate with Mr. Preetam Talaulikar and Mr. D. Vernekar, the learned Counsels for the petitioners, Mr. Sudesh Usgaonkar with Ms. R. Pereira, the learned Counsels for the respondent no.1 and Ms. Priyanka Kamat, the learned Additional Government Advocate for the respondent no.2.

2. The petitioner by instituting this petition, challenges the Order/decision dated 1.1.2013 made/taken by the respondent no.2 keeping in abeyance its earlier Office letter dated 3.1.2012 granting technical clearance for the construction proposed to be put up by the petitioner in the property bearing survey no.52/1-A at Chaudi, Canacona. This impugned communication dated 1.1.2013 is based upon the Resolution of the respondent no.1 dated 3.10.2012, in which, the respondent no.1, resolved and directed its Chief Officer to write to the respondent no.1, basically, objecting to the grant of technical clearance to the construction proposed by the petitioner.

The petitioner has therefore sought for quashing of the Resolution dated 3.10.2012 as well in this petition.

3. There is no dispute of whatsoever that the petitioner, is the owner of the property bearing survey no.52/1-A at Chaudi Village, Canacona, upon which, he proposes to put up a construction. Accordingly, the petitioner, applied to both the respondents for permissions under the respect of enactments which govern their functioning. The respondent no.2, upon examining the application as well as the Plans accompanying the same issued Technical Clearance Order on 3.1.2012 in respect of the proposed construction. The matter was then referred to the respondent no.1 for issuance of construction license, as is required under the provisions of the Goa Municipalities Act, 1968. Since for a long time there was no decision coming from the respondent no.1, the petitioner filed a Writ Petition no.453/2012, seeking a writ of mandamus against the respondent no.1. This petition was disposed of by directing the respondent no.1 to take a decision on the petitioner's application and to communicate, the same to the petitioner on or before 6.11.2012.

4. The respondent no.1 then passed the impugned Resolution dated 3.10.2012 raising some dispute about the access to

the petitioner's property and directed its own Chief Officer to write to the respondent no.2 objecting to the Technical Clearance Order dated 3.1.2012 issued by the respondent no.2.

5. Upon receipt of letter dated 9.10.2012 from the Chief Officer of the respondent no.1, in which, it was stated that the petitioner had misrepresented the facts and that the access/road shown in the plan approved by the respondent no.2 was in fact the property belonging to the respondent no.1 Council, the respondent no.2 issued a Show Cause Notice dated 31.10.2012 to the petitioner.

6. The petitioner vide response dated 17.4.2012 denied the allegations made by the respondent no.1 through its Chief Officer. The respondent no.2, thereafter, vide the impugned communication dated 1.1.2013 then observed that the proposal under reference is disputed and the matter is pending in the Court, the Technical Clearance Order dated 3.1.2012 issued to the petitioner, will be kept in abeyance till further intimation to the respondent no.1.

7. The impugned communication dated 1.1.2013, in fact, reads as follows:

*“Ref. No: TPC/CT/Chaudi/52/2013/01
Town & Country Planning Department
Government of Goa
Taluka Office – Canacona
Canacona – Goa 403 702
Date: 01/01/2013*

*To,
The Chief Officer,
Canacona Municipal Council
Canacona – Goa.*

*Sub: Proposed Commercial Building in Sy. No.52/1-A
at Chaudi Canacona.*

*Ref. No. 1) C.M.C/Tech-Sec/2012-13/2245 dtd.
09/10/2012.*

*2) TPC/CT/Chaudi/52/2012/342 dtd.
31/10/2012.*

*3) Reply of Shri Shailesh N. Vernekar dtd.
09/11/2012.*

Sir,

With reference to the above, it is to inform you that this office has issued Show Cause Notice to Shri Shailesh N. Vernekar, r/o. Chaudi – Canacona based on your letter dtd. 09/10/2012 and the documents submitted by you. In response to this office Show Cause Notice dated 31/11/2012, Shri Shailesh N. Vernekar has filed his reply dtd. 09/11/2012 alongwith the several enclosures. As per the documents submitted by the Municipality and Shri Shailesh N. Vernekar it is clear that the proposal under reference is disputed and the matter is pending in the Court.

Since the matter is not yet finalized the Technical Clearance Order issued to Shri Shailesh N. Vernekar vide this office letter No.TPC/CT/Chaudi/52/2012/01 dtd. 03/01/2012 shall be kept in obedience till further intimation to you.

Yours faithfully,

Sd/-

(Prakash Bandodkar)

Dy. Town Planner

Quepem – Goa.

Copy to:

Shri. Shailesh N. Vernekar,

Chaudi-Canacona-Goa. ----- he is requested to stop the work at site till further intimation.”

8. Mr. S.S. Kantak, submits that the respondent no.1 Council, is out to deny the construction license to the petitioner simply because the petitioner's predecessors in title were involved in a litigation with the respondent no.1, in relation to the road/access, which now is being claimed illegally, by the the respondent no.1 to be the property owned by the respondent no.1 Council. He pointed out that in relation to this very access/road, the predecessor in title of the petitioner had instituted Regular Civil Suit No.18/1973 before the Civil Court, which suit was decreed in favour of the predecessor in title of the petitioner. He submits that a categorical finding was recorded by the Trial Court that it was the predecessor in title of the

petitioner, who was the owner of the strip of land which affords an access or in any case, is a road leading to the petitioner's property. He points out that this Decree made on 7.9.1990 by the Trial Court was appealed by the respondent no.1 Council and this finding of ownership was confirmed by the Appellate Court as well as the Trial Court. He points out that there was a limited modification of a Decree in a sense that the respondent no.1 was granted liberty to deposit costs towards purchase of acquisition of this strip and thereafter there was a direction for the execution of a Sale Deed in favour of the respondent no.1 Council. He points out that merely because the Execution Application taken out by the petitioner was dismissed by the Executing Court on 30th March, 2000 that does not mean that the respondent no.1 Council was vested in ownership right in respect of the said strip which constitutes the access/road to the petitioner's property.

9. Mr. Kantak, also submits that it was itself defense that there was always an existing road at the site and the respondent no.1 Council was only asphaltting the same. Mr. Kantak also submits that in the alternate, looking to the definition of street and public street as they appear in Sections 2 (52) and 2 (46) of the Goa Municipalities Act, 1968, it is apparent that the strip of land constitutes a public street, which provides access to the property of the petitioner. Mr.

Kantak, submits that in fact it is the respondent no.1 Council, who had misrepresented to the respondent no.2 that it was the owner of this strip of land when in fact there are two concurrent findings recorded by the Trial Court and the Appellate Court to the contrary.

10. Mr. Kantak, further points out to the notings maintained by the respondent no.1 as also Affidavit filed by the respondent no.1, in the matter. On the basis of the same he submits that the Chief Officer on the basis of the inspection had found absolutely nothing wrong in issuance of the construction license to the petitioner. It is however, on the intervention of the Chairman that the impugned resolution came to be passed and the Chief Officer was required to make misleading statements to the respondent no.2.

11. Mr. Kantak submits that even the respondent no.2 without verifying the misleading statements has simply chosen to keep the technical clearance in abeyance. He points out that the Affidavit of the respondent no.2 makes it clear that there was nothing wrong in issuance of the clearance and approval of plans.

12. For all these reasons, Mr. Kantak, submits that the reliefs applied for in this petition are to be granted. He submits that looking to the conduct of the respondent no.1 in delaying the issuance of the

construction license to the petitioner, it would be justifiable to issue a writ to the respondent no.1 to grant such license, since respondent no.2 had virtually stalled the construction for the last 7 to 8 years.

13. Ms. Priyanka Kamat, the learned Additional Government Advocate appearing for the respondent no.2 submits that the respondent no.2 has gone by the complaint received from the respondent no.1 being under the bonafide belief that disputes are pending before the Courts, decided to keep in abeyance its technical Order dated 3.1.2012. She points out that otherwise there is no infirmity to the technical clearance issued by the respondent no.2 and this is what precisely set out in the Affidavit filed by the Deputy Town Planner on behalf of the respondent no.2. She points out to the statements made in paragraphs 6, 7 and 8 of the Affidavit-in-Reply dated 20.4.2013 filed by the Deputy Town Planner in this matter.

14. Mr. Usgaonkar, the learned Counsel for the respondent no.1 submits that at the outset the petition which is virtually a petition to seek consent of the respondent no.1 to use its property as an access to the property of the petitioner is not at all maintainable. He submits that the Court proceedings indicate that it is the respondent no.1 who is in possession of the strip of land and this fact

coupled with the Order dated 30.3.2000 made by the Executing Court in Execution Application No.1/1998 makes it clear that it is the respondent no.1 who is the real owner of the access/road in question. Since the petitioner, attempted to indicate this access/road on the plans without seeking any consent from the respondent no.1 there was misrepresentation on the part of the petitioner and the respondent no.1 Council was justified in passing the impugned Resolution objecting to the technical clearance issued to the respondent no.2.

15. Mr. Usgaonkar, the learned Counsel for the respondent no.1 Council submits that apart from the fact that the respondent no.1 is the owner of the suit strip of land, it is clear that the suit strip of land is neither a Street nor a Public Street within the meaning assigned in these terms under the Goa Municipalities Act, 1980. He submits that merely because two to three houses are using this strip of land/road, the same does not render this access/or a road as street or public street. He points out that it is only by way of tolerance that two or three parties may have been permitted to use this strip of land as an access or road. He points out that the construction which even come up abutting this access/road are unauthorized and demolition notices have been issued to demolish some of them. He therefore submits that this petition is liable to be dismissed.

16. Mr. Usgaonkar, without prejudice points out that the impugned Resolution dated 3.10.2012 merely directs the Chief Officer to complain to the respondent no.2. He submits that such Resolution has already worked itself out and there is no question of quashing it at this stage. He also submits that the construction license fees taken from the petitioner were not refunded because the issue of refund was subject to the decision of the respondent no.2 in the matter. He submits that were the respondent no.2 to decide not to entertain the complaint made on behalf of the respondent no.1, then, there would arise no occasion of refund of the construction fees of Rs.1,03,137/- paid by the petitioner on 18.1.2012.

17. Rival contentions now fall for our determination.

18. In the present case, the records indicate that the petitioner, in his plans submitted for approval/license to both the respondents, has indicated the strip of land admeasuring 358.40 sq. mts. having length of 56 mts. and breadth of 6.40 mts. or slightly higher, as the access/road to his property surveyed under no.52/1-A upon which he proposes to put up a construction. This strip of land shall hereinafter be referred to "as the strip or the access".

19. In respect of this very strip/access, the predecessor in title

of the petitioner Sheshguiri Vernekar and Ramabai Vernekar (grandparents of the petitioner) had instituted Regular Civil Suit No.18/1973 in the Court of the Civil Judge Junior Division at Canacona, seeking following substantive reliefs:

“a) for a declaration that the strip of land identified in para 3 of the plaint is integrant part of the property of the plaintiffs mentioned in para 1 of the plaint and belongs to the plaintiffs either by tittle of purchase or by prescription (prescripcao).

b) for a permanent injunction restraining the defendant, its representatives, servants, agents, contractors, sub-contractors etc. from constructing the road in the said strip of land and from collecting therein stones or any other material of construction and from executing preliminary work of any kind within the area of the same strip;”

20. The Regular Civil Suit No.18/1973 was disposed of vide Judgment and Decree dated 7/9/1990, in which, the issue as to the ownership of the said strip was substantially answered in favour of the predecessors in title of the petitioner. In fact, the said issue, concerned not only of ownership but also of possession. The issues framed in paragraph 4 of the Judgment and Decree dated 7/9/1990 read as follows:

- “1. Whether the strip of land where the works of the road were started is a part of the property “Rumodgopoiguim” and is in possession of the plaintiff and his predecessors for more than fifty years?”*
- 2. Whether the said strip of land is in possession of the defendant for more than fifty years and a road exists on the place?”*
- 3. Whether the plaintiff is entitled to the relief sought?”*

21. From the aforesaid, it is quite clear that the Trial Court, accepted the case of the predecessor in title of the petitioners that they were the owners in possession of the land of strip for more than 50 years and the case of the respondent no.1 Council about being in possession to this very strip for more than 50 years or that road exists on the said place was squarely rejected.

22. The respondent no.1 then instituted a Regular Civil Suit No.48/1990 before the First Appellate Court. This appeal was disposed of by the Judgment and Decree dated 31.8.1995. Again, the finding as to both the ownership and the possession of the predecessor in title of the petitioner was upheld by the First Appellate Court by observing that it is very pertinent to note that is the appellants, i.e. the respondent no.1 Council herein has not produced

any single document of title to this strip of land, whatever material plans were produced were not exhibited or authenticated or even otherwise the plans does not show the existence of the road in the strip of land. The Appellate Court then observed that the Trial Court was perfectly right in its finding that the predecessors in title of the petitioner were and are owners of the strip of land admeasuring about 358.40 sq. mts. lying between the compound wall and the building of the Municipality.

23. The Appellate Court, did modify the Decree made by the Trial Court after taking cognizance of the fact that during the pendency of the suit, the respondent no.1 Council, after depositing the cost price in the Court had already proceeded to asphalt the access/road. The Appellate Court, therefore, held that the respondent no.1 is given an opportunity to execute sale deed by purchasing the property from the predecessors in title of the petitioner within 30 days.

24. Thereafter, the predecessors in title of the petitioners filed Execution Application No.1/1998 by pointing out that there was failure to deposit within the prescribed period and therefore in terms of the Decree as modified by the Appellate Court, they were entitled to seek an eviction from the said strip/access. This Execution

Application was dismissed by the Civil Judge, Junior Division, Canacona dated 30.3.2000 by recording a finding that the respondent no.1 had already deposited the costs and therefore it cannot be said that they were liable to be evicted from the said strip/access.

25. From the aforesaid three Orders, that is, the two Judgments and Decrees made by the Trial Court and the Appellate Court respectively and the Order made by the Executing Court, at least one thing is clear and that is the respondent no.1 Council is not the owner of the said strip of land/access. Therefore, quite correctly, even the Chief Officer of the respondent no.1 had not thought about any such objection. In fact in his Affidavit, the Chief Officer states that he had approved the petitioner's application dated 17.1.2012 for issuance of construction license. The Chief Officer, in his Affidavit, however adds that the Chairperson "*verbally objected*" to the grant of construction license to the petitioner on 30.1.2012 after meeting him (the Chief Officer) in his chamber stating that there was no proper access to the petitioner's property. The Chief Officer has stated on Affidavit that the Chairperson has informed him about the litigation and on basis of the same, the Chief Officer intimated the respondent no.2 by letter dated 12.3.2012 that the petitioner has shown the part of the property of the respondent Municipal Council as the access to

the proposed site and that the access shown in the said plan is therefore a misrepresentation.

26. In the light of two concurrent findings of fact recorded by the Trial Court and the Appellate Court to the effect that it is the predecessors in title of the petitioner, who were the owners in respect of the said strip/access, it was not at all proper for either the Chairperson to allegedly inform the Chief Officer or for the Chief Officer, without properly verifying the Court orders to claim that the respondent no.1 Council was the owner of the said strip/access and on such basis to alleged that the petitioner had indulged in any misrepresentation.

27. If at all, the charge of misrepresentation, can, in such circumstances, be made against the respondent no.1 Council itself. The Decrees made by the Trial Court and the Appellate Court are quite categorical, inasmuch as they declared that it is the predecessor in title of the petitioner who is the owner of the said strip/access. There is a positive finding of fact recorded by the said Courts on these aspect. There is also a finding in negative terms, i.e. that the respondent no.1 Council is not the owner of the strip/access, as was claimed by the respondent no.1 Council before the Trial Court and the Appellate Court.

28. The only reason why the Execution Application taken out by the predecessor in title of the petitioner was dismissed was because the respondent no.1 Council had deposited the purchase price in the Court in accordance with the auction given to it. There is nothing in the execution dismissal order which vest in right of ownership in the respondent no.1 Council or authorizes the respondent no.1 Council to misrepresent to the respondent no.2 that it was the owner of the said strip/access and the petitioner had misrepresented that he was the owner of the said access/strip. In these circumstances, we agree with Mr. Kantak, the learned Senior Counsel for the petitioner that the impugned Resolution of the respondent no.1 Council dated 3.10.2012 deserves to be set aside and once, the same is set aside, even the impugned Order dated 1.1.2013, which is based solely on the complaint of the respondent no.1 Council must also fall and is required to be set aside.

29. In this case, it is very apparent from the record that even the respondent no.2 has not applied its mind independently to the complaint made by the respondent no.2. The impugned Order dated 1.1.2013 refers to the dispute pending before the Court. Admittedly, as on 1.1.2013, there was no dispute which was pending before the Court. The record very clearly establishes that there was absolutely no misrepresentation on the part of the petitioner and the

misrepresentation, if at all, was mostly on the part of the respondent no.2 by claiming to be the owner of the said strip/access despite concurrent findings of the Trial Court and the Appellate Court to the contrary.

30. The Deputy Town Planner, who has filed the Affidavit on behalf of the respondent no.2, in paragraphs 6, 7 and 8 has stated that the petitioner had shown 6 mts. wide access on the site plan on the strip of land admeasuring 358.40 sq. mts. being 56 mts. in length and 6.40 mts. in breadth. He as further stated that the proposal of the petitioner was scrutinized and in the course of site inspection it was noticed that the property of the petitioner bearing survey no.52/1-A at Chaude, Canacona, is accessible by 6 mts. road and about three structures are fronting to the said access. The Affidavit proceeds to state that considering the above and treating the said access Public Street Road/Public Road, the respondent no.2 issued Technical Clearance Order dated 3.1.2012 for the construction proposed by the petitioner.

31. The Affidavit filed on behalf of the respondent no.2 therefore categorically states that there was absolutely nothing wrong in the plans submitted by the petitioner and that such plans were scrutinized inter alia by holding a site inspection. At this stage, it is

pertinent to note that the access desired by the respondent no.2 in paragraph 6 of his Affidavit is the identical access which was the subject matter of Regular Civil Suit No.18/1973, in which, findings of fact have been recorded by both the Trial Court as well as the Appellate Court that it is the predecessor in title of the petitioner, who was the owner in possession of the said access/road. Obviously, therefore, the respondent no.2 was not at all justified in taking a position contrary to the decrees of the Civil Court which have admittedly attained finality. In any case, even the respondent no.1 was not at all justified in not even examining the decrees of the Civil Court to which, reference was clearly made by the petitioner in response to the Show Cause Notice.

32. The respondent no.2, in Regular Civil Suit No.18/1973, by filing a written statement, had never pleaded that it was the owner of the said strip/access. Rather the respondent no.2, had only pleaded that the said strip is in their possession for last many years and the predecessors in title of the petitioner are in possession of the property beyond the compound wall. Further and most significantly, the respondent no.1 Council had pleaded that *“the road is existing for more than 60 years and the defendant is only trying to asphalt the same”*.

33. It is further pertinent to note that the respondent no.1 Council had never raised the defense in its written statement that the road is some private road and not a public road or a public street. This is noted because Mr. Usgaonkar, the learned Counsel for the respondent no.1 did, attempt to urge that the said strip/access is a private road belonging to the respondent no.1 Council. Upon evaluation of the material on record, such contention is quite untenable and indicates the extent to which the respondent no.1 Council is prepared to go in order to deny the construction license to the petitioner.

34. From the findings recorded by the decrees made by the Trial Court and the Appellate Court, it is the Predecessor in title of the petitioners who are the owners of the said strip/access. The record also reveals that during the pendency of such litigation, the Municipal Council by depositing the costs of acquisition, proceeded to asphalt this existing road. In these circumstances, the respondent no.1 Council can neither claim that the said strip/access belongs to the respondent no.1 Council nor can it claim that the strip/access is not a public street through which the petitioner cannot claim any access. The stance taken by the respondent no.1 Council, cannot, in such circumstances, be regarded as any honest stance.

35. There is substance in the contention of Mr. Kantak, the learned Senior Advocate that such contradictory stances opposed to the material on record are being taken by the respondent no.1 Council only to deny the petitioner construction license, simply because the predecessor in title of the petition instituted and succeeded in the litigation against the respondent no.1 Council.

36. Mr. Kantak has rightly referred to Section 2 (52) of the Goa Municipalities Act, 1968 which defines “street” as follows:

“(52) “street” means any road, foot-way, square, court-alley, or passage, accessible whether permanently or temporarily to the public, whether a thoroughfare or not; and shall include every vacant space, notwithstanding that it may be private property and partly or wholly obstructed by any gate, post, chain or other barrier, if houses, shops or other buildings abut thereon and if it is used by any persons as a means of access to or from any public place or thoroughfare, whether such persons be occupiers of such buildings or not, but shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid;”

37. Mr. Kantak, is also right in referring to the definition of “Public Street”. In Section 2 (46) of the Goa Municipalities Act,

which reads as follows:

*“(46) “public street” means any street-
 (a) over which the public have a right of way;
 (b) heretofore levelled, paved, metalled, channeled,
 sewered, or repaired out of municipal or other public
 funds; or
 which under the provisions of this Act becomes, or is
 declared, a public street;”*

38. From the conjoint reading from the aforesaid two definitions and upon taking into consideration the overwhelming material on record in the form of decrees made by the Trial Court and the Appellate Court as well as the defense of the respondent no.1 Council itself in the litigation with the Predecessor in title of the petitioner, it is apparent that the said strip/access is in fact owned by the petitioner or in any case, the said strip/access is a public street. The record indicates that already at least three structures have come up abutting this public street. In respect of only one of the structures, the respondent no.1 Council states that the demolition order has been issued which has been stayed by the Municipal Tribunal. Again, there is no clarity as to whether the demolition order was issued on the ground that the said structure was not abutting a public street or whether the demolition order was issued because the structure was otherwise unauthorized.

39. In any case, there are no details provided with regard to the other two structures and the position taken in the Affidavit is that people use this access and such user is merely tolerated by the respondent no.1 Council. In the light of the material on record, such defenses bear no credibility of whatsoever. In any case, the respondent no.1, has failed to make good such contradictory defenses, which are contrary to the material on record.

40. For the aforesaid reasons, impugned resolution dated 3.10.2012 and the impugned communication dated 1.1.2013 are liable to be set aside and are hereby set aside.

41. As noted earlier, both the Deputy Town Planner and the Chief Officer, in their Affidavits were stated that there was absolutely nothing wrong in the plans submitted by the petitioner. These statements have been made on the basis of inspection of site and scrutiny of the plans. Now that the impugned Order dated 1.1.2013 is set aside, obviously, the Technical Clearance Order dated 3.1.2012 revives and the same will have to be acted upon by the respondent no.1 Council.

42. Further, taking into consideration the notings placed on record as well as the Affidavit of the Chief Officer of the respondent

no.1, in which, he stated that he had in fact approved the application dated 17.1.2012 made by the petitioner for the issuance of construction license, ordinarily, we would have been justified in issuing a writ to the respondent no.1 to issue a construction license to the petitioner within a time bound schedule simply because the respondent no.1 has delayed the issuance of the construction license to the petitioner by almost 7 to 8 years, without any reasonable cause and rather, by taking positions which are contrary to the concurrent findings recorded by the Civil Court and the Appellate Court in the litigation between the predecessor in title of the petitioner and the respondent no.1 Council.

43. However, in order to enable the respondent no.1 Council to objectively scrutinize the petitioner's application dated 17.1.2012 and in order to enable the respondent no.1 to impose the usual conditions, we direct the respondent no.1 Council to consider and dispose of the petitioner's application dated 17.1.2012 for construction license within a period of 30 days from today.

44. We clarify that the respondent no.1 Municipal Council, on this occasion, will not be at liberty to once again raise the issue of access in order to deny the petitioner the construction license. As it is, the respondent no.1 Council, has despite its unjustified opposition

to the project of the petitioner, retained the fee amount of Rs.1,03,137/- paid by the petitioner to the respondent no.1 Council. It is necessary to note that the petitioner had also paid infrastructure tax of Rs.1,49,760/- to the respondent no.2 at the stage of obtaining the technical clearance dated 3.1.2012, which was quite unjustifiably kept in abeyance by the respondent no.2 vide the impugned order dated 1.1.2013, which, we have now set aside.

45. In the facts and the circumstances of the present case, we direct the respondent no.1 Council to pay costs of Rs.15,000/-, again, within a period of 30 days from today.

46. This petition is disposed of by passing the following Order:

a) The Impugned Order dated 1.1.2013 and the Impugned Resolution dated 3.10.2012 are hereby quashed and set aside;

b) The respondent no.1 is now directed to consider and dispose of the petitioner's application dated 17.1.2012 for construction License within a period of 30 days from today by taking cognizance of the observations made by us in our

Judgment and Order;

c) The respondent no.1 Council is directed to pay costs of Rs.15,000/- to the petitioner within a period of 30 days from today and

d) The Rule is made absolute in the aforesaid terms.

47. All concerned to act on the basis of an authenticated copy of the Order.

SMT. M.S. JAWALKAR, J. M. S. SONAK, J.

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