

**IN THE HIGH COURT OF BOMBAY AT GOA
MISC.CIVIL APPLICATION NO. 204 OF 2020**

IN

PUBLIC INTEREST LITIGATION WP NO. 26 OF 2017

VMSALGAOCAR CORPORATION PVT. LTD., ... Applicant

Versus

THE GOA FOUNDATION, THR. ITS

SECRETARY, DR. CLAUDE ALVARES., ... Respondent

Shri Nitin Sardesai, Senior Advocate with Shri J. Supekar, Advocate
for the applicant.

Ms. Norma Alvares, Advocate for the petitioner.

Shri S.R. Rivankar, Senior Advocate with Shri Deeps Shirodkar,
Additional Government Advocate for the respondent no.2

Coram:- DAMA SESHADRI NAIDU &

NUTAN D. SARDESSAI, JJ.

Date:- 12th March, 2020

P.C.:

This Court on 13/02/2020 passed a detailed order, first, recording the hotel's readiness to comply with the Court's judgment concerning the swimming pool and the hut. Second, about the retaining wall, the Court has noted that the Government has been consulting the experts and once that consultation is over, it will take steps to demolish the retaining wall in tune with the expert's

opinion. Now, the Government has come with MCA No.202 of 2020.

2. The learned Senior Counsel for the Government draws our attention to paragraphs 8 and 12 of this Court's order, dated 13/02/2020. He stresses that the Government never assured the Court that it would demolish the retaining wall. Instead, it has only informed the Court that it would take further action based on the expert's opinion.

3. The learned counsel for the petitioner has, however, strongly objects to it. According to her, the Government cannot have change of heart at the eleventh hour—in the name of expert opinion, at that. The learned counsel also stresses that the issue has attained finality. To be specific, she points out that no one should be allowed to negate the rule of law and binding judicial directives in the name of expert opinion. An opinion, after all, is an opinion. The retaining wall was found illegal and it must go.

4. About the alleged soil erosion and the other consequences in the wake of the retaining wall demolition, the learned counsel wants the Government to take remedial steps.

5. At any rate, we will keep this issue—the issue of how the parties to the dispute including the Government—leave open. We will address it on 09/04/2020, when the matter otherwise stands posted.

6. On the other hand, in MCA No.204 of 2020, for the third respondent hotel, the learned Senior Counsel points out that the order was rendered in Contempt Petition to which the hotel is not a party. Instead, it ought to be in the PIL WP. With that, the names of the counsel mentioned in the order, too, change. Of course, the petitioner's counsel does not object to having the order, dated 13.02.2020, treated as one passed under PIL WP.

7. Then, the learned Senior Counsel for the hotel has drawn our attention to paragraph no.2 of the order. According to him, the order reads as if the hotel undertook to demolish the retaining wall as well. After taking us true the affidavit filed for the hotel on the earlier occasion, the learned Senior Counsel clarifies that as the show cause notice confines itself to the swimming pool and the hut, the hotel has placed on record its willingness to comply with the Court's directions to the extent of those two structures. As to the retaining wall, the learned Senior Counsel submits that it would

depend on the steps the Government takes in consultation with the experts and also the Show Cause Notice to be given by it in due course.

8. Nevertheless, the petitioner's counsel strongly objects to the hotel taking up the issue of Show Cause notice, even under the cover of the pending Government decision on the retaining wall. According to her, this Court has never intended that the hotel should be put on notice once again after the entire issue has attained finality.

9. As we have already noted, let the matter stand posted to 09.04.2020.

10. We, however, clarify that our reference in paragraph 2 of the order, dated 13.02.2020, to the hotel's undertaking should not relate to the retaining wall. To that extent, the order, dt.13.02.2020, stands altered.

11. The learned Senior Counsel for the hotel adds that the initial Show Cause Notice from the Government included the issue of retaining wall and, in fact, only based on the hotel's objection did the Government consult the experts.

12. At any rate, we note that once the Government comes up with its view on the retaining wall, the Court will consider whether the hotel should be put on notice, once again.

Post matter on 09.04.2020.

NUTAN D. SARDESSAI, J.

DAMA SESHADRI NAIDU, J.

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