

IN THE HIGH COURT OF BOMBAY AT GOA**PUBLIC INTEREST LITIGATION WP NOS.10 & 13 OF 2018****PUBLIC INTEREST LITIGATION WP NO.10 OF 2018**

Mr. Alexander J. Michael,
son of James C. Micheal, aged 45 years,
Indian National, resident of House No.
201/A, near Mahima Vastu, Alto,
Dabolim Goa,
Mobile No.7972148486
Aadhaar Card No. [REDACTED]
PAN CARD NO. AIMPM5752H,
E Mail No. Alexanderjmicheal@gmail.com
Annual Income -Rs.2,50,000/- ... Petitioner

Versus

1. State of Goa,
Through Chief Secretary,
having office at Secretariat,
Porvorim Goa.
2. Union of India,
through the Cabinet Secretary of India
South Block,
New Delhi
3. The Flag Officer,
Commanding for
Station Office
(Aviation), Headquarters
Goa Naval Area,
Vasco-da-Gama, Goa.

4. The Director, Airport
Authority of India,
Goa International Airport,
Dabolim Goa 403 801,

5. Village Panchayat of Chicalim,
Through its Secretary,
having office at Chicalim Goa.

6. Mormugao Planning and Development
Authority, Mormugao Goa.

7. M/s Venture Building Dreams
H.No.148, Bogmalo Junction,
Alto Dabolim Goa,
represented through
Mr. Kamla Prasad Yadav.

... Respondents

Mr. Rohit Bras De Sa with Ms. V. Shet, Advocates for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. Arun Talaulikar, Addl.
Government Advocate for Respondent No.1.

Mr. Mahesh Amonkar, Central Government Standing Counsel for
Respondent No.3.

Mr. Abhay Nachinolkar with Mr. H. Vaze, Advocates for Respondent
No.4.

Mr. Z. D'Souza, Advocate for Respondent No.5.

Mr. A. D. Bhobe, Advocate for Respondent No.6.

Mr. S. D. Lotlikar, Senior Advocate with Mr. J. Karn, Advocate for
Respondent No.7.

Mr. Ashok Kumar, Member Secretary, Mormugao Planning and
Development Authority (Respondent No.6).

**WITH
PUBLIC INTEREST LITIGATION WP NO.13 OF 2018**

1. Mr. Alexander J. Michael,
son of James C. Micheal, aged 45 years,
Indian National, resident of House No.
201/A, near Mahima Vastu, Alto,
Dabolim Goa,
Mobile No.7972148486
Aadhaar Card No. [REDACTED]
PAN CARD NO. AIMPM5752H,
E Mail No.Alexanderjmicheal@gmail.com
Annual Income -Rs.2,50,000/-
2. Shri Abhijit Shripad Prabhudesai,
son of Shripad Prabhudesai,
aged 52 years, Indian National
Resident of House No.479,
Curtorim, Salcete Goa. ... Petitioners

Versus

1. State of Goa,
Through Chief Secretary,
having office at Secretariat,
Porvorim Goa.
2. Union of India,
through the Cabinet Secretary of India
South Block,
New Delhi
3. The Flag Officer,
Commanding for
Station Office

(Aviation), Headquarters
Goa Naval Area,
Vasco-da-Gama, Goa.

4. The Director, Airport
Authority of India,
Goa International Airport,
Dabolim Goa 403 801,

5. Village Panchayat of Chicalim,
Through its Secretary,
having office at Chicalim Goa.

6. Mormugao Planning and Development
Authority, Mormugao Goa.

7. M/s Venture Building Dreams
H.No.148, Bogmalo Junction,
Alto Dabolim Goa,
represented through
Mr. Kamla Prasad Yadav.

... Respondents

Mr. Rohit Bras De Sa with Ms. V. Shet, Advocates for the Petitioners.

Mr. D. Pangam, Advocate General with Ms. Sulekha Kamat, Addl.
Government Advocate for Respondent No.1.

Mr. Mahesh Amonkar, Central Government Standing Counsel for
Respondent No.3.

Mr. Abhay Nachinolkar with Mr. H. Vaze, Advocates for Respondent
No.4.

Mr. Z. D'Souza, Advocate for Respondent No.5.

Mr. A. D. Bhobe, Advocate for Respondent No.6.

Mr. S. D. Lotlikar, Senior Advocate with Mr. J. Karn, Advocate for
Respondent No.7.

Mr. Ashok Kumar, Member Secretary, Mormugao Planning and

Development Authority (Respondent No.6).

Coram:- M. S. SONAK &

SMT. M. S. JAWALKAR, JJ.

Reserved on :- 6th February, 2020

Pronounced on: 28th February, 2020

JUDGMENT (Per M. S. Sonak, J)

Heard Mr. Rohit Bras De Sa, learned counsel for the Petitioners, Mr. D. Pangam, learned Advocate General for Respondent No.1, Mr. Mahesh Amonkar, learned Central Government Standing Counsel for Respondent No.3, Mr. A. Nachinolkar, learned counsel for Respondent No.4, Mr. Z. D'Souza, learned counsel for Respondent No.5, Mr. A. D. Bhobe, learned counsel for Respondent No.6 and Mr. S. D. Lotlikar, learned Senior Counsel for Respondent No.7.

2. Rule. With the consent and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3. By order dated 6th February, 2020, the PIL WP No.11 of 2018 was detagged from these two petitions and the same, has in fact, been disposed of by order dated 10th February, 2020. The learned counsel for the parties agree that these Public Interest Litigations can be disposed of by a common judgment and order, since the main issue raised and which is proposed to be decided, is one and the same in both these matters.

4. The main issue involved in both these petitions relates to mushrooming of allegedly unauthorized constructions around the Dabolim Airport which is basically a defence aerodrome permitted to be used as a civil enclave i.e. for civilian aircraft for some portion of the day. The Petitioner contends that while the Navy and the Airport Authorities, acknowledge the problem posed by such constructions to the aviation safety, they are only intent upon passing the buck to the State and its agencies, who, in turn, are avoiding any action by urging that it is the Navy and the Airport Authorities or the civil aviation Authorities who are required to act in the matter.

5. The Petitioner, by way of illustration has made reference to the constructions put up on the property bearing survey No.60/2 of Chicalim Village *inter alia* by Venture Building Dreams, a concern of M/s Kamla Prasad Yadav (Builder) and the Deputy Sarpanch of the Chicalim Village Panchayat, who has been impleaded as the Respondent to these petitions. The Petitioner contends that the constructions put up in the property bearing survey No.60/2 of Chicalim are unauthorized constructions commenced and continued despite notices for stoppage being issued by the Naval Authorities which notices were ignored by the Planning Authorities and the Panchayat with impunity.

6. In short, the Petitioner complains about inaction on the part

of the statutory Authorities to address the issue of unauthorized constructions and development mushrooming around the Dabolim Airport, in scant regard to the issue of aviation safety.

7. Mr. S. D. Lotlikar, learned Senior Advocate who appears for the builder has no doubt, denied the Petitioner's contentions and submitted that the present petitions are barred by delay, laches and in any case, are motivated petitions which should never be entertained as Public Interest Litigations. Mr. Lotlikar, submitted that in any case, there are several constructions and buildings which have come up in the area and even the Naval Authorities themselves have put up some constructions and undertaken development within the area. He submits that since the Petitioner has not targeted such constructions, these petitions cannot be regarded as some genuine public interest litigations. He therefore submits that the present petitions deserve to be dismissed at the very threshold.

8. From the material placed on record before us, in these two matters, we cannot say that these petitions are motivated or aimed at only targeting the construction put up by any particular builder. In any case, in such matters the message is more important than messenger. From time to time, this Court has made several orders in these matters. The affidavits have also been filed by the statutory authorities. The affidavits indicate that there is a genuine issue of constructions mushrooming in and around the

Airport all of which, may really not be authorized. The affidavits also acknowledge that such constructions pose a serious hazard to aviation safety. Despite acknowledgment of this position, only dispute raised was in relation to precise authorities which must act in order to remedy the unfortunate situation which has arisen. In such circumstances, it is not possible to accept Mr. Lotlikar's contention that these matters should be rejected at the threshold without issuing appropriate orders to activate statutory authorities, to act in accordance with law so that threat to aviation safety is at least addressed with the seriousness, it deserves. The preliminary objection to the entertainment of these petitions is therefore rejected.

9. The main enactment, which deals with the issues of aviation safety is the Aircraft Act, 1934, which was enacted to make better provision for the control of manufacture, possession, use, operation, sale, import and export of aircraft.

10. Section 4-A of the Aircraft Act deals with “*safety oversight functions*” and provides that the Director-General of Civil Aviation (DGCA) or any other officer specially empowered in this behalf by the Central Government shall perform the safety oversight functions in respect of matters specified in the Aircraft Act or the rules made thereunder. Though, the DGCA was not specifically impleaded in either of these

petitions, the Union of India is a party to these petitions. The Standing Counsel who appeared on behalf of the Union of India has accepted that the DGCA has a vital role to play when it comes to safety oversight functions, in terms of Section 4-A of the Aircraft Act.

11. Section 5-A of the Aircraft Act empowers the Director-General of Civil Aviation (DGCA) or any other officer specially empowered in this behalf to issue directions consistent with the provisions of Aircraft Act and the Rules made therein in respect of the matters specified therein. Section 5-A(2) provides that direction so issued under sub section (1) shall be complied with by the person or persons to whom such direction is issued. Section 11-A provides for penalty for failure to comply with directions issued under Section 5-A.

12. Section 9-A of the Aircraft Act is quite relevant to the issues raised in these petitions and the same reads as follows :-

“9-A. Power of Central Government to prohibit or regulate construction of buildings, planting of trees, etc. (1) If the Central Government is of opinion that it is necessary or expedient so to do for the safety of aircraft operations, it may, by notification in the Official Gazette,-

(i) direct that no building or structure shall be constructed or erected, or no tree shall be planted on any land within such radius, not exceeding twenty kilometres from the aerodrome reference point, as may

be specified in the notification and where there is any building, structure or tree on such land, also direct the owner or the person having control of such building, structure or tree to demolish such building or structure or, as the case may be, to cut such tree within such period as may be specified in the notification;

(ii) direct that no building or structure higher than such height as may be specified in the notification shall be constructed or erected, or no tree, which is likely to grow or ordinarily grows higher than such height as may be specified in the notification, shall be planted, on any land within such radius, not exceeding twenty kilometres from the aerodrome reference point, as may be specified in the notification and where the height of any building or structure or tree on such land is higher than the specified height, also direct the owner or the person having control of such building, structure or tree to reduce the height thereof so as not to exceed the specified height, within such period as may be specified in the notification.

(2) In specifying the radius under clause (i) or clause (ii) of sub-section (1) and in specifying the height of any building, structure or tree under the said clause (ii), the Central Government shall have regard to-
(a) the nature of the aircraft operated or intended to be operated in the aerodrome; and
(b) the international standards and recommended practices governing the operation of aircraft.

(3) Where any notification has been issued under sub-section (1) directing the owner or the person having control of any building, structure or tree to demolish

such building or structure or to cut such tree or to reduce the height of any building, structure or tree, a copy of the notification containing such direction shall be served on the owner or the person having the control of the building, structure or tree, as the case may be,-

(i) by delivering or tendering it to such owner or person; or

(ii) if it cannot be so delivered or tendered, by delivering or tendering it to any officer of such owner or person or any adult male member of the family of such owner or person or by affixing a copy thereof on the outer door or on some conspicuous part of the premises in which such owner or person is known to have last resided or carried on business or personally worked for gain; or failing service by these means;

(iii) by post.

(4) Every person shall be bound to comply with any direction contained in any notification issued under sub-section (1).”

13. Section 9-B of the Aircraft Act, makes provision for payment of compensation. If in consequence of any direction contained in any notification issued under section 9-A(1), any person sustains any loss or damage also provides for the manner and the principles for determination of such compensation. Section 9-C provides for appeals from awards in respect of compensation. Section 10 provides for penalty for act in contravention of rule made under the Aircraft Act and Section 11 provides for penalty for flying so as to cause danger.

14. Section 11-B is quite important in the context of issues raised in the present petitions and the same reads as under :-

“11-B Penalty for failure to comply with directions issued under section 9A.- (1) If any person wilfully fails to comply with any direction contained in any notification issued under section 9A, he shall be punishable with imprisonment for a term which may extend to [two years or with fine which may extend to ten lakhs rupees], or with both.

(2) Without prejudice to the provisions of sub-section (1), if any person fails to demolish any building or structure or cut any tree or fails to reduce the height of any building, structure or tree in pursuance of any direction contained in any notification issued under sub-section (1) of section 9-A within the period specified in notification, then, subject to such rules as the Central Government may make in this behalf, it shall be competent for any officer authorised by the Central Government in this behalf to demolish such building or structure or cut such tree or reduce the height of such building, structure or tree:

[Provided that the power to make rules under this sub-section shall be subject to the provisions of section 14.]

15. In exercise of powers conferred by Section 11-B(2) of the Aircraft Act, the Central Government has made “*Aircraft (Demolition of Obstructions Caused by Buildings and Trees, etc.,) Rules, 1994*” (hereinafter referred to as the 1994 Rules). There is no dispute that such Rules are in force from the date of their publication in the Official Gazette on 14th May, 1994.

16. The 1994 Rules defines expression “*Officer-in-charge of an Aerodrome*” under Rule 2(6) to mean the officer holding charge of the Airport by whatever designation known. Now, in the present case, there is no dispute that the Dabolim Airport is basically a Defence Aerodrome and the officer-in-charge is the Flag Officer, Commanding (hereinafter referred to as the Flag Officer).

17. Rule 3 of the 1994 Rules provide that where any notification has been issued by the Central Government under Section 9-A(1) of the Aircraft Act and the [officer-in-charge of the concerned aerodrome] has reason to believe that any building or tree exists in violation of the provisions of the aforesaid notification, he shall serve a copy of the notification on the owner of the building or tree, as the case may be, in accordance with the procedure laid down in Section 9-A(3) of the Aircraft Act. Thereafter, Rule 4 of the 1994 Rules provides service of the copy of the Notification under Rule 3 shall be accompanied by an order of the Director-General of Civil Aviation or any other officer of the Civil Aviation Department authorized by him in this behalf and directing the owner to furnish to the officer-in-charge of the aerodrome within a specified period, a plan showing the location of the building or tree, as the case may be and also its dimensions or any other details specified in the order. The owner shall be bound to furnish the details asked for in the order passed under Rule 4(1) of the 1994 Rules.

18. Rule 5 of the 1994 Rules then provides that the details furnished by the owner of the building or tree, as the case may be, shall be forwarded by the officer-in-charge of the aerodrome to the Director-General of Civil Aviation with his comments. Before forwarding the details to the DGCA, the officer-in-charge of the aerodrome shall satisfy himself about the correctness of the details and for that purpose he shall be empowered to enter the premises in question and carry out physical verification of the dimensions of the building or tree, as the case may be, during day light hours and with reasonable prior notice to the owner, who shall be duty bound to extend full cooperation during such physical verification. Provided that in a case where the owner fails to cooperate, the officer-incharge of the aerodrome shall be free to forward details to the DGCA with his comments based on whatever verification is possible.

19. Rule 6 of the 1994 Rules then provides that if a Joint Director General or a Deputy Director General of Civil Aviation, on an examination of the details forwarded to him by the officer-in-charge of the aerodrome, is satisfied, after giving the owner an opportunity of being heard, that the building or tree in question does violate the provisions of the notification issued by the Central Government under section 9-A(1) of the Aircraft Act, he shall pass a final order in the matter directing the owner to demolish the building, or to cut the tree, or to reduce the height of the building, or the tree, as may be required for compliance with the

provisions of the notification, within a specified period. In case of reduction in the height of the building, or tree, as the case may be, the permissible height shall also be specified in the order. Provided that in a case where the owner has failed to furnish details in response to the order under Rule 4, [a Joint Director General or a Deputy Director General of Civil Aviation] shall be empowered to pass a final order based on information made available to him by the officer-in-charge of the aerodrome, or any other reliable source. The final order passed under Rule 6(1) shall be served on the owner through the officer-in-charge of the aerodrome, in accordance with the procedure laid down in Section 9-A(3) of the Aircraft Act. Rule 6-A of the 1994 Rules provides for appeal against the final order under Rule 6. Rule 7 of the 1994 Rules provides that the owner shall comply with the directions contained in the final order passed under Rule 6 or confirmed or modified under Rule 6-A, as the case may be, within the time limit specified therein. The owner however may claim compensation in accordance with the provisions contained in section 9-B of the Aircraft Act.

20. Rule 8 of the 1994 Rules is quite relevant to the issues raised in the present petitions and the same is therefore transcribed below for convenience of reference.

“8. Non compliance to be reported to the District Collector.- [(1)If the owner fails to carry out the directions

contained in the order passed under rule 6 or confirmed or modified under rule 6-A, as the case may be, within the time limit specified therein, the officer-in-charge of the aerodrome shall report the matter to the District Collector giving brief facts of the case and a copy of the final order passed under rule 6 or confirmed or modified under rule 6-A, as the case may be.

(2) On receiving the report from the officer-in-charge of the aerodrome, the District Collector shall carry out forthwith the demolition of the building or the cutting of the tree or reduction in height of the building, as the case may be, in the same manner and by the same procedure as is followed in case of demolition of any unauthorized construction in his district.”

21. Thus, the scheme of the provisions of the Aircraft Act and the 1994 Rules is quite clear in that the action against the unauthorized constructions or development has to be initiated by the officer-in-charge of aerodrome, which, in the present case will be the Flag Officer. The action has to be initiated by serving Notification issued by the Central Government under Section 9-A(1) of the Aircraft Act upon the owner, where there is reason to believe that the owner has put up any construction in violation of provisions of such Notification. Thereafter, in terms of Rule 4, the owner is afforded opportunity of furnishing details. In fact, the owner is duty bound to furnish details. Rule 5 then provides that such details and their physical verification should be forwarded by the officer-in-charge of the aerodrome to the Director-General of Civil Aviation with his

comments. The officer-in-charge of aerodrome is required to satisfy himself about the correctness of the details and in order to arrive at such satisfaction, he is empowered to enter the premises in question and carry out physical verification. Thereafter, it is for the Joint Director-General or the Deputy Director of Civil Aviation to pass the final order after giving the owner an opportunity of being heard. The final order can be appealed under Rule 6-A. The final order once confirmed or modified in appeal has to be complied with by the owner. Finally, non compliance has to be reported to the District Collector by the officer-in-charge of aerodrome and the District Collector is then required to forthwith carry out the demolition of the building or the cutting of the tree or reduction in height of the building, as the case may be in the same manner and by the same procedure as is followed in case of demolition of any unauthorized construction in his district.

22. More than the pleadings in these petitions, it is the affidavits filed by the Airport Director, Goa International Airport, the Flag Officer, Commanding, Goa Naval Area and the Collector of South Goa which explain the magnitude of the issue raised in these petitions. Therefore, it is only appropriate that reference is made to these affidavits, in some detail, in the course of this judgment and order.

23. The Airport Director in the present case has filed an affidavit

in which, he has admitted that there may be several structures violating the Notification issued under Section 9-A of the Aircraft Act but has stated that the Authority for initiating action, is not the Airport Director but it is the Officer-in-charge of aerodrome, which in the present case, is the Flag Officer. Mr. Nachinolkar for the Airport Director also submitted that there is a problem of unauthorized constructions mushrooming around the Airport which might pose a threat to aviation safety but the Authority for initiating action against such constructions is not the Airport Director but it is the Officer-in-charge of aerodrome i.e. the Flag Officer, since, this is a defence aerodrome owned and operated by Navy.

24. The Rear Admiral P. G. Pynumootil, NM, Flag Officer, Commanding, Goa Naval Area, has filed affidavit in these matters acknowledging that he is the officer-in-charge of aerodrome. He has also referred to Aircraft Act, 1994 Rules and Notification GSR 751(E) issued by the Ministry of Civil Aviation on 30th September, 2015, which incorporates Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015 (hereinafter referred to as the 2015 Rules). He has stated that this is the Notification issued by the Central Government under Section 9-A(1) of the Aircraft Act and the action is required to be taken against the unauthorized constructions in accordance with the Aircraft Act, the 1994 Rules and the 2015 Rules.

25. The Flag Officer, in his affidavit has stated that even before certain constructions commenced or whilst the constructions of certain structures were in progress, he had addressed several notices/communications to the State Government and agencies of the State Government pointing out the illegalities of such structures. He has however stated that all such communications were ignored and the constructions were permitted to proceed by the State Government and its agencies. He has stated that *“had the actions been carried out by the concerned authorities proactively, current situation which warrants demolition would not have come up”*.

26. The Flag Officer in the context of constructions put up in survey No.60/2 of Chicalim Village by one Dinesh Nadar and Kamla Prasad Yadav (Builder), has made reference to the letters/communications dated 6th February, 2015, 21st July, 2015, 12th August, 2015, 16th March, 2015, 12th April, 2018, 7th May, 2018 and 30th June, 2018 addressed by him to the various authorities. The Flag Officer has stated that despite all such letters no action was taken by the MPDA, the Village Panchayat of Chicalim and the State Government officials to stop the constructions, which went on *“unabashedly”*.

27. The Flag Officer, in affidavit has stated that no NOCs were issued by him in respect of the constructions coming up in survey No.60/2

and despite absence of such NOCs, the Authorities like MPDA and the Panchayat, permitted constructions to come up.

28. The Flag Officer has then placed on record his correspondence with the integrated Headquarters of Ministry of Defence (Navy) and pleaded that upon receiving node, how he has served Notification under Section 9-A(1) upon the owners whom, he had reason to believe, had undertaken the unauthorized constructions. The Flag Officer has specifically pleaded that the copy of GSR 751(E) i.e. the 2015 Rules were served upon such owners and even the Authorities were apprised of the position.

29. The Flag Officer has also made reference to the colour coded zoning map (CCZM), which is an interactive tool including various demarcated areas within 20 Kms from the runway of the Dabolim Airport as per GSR 751(E) and the top elevation permitted for any construction within those areas. It was pointed out by the Flag Officer that this CCZM aids the civil administration in deciding whether NOC needs to be sought for a particular application depending on its geographical location. As per GSR 751 (E), such CCZM is to be provided to the civil administration by the aerodrome operating authority. The Flag Officer has pointed out that the Indian Navy proactively liaised with Indian Air Force and formulated this CCZM, since the Navy lacked facilities to formulate the same. He has

pointed out that this CCZM has been approved by the Integrated Headquarters, Ministry of Defence (Navy) and the copy of the same has been handed over to the local administration i.e. Goa Government. The Flag Officer has finally pointed out that the formulation of CCZM, the local Authorities can approve the construction in all areas except 4 Kms around the Airport as long as the buildings are below the stipulated height limits. The CCZM was also placed on record in these matters alongwith the affidavit of the Flag Officer.

30. Mr. Amonkar, learned Standing Counsel who appears *inter alia* for the Flag Officer submits that the Flag Officer has already initiated steps to deal with issue of unauthorized constructions around the Dabolim Airport and will continue with his action so that the issues concerning aviation safety are suitably redressed. He however submits that the State Government Authorities like District Collector, MPDA and the Panchayat are expected to cooperate in the matter and therefore, suitable directions be issued to these Authorities to ensure cooperation.

31. The Collector of South Goa, Ajit Roy has also filed affidavit in these matters on 30th September, 2019. Some reference is necessary to this affidavit, because according to us, this affidavit, to a certain extent reflects the response of the State Administration to the issue of aviation safety raised in these petitions.

32. In the context of certain conversion sanads issued by the Collector/Deputy Collector to the properties around the Dabolim Airport, the Collector has acknowledged that he had received various complaints from the Goa Naval Authorities informing him about unauthorized constructions mushrooming around the Airport areas which indicates '*probability of serious statutory lapses and deviations by the concerned departments including the local bodies*'. The affidavit states that in order to streamline the procedure for initiating appropriate action, the Collector's office has addressed communication dated 19th October, 2018 to various authorities like the Director of Municipal Administration, the Director of Panchayats, the Chief Town Planner and the Member Secretary, MPDA on the subject matter of regulation of unauthorized construction around the Goa Dabolim Airport. By this communication dated 19th October, 2018, these Authorities were apprised of G.S.R. 751(E) dated 30th September, 2015 containing 2015 Rules issued by the Central Government. The attention of these Authorities was also invited to the provisions of the 1994 Rules. The Collector has then stated that he issued a Circular dated 7th November, 2018, to various authorities dealing with the issue of conversion under the provisions of the Land Revenue Code, again, bringing to their notice the G.S.R. 751(E) containing the 2015 Rules. The attention of various authorities were also invited to the 1994 Rules.

33. The Collector, in paragraphs 11 and 12 of his affidavit has

made the following statements, which echo apprehension of illegal and haphazard development around the Dabolim Airport :-

*“11. I state that, in addition to above this office also vide No. COL/CONV-CELL/NOC-AAI/2018/12878 dated 07/11/2018 had issued Circular to various authorities dealing with the land conversion U/s 32 of Land Revenue Code, 1968 like the Additional Collectors and Deputy Collectors bringing to their notice the gazette notification of G.S.R. 751(E) dated 30.09.2015 issued by the Ministry of Civil Aviation, New Delhi, the Ministry of Civil Aviation (Height Restriction for Safeguarding Aircraft Operation) Rules 2015 and the Aircraft (Demolition of Obstructions caused by Building and Trees Etc.) Rules, 1994. Also all the provisions were brought to the notice of said Authorities. As per Rule 4, the said rule places restrictions on construction/erections within a radius not exceeding 20 Km from the aerodrome reference point of the Civil and Defence Aerodromes without obtaining no objection certificate for height clearance except in cases where the colour coded zoning map has already been published/notified. **In respect to Dabolim Airport which is a defence airport, it is to be noted that, haphazard development is taking place around the airport due to absence of clarity with respect to the colour coded maps and non adherence by local authority/municipality to ensure that restrictions are adhered to in order to ensure safety and as a measure of enforcement.** It is necessary that as an initial step for all the areas/villages in Mormugao Taluka, in the event that conversion cases are to be considered, N.O.C., from the Naval Authorities is to be obtained and any condition given by Naval Authorities are to be incorporated in the conditions of the Sanad.*

“12. I state that Rule 7 of the said rules makes it incumbent

upon the local bodies, Municipal, Town Planning Department and Development Authorities to ensure that NOC is obtained in each case from the aerodromes authorities unless the colour coded zoning maps are available in which case they need to restrict their permissions as per the colour coded zoning maps.”

(Emphasis supplied)

34. The Collector, has then referred to the correspondence of Flag Officer, Commanding in the context of Circular dated 7th November, 2018 and then stated that the Circular dated 7th November, 2018 was amended vide Circular dated 3rd January, 2019 on the issue of conversion of the properties around the Dabolim Airport areas. The operative portion of Circular dated 3rd January, 2019 is relevant to the issue raised in the present petitions and the same reads as follows :-

“ In view of the above, and considering the issue of safety and as a measure of enforcement since in the long run the responsibility for removal/demolition of any unauthorized structures will fall upon this office, the above mentioned circular is amended and the following instructions are issued.

(a) A clause/condition to be incorporated in the sanad that “NOC is to be obtained from the Flag Officer, Commanding Goa Area (For Staff Officer 'Aviation'), Headquarters Goa Naval Area, Vasco-da-Gama, Goa, 403802 prior to under taking any construction in the land so converted”.

(b) As an initial step the said clause to be incorporated in the conversion sanad for sanads being issued in Mormugao Taluka only. With respect to applicability of 20 Kms radius

and the village wise applicability for other talukas, the exercise is being carried out by Conversion Cell and matter has also been referred to Government. Subsequent instructions in this regard will be issued later.

(c) No NOC from Navy is required to be sought during the processing of the conversion cases. The applicant will require to meet the said condition and as per Rule 7 the local development authorities i.e. Village Panchayat/Municipality/TCP etc. as the case may be, have to take cognizance. The matter has been brought to notice of respective departments/stakeholders.

*Sd/-
(Dr. Tariq Thomas, I.A.S.)
Collector
South Goa District,
Margao-Goa”*

35. According to us, the Collector, as also the Deputy Collector or the Additional Collector dealing with the cases of conversion of properties around the Dabolim Airport are duty bound to follow the instructions in the Circular dated 3rd January, 2019, particularly because such instructions have been issued considering the aviation safety and the fact that in the long run responsibility of removal/demolition of unauthorized structures will fall upon the office of the Collector. Accordingly, we direct that the Collector/Additional Collector, Deputy Collector, Officer dealing with the applications for conversion in properties around the Dabolim Airport, will scrupulously adhere to the instructions in Circular dated 3rd January, 2019.

Further, we direct the Collector of South Goa not to unilaterally amend such instructions. In case, any occasion arises for amendment, the same shall be in consultation with the Flag Officer, Commanding and the DGCA.

36. Taking cognizance of the affidavit of the District Collector, we had made an order on 3rd October, 2019. In the said order, we had recorded and accepted the statements made by Mr. M. Pereira, learned counsel for MPDA and Mr. Zeller D'Souza, learned counsel for the Village Panchayat of Chicalim that unless and until a conversion sanad is produced by the Applicant, they will not grant any permission for development or construction within the areas of their respective jurisdiction. These statements were in fact accepted as the statements made to this Court and both the MPDA as well as the Panchayat were directed not to entertain any applications for development/construction in the areas of their respective jurisdiction unless the Applicant produces valid conversion sanad in terms of the Goa Land Revenue Code. We make such directions absolute by this judgment and order.

37. The Member Secretary of the MPDA has also filed several affidavits in these matters. Unfortunately these affidavits have attacked the bonafides of the Petitioner rather than addressing the serious issue of unauthorized constructions around the Dabolim Airport. The affidavits

acknowledge the receipt of several letters from the Flag Officer, Commanding in the context of constructions coming up in disregard to aviation safety. However, affiant merely states that it was for the Flag Officer, Commanding to take action in the matter and the MPDA cannot be faulted for its inaction.

38. To the same effect are some of the affidavits on behalf of the Panchayat of Chicalim, of which Kamla Prasad Yadav (Builder) is stated to be the Deputy Sarpanch. Incidentally, the record indicates that Kamla Prasad Yadav (Builder) is also the member of MPDA. Mr. De Sa, learned counsel for the Petitioner submits that the response of both the MPDA and Panchayat is influenced by the membership of said Kamla Prasad Yadav (Builder).

39. While we refuse to delve into such controversy, we must say that the affidavits filed by the MPDA and Panchayat leave lot to be desired. Rather than focusing upon questioning bonafides of the Petitioner, these statutory authorities, should have responded to the serious charges of inaction, made not only by the Petitioner, but by the Flag Officer, Commanding particularly in relation to the constructions undertaken by one Dinesh Nadar and Kamla Prasad Yadav (Builder).

40. From the record, we find that the MPDA has not only ignored

with impunity several letters and communications addressed by the Flag Officer, Commanding in the context of unauthorized constructions mushrooming around the Dabolim Airport but further attempt was made by the MPDA to even overreach the action of the Central Authorities under the Aircraft Act, particularly in the context of 2015 Rules and the CCZM prepared thereunder by the Central Authorities.

41. In the course of the arguments in these matters, our attention was invited to the resolution passed by the MPDA in its second meeting held on 18th November, 2019 which reads as follows :-

“3) Discussion on the colour-coded map submitted by the Indian Navy vide letter dated 15/10/2019: The Member Secretary informed the Members regarding the issue raised in the Writ Petition No.10/2018, 11/2018 & 13/2018 in the High Court wherein, the Navy has submitted the Affidavit along with the Colour-Coded Zoning Map in the Court. She further informed that the Colour Coded Zoning Map (soft copy) of Dabolim Airport has been submitted by the India Navy to this Authority vide their letter dated 15/10/2019 and she explained the same to the Members stating that as per the Colour-Coded Zoning Map (CCZM) NOC from the Navy upto 4.00 kms. radius around the Airport is mandatory. It is also noted that the Navy has added security concerned as one of the reason for deciding a 4.00 kms. radius. Some Members were of the opinion that at the time of preparing CCZM Goa Government was not taken into confidence, wherein the topography of the 4.00 km. radius was not considered. Earlier, MPDA has adopted funnel area for building height restrictions as per the requirement of Navy within the 100 mts of the

runway having height beyond 30 mts. These building are constructed without any approval from this Authority and the height is more than the permissible as per the Buildings Regulations.

During the discussion, the Authority was informed by Hon'ble Minister of Panchayat that the Hon'ble Minister had called the meeting on 22/10/2019, regarding the CCZM which was also attended by the Officials of Navy. The State Government did not agree with CCZM submitted by the Navy and CM has written a letter to the Union Defence Minister and that letter was read out.

”Considering all facts as detailed above, the Authority resolved that until the matter is decided by the Central Government, this Authority will maintain status quo, in the matter of granting Development Permissions, that is to say continuing to treat only the present funnel area shown in the ODP of Vasco da Gama – 2026, as a restrictive zone whereas the NOC from Naval Authorities would be required before processing applications for Development Permission. Accordingly, for reasons recorded above, the colour coded Plan was rejected.

(Emphasis supplied)

42. Finding that the aforesaid resolution of the MPDA was in excess of authority vested in MPDA, on 6th February, 2020, while closing these matters for orders, by way of an interim order we stayed the operation of the aforesaid resolution dated 18th November, 2019 particularly since the issue of aviation safety was involved.

43. According to us, the MPDA, in passing the aforesaid

resolution has acted in defiance of the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015 or the Colour Coded Zoning Map (CCZM) prepared thereunder. This is a matter of aviation safety and, therefore, due deference was necessary to be shown to not only the 2015 Rules, but also the CCZM prepared thereunder. If, in pursuance of the aforesaid resolution the MPDA, in the name of maintaining status quo, is permitted to issue development permissions in defiance of the 2015 Rules or the CCZM prepared thereunder, what will be at stake is the aviation safety itself.

44. According to us, the MPDA which is constituted under the State Act will not have the competence to act contrary to the Rules and Notifications issued under the Central Act i.e. Aircraft Act, 1934 and the CCZM prepared thereunder. Therefore, if the ODP prepared by the MPDA is at variance with the 2015 Rules or the CCZM prepared thereunder, then, obviously it is the latter which will prevail and the MPDA by passing such resolution cannot insist upon virtually ignoring 2015 Rules or CCZM prepared thereunder.

45. From the perusal of the resolution, we find that the Member Secretary of the MPDA made the members of the MPDA aware of the pendency of the present petitions. From the resolution, it is also apparent that the Members of the MPDA were aware of its own powers and

therefore, they have themselves stated that it is for the Central Government to take a call on the status of the CCZM. Despite all this rather than to act in accordance with 2015 Rules and the CCZM prepared thereunder, the MPDA, proceeded to pass the aforesaid resolution seeking to ignore with impunity the 2015 Rules and the CCZM prepared thereunder. This was clearly an exercise in patent excess of the jurisdiction vested in MPDA.

46. Further, what is more disturbing is that one of the parties to these petitions Kamla Prasad Yadav (Builder) who is alleged to have undertaken the unauthorized construction in *prima facie* defiance of 2015 Rules and the CCZM prepared thereunder, in his capacity as the Deputy Sarpanch and Member of the MPDA, is also a party to the resolution dated 18th November, 2019. According to us, at least *prima facie*, this is a case of conflict between interest and duty. However, the learned counsel for the MPDA and the learned Senior Counsel for Kamla Prasad Yadav (Builder) submit that there are no provisions under the TCP Act which prevent the Members from taking part in the resolutions in which they have personal interest. According to us, it is for the State Government, to look into this situation with all seriousness because, if the Members, having conflict of interest are taking part in the decision process, the ensuing decisions may be rendered vulnerable, if challenged. We leave the matter at that for the present.

47. Upon all the aforesaid circumstances, being pointed out, by Mr. A. D. Bhobe, learned counsel for the MPDA on the basis of instructions made a statement that notwithstanding the resolution dated 18th November, 2019, the MPDA will strictly follow the CCZM and in the name of maintaining status quo, will not continue to grant development permissions on the basis of its own ODP even though the ODP may be at variance with what is provided in the CCZM. This statement was appreciated and recorded as the statement made to this Court. We made it clear that even if no such statements were made before us, we were quite satisfied that the resolution will have to be stayed, particularly since the issue of aviation safety was involved. We also noted that the MPDA was made aware of the pendency of the petitions and the issues raised therein. Despite the same, the member of the MPDA which includes Kamla Prasad Yadav (Builder) proceeded to pass resolution purporting to virtually “*reject*” the CCZM. We therefore, make absolute the interim order made by us on 6th February, 2020 and restrain the MPDA from acting on its own resolution dated 18th November, 2019, in relation to the CCZM.

48. In ***Siddheshwar Sahakari Sakhar Karkhana Ltd. Vs Collector and District Magistrate, District Solapur and others,***¹ in Writ Petition No.5253 of 2017 and connected matters disposed of by the Division Bench of this Court vide judgment and order dated 6th August,

¹ WP No.5253 of 2017 dated 06.08.2018

2018, it is held that matters of safety of aircraft operations are to be exclusively determined and decided by the Authorities under the Aircraft Act, 1934. The Authority is the Department or Ministry of Civil Aviation and the Directorate General of Civil Aviation (Safety). These observations were made in the specific context of 2015 Rules where this Court was concerned with a chimney, 90 metres in height put up by the Petitioner – Sugar Factory, which was posing a danger to aviation safety.

49. Mr. Lotlikar, learned Senior Advocate for Kamla Prasad Yadav (Builder) disputed the factum of service of Notification under Section 9-A(1) of the Aircraft Act upon the Builder. He in fact submitted that the GSR 751 (E) dated 30th September, 2015 or the 2015 Rules is not at all a Notification under Section 9-A(1) of the Aircraft Act. He submitted that the Notification contemplated under Section 9-A(1) of the Aircraft Act must be in relation to specific aerodrome and further, must prescribe specific height restrictions. He submits that the GSR 751 (E) contains the 2015 Rules, which are of general application and therefore, GSR 751(E) can never be regarded as any Notification under Section 9-A(1) of the Aircraft Act. He submits that in absence of any Notification under Section 9-A(1) of the Aircraft Act, there is no question of any action against allegedly unauthorized constructions.

50. According to us, the submissions of the learned Senior

Advocate, which were not supported by any of the other counsel appearing in these matters, cannot be accepted. GSR 751(E), in terms states that the same is issued in exercise of powers conferred by Section 9-A of the Aircraft Act. Secondly, GSR 751(E) complies with parameters prescribed under Section 9-A of the Aircraft Act. In this regard, reference is necessary of clause (2) which specifically provides that clause/Rule 2 which specifically provides that the Rule in GSR 751(E) shall apply to all civil and defence aerodromes listed in Schedule III to Schedule VII as amended from time to time. In Entry 28 at Schedule V there is specific reference to Goa (Dabolim) aerodrome. The Schedule provides for coordinates, aerodrome elevation in meters, details of runway, dimension and the name of the owner/operator, which, in case of Goa (Dabolim) the Airport is indicated as “Navy”. Therefore, we cannot accept the contention raised by the learned Senior Advocate that the GSR 751(E) is not at all notification as contemplated by Section 9-A(1) of the Aircraft Act.

51. Further, we note that GSR 751(E) incorporates and publishes Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015 i.e. the 2015 Rules providing for details and minutest instructions on the aspect of height restrictions for obtaining NOC etc. when it comes to putting up of constructions around the Dabolim Airport.

52. Rule 6 of the 2015 Rules deals with the issuance of Colour Coded Zoning Maps (CCZM). The CCZM in the present case has been prepared under the 2015 Rules. In regard to such CCZM, the learned Advocate General did express certain reservations by pointing out that the same may not be in accordance with Rule 6 of 2015 Rules. He submitted that Rule 6 requires that the CCZM must be based on the latitude and longitude of the area in respect of civil aerodromes which shall indicate through different colour coded grids, the permissible heights in the areas around the Airport, falling within the radius not exceeding twenty kilometers from the Aerodrome Reference Point. He submits that if the CCZM placed on record is perused, then, in respect of area indicated in colour “*RED*” remark is with irrespective of the building height, the NOC is to be applied for. The learned Advocate General submits that this means that no height restriction has been prescribed in respect of area under colour “*RED*” and this is in breach of requirements of Rule 6 of 2015 Rules.

53. We are however unable to accept the aforesaid contention because we find that the CCZM placed on record is quite consistent with the details set out in the Appendix-A of Schedule VIII to the 2015 Rules. The Appendix-A indicates that an area of 4000 metres from the runway is really the area of the Airport and in that sense the core area of the Airport. Therefore, in respect of this aspect, there is a requirement to seek the

NOC irrespective of height of the building. It cannot be said that such a requirement is *de hors* the 2015 Rules or that it, in any manner renders defective CCZM placed on record in the present case.

54. In fact, Rule 7(2) of 2015 Rules, in terms provides that in cases of aerodromes where the CCZM is issued, the Local, Municipal or Town Planning and Development Authorities shall in accordance with the height specifications provided in such CCZM, approve the construction of the structures, as per the existing building regulations or bye laws or any other law for the time being in force. Provided that no such approval shall be given by the Local, Municipal or Town Planning and Development Authorities for sites which lies in approach, take off and transitional areas of an airport or in any other area, marked in the CCZM for the compulsory obtaining of NOC from the designated officer or authorized officer.

55. This provision in Rule 7(2), in fact, affords a complete answer to the objection expressed by the learned Advocate General in the context of the CCZM. This Rule itself contemplates the requirement of compulsory obtaining of NOC irrespective of height restrictions for sites which lies in approach, take off and transitional areas of the Airport or in any other area marked in the CCZM for compulsory obtaining of NOC. Besides, we note that the areas marked in other colour like blue, pink,

yellow, green, the NOC is in fact exempted if the top elevation is below the specified height restrictions as prescribed. Accordingly, we are quite clear that neither the State Government nor the Authorities like the MPDA or the Village Panchayat can refuse to abide by either the 2015 Rules or the CCZM prepared thereunder.

56. The 2015 Rules impose restrictions upon the MPDA and the Panchayat in the matters of grant of permission for construction and development in areas around the Dabolim Airport. Such restrictions will have to be honoured by these authorities. The 2015 Rules also provide that in case of violation, resort is to be held to the 1994 Rules.

57. Though urged by Mr. De Sa, learned counsel for the Petitioner, according to us, this is not the occasion for us to investigate into the illegalities of the constructions that are said to have come up around the Dabolim Airport. There is detailed procedure provided in the Aircraft Act, 1994 Rules and 2015 Rules, in terms of which the action will have to be initiated against such constructions. According to us, in a petition of this nature, our role is to basically activate statutory authorities who, despite acknowledging that unauthorized constructions which pose danger to aviation safety have come up around the Airport, have failed to take any meaningful action against the same. Accordingly, we propose to issue directions to the statutory authorities to initiate action against such

constructions, in terms of Aircraft Act, 1994 Rules and 2015 Rules.

58. However, in so far as the constructions which have come up in survey No.60/2 of Chicalim Village are concerned and which form subject matter of communications/letters dated 6th February, 2015, 21st July, 2015, 12th August, 2015, 16th March, 2015, 12th April, 2018, 7th May, 2018 and 30th June, 2018 issued by the Flag Officer, Commanding to various authorities are concerned, we get an impression that such constructions have come up in teeth of several letters addressed by the Flag Officer to the Authorities like MPDA and the Panchayat. From the affidavits filed by the MPDA and the Panchayat, an impression is created that these authorities, are interested in protecting such structures regardless of issue of aviation safety. We clarify that this is only *prima facie* impression and it is possible that on investigations, there are no illegalities in the constructions which have been already come up. Therefore, it is necessary to direct the Flag Officer to initiate or if initiated, complete investigation and action with regard to such structures as expeditiously as possible and in any case within a period of six months from today. This time limit of six months will apply not only to the Flag Officer but also to the DGCA or the other Authorities as prescribed in Rule 6 of 1994 Rules.

59. Accordingly, we dispose of these petitions by making the following order :-

(a) We direct the Flag Officer, Commanding to immediately initiate/pursue action against the constructions which have come up in and around the Dabolim Airport areas and which, in his opinion, are *prima facie*, unauthorized and to complete such action as expeditiously as possible and in any case within a period of nine months from today. Such action to be initiated/completed having regard to the provisions of the Aircraft Act, the 1994 Rules, the 2015 Rules and the CCZM prepared thereunder and conditions of NOC, if issued;

(b) We direct the Union of India, through Director General of Civil Aviation (DGCA), the Joint Director General of Civil Aviation (Jt. DGCA), the Deputy Director General of Civil Aviation (Dy. DGCA) to act upon report made by the Flag Officer, Commanding and to issue final orders as contemplated under the 1994 Rules as expeditiously as possible and in any case, within a period of maximum six months from the date of receipt of such report from the Flag Officer, Commanding;

(c) If any appeals are instituted against the final orders

made under Rule 6 of the 1994 Rules, the Appellate Authority, to dispose of such appeals as expeditiously as possible and in any case within a period of three months from the date of their institution;

(d) Notwithstanding the above general directions, in so far as the constructions which have come up in the property bearing survey No.60/2 of Chicalim Village, we direct the Flag Officer, Commanding as well as the Authorities enjoined to make final orders under Rule 6 of 1994 Rules to initiate/complete action as expeditiously as possible and in any case within a period of six months from today;

(e) If any appeals are instituted, the Appellate Authority to dispose of such appeals within a period of three months from the date of their institution. The outer limit for completion of action, will then stands proportionately extended upto nine months;

(f) We direct the Flag Officer, Commanding to file compliance report regards the action against the constructions in survey No.60/2 of Chicalim, in the registry of this Court on or before 7th September, 2020;

(g) We also direct the Flag Officer, Commanding to file compliance report with regard to the action taken/status report in respect of remaining structures in and around the Dabolim Airport areas on or before 31st March, 2021;

(h) We direct the Collector of South Goa, Additional Collector, Deputy Collector or such other officer dealing with the applications for conversion sanads in respect of the properties in and around the Dabolim Airport areas to strictly comply with the instructions in the Collector's Circular dated 3rd January, 2019. We further restrain all concerned to amend or modify this Circular, without written consultation with the Flag Officer, Commanding and DGCA;

(i) By accepting the statements of Mr. M. Pereira, learned counsel for the MPDA and Mr. Z. D'Souza, learned counsel for the Village Panchayat of Chicalim as recorded in our order dated 3rd October, 2019 in these matters, we direct that the MPDA and the Village Panchayat of Chicalim shall not grant any permission for development or construction in respect of the areas in and around the Dabolim Airport affected by the CCZM,

unless the Applicants have valid conversion sanad under the Land Revenue Code, 1968;

(j) Further, we direct the MPDA and the Village Panchayat of Chicalim to refrain from granting any permission in respect of the properties affected by the CCZM, unless, the Applicant obtains the NOC from the Flag Officer, Commanding in terms of the provisions of the Aircraft Act, the 1994 Rules, the 2015 Rules and the CCZM prepared thereunder;

(k) We direct the Flag Officer, Commanding to dispose of the applications seeking the NOCs for constructions as expeditiously as possible and in any case within a period of three months from the date of receipt of applications, complete in all respects;

(l) We restrain the MPDA from acting on or implementing its resolution dated 18th November, 2019 and further direct the MPDA to abide by the CCZM, taking into consideration the issue of aviation safety. The interim order made by us on 6th February, 2020 is hereby made absolute;

(m) The observations in this judgment and order regarding the constructions being unauthorized are only *prima facie* and therefore, it is for the Flag Officer, Commanding and the Authorities under the 1994 Rules to determine the issue of legality or otherwise of such constructions, no doubt, by due compliance with the principles of natural justice and fair play;

(n) Rule is made absolute in both these petitions in the aforesaid terms;

(o) There shall be no order as to costs.

60. All concerned to act on the basis of the authenticated copy of this judgment and order.

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.

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