

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 631 OF 2011**

Mr. Hubert Saldanha,
s/o Hubert Saldanha,
major of age 48,
residing at H.No.167,
Nagali Hills Colony,
Dona Paula, Goa.

... Petitioner

Versus

1. The Village Panchayat of Taleigao,
Through its Sarpanch,
Taleigao, Tiswadi, Goa.
2. The Director of Panchayats,
Government of Goa,
Panaji Goa.
3. The Deputy Director of Panchayats,
Government of Goa,
Panaji Goa.
4. The Health Officer,
Urban Health Centre,
Panaji Goa.
5. The Director,
Directorate of Health Services,
Panaji Goa.
6. The Excise Commissioner,
Panaji Goa.

7. The Block Development Officer,
Tiswadi, Panaji Goa.
8. The Director of Tourism,
Department of Tourism,
Patto, Panaji Goa.
9. The Greater Panaji Planning and
Development Authority,
Through its Member Secretary,
1st Floor, Archdiocese Building
Mala Link Rd, Mala, Panaji,
Goa 403 001.
10. Member Secretary,
The Goa State Pollution Control Board,
Panaji Goa.
11. M/s Bonus Consultants Pune Pvt. Ltd.,
A Company incorporated under the Companies Act, 1956
with its registered address at 101/A,
Sneha Ganga Apartments,
Next to Vega Center,
Shankar Seth Road,
Swar Gate, Pune-38,
Through its Director Mr. Mahesh Shanbhag,
having his office at the
above mentioned address.
12. Union of India,
Through the Department of Telecommunications,
Paryavaran Bhavan,
New Delhi.

13. The Ministry of Environment and Forests,
Government of India,
New Delhi.

... Respondents

Mr. Nigel Da Costa Frias with Ms. L. Sawant, Advocates for the Petitioner.
Mr. V. Sardesai, Addl. Government Advocate for Respondent Nos.2, 3, 4,
5, 6, 7 and 8.

Mr. S. Mahambrey, Advocate for Respondent No.9.

Mr. J. Godinho, Advocate for Respondent No.10.

Mr. S. N. Joshi with Ms. S. Rawool, Advocates for Respondent No.11.

**Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Date:- 21st February, 2020

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

Heard Mr. Nigel Da Costa Frias who appears alongwith Ms.
L. Sawant for the Petitioner.

2. Mr. S. N. Joshi alongwith Ms. S. Rawool for Respondent
No.11. Mr. V. Sardesai, learned Addl. Government Advocate for
Respondent Nos.2, 3, 4, 5, 6, 7 and 8. Mr. S. Mahambrey for Respondent
No.9 and Mr. Godinho for Respondent No.10.

3. The Petitioner has instituted the present petition complaining
about the construction put up by the Respondent No.11 and through

which the Respondent No.11 operates a hotel, is unauthorized in the sense that the same is contrary to the approved plans as well as the Goa Land Development and Building Construction Regulations, 2010. The Petitioner has also complained about erection of mobile towers on the building put up by Respondent No.11 and has submitted that the statutory Authorities have failed to complete the action initiated by them in that regard.

4. The affidavits and counter affidavits have been filed by some of the Respondents in support of their respective contentions.

5. Ultimately, on 8th April, 2019, we made the following order in this petition.

“Heard learned Counsel for the parties.

2. The learned Counsel for the petitioner states that some of the grievances raised in this petition against the Authority and private respondent i.e respondent no.11 are already sorted out. He strongly submits that issues however in respect of set back area and parking space which is required to be maintained under the provisions of Goa Land Development and Building Construction Regulations 2008 and the Regulations of 2010 are still not resolved by the respondents. He submits that it is admitted in the affidavit filed by the respondent no.9 that the set back areas has to be 5 mts whereas actually it is 4.58 mts at site. He also invited our attention to the various photographs annexed at page 109 and

152 A in support of this submission.

3. The learned Counsel for the respondent no.11 on the other hand submits that though there is no substance in the submission made by the learned counsel for the petitioner, his client has no objection if the respondent no.9 carries out inspection at site in the presence of both the parties and submits a report on these two issues. Statement is accepted. The learned Counsel for respondent no.9 states that concerned officer of his client would visit and inspect the site in question and would submit a report whether the requirements of set back area as well as parking are complied with by the respondent no.11 or not. Statement is accepted.

4. Respondent no.9 shall issue two days advance notice to the petitioner as well as to respondent no.11 before taking propose site visit for the purpose of inspection. Report shall be submitted before this Court on 10.5.2019. A copy of the report shall be served on the learned Counsel for the petitioner as well as learned Counsel for respondent no.11.

5. Place the matter on board for final hearing at the bottom of the admission board on 13.6.2019.

6. Parties to act on the authenticated copy of this order.”

6. In pursuance of our order, the Greater Panaji Planning and Development Authority officials actually inspected the site and have submitted the site inspection report dated 31.05.2019. The findings in this site inspection report read as follows :-

“Findings:

1) *The respondent No.11 has extended the area having a size of 4.49 x 1.50m², admeasuring an area approximately 6.70m² with fixed glass panel towards more or less north/west side of the building, which is below the open Terrace of the first floor, therefore the said extension is violation, as per the approved plan.*

2) *One round column found within front setback, the respondent no.11 has erected one round column which is vertically erected up to the 1st floor balcony and above supporting the balcony of 1st floor, therefore the said erection of column is violation, since it is not shown in the approved plan.*

3) *As per the approved plan, the part of the ground floor area is vacant without any define use in the approved plan. The said area is undefined use in the approved plan, in said vacant area the activity is being carried out as serving area by placing chairs and tables as extended support area to the restaurant, therefore there is a violation, as per the approved plan the use of such open area was undefined. The respondent no.11 has put this area in use unauthorisely therefore violates the FAR of the Hotel building.*

4) *The front set back in the approved plan was showing 3 nos of cars for parking, it appears that respondent no.11 has not maintained the front side setback area for parking, since he has constructed 5 steps in front setback and compounded the area, with this parking area for use of parking has become ineffective, therefore violation in the approved plan.*

5) *As per the approved plan the front set back was shown*

5.00 mts whereas it is measured 4.50 from the edge of the building to outer wall of existing compound wall, therefore there is a violation in the setback.”

(Emphasis supplied)

7. Mr. Joshi, learned counsel for the Respondent No.11 however joins the issue with the aforesaid findings. He submits that the aforesaid findings are not correct and in any case, the construction is in accordance with the regulations.

8. According to us, it will not be appropriate for us at this stage, to examine whether the findings in the site inspection report dated 31.05.2019 are correct or not or whether, the construction put up by the Respondent No.11 is in accordance with the regulations or not. However, taking into consideration the findings in the said site inspection report, we feel that the Greater Panaji Planning Development Authority (GPPDA) must treat the findings as *prima facie* findings and on the said basis, issue a show cause notice to Respondent No.11 in relation to violations indicated therein. This will give an opportunity to both the Respondent No.11 as also the Petitioner to put forth their respective contentions before the GPPDA, so that the GPPDA upon due consideration of such contentions, can make appropriate orders in accordance with law. We understand that as against the order made by the GPPDA, there is an appeal provided to the Board under the provisions of the Town and Country Planning Act,

1974. This is an additional reason as to why we feel that we should not go into this contentious issue ourselves in the first instance.

9. Mr. Mahambrey, learned counsel for GPPDA states that the GPPDA will issue show cause notice to the Respondent No.11 as expeditiously as possible and in any case within a period of four weeks from today. Since, the Petitioner has been pursuing this matter, we direct that the Petitioner be also given an opportunity of participating in the proceedings in pursuance of show cause notice which will be issued to the Respondent No.11. The show cause notice to be disposed of by the GPPDA after affording opportunity of hearing to both the Petitioner as well as the Respondent No.11 as expeditiously as possible and in any case within a period of four months from today. The GPPDA to dispose of the show cause notice on its own merits and in accordance with law particularly since we have not expressed any opinion on the rival contentions. The GPPDA to communicate its decision to both the Petitioner as well as the Respondent No.11 within the aforesaid period of four months.

10. In so far as the construction of mobile towers on the building put up by the Respondent No.11 are concerned, Mr. Costa Frias points out that the Mamlatdar has already sealed such mobile towers. Mr. Joshi, learned counsel for the Respondent No.11 also confirms that the mobile

towers are presently not operational. The issue as to whether the erection of mobile towers was proper or not can always be examined by the Village Panchayat concerned i.e. the Respondent No.1 herein as well as the GPPDA. The Panchayat and the GPPDA are directed to therefore issue show cause notice to the Respondent No.11 in relation to the mobile towers and to complete their action in this regard as well within four months from today. Both the Petitioner as well as the Respondent No.11 to be offered hearing in the peculiar facts and circumstances of the present case. The decision to be communicated to both the Petitioner as well as the Respondent No.11 within the aforesaid period of four months.

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

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

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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