

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 216 OF 2012**

Mr. Jerome Velho,
major,
Son of late Francisco Velho,
Residing at House No.228,
Namoxim,
[Near “Kamat Kinara”]
Caranzalem- Ilhas Goa.

.... Petitioner

Versus

1. State of Goa,
through the Secretary,
Ministry of Urban Development,
with his office at
Secretariat,
Porvorim Goa.
2. Town and Country Planning Board,
Through its Member-Secretary,
with his office at
Panaji Goa.
Patto Centre,
Dempo Towers,
3. Chief Town Planner,
with his office at
'Dempo Towers'
Pato Plaza,
Panaji Goa.
4. North Goa Planning and
Development Authority,
Archdiocese Building, 1st Floor,
Mala – link Road,
Panaji Goa.

5. Corporation of the City of Panaji,
through its Commissioner,
with his office at Panaji Goa,
Opp. Cafe Central, Panaji Goa.
 6. M/s Noronha, Chemburkar & Associates,
A Partnership Firm,
registered under the
Indian Partnership Act,
with its Branch Office at
'Susheela Building' 2nd Floor,
18th June Road,
Panaji Goa.
Represented by its Partner,
Mr. Vibhas Keroba Chemburkar,
 7. Addl. Collector,
North Goa, at Panaji Goa.
Near old Central Library,
Panaji Goa.
 8. Sonata Housing Co Op. Society Ltd.,
Through its Chairman,
Mr. Francis Tavora
409, Sonata Building,
A-Wing,
Behind Science Centre,
Miramar, Panaji Goa.
- ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. T. Sequeira, Advocate for the Petitioner.

Ms. Susan Linhares, Additional Government Advocate for Respondent Nos.1, 2, 3 and 7.

Mr. S. S. Kantak, Senior Advocate with Ms. Aleesha Dos Reis Falcao, Advocate for Respondent No.6.

**Coram:- M. S. SONAK &
SMT. M. S. JAWALKAR, JJ.
Date:- 11th March, 2020**

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

Heard Mr. S. D. Lotlikar, learned Senior Advocate who appears with Mr. T. Sequeira for the Petitioner, Ms. S. Linhares, learned Additional Government Advocate for Respondent Nos.1, 2, 3 and 7 and Mr. S. S. Katak, learned Senior Advocate who appears with Ms. A. Reis Falcao for Respondent No.6.

2. The Petitioner, by instituting the present petition seeks the cancellation/setting aside of modification made in the Outline Development Plan (ODP) vide Notification dated 20th January, 2009 so as to change the land use in respect of the property surveyed under Chalta No.2 of P. T. Sheet No.141 of City survey, Panaji, (the said property) from 'P' Zone to Commercial Zone 'C2' and thereafter to Commercial Zone 'C1'.

3. The Petitioner, also seeks appropriate writ, order or direction to cancell/set aside the development permission dated 13th August, 2010 issued by the North Goa Planning and Development Authority (NGPDA) to Respondent No.6 for undertaking construction of a building in the said property.

4. The Petitioner, also seeks appropriate writ, order or direction to cancell/set aside licences as well as the occupancy certificate issued by the Corporation of City of Panaji in respect of construction of building carried out by the Respondent No.6 in or around the said property.

5. The Petitioner, also seeks a writ, order or direction to cancell/set aside the conversion sanad dated 10th April, 2008 granted by the Additional Collector, North Goa, in respect of the said property.

6. On the basis of all the aforesaid reliefs, in effect, the Petitioner who claims interest as a tenant in the property bearing Chalta No.1 of P. T. Sheet No.143, which is the property adjacent to the said property, seeks demolition of seven storey building put up by the Respondent No.6 in or around the said property.

7. At the outset, it is necessary to clarify that this petition has not been filed as a Public Interest Litigation. Rather, the Petitioner, was quite clear in submitting that this is a petition to protect his rights in the adjacent property of which he claims to be an “*agricultural tenant*”. The Petitioner, in fact had a grievance that the Respondent No.6, has encroached upon the adjacent property in which the Petitioner claims interest as an agricultural tenant and has virtually attempted to pass of a portion of such property admeasuring about 205 square metres or

thereabouts as its own property in order to obtain permissions/approvals from the statutory authorities.

8. Further, it is necessary to indicate at the outset by the time when this petition was filed, the building of seven storey was already complete and even the completion and occupancy certificate had been issued by the statutory Authorities. According to us, there is hardly any proper explanation for the delay and laches involved in the institution of this petition.

9. However, Mr. Lotlikar, learned Senior Advocate for the Petitioner pointed out that the Petitioner had in fact instituted Writ Petition No.790/2010 in this Court challenging various approvals/permissions granted to Respondent No.6. He pointed out that even in this petition, the Petitioner, had raised the issue of encroachment. He pointed out that this Court vide order dated 25th April, 2011 had directed the survey Authorities to conduct a survey in the context of allegation of encroachment made by the Petitioner. He pointed out that such survey was in fact conducted and the allegations of encroachment were found to be true. He pointed out that the order dated 25th April, 2011 had made it clear that the contentions of the Petitioner were specifically kept open.

10. We have perused the order dated 25th April, 2011 by which

Writ Petition No.790/2010 instituted by the Petitioner for virtually same or in any case similar relief came to be disposed of.

11. In paragraph 2 of our order dated 25th April, 2011 this is what was observed by us :-

“2. Having heard learned Senior Counsel Mr. Lotlikar on behalf of the Petitioner at some length, we are of the opinion that disputed question of facts are raised in this Petition. Essentially, the dispute pertains to the encroachment on the property, on which construction has been made. It is stated that the portion of land surveyed under Chalta No. 1 of P.T. sheet No. 143 of City Survey, Panaji as well as that of Chalta No. 2 of P.T. sheet No. 141 was acquired by Government of Goa, under Land Acquisition Act for institutional and other purposes.”

12. In the said petition, Mr. Lotlikar had made a statement that the proceedings were pending before the Deputy Collector and SDO, Panaji, on the issue of encroachment. This was recorded in paragraph 4 of our order dated 25th April, 2011. Thereafter, this Court expressed the view that during the pendency of the proceedings before the Deputy Collector and SDO, it would not be appropriate to exercise writ jurisdiction. Rather, it will be proper for the Petitioner to move the Authorities including those who have issued the development plan and construction licences bringing to their notice the mis-calculation of the area on which the construction has been carried out. All the Authorities were to abide by the area calculated by the Deputy Collector and SDO and the final orders thereon subject of course to the legal rights of the

affected parties.

13. This Court, in its order dated 25th April, 2011 made it clear that it was not expressing any opinion and all contentions and pleas in the petition will be kept open to be raised before the appropriate Authority at the appropriate stage. The action which was impugned in the petition was not interfered with at that stage and it was clarified that it would be open to the Petitioner to seek calculation of area and the issues in that behalf were also kept open. Equally, it was clarified that the Authorities shall abide by all the actions and orders made by the Deputy Collector and SDO, Panaji. The Deputy Collector and SDO was directed to dispose of the pending proceedings expeditiously and endeavour to dispose of within six months from the date of the order.

14. Finally, in paragraph 6 of our order dated 25th April, 2011, this is what was observed :-

“6. The Petition is disposed off in the light of the factual disputes raised and limits of writ jurisdiction being clear. There will be no order as to costs.”

15. Admittedly, in pursuance of our order, the survey Authorities disposed of the proceedings pending before them. The order of the survey Authorities and the site plan prepared by them, which is perhaps most relevant in adjudicating the issue raised in the present petition has been placed on record and is to be found at pages 236 to 238 of paper book in this petition.

16. The Petitioner as well as the Respondent No.6 have accepted the site plan at page 238 of the paper book. The site plan does indicate that the Respondent No.6 had encroached into the property bearing survey No.1P/143PTS, in which the Petitioner claims interest to the extent of 205 square metres. This is evident from the firm line and dotted line reflected by the letters L, M, N, O, P, E in the site plan at page 238.

17. Mr. Kantak, learned Senior Advocate for the Respondent No.6 acknowledges that by inadvertence there was some encroachment. He submits that by accepting the site plan at page 238, the Respondent No.6 has demolished the portion of the compound wall which fell beyond the firm line indicated by the aforesaid letters L, M, N, O, P, E. He submits that there is no portion of any construction, which now fall beyond the said firm line and consequently, the issue of encroachment to the extent of 205 square metres stands fully redressed.

18. Mr. Lotlikar, learned Senior Advocate for the Petitioner however, on the basis of the instructions submits that some portion of the encroached compound wall and the portion of the electricity transformer still continues beyond the firm line indicated by letters L, M, N, O, P, E.

19. The dispute now raised by the parties, in fact, involves

adjudication into disputed question of fact. Be that as it may, since, Mr. Kantak, learned Senior Advocate for Respondent No.6 asserts that the encroachment has been completely removed and Mr. Lotlikar, learned Senior Advocate for the Petitioner denies this position, we direct the Director of Settlement and Land Records to depute an inspector to visit the site within a period of one month from today by giving notice to both the Petitioner, Respondent No.6 and Respondent No.8, hold a site inspection and thereafter determine whether any portion of old compound wall or portion of transformer or any other structure is to be found beyond the firm line indicated by letters L, M, N, O, P, E in the site plan at page 238. Mr. Kantak, learned Senior Advocate for the Respondent No.6 has stated that in case any such construction is in fact found, the Respondent No.6 will ensure that same is demolished within a period of eight weeks from the date of the site inspection report to be furnished by the official from the Director of Settlement and Land Records to the parties. This statement is accepted as an undertaking on behalf of the Respondent No.6 and the Respondent No.6 is directed to act accordingly.

20. The aforesaid, according to us takes care of the grievance of the encroachment on the property in which the Petitioner claims interest. Apart from the aforesaid direction, no further directions are necessary on the issue of encroachment.

21. The Petitioner's case is that there was misrepresentation in so far as the area is concerned for the purpose of obtaining development permissions and approvals cannot be accepted. This is because the site plan clearly indicates that the total area of the said property continues to be 4752 square metres and it is only a case of some slight shifting of boundary. In fact, the site plan indicates that the western boundary of the said property is slightly beyond the compound wall erected by the Respondent No.6 on the western side. It is the case of the Respondent No.6 that this is the matter between the Goa Science Centre and the Respondent No.6 and the Petitioner, who does not even claim that the present petition has been instituted in public interest and have no concern on this issue.

22. The site plan at page 238, at least *prima facie* bears out that the submissions of Mr. Kantak on behalf of Respondent No.6 are correct. Besides, the statutory Authorities also stand by this position. Mr. Kantak has also pointed out that there is no law which requires a party to build a compound wall exactly on the boundary and it is always open to a party to build a compound wall by leaving some portion. Mr. Kantak however submits that merely because some portion may have been left and falls beyond the compound wall, it cannot be said that the portion which falls beyond the compound wall does not belong to such party or that such portion is not a part of plan which is developed.

23. Be that as it may, if we are to go by the site plan at page 238 which is incidentally a site plan which is relied by the Petitioner as well, it cannot be said that this is a case of any misrepresentation by the Respondent No.6 in the matters of area and therefore, any case is made out for cancellation of approvals, completion certificate and occupancy certificate at the behest of the Petitioner, whose basic complaint was of encroachment on the property surveyed under No.1P/143PTS, of which he claims to be an agricultural tenant.

24. The issue of delay and laches is also relevant because this petition was instituted after the building was complete and issued completion certificate as well as the occupancy certificate. Several third party rights have already been created and at the behest of the Petitioner no case is made out to quash and set aside the approved plan, completion certificate or occupancy certificate or the sanad issued by the statutory Authorities.

25. Mr. Lotlikar contended that in the original ODP the said property was indicated as being in the institutional zone and was demarcated as 'P' zone. He submitted that the Notification was published by the NGPDA inviting objections for change of 'P' zone to 'C2' zone. He submits that finally however the zone was changed to 'C1' which admits of F.A.R. 200% as against the F.A.R. of 150% applicable to 'C2' zone. Mr. Lotlikar submits that this means that there

was no opportunity given to the members of public to object to the change of zone from 'P' to 'C1' and on this ground, the Notification dated 20th January, 2009 by which such change of zone was effected deserves to be quashed and set aside.

26. The record does indicate that the said property was initially in 'P' zone in the ODP. Thereafter, by Notification dated 7th September, 2006, the NGPDA, in terms of Section 39 of the Goa Town and Country Planning Act, 1974 on the directions of the Government issued under Section 132 of the said Act, invited objections to the proposed change of zone from 'P' to 'C2'. This Notification is to be found at page 73 of the paper book.

27. The record also indicates that in effect no such change from zone 'P' to zone 'C2' was ever effected in ODP. Instead, the NGPDA published yet another Notification on 16th October, 2007 inviting objections for change of zone from 'P' to 'C1'. It is in pursuance of this Notification dated 16th October, 2007 that the impugned Notification dated 20th January, 2009 came to be issued changing zone from 'P' to 'C1'. Therefore, it is not as if the members of public were afforded no opportunity for objecting the change of zone from 'P' to 'C1' as contended by Mr. Lotlikar, learned Senior Advocate for the Petitioner.

28. Incidentally, it is necessary to note, the Petitioner who

claims to have an interest in the property adjacent to the said property, on both occasions raised no objection whatsoever to the change of zone from either 'P' to 'C2' or from 'P' to 'C1'. The challenge has been raised in this petition, which, is noted earlier was instituted after considerable delay. The principle of laches is clearly attracted to the case of the Petitioner.

29. For all the aforesaid reasons, we dispose of this petition, by not interfering with the impugned Notification changing the zone or approvals/permissions granted by various Authorities. However, on the aspect of alleged continuance of encroachment in the property surveyed under No.1P/143PTS, we direct the Petitioner, Respondent No.6 and Director of Settlement and Land Records to comply with the directions issued by us in paragraph 19 of this judgment and order.

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

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

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.

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