

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION (REVIEW) NO.1 OF 2021
WITH
CIVIL APPLICATION (REVIEW) NO.2 OF 2021
IN
PUBLIC INTEREST LITIGATION WPS NO.10 & 13 OF 2018

MORMUGAO PLANNING
AND DEVELOPMENT
AUTHORITY, THR. ITS
MEMBER SECRETARY

... Applicant.

VS

ALEXANDER J. MICHAEL

... Respondent.

Mr. N. Sardesai, Senior Advocate with Mr. Kaif Noorani, Advocate for
the Applicant.

Mr. Zeller D'Souza, Advocate for Original Respondent No.5

Coram : M.S. SONAK &
SMT. BHARATI H. DANGRE, JJ.

Date : 24th February, 2021

P.C.:

Heard the learned Senior Advocate Mr. Sardesai for the
Applicant who appears along with Mr. Kaif Noorani.

2. Mr. Sardesai points out that his statement made on 10.02.2021 is not correctly reflected in paragraph 4 of our order dated 10.02.2021.

3. Accordingly, we substitute paragraph 4 of our order dated 10.02.2021, with the following:-

“Para 4 – Mr. Sardesai states that review is applied for only in respect of the direction to the MPDA to comply with CCZM. However, he clarifies that no review is applied for in so far as the resolution dated 18.11.2019 is concerned or the direction that NOC is necessary from the Flag Officer Commanding.”

4. The aforesaid correction to be carried out in the original order dated 10.02.2021 as also in the order uploaded on the website.

5. In pursuance of our order dated 10.02.2021, the necessary affidavits have been filed. The statistics in Annexure 1 reveal that necessary NOCs have been issued by the Flag Officer, Commanding and therefore, there can be no grievance in so far as the applicants referred to in Annexure 1 are concerned.

6. In so far as the applicants referred to in Annexure 2 are concerned, as yet, there is no NOC from the Flag Officer Commanding. However, in a connected matter i.e. Writ Petition No.115 of 2021 vide order dated 24th February, 2021, we have already issued directions that if any applications are pending before the Flag Officer, Commanding, the same will have to be disposed off in accordance with law, as expeditiously as possible and in a time bound manner.

7. These Petitions seek a review of the Judgment and Order dated 28th February, 2020 made in Public Interest Litigation WP Nos. 10 and 13 of 2018 to a limited extent indicated above.

8. Prayer clause (a) of the Review Petitions reads as follows :

“a. This Hon’ble Court may be pleased to review the Judgment and Order dated 28/02/2020 passed in Public Interest Litigation Writ Petition Nos. 10 and 13 of 2018 to the extent that this Hon’ble Court has been pleased to direct the Applicant to refrain from granting any permission in respect of the properties affected by the CCZM (Color Coded Zoning Map), unless, the Applicant (anyone) obtains the NOC from the Flag Officer, Commanding in terms of the provisions of the Aircraft Act, 1934, the Aircraft (Demolition of Obstructions

Caused by Buildings and Trees, Etc.) Rules, 1994, the Ministry of Civil Aviation (Height Restrictions for Safeguarding Aircraft Operations) Rules, 2015 and the CCZM prepared thereunder, as directed under paragraph (j) at page 42 of the Judgment i.e. Direction-(j) and also to the extent that this Hon'ble Court has directed the Applicant to abide by the CCZM, as directed under paragraph (1) at page 42 of the Judgment i.e. Direction-(1) and may be pleased to quash and set aside the said Directions and the observation made by this Hon'ble Court at paragraph 52 of the Judgment that the CCZM has been prepared under the 2015 Rules.”

9. In order to ascertain whether the MPDA is at all affected by the directions which they seek to review, we had directed the MPDA to file an affidavit stating whether the MPDA has received any applications backed by NOCs from the Flag Officer, Commanding seeking permissions for development and whether the MPDA has received applications for renewal/renovation/repairs of structures coming up in or around the Dabolim Airport, which is basically a Defence Aerodrome, permitted to be used as a civil enclave for some time each day.

10. This means that if the NOCs are indeed granted by the Flag Officer, Commanding, then, even the applicants referred to in Annexure 2 will have no grievance.

11. However, even assuming that the NOCs are refused by the Flag Officer, Commanding to the applicants in Annexure 2, then it will be basically for such applicants to challenge the refusal, if according to them, such refusal is invalid. Most of the applicants in Annexure 2 are builders and developers, who are perfectly capable of taking care of their own interests. There is no necessity for the MPDA to espouse their cause, particularly in this matter. This is because the Judgment and Order dated 28th February, 2020 indicates that despite the Flag Officer, Commanding addressing several communications to the MPDA to refrain from issuing development permissions to builders and developers in the designated areas around Dabolim Airport, the MPDA, in defiance of the statutory provisions and in disregard to aviation safety, proceeded to issue development permissions. Accordingly, it cannot be said that the MPDA is, in any manner, aggrieved by the directions in respect of which they now seek a review.

12. Mr. Sardessai, the learned Senior Advocate for the MPDA has already made it clear that no review is applied for in respect of the directions to restrain the MPDA from implementing its resolution dated 18th November, 2019. By this resolution, the MPDA had resolved to continue to grant development permissions by reference only to the funnel area indicated by them in Outline Development Plan (ODP). This means that the MPDA agrees that it cannot continue to grant any development permissions by reference only to the funnel area indicated in their ODP. At the same time, therefore, the MPDA cannot question the CCZM and thereby once again revert to grant development permissions based upon the funnel area indicated in their ODP.

13. Significantly, the contentions now sought to be raised in the context of CCZM, were never raised by the MPDA in the detailed hearing preceding the disposal of the Public Interest Litigation vide Judgment and Order dated 28th February, 2020. The MPDA had filed affidavits in the Public Interest Litigation and even in such affidavits, no such issue was ever raised.

14. In any case, apart from the MPDA not being a proper relator, the contention as now raised, does not make out any case of an error apparent on the face of the record, so as to warrant exercise of review jurisdiction.

15. The directions in our order dated 28th February, 2020 have been issued in the context of aviation safety and are based on the material on record, which indicated that mushrooming of several unauthorised constructions in and around the Dabolim Airport, posing serious hazard to the aviation safety. The directions had to be issued because the MPDA and the Panchayat were insisting upon issuing permissions in the designated areas around the Dabolim Airport despite repeated and serious objections being raised by the Airport Authorities and the Naval (Defence) Authorities.

16. For all the aforesaid reasons, these Review Petitions are hereby dismissed. There shall be no order as to costs.

BHARATI H. DANGRE, J.

M.S. SONAK, J.