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IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO.14 OF 2021

Mr. Alex J. Fernandes,
aged 60 years, Indian National,
Fisherman and Social Activist,
R/o H. No. 140, Umta Vado,
Calangute, Bardez, Goa.
Mobile No. 9822386955
PAN Card No. ABRPF8287G
Aadhar Card No. 9052 4418 5684.

...PETITIONER

Versus

1. The State of Goa,
through the Chief Secretary,
Secretariat, Alto Porvorim, Bardez, Goa.
2. The Goa Coastal Zone Management
Authority, Through the Director, 1st Floor,
Pt. Deen Dayal Upadhyay Bhavan, Behind
Pundalik Devasthan, Porvorim, Bardez,
Goa.
3. The Collectorate,
North Goa, Collectorate Building,
Panaji, Goa.
4. The Mamlatdar of Bardez,
Office of the Mamlatdar of Bardez,
Mapusa, Bardez, Goa.
5. The Block Development Officer,
Office of the Block Development Officer,
Mapusa, Bardez, Goa.
6. The Secretary,
Village Panchayat Calangute, Bardez, Goa.

7. Mr. Alex Elvis Fernades,
r/o H. No. 140/B, Umta Vado,
Calangute, Bardez, Goa.

...RESPONDENTS

Mr. Rohit Bras De Sa with Ms. V. Shet, *Advocate for the Petitioner.*
Mr. D. Pangam, *Advocate General with Mr. M. Salkar, Government*
Advocate for the Respondents No.1 to 5.
Mr. Pankaj P. Pai Vernekar, *Advocate for Respondent No.6.*
Mr. A.D. Bhobe, *Advocate for the Respondents No.7 & 8.*

CORAM: M. S. SONAK &
M. S. JAWALKAR, JJ
DATED: 15th September 2021

ORAL JUDGMENT :

1. Heard learned Counsel for the parties.
2. Rule. The rule is made returnable forthwith at the request and by consent of the learned Counsel appearing for the parties.
3. This petition highlights an extremely disturbing feature as to how constructions are put up in CRZ areas without bothering to obtain any permissions from any Authorities and thereafter some sort of immunities are claimed based on the completion of such constructions at breakneck speeds by taking advantage of the circumstance that the enforcement was lax because the enforcement agencies were battling the COVID 19 pandemic.
4. In this case, the petitioner filed complaints *inter alia* to the Panchayat and the Goa Coastal Zone Management Authority (GCZMA) that respondents no.7 & 8 had commenced

construction within 200 meters of the HTL which is a CRZ area. These complaints were made on 9th and 10th March 2021. Since no action was taken but respondents no.7 & 8 continued with their construction activity, the petitioner caused a legal notice dated 20.03.2021 to be served on the Authorities urging action.

5. Again, since no action was forthcoming from any of the Authorities and respondents no.7 & 8 were continuing with their construction, the petitioner instituted this petition on 30.03.2021. The petitioner, along with the petition enclosed photographs on pages nos.35, 36 & 37, which indicate that entirely new construction had commenced and such construction was at the preliminary stages. If at that stage itself, the Authorities like the Panchayat and the GCZMA were to have acted then the construction would never have come up.

6. Unfortunately, none of the Authorities were prompt in taking action. As a result of which the respondents no.7 & 8 have completed the construction within four to five months, named it as "Typsy Villa" and further entered into the same. This is even though the construction has no permission from any of the Authorities. Further, the construction has no occupancy certificate and yet the same has been occupied by respondents no.7 & 8.

7. According to us, this is a brazen violation of the law and the legal provisions in the matters of putting up constructions in a Panchayat area and that too in a CRZ area. Respondents no.7 & 8 are firmly convinced that as long as they race to complete the illegal construction and occupy the same the law will never be

able to catch up with them. The attempt thereafter is to institute all sorts of proceedings and, delay the action against the wholly unauthorized construction put up in an eco-sensitive zone without seeking permissions from any authorities. In the meanwhile, respondents no.7 & 8 feel that they can continue to occupy the premises even though the premises were put up without any permission from any Authorities in an area where at least *prima facie* no construction could have even been put up by them. As noted earlier, respondents no.7 & 8 have also occupied these premises in the absence of an occupancy certificate. These Respondents were aware that no occupancy certificate could be issued to such an unauthorized structure because it was put up without any permissions possibly at a site where no permissions could even have been granted by the Panchayat.

8. Learned Counsel for the petitioner submits that this is a *modus operandi* where constructions are put up without any permissions, relying on the fact that Authorities refuse to take any action or at least refuse to take any prompt action despite complaints.

9. On 08.09.2021, we were constrained to make the following order in this matter :

“P.C. :

1. Prima facie we feel that this is a case of remiss in the discharge of duties on the part of the Sarpanch and Deputy Sarpanch in not taking any action whatsoever against the construction which is put by

Respondent Nos.7 and 8, possibly at the breakneck speed to avoid any restraint orders from the Court or statutory authorities.

2. When this petition was filed on 30.03.2021, the same was accompanied by a picture of the construction in progress. The construction had not significantly progressed at that stage. However, today to present fait accompli a picture is placed on record indicating that the construction is complete in a record period.

3. The complaint in the petition was precise that the illegal and unauthorized construction is being put up by Respondent Nos.7 and 8 without seeking permission inter alia from the Village Panchayat and the Goa Coastal Zone Management Authority (GCZMA).

4. Before filing the petition, a complaint was made to the Village Panchayat on 09.03.2021. There is no explanation as to why no cognizance was taken of this complaint and the powers under Section 64 of the Panchayat Raj Act, 1994 to stop such construction were exercised by the Sarpanch.

5. As a result of inaction, Respondent Nos.7 and 8 admittedly have not bothered to obtain permission from any authorities and put up a huge villa and even proceeded to name the said villa as "Typsy Villa".

There is neither any license nor there is any occupancy certificate for its occupation.

6. This is the construction which is hardly a kilometer away from the Panchayat office. The Sarpanch cannot claim ignorance in the matter because on 09.03.2021 the Petitioner had brought this prima facie illegal activities to the notice of the Sarpanch himself. Besides notices were issued in this petition on 05.04.2021 and notice was served in the Panchayat office on 06.04.2021.

7. Prima facie it is clear that the construction of this nature which is backed by no permissions whatsoever could be completed on account of inaction on the part of the Panchayat and its Sarpanch.

8. Mr. Vernekar, learned counsel appearing for the Panchayat expresses helplessness on behalf of the Panchayat to seal the unauthorized structure. He states that the Sarpanch of the Panchayat has no such powers. All that he offers is that the Panchayat will issue show-cause notice and thereafter dispose of the same within eight weeks. At least prima facie all this appears to be aimed at assisting Respondent Nos. 7 and 8 who have put up an illegal construction without seeking any permissions and further entered into the structure without there being any occupancy certificate.

9. The affidavit should also place on record the number of complaints received in this Panchayat during the tenure of the present Sarpanch about illegal constructions and action taken if any. An affidavit should also indicate the timeline within which the action, if any, was taken.

10. Depending upon the affidavit so filed, this Court will consider whether the Director of Panchayat should be directed to consider whether any case is made out for action under Section 50(4) of the Panchayat Raj Act against this Sarpanch.

11. Stand over to 15th September 2021.”

10. In response to our order, Mr. Shawn Martins, the Sarpanch of the Village Panchayat of Calangute has filed an affidavit. He has submitted that he assumed the charge as Sarpanch only on 09.04.2021. He has pointed out that after that date there was a lockdown and the Panchayat was involved in measures concerning the COVID 19 pandemic. In the affidavit, there is a reference to the measures that were being taken by the Panchayat. He has, therefore, stated in the affidavit that there was no intention of protecting respondents no.7 & 8, and the delay in initiating action was for the reasons indicated in the affidavit, which mainly concern combatting the COVID 19 pandemic.

11. The affidavit also refers to the resolution of the Panchayat in its special meeting held on 13.09.2021. This is followed by an order of demolition under Section 66(4) of the Panchayat Raj Act, 1994. All this has been annexed to the affidavit of the Sarpanch.

12. The resolution states that the site was inspected on 09.09.2021 and the site inspection report indicates that the structure is totally illegal, in the sense that there was no existing structure but an entirely new structure has been put up. Admittedly, respondents no.7 & 8 have obtained no permission from any of the Authorities. The resolution also noted that respondents no.7 & 8 have occupied the house without obtaining any occupancy certificate from the Panchayat, which is also mandatory.

13. The Panchayat has considered the usual contention about the old existing structure and the carrying out of any minor repairs to the same and, thereafter, rejected the same. Even according to us, the material placed on record establishes that this usual contention is false and this is not a case where some existing structure has been repaired or that any minor repairs are carried out to some existing structure. The photographs on record and

the site inspection referred to in the Panchayat's resolution clearly bear out this position.

14. This is a case where an entirely new structure was put up by respondents no.7 & 8 without obtaining permission from any Authorities in an eco-sensitive CRZ area taking advantage of the fact that all Authorities were busy combatting the COVID 19 pandemic.

15. The demolition order dated 13.09.2021 gives respondents no.7 & 8 ten days to demolish their structure. Respondents no.7 & 8 to demolish this structure within ten days from today, as directed, failing which the Panchayat to demolish this structure within a maximum period of 15 days thereafter.

16. In the meanwhile, we direct the electricity department to forthwith disconnect the electricity supply and the water department to forthwith disconnect the water supply. Respondents no.7 & 8 shall forthwith vacate the premises and the Panchayat shall forthwith seal the premises. The seals can be removed only to facilitate the demolition if respondents no.7 & 8 seek to demolish the structure by themselves.

17. The learned Advocate General states that the demolition squad has to spend ₹5.00 lakhs to ₹6.00 lakhs to demolish this kind of structure. The respondents no.7 & 8 to deposit with the Panchayat an amount of ₹2.00 lakhs within three days from today. If respondents no.7 & 8 demolish the structure by themselves then the Panchayat will refund this amount. If the structure is not demolished by respondents no.7 & 8 then respondents no.7 & 8 will have to bear the further expenses concerning demolition.

18. The GCZMA should also visit the site and determine the damage to the environment on account of putting up such a structure in the CRZ area. Ultimately, respondents no.7 & 8 will have to make good the loss which they have caused to the environment by putting up a brazen, illegal, and unauthorized structure without permission from any Authorities whatsoever in a CRZ area. This exercise must be completed within six weeks from today.

19. The State to provide police assistance for implementation of our order. If respondents no.7 & 8 resist any Authorities, including police Authorities, action in terms of the law will have to be initiated against them.

20. The rule is made absolute in the aforesaid terms. There shall be no order as to costs.

21. All concerned to act based on an authenticated copy of this order.

M. S. JAWALKAR, J.

NITI K
HALDANKAR

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HALDANKAR
Date: 2021.09.15 18:23:01
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M. S. SONAK, J.