

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO. 454 OF 2014
WITH
MISC. CIVIL APPLICATION NO. 788 OF 2015
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WITH
MISC. CIVIL APPLICATION NO. 132 OF 2017
IN
WRIT PETITION NO. 454 OF 2014

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1. Augusta Vaz wife of Shri Rajesh Naik, Occupation: housewife, Aged 35 years, R/o H. No. 57/D/1, Unit No.1, Tolleband, Davorlim, Dicarpale, Salcete, Goa.
2. Tukaram Patil s/o. Shanker Patil Occupation: Carpenter, Aged 54 years, R/o H. No. 57/D/1, Unit No.11, Tolleband, Davolim, Dicarpale, Salcete, Goa.
3. Ganpat Dhondo Palkar S/o Dhondur Palkar, Aged about 60 years, Occupation: Painter, R/o. H. No. 57/D/1, Unit No. 14, Tolleband, Davorlim, Dicarpale, Salcete, Goa.
4. Bashasaheb Narangi, s/o. Mehboobsaheb Narangi, Aged about 52 years, Occupation: Mechanic, R/o. H. No. 57/D/1, Unit No. 12, Tolleband, Davorlim, Dicarpale, Salcete, Goa.
5. Chandrakant Jamune S/o. Annapa Jamune Aged 53 years, Occupation: Government Employee, R/o. H. No. 57/D/1, Unit No. 3, Tolleband, Davorlim, Dicarpale, Salcete, Goa. ... Petitioners

Versus

1. State of Goa, Through the Chief Secretary, Secretariat, Alto Porvorim, Bardez, Goa.
2. The Village Panchayat of Davorlim/Dicarpale; Through its Secretary, At Davorlim/Dicarpale, Salcete, Goa.
3. The Town Planner, South Goa, Town and Country Planning Department, 4th floor, SGPDA, Market Complex, Margao Goa 403 601.
4. The Addl. Directorate of Panchayat, 1227, 2nd floor, late Mathany Saldhana Administrative Complex, Margao, Goa 403 601.
5. South Goa Planning and Development Authority, Through its Member Secretary, Having office at New Office Complex, Margao, Goa 403 601.
6. M/s. K. K. Constructions A proprietary Concern, Through its Proprietor Govindraaj Pai Kakode, S/o. Kashinate Kakode, Aged major, Having its office at 408 Damodar Building, Near Police Station Margao, Goa 403 601. ... Respondents

**MISC. CIVIL APPLICATION NO. 788 OF 2015
IN
WRIT PETITION NO. 454 OF 2014**

Mr. Shankar Yamanappa Mader, major, ... Applicant
s/o Yamanappa Mader, r/o H. No. 664,
Housing Board Road, Gogol, Salcete-
Goa.

Versus

1. Augusta Vaz wife of Shri Rajesh Naik, Occupation: housewife, Aged 35 years, R/o H. No. 57/D/1, Unit No.1, Tolleband, Davorlim, Dicarpale, Salcete, Goa.
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5. Chandrakant Jamune S/o. Annapa Jamune Aged 53 years, Occupation: Government Employee, R/o. H. No. 57/D/1, Unit No. 3, Tolleband, Davorlim, Dicarpale, Salcete, Goa. ... Original Petitioners

AND

1. State of Goa, Through the Chief Secretary, Secretariat, Alto Porvorim, Bardez, Goa.
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**MISC. CIVIL APPLICATION NO. 789 OF 2015
IN
WRIT PETITION NO. 454 OF 2014**

Mr. Abdul Khadar Tambak, major, s/o Hazare Sab Tambak, r/o H. No. 27, Talsonzor, Motidongor, Margao, Salcete-Goa. ... Applicant

Versus

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3. Ganpat Dhondo Palkar S/o Dhondu Palkar, Aged about 60 years, Occupation: Painter, R/o. H. No. 57/D/1, Unit No. 14, Tolleband, Davorlim, Dicarpale, Salcete, Goa.
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6. M/s. K. K. Constructions A proprietary Concern, Through its Proprietor Govindraj Pai Kakode, S/o. Kashinate Kakode, Aged major, Having its office at 408 Damodar Building, Near Police Station Margao, Goa 403 601. ... Respondents

**MISC. CIVIL APPLICATION NO. 132 OF 2017
IN
WRIT PETITION NO. 454 OF 2014**

Mr. Hasim Pir Khatib, 55 years of age,
s/o Abdulsab Khatib, r/o Rawanfond,
Navelim, Salcette, Goa. ... Applicant

Versus

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5. Chandrakant Jamune S/o. Annapa Jamune Aged 53 years, Occupation: Government Employee, R/o. H. No. 57/D/1, Unit No. 3, Tolleband, Davorlim, Dicarpale, Salcete, Goa. ... Original Petitioners

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Ms. Zulfiya B. Desai, Advocate for the Petitioners.

Mr. Manish Salkar, Government Advocate for Respondent Nos. 1, 3 and 4.

Mr. Nigel da Costa with Mr. Gauresh Malik, Advocates for the Interveners.

**Coram:- M. S. SONAK &
M. S. JAWALKAR, JJ.**

Date:- 5th APRIL 2021

ORAL JUDGMENT : (per M.S. Sonak, J.)

Heard Ms. Zulfiya Desai, the learned Counsel for the petitioners, Mr. Manish Salkar, the learned Government Advocate for respondent nos. 1, 3 and 4 and Mr. Nigel da Costa Frias, who appears along with Mr. Gauresh Malik, the learned Counsel for the intervenors.

2. The petitioners are the residents/owners of the construction put up by respondent no. 6 in the suit property. Earlier, when the respondent no. 6 attempted to put up the construction in the plot, which was reserved as parking lot, the petitioners objected to the same. In pursuance of such objections, such construction was stopped or rather could not be put up. The Petition instituted by the petitioners in this regard was disposed of.

3. The petitioners instituted the present Petition, when they noticed after few years that the respondent no. 6, once again, put up the construction in the same plot, which was reserved as a parking lot. The petitioners contended that as respondent no. 6 had already executed sale deeds in their favour, thereafter, had no right to put up any construction in the suit property.

4. The intervenors in this matter have pointed out that the revised plans were submitted by respondent no. 6 and the same had been approved, thereby relocating the parking lot. Mr. Nigel Costa Frias pointed out that the petitioners suppressed this fact and therefore, the interim order made by this Court may be vacated and the Petition may be dismissed.

5. We have heard the learned Counsel for the parties.

6. On 11.08.2014, we made the following order:

“Affidavit-in-reply filed on behalf of the respondent no.2 is taken on record.

2. Heard Mr. De Sa, learned Counsel for petitioners, Mr. Silva, learned Counsel for

respondent no.2 and Mr. Dangui, learned Additional Government Advocate for respondents no.1,3 and 4. Respondent no.5 though served, none appears on his behalf.

3. Perusal of affidavit filed by respondent no.2 in Writ Petition No. 530 of 2008 and order dated 18/02/2008 passed by Division Bench of this Court in said Writ Petition make it abundantly clear that it was the stand of respondent no.2 that the construction of respondent no.6 was unauthorised one.

4. Respondent no.2 thereafter passed demolition order dated 30/01/2010 directing the respondent no.6 to demolish unauthorised construction. The order of respondent no.2 Village Panchayat is challenged by respondent no.6 by filing Panchayat Appeal No. 57 of 2010 before the Additional Director-I of Panchayat and obtained order of status quo regarding existing construction.

5. Mr. De Sa, learned Counsel for the petitioner complains that despite of this order of status quo the respondent no.6 is continuing with the further construction illegally on parking lot. The learned Counsel for the respondent no.2 states that the petitioner no.1 is not co-operating in identifying the illegal construction of the respondent no.6. He also seeks sometime to file additional affidavit in this regard.

6. *In the aforesaid circumstances, the petition is adjourned to 29/09/2014.*

7. *Meanwhile, the Additional Director of respondent no.1 at Panaji, Goa is directed to disposed of Appeal no. 57 of 2010 filed by respondent no.2 as expeditiously as possible within a period of six weeks from the date of receipt of this order.*

8. *Needless to mention that the said appeal be disposed of by hearing the concerned parties.*

9. *Till the returnable date, the respondent no.6 shall maintain status quo with regard to the parking and excess area in the approved plan."*

7. Thereafter, on 24.03.2015, we issued Rule in this Petition and directed the interim order dated 11.08.2014 to continue until further orders. Till date, the interim order is in operation.

8. For the present, we are not satisfied that this is a case of suppression of any material particulars. This Petition is based on the premise that from 2007 onwards they have become the owners of the suit property, the respondent no. 6 has no right or authority to make any construction on the suit property. In any case, no construction can be put up in open

space or area reserved as a parking lot. At this stage, it is not for us to go into these contentions. Having regard to such contentions, we are not inclined to vacate interim relief in operation since 2014 or dismiss the Petition on the ground of any alleged suppression.

9. According to us, interests of justice will be served if this Petition itself is treated as representation by both, the Village Panchayat i.e. respondent no. 2 and the Planning Authority i.e. respondent no. 3. These two Authorities to thereafter, dispose of such representation on its own merits and in accordance with law as expeditiously as possible and in any case within a period of four months from today.

10. Respondent nos. 2 and 3 to afford an opportunity of hearing to the petitioners, intervenors as well as respondent no. 6. All these parties to co-operate with respondent nos. 2 and 3 so that they are in position to dispose of the representation within four months from today.

11. Respondent nos. 2 and 3 will have to communicate their decision to the parties within this period of four months. If the decision of respondent nos. 2 and 3 is adverse to the

petitioners, then, the same will not be implemented for a period of three weeks from the date of intimation of the same to the petitioners.

12. All contentions of all parties are left open for consideration by respondent nos. 2 and 3. In case any of the parties wish to file further representation before these two Authorities, they will do so within a period of two weeks from today. The parties to attend the day/date on which the hearing is fixed on and shall not seek unnecessary adjournment. In particular the petitioners should not delay the proceedings, since the interim order is directed to operate until the disposal of the representation and for three weeks thereafter, should the decision be adverse to the petitioners.

13. The Petition is disposed of in the aforesaid terms. The interim orders made in this Petition to operate until the disposal of the representation by respondent nos. 2 and 3 and for a period of three weeks thereafter, should the decision be adverse to the petitioners.

14. The applications for intervention and the other miscellaneous civil application are disposed of in the aforesaid

terms.

15. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

16. All concerned to act based on an authenticated copy of this Order.

M. S. JAWALKAR, J.

M. S. SONAK, J.

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