

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 572 OF 2014

Carmen De Miranda,
d/o late Antonino de Miranda,
major of age, resident of
House No. 561, Loutolim,
Salcete, Goa.

... Petitioner

Versus

(1) The State Of Goa,
represented herein by the
Chief Secretary,
Government of Goa,
Secretariat, Porvorim,
Bardez, Goa.

(2) Director of Health Services
Government of Goa,
18th June Road, Panaji, Goa.

(3) The Medical Officer,
Primary Health Centre,
Loutolim, Salcete, Goa.

(4) The Sanitary Inspector,
Primary Health Centre,
Loutolim, Salcete, Goa.

(5) The Assistant Engineer,
Works Division IX (PHE),
Sub Division IV, P.W.D.
Government of Goa,
Monte Hill, Margao,
Salcete, Goa.

(6) Alberto Caetano Gomes,

s/o late Militao Gomes,
major of age, service,
r/o House No. 527/A,
Caracol, Devotte, Loutolim,
Salcete, Goa.

(7) Rosa Maria Pires e Gomes,
w/o Alberto C. Gomes,
major of age, housewife,
r/o House No. 527/A, Caracol,
Devotte, Loutolim, Salcete, Goa.

..... Respondents

Mr. Ryan Menezs, with Mr. Nigel Fernandes, and Ms. Gina Almeida,
Advocates for the Petitioners.

Mr. Pravin Faldessai, Addl. Govt. Advocate for Respondents No.1 to
5.

Mr. Nigel De Costa Frias, with Ms. Andrade Barbare, Advocates for
Respondents No.6 and 7.

WITH
WRIT PETITION NO. 191/2014 WITH
MISC. CIVIL APPLICATION NO. 781/2014

1. Mr. Alberto Caetano Gomes,
Major in age, Son of
Late Shri Militao Gomes,
In service,

2. Mrs. Rosa Maria Pires e Gomes,
Major in age, wife of Mr. Alberto C. Gomes,
Housewife,
Both permanent residents of H.No. 439-A,
Devotte, Loutolim, Salcete, Goa,
currently residing at House No. 527/A,
Caracol, Devotte, Loutolim, Salcete, Goa.

... Petitioners

Versus

1. Mrs. Carmen De Miranda,
Major in age, Resident of
561, Loutolim, Salcete, Goa.
 2. The Medical Officer,
Primary Health Centre, Loutolim,
Salcete, Goa.
 3. The Sanitary Inspector,
Primary Health Centre, Loutolim,
Salcete, Goa.
 4. The Assistant Engineer,
S.D. IV, W.D.IX (PHE),
Public Works Department,
Monte Hill, Margao, Salcete, Goa.
 5. The State of Goa
Through its Chief Secretary
Secretariat, Porvorim
Bardez, Goa.
- ... Respondents.

Mr. Nigel De Costa Frias, with Ms. Andrade Barbare, Advocates for the Petitioners.

Mr. Ryan Menezs, with Mr. Nigel Fernandes, and Ms. Gina Almeida, Advocates for Respondent No.1.

Mr. Pravin Faldessai, Addl. Govt. Advocate for Respondents No.2 to 5.

***Coram:- DIPANKAR DATTA,CJ &
M. S. SONAK, J***

Date:- 24th March 2021

ORAL JUDGMENT: (Per M.S. SONAK, J.)

Heard the learned Counsel for the parties.

2. The learned Counsel for the parties agree that both these Petitions can be disposed of by a common Judgment and Order.

3. In Writ Petition No.572/2014, the Petitioner who is a Portuguese National, seeks an appropriate writ, order, or direction to quash and set aside the orders/communications dated 12/2/2011, 5/4/2014, 3/11/2014, and 14/1/2015 made by the Medical Officer, Primary Health Centre, Loutolim, Salcete, Goa under the provisions of the Goa Public Health Act, 1985 (said Act).

4. In Writ Petition No.191/2014, the challenge is to the order dated 8/7/2013, made by Lokayukta in complaint No.10/2013, made by the Petitioner in Writ Petition No.572/2014, who has been impleaded as Respondent No.1 in Writ Petition No.191/2014. In terms of the Lokayukta's order dated 8/7/2013, the Medical Officer acting under the said Act was enjoined from implementing his order dated 12/2/2011 providing a water connection to Respondents No.6 and 7 in Writ Petition No.572/2014 and the Petitioner in Writ Petition No.191/2014. This order dated 8/7/2013 was stayed by the learned Single Judge of this Court on 21/8/2014 and the water connection was directed to be released, subject to the final relief in the writ petition.

5. Having regard to the aforesaid, it is only appropriate that both these petitions are taken up for consideration together and disposed of by a common judgment and order.

6. Since the orders impugned in Writ Petition No.572/2014 were made by the Medical Officer purporting to exercise the powers conferred under Section 94A of the said Act, it is only appropriate that Sections 94A, 94B, 94C, and 94D, which comprise Chapter XA, are transcribed below for the convenience of reference:

“94A. Power of Government to issue directions. - (1) Notwithstanding anything contained in any provisions of this Act, or in any rules, regulations, notifications, orders or in any decree or judgement of any Court, or in any law for the time being in force, the Government may, in appropriate cases, by order, direct any authorities, local bodies, statutory functionaries, or any other functionaries discharging public functions,-

(a) to grant, supply, provide and ensure supply of potable water, electricity, sanitary convenience or such other essential services, so declared by the Government under the Goa Essential Services Maintenance Act, 1988 (Act 20 of 1989) or under any other law for the time being in force, to any person, house, structure, hut, factory, area, locality;

(b) to remove forthwith or within such period as the Government may specify in the order, any filth nuisance, offensive trade or matter, sewage, or any object causing or likely to cause any disturbance to human senses or to public health, from any land or portion thereof, house, hut, structure, locality, river front, riverine land, port area, seabed, sea, river or nullah, anywhere in the State.

(2) The Government may empower any of the following authorities, by a special or general order, to perform its functions under sub-section (1), namely:-

- (a) Health Officer of the concerned area;*
- (b) Chief Officer of a Municipal Council or the Commissioner of a Corporation, as the case may be;*
- (c) Director of Health Services;*
- (d) Collector of the District;*
- (e) Secretary to the Government, dealing with Public Health Department.*
- (f) Director of Panchayats;*
- (g) Project Director of Rural Development Agency.*
- (h) Mission Director of Swachi Bharat Mission;*
- (i) Any other authority as deemed fit by the Government.*

(3) Upon the issuance of an order under sub-section (1) or sub-section (2) by the Government, every authority, local body, statutory functionary or other functionaries and every person thereof referred to in sub-section (1) or sub-section (2), shall be bound to comply with the same and provide and facilitate the provision of potable water, electricity or any other essential services, as the case may be, and for this purpose, every authority, local body, statutory functionaries or other functionaries and every person thereof, referred to in sub-section (1) or sub-section (2), shall have all powers to lay necessary lines, cables, pipes, poles, pipelines and to provide necessary infrastructure, subject to the provisions of sub-section (4) hereof:

Provided that if any order issued by an authority empowered under sub-section (2) in respect of the

nuisance referred to in clause (b) of sub-section (1) has not been complied with within the stipulated period, then, the authority empowered under sub-section (2) may order any statutory person or body to comply with such order within such further time as may be specified in the order and recover the cost incurred in removing such nuisance from the person responsible for such nuisance as an arrears of land revenue under the law for the time being in force.

[Provided that before making order for grant or supply of potable water, electricity or other essential services, the authority making such order shall ensure that the occupier of the premises has complied with the safety and sanitary measures to the satisfaction of such authority.]

(4) (a) In the event of any private right being affected or dispute having arisen, or any person, owner or occupier being entitled to any compensation, either under the Electricity Act, 2003 (Central Act 36 of 2003), the Land Acquisition Act, 1894 (Central Act 1 of 1894) or any other law for the time being in force, rights of such person to determine, claim and receive such compensation shall remain unaffected.

(b) In the event of any dispute as regards land, building, apportionment, encroachment, including legality or illegality of structure or occupation of any structure by any person or any question related or incidental thereto, such dispute, this, proceedings, right, privilege shall remain unaffected and shall not prejudice any person in any way whatsoever.

(c) Providing water supply connection, electricity supply connection or any other essential service, shall not in any way be taken to have regularized, validated or legalised any such structure, premises, house, hut, area or occupation of or by any such person, as an order under sub-section (1)

is relatable to all matters of health only.

94B. Bar of Courts' jurisdiction to entertain suits. - Any order passed by or on behalf of the Government under section 94A shall not be called in question in any Court of law and no Court shall have jurisdiction to entertain, try or dispose of any proceedings, suit or application challenging, questioning or prohibiting, directly or indirectly, the order under section 94A:

Provided however that, the right of any person, body, authority, owner or occupier of any land or structure, to receive any compensation subsequent to such supply, under any law, shall not be affected.

94C. Punishment for non-compliance with order under section 94A. - Any person or statutory functionary or other functionaries or the principal officer of any authority or local body, responsible for complying with the order under section 94A, disobeying or not complying forthwith, or abetting violation of any orders under section 94A shall, on a trial by a Magistrate, be liable to punishment with imprisonment for a term which may extend to six months or a fine which may extend to Rs. 50,000/- or both.

94D. Provisions of this Chapter to be in addition to and not in derogation of other provisions or laws. - The provisions of this Chapter shall be in addition to and not in derogation of any other power under any provisions of this Act or any other law for the time being in force.]”

7. The records indicate that vide Deed of Sale dated 18/6/1985, the parents of the Petitioner sold to Respondents No.6 and 7, two plots of land in Loutolim, Salcete, Goa along with the house situated therein. It is the case of Respondents No.6 and 7 that the parents of the Petitioner had specifically permitted Respondent

No.6 to use a strip of land as means of access to the house. Respondents No.6 and 7 applied under the provisions of the said Act for direction to release a water connection to their house and the Medical Officer, vide order dated 12/2/2011, issued such directions for release of the water connection to House No. 439/A, situated in Survey No.107/2A at Loutolim, Salcete, Goa. The Medical Officer made this order under Section 94A of the said Act. This is one of the orders challenged in Writ Petition No.572/2014.

8. Based on the order dated 12/2/2011, a letter dated 5/4/2013 was addressed by the Medical Officer to the Assistant Engineer, PWD, requiring him to take indicated alignment for laying of pipeline and providing water connection to Respondents No.6 and 7. This is the second communication challenged by the Petitioner, Carmen de Miranda in Writ Petition No.572/2014.

9. Based on a complaint of Carmen de Miranda, the Medical Officer issued a show-cause notice dated 23/9/2014 to Respondents No.6 and 7 to clarify the allegations made by Carmen de Miranda on the issue of release of water connection vide order dated 12/2/2011. After hearing both, Carmen de Miranda and Respondents No.6 and 7, this show cause notice dated 23/9/2014 was discharged by the Medical Officer vide order dated 3/11/2014. This is the third order which is challenged by Carmen de Miranda.

10. The Petitioner, Carmen de Miranda, filed an application

dated 10/10/2014, seeking for modification/review of the order dated 12/2/2011 made by the Medical Officer. This application was disposed of by the communication dated 14/1/2015 by the Medical Officer holding that no case was made out for the review of the order dated 12/2/2011 for release of water connection. This is the fourth-order that is challenged in Writ Petition No.572/2014.

11. Mr. Menezes, the learned Counsel for the Petitioner, Carmen de Miranda, submits that House No.439/1 does not exist at the site or, in any case, is not at all habitable. He submits that Respondents No.6 and 7 do not reside in the said house, but they reside in some other house in the neighborhood. He submits that powers under Section 94A can never be exercised for release of a water connection in favor of Respondents No.6 and 7 since they do not reside in the suit house and the powers under Section 94A of the said Act are only to take care of health issues which might arise for want of regular water connection to any dwelling house. He submits that fraud was played by Respondents No.6 and 7 as if to indicate that they were staying in house No.439/1 only to obtain a water connection by resort to the provisions of Section 94A of the said Act. He submits that otherwise, Respondents No.6 and 7 would have to seek water connection in terms of the Goa Provision of Water Supply Act, 2003 and, for several reasons, Respondents No.6 and 7 were not even eligible to obtain water supply connection in terms of the Goa Provision of Water Supply Act, 2003. He, therefore, submits that the orders impugned in Writ Petition No.572/2014 warrant interference.

12. Mr. Nigel Costa Frias, the learned Counsel for Respondents No.6 and 7 pointed out that there is no case of fraud involved in this matter. He points out that the parents of the Petitioner had themselves sold the property along with the house therein to Respondents No.6 and 7. At a later point in time, the son of Respondent No.6 may have constructed some other house in the neighborhood, but that does not mean that Respondent No.6 and 7 stopped living in the earlier house. He submits that the Petitioner is not even an Indian citizen and the Petition involves disputed questions of fact. He submitted that the Medical Officer had no powers of review and even the allegations of fraud were never made against Respondents No.6 and 7. He submits that the pipeline has been laid through the access specifically granted by the Petitioner's parents while selling the property to Respondents No.6 and 7 vide Deed of Sale dated 18/6/1985. He submits that the pipeline is laid and in any case, aligned to the public road and the Petitioner has no cause for complaint. He submits that this is a civil dispute between the parties and it would be open to the Petitioner, Carmen de Miranda to approach a Civil Court, *inter alia*, to seek compensation or any other relief as is permissible under law. For all the aforesaid reasons Mr. Costa Frias submits that Writ Petition No.572/2014 may be dismissed.

13. Mr. Nigel Costa Frias has also relied on the decision of the Division Bench of this Court in the case of ***Dr. Winston Dias vs.***

State of Goa and ors. in *Writ Petition No. 192/2008* which was disposed of vide Judgment and Order dated 18th December 2014. He points out that in this decision, the constitutional validity of Section 94 of the said Act was upheld by this Court.

14. Upon due consideration of the rival contentions and perusal of the material on record, we are quite satisfied that the Petitioner, Carmen de Miranda has not made out any case for exercise of our extraordinary jurisdiction under Articles 226 and 2267 of the Constitution of India and quashing the impugned orders/communications.

15. In the first place, it is evident that the Petitioner seeks to resolve her private and civil disputes with Respondents No.6 and 7 by invoking the extraordinary jurisdiction of this Court. Resolution of such disputes involves disputed questions of fact which cannot be adjudicated in the present proceedings.

16. Secondly, if the scheme of Chapter XA of the said Act is perused, then, it is not as if the Petitioner is left without any remedy, in case the Petitioner, Carmen de Miranda can make out a case that her private rights have been affected by the release of water connection in favor of Respondents No.6 and 7, or by alignment of the water pipeline for release of such water connection. The provisions of Section 94A are quite clear and afford redressal in such a situation. Besides, since it is the case of the Petitioner that there is

some fraud involved, it is possible for the Petitioner to perhaps contend that the jurisdiction of the Civil Court is not entirely barred. However, even if it is assumed that Section 94B of the said Act will disable the Petitioner from questioning the impugned orders by instituting a suit, the Petitioner can always agitate the issue concerning her private rights, including the issues relating to the existence or non-existence of the house or the legality or illegality of the structure and other such matters, having regard to the provisions of Section 94A(4) of the said Act. If, ultimately, the Petitioner can make good her allegations, then, the issue of water connection will be almost irrelevant or inconsequential. This is yet another reason as to why we are not inclined to exercise our extraordinary jurisdiction in a matter of this nature.

17. Thirdly, Respondents No.6 and 7 have stated on an affidavit that they reside in the house in question. Mr. Costa Frias has submitted that on some occasions, Respondents No. 6 and 7 may be residing with their son, but that does not mean that the house for which the water connection has been released, was not being used for residence by Respondents No.6 and 7. The authorities under the said Act have accepted the version put forth by Respondents No. 6 and 7 and there is no unimpeachable material produced by the Petitioner in support of her allegations. Besides, the learned Counsel for the Petitioner was unable to indicate any provisions in the said Act which require continuous residence in the house as a precondition for an order for the release of water connection under Section 94A of the

said Act.

18. The aforesaid means that the Petitioner, Carmen de Miranda has neither made out any case of statutory infraction nor is any case of breach of the principles of natural justice made out. In such circumstances, it will not be proper to exercise our extraordinary jurisdiction and interfere with the impugned orders. Mr. Menezes was even unable to point out any provisions under the said Act which confer any powers of review upon the Medical Officer. He was also unable to make out any case of *ex facie* fraud on the part of Respondents No.6 and 7. Therefore, no case is made out for interference with the impugned orders dated 3/11/2014 and 14/1/2015.

19. For all the aforesaid reasons, we see no merit in Writ Petition No.572/2014, which is hereby dismissed.

20. As noted earlier, the challenge in Writ Petition No.191/2014 is to the order dated 8/7/2013, made by the Lokayukta injuncting the Authorities under the said Act from giving effect to their order dated 12/2/2011 and releasing the water connection in favor of Respondents No.6 and 7 in Writ Petition No.572/2014.

21. The learned Single Judge of this Court in his order dated 21/8/2014, by giving detailed reasons had stayed the Lokayukta's impugned order dated 8/7/2013, and further directed the Respondents to proceed to release the water connection to the

residential house of Respondents No.6 and 7 though, subject to the result of the Petition. There is no dispute that in pursuance of the interim order dated 21/8/2014, the water connection has since been released.

22. Mr. Menezes was unable to point out any provisions under the Lokayukta Act, in terms of which the learned Lokayukta could have made the impugned order dated 8/7/2013, injuncting the authorities under the said Act from implementing their order. Besides, we note that Carmen de Miranda, in her complaint made to Lokayukta did not even implead Respondents No.6 and 7, who were the beneficiaries of the order dated 12/2/2011, which the learned Lokayukta stayed, pending disposal of the complaint. From the perusal of the complaint, which is to be found at Exhibit U, pages 99 to 104 of the paper book in Writ Petition No.191/2014, it is quite doubtful as to whether the complaint was maintainable before the learned Lokayukta or not.

23. In any case, the impugned order dated 8/7/2013 made by the Lokayukta was in excess of jurisdiction, apart from the same being in violation of the principles of natural justice. Even, the aspect of the balance of convenience was not at all considered whilst making this order, particularly since the order dated 12/2/2011 had only directed the authorities to provide a water connection. Such an order was without prejudice to the rights and remedies available to Carmen de Miranda to protect her private rights concerning her

property. Accordingly, we have no hesitation in setting aside the impugned order dated 8/7/2013 made by the learned Lokayukta.

24. For all the aforesaid reasons, we dispose of both these Petitions by making the following order :

(A) Writ Petition No.572/2014 is, hereby, dismissed. Misc. Applications in Writ Petition No.572/2014, if pending, will no longer survive on the dismissal of the main Petition and, therefore, even the same are hereby disposed of.

(B) Writ Petition No. 191/2014 is, hereby, allowed and the order dated 8/7/2013, made by the learned Lokayukta in Complaint No.10/2013 is, hereby, set aside.

(C) There shall be no order as to cost.

M.S. SONAK, J.

CHIEF JUSTICE