

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.657/2015
WITH
CIVIL APPLICATION NO.1804/2021 (F)**

1. Dinanath N. Chari

Aged about 67 years, son of
Narcive Chari, retired,

2. Saraswati D. Chari,

Aged about 59 years,

wife of Dinanath N. Chari,

Housewife,

Both residents of House No.25A,

Chandrawaddo, Fatorda, Margao Goa.

... PETITIONERS

Versus

1. State of Goa,

through its Chief Secretary,
Secretariat Porvorim Goa.

2. Executive Engineer-XXI,

Office of the Executive Engineer,

Works Division XI (PHE), PWD,

Government of Goa,

Fatorda, Margao Goa.

3. The Principle Chief Engineer,

Altinho, Panaji Goa.

4. Mr. Rajendra Bandekar,

Major of age,

PWD Contractor

Near Corporation Bank,

Gogol, Borda Goa.

5. The Police Inspector,
Margao Town Police Station,
Margao Goa.

6. M/s British Construction,
House No.306 B, Telaulim,
Navelim Goa.

7. Shri Tulsidas Hari Naik
aged 77 years, Indian National,
resident of House No.2466,
V. N. Naik Road,
Chandrawada,
Fatorda, Margao Goa.

8. Ms. Rekha Shashikant Naik,
aged 70 years, Indian National,
resident of House No.25,
V. N. Naik Road, Chandrawada,
Fatorda, Margao Goa.

9. Shri Umesh @ Digambar Mahadev Naik,
aged 75 years, Indian National,
resident of House No.EWS-51,
Gogol Housing Board,
Margao Goa.

10. The Chief Officer,
Margao Municipal Council
Margao, Salcete Goa.

11. Alam Shah Sayed
Son of Rashida Bi Sayed
Major of age,
Municipality Contractor
resident of Plot No.24,
Amrutnagar Fatorda,
Margao, Salcete Goa.

...RESPONDENTS

Mr. Jatin Ramaiya, Advocate *for the Petitioners*.

Mr. Deep Shirodkar, Additional Government Advocate *for the State*.

Mr. Prasad Panandikar, Executive Engineer, Works Division VI (Roads), PWD, Margao.

Mr. Parikshit Sawant, Advocate *for Respondents No.7, 8 & 9*.

Mr. S. Karpe, Advocate *for the Margao Municipal Council*.

**WITH
CIVIL APPLICATION NO.1517/2021 (F)**

1) Shri Tulshidas Hari Naik,
aged 77 years, Indian National,
resident of . House No. 2466,
V.N.Naik Road, Chandrawada,
Fatorda, Margao-Goa.

2) Ms. Rekha Shashikant Naik,
aged 70 years, Indian National,
resident of House No. 25,
V.N.Naik Road, Chandrawada,
Fatorda, Margao-Goa.

3) Shri Umesh @ Digambar
Mahadev Naik,
aged 75 years, Indian National,
resident of House No. EWS-51,
Gogol Housing Board,
Margao-Goa.

... APPLICANTS

Versus

1. Dinanath N. Chari
Aged about 67 years, son of
Narcive Chari, retired,

2. Saraswati D. Chari,
Aged about 59 years,
wife of Dinanath N. Chari,
Housewife,

Both residents of House No.25A,
Chandrawaddo, Fatorda,
Margao Goa.

... RESPONDENTS/
ORIGINAL PETITIONERS

3) State Of Goa,
through its Chief Secretary,
having Office at Secretariat,
Porvorim-Goa.

4) Executive Engineer-XXI,
Office of the Executive Engineer,
Works Division XI (PHE),
Public Works Department,
Government of Goa,
Fatorda, Margao-Goa.

5) The Principal Chief Engineer,
Government of Goa, having Office
at Altinho, Panaji-Goa.

6) Mr. Rajendra Bandekar,
major of age PWD Contractor,
near Corporation Bank,
Gogol, Borda-Goa.

7) Police Inspector,
Margao Town Police Station,
Margao-Goa.

8) M/s. British Construction,
House No. 306B, Telaulim,
Navelim-Goa.

... RESPONDENTS/
ORIGINAL RESPONDENTS 1 TO 6

Mr. Jatin Ramaiya, Advocate *for Original Petitioners.*

Mr. P. Sawant, Advocate *for the Applicants.*

Mr. Deep Shirodkar, Additional Government Advocate *for the State.*

**CORAM: M. S. SONAK &
M. S. JAWALKAR, JJ**
DATED: 12th October 2021

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

- 1.** Heard learned counsel for the parties.
- 2.** This petition was instituted to seek a writ of mandamus restraining respondents no.1 to 4 and 6 from carrying out construction in the property surveyed under Chalta No.42 of P.T. Sheet No.11 of City Survey of Margao which the petitioners claim is owned and possessed by them. Interim relief was also sought in this petition to restrain the said respondents from undertaking any construction activities in the subject land.
- 3.** On 27.11.2016, this petition was admitted and the statement of Mr. Rodrigues, learned Government Advocate appearing for the respondents was recorded to the effect that the respondents shall not carry out any construction activities in the subject land. The order records that this statement was made on instructions and upon accepting the statement of the Government Advocate, this Court held that the question of granting any interim relief at that stage did not arise.

4. During the pendency of this petition, the petitioners complained that the Margao Municipal Council (MMC) made attempts to undertake construction activities upon the subject land. This Court granted interim relief and required the MMC to file a response. The MMC has filed a response in this matter and has also appeared through Mr. Karpe. The MMC has stated that it was not carrying out any construction activities in the subject land. This position was reiterated by Mr. Karpe appearing on behalf of the MMC.

5. Today, when the matter was taken up for final disposal, Mr. D. Shirodkar on instructions states that there is no proposal to carry out any construction activities in the subject land though, all contentions of the petitioners are not admitted by the respondents.

6. Mr. Parikshit Sawant learned counsel for respondents no.7, 8, and 9, however, submits that this petition is liable to be dismissed because the petitioners have suppressed material particulars. He refers to the Judgment and Order made by the Inquiry Officer, City Survey Margao on 29.12.1968 and based upon the same submits that the subject land is admitted to be a road to safeguard the easementary rights of the holder of Chalta No.4 of P.T. Sheet No.26. He submits that respondents no.7, 8,

and 9 are the holders of Chalta No.4 of P.T. Sheet No.26. Mr. Sawant submits that there are other documents as well which indicate that the subject land is a road. He relies on certain building regulations to say that such a road has to be treated as a public road.

7. The Judgment and Order dated 29.12.1968 was in the context of confirmation of possession of the property surveyed under Chalta No.4 of P.T. Sheet No.26 of City Survey Margao. The operative portion of this order reads as follows:

“POSSESSION: The possession of Dinanath Narasinha alias Dinu Chari to the property to the property surveyed under Chalta No.42 and 43 of P.T.S. No.11 is confirmed. The remaining portion of Chalta No.4 of P.T.S No.26 will be taken separately for confirmation. Chalta No.42 being a road the easementary rights of the way to the holder of Chalta No.4 of P.T.S. No.26 is maintained.

CORRECTION: The house of Shri Dinanath Narasinha Chari should be correctly plotted as per the plan placed in this file.

All other boundaries as laid down in the map in my office which have already been inspected by the party Dinanath Narasinha Chari and which is open for inspection are confirmed. The complete Map incorporating the above corrections shall also be open for inspection.”

8. In the first place, the issue of whether the survey authorities can go into such issues or not is itself a question that will have to be decided before the appropriate forum. Be that as it may, at least *prima facie*, the order relied upon refers to the issue of easementary rights which are private rights of the parties. At this stage, however, this Court does not need to go into such disputed questions of fact and if the petitioners or the respondents who Mr. Sawant represents have any rights or have any contentions including the contention that the subject land is indeed a public road, it is open to them to take out appropriate proceedings before the appropriate forum for determination of the same. Nothing in this order is intended to prejudice the rights of any of the parties.

9. This petition was instituted on the apprehension that the State or the MMC was undertaking some construction activities in the subject land and now that both these authorities have declared that for the present they have no such intentions, there is no necessity of keeping this petition pending any longer.

10. This petition is accordingly disposed of leaving it open to both the petitioners as well as the respondents no.7, 8, and 9 to take out appropriate proceedings before the appropriate forum to determine not only their rights and entitlements but also to

secure appropriate declarations as to whether or not the subject land constitutes a public road. Once again it is clarified that nothing in this order is intended to prejudice any of the parties to this petition in the matter of such determination.

11. The Rule in this Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

12. The pending civil applications do not survive and the same are also disposed of.

M. S. JAWALKAR, J.

M. S. SONAK, J.