

Aura

IN THE HIGH COURT OF BOMBAY AT GOA

Public Interest Litigation Writ Petition No. 27 of 2018.

Manguesh Gaonkar,
Age year,
s/o Mr. Mahabaleshwar Gaonkar,
Service, r/o H. No. 334/2/1F,
Zuarwada, Tivrem, Marcel, Goa.
Mobile No: 9765813723 .

2. Shekhar Gaonkar,
Age 44 years, s/o late
Harichandra Gaonkar,
Service, r/o Zuarwada,
Tivrem, Marcel, Goa,
Mobile No: 9822582186

3. Bharat Jalmi,
Age 41 years, s/o
Late Sakaram Jalmi,
Service, r/o
Chimulwada, Marcel, Goa
Mobile No: 9922810672

Petitioners

Versus

1. State of Goa,
Through the Chief Secretary,
Porvorim, Goa.
2. Town and Country Planning,
Through the Town Planner, Ponda, Goa
3. The Collector, North Goa,
District, Panaji, Goa.
4. Village Panchayat of Tivrem- Orgao,
Through its Secretary,

5. Goa Coastal Zone Management
Authority, Porvorim, Goa.
6. Deputy Conservator of Forest,
North Goa Division, Ponda, Goa.
7. State Environment Impact
Assessment Authority,
Patto, Panaji, Goa.
8. Scholar Builder Pvt. Ltd.
Through its Managing Director,
Mr. Dnyaneshwar Govekar
Fatima Chambers 2nd floor,
Near to Rayu Cambers,
Dr. B. A. Road, Panaji, Goa.
9. The Collector, Office of the the
Collector South Goa,
District, Margao, Goa.
10. Chief Conservator of Forest,
Ponda, Goa.
11. The Executive Engineer,
W.D. III (PHE).
Public Works Department,
Government of Goa, St. Inez,
Panaji-Goa.
12. The Sub Divisional Engineer,
Electricity Department,
S. D. III (R), Div.-X,
Curti- Ponda, Goa.
(amendment carried out as per order dt.
26.3.2019)

13. The Director,
Directorate of Settlement & Land Records,
Collectorate Building,
Swami Vivekanand Road,
Near Military Head Qts.
Panaji, Goa and 403 001.
(Amendment carried out as per order dt.
26/2/21) ...Respondents

**Mr. Parag Rao with Ms. S. Khushwaha, Advocates for the
Petitioners.**

**Mr. Pravin Faldessai, Additional Government Advocate
for the Respondent no.1,2,3,5,6, 9 and 10.**

**Mr. Nitin Sardesai, Senior Advocate with Mr. Abhay
Nachinolkar, Advocate for the Respondent no.8.**

**CORAM: MANISH PITALE &
M. S. JAWALKAR, JJ**

Reserved on: 17th SEPTEMBER, 2021

**Pronounced on: 24TH SEPTEMBER, 2021
ORDER (As per Manish Pitale, J)**

1. The petitioners are residents of Village Tivrem, Marcel, Ponda, Goa, and they have filed this Writ Petition in public interest, claiming that the respondent no.8. i.e. Scholar Builder Pvt. Ltd. has undertaken a construction project in the said village without complying with the requirements of law, including failure to obtain requisite permissions from the concerned authorities. The writ petition was amended to add certain facts and, on that basis, raised additional grounds in support of the prayers made in the petition. The petitioners specifically prayed for quashing and setting aside of the construction licence dated 2/9/2016 and technical clearance issued in favour of the respondent no.8.

2. In the writ petition it was stated that while such a huge project consisting of 120 flats and 120 shops in about 13 buildings was being constructed, the requirements of law were blatantly violated. The petitioners referred to a number of documents, some of them obtained under the Right to Information Act, 2005 and various allegations were levelled against the respondent no.8. Certain documents were specifically relied upon and it was claimed that even the construction licence had expired, which was not renewed and that if the spot where the project was being constructed were to be inspected, it would make clear that there were number of violations and that environment impact assessment was not done, indicating violation of the coastal regulation zone.

3. In response, the respondent no.8 filed detailed affidavits, with number of documents so as to meet the issues raised on behalf of the petitioner. It was submitted that the petition was filed when substantial construction of the project was already over and that all the requisite permissions were obtained by the respondent no.8, in respect of the said project. It was submitted that the concerned authorities had granted clearances on the basis of specific documents placed on record on behalf of the respondent no.8 and that the purpose of filing the present petition was to somehow derail the project.

4. Since the petition upon amendment and completion of pleadings became bulky and number of documents were referred to by the petitioners as well as the respondents, this Court called upon the learned counsel appearing for the parties to specify the points arising for consideration in the present writ petition, so

that the contentions raised by the rival parties could be considered in the light of such specific points for consideration.

5. Mr. Parag Rao, the learned counsel appearing for the petitioners raised six points for consideration and Mr. Nitin Sardessai, the learned Senior Counsel appearing for the respondent no.8, as well as the learned counsel appearing for the other respondents, made submissions in respect of the said specific six points raised on behalf of the petitioners.

6. The six points raised for consideration in the present writ petition filed in public interest are as follows:

- (i) The respondent no.8 proceeded to undertake construction in survey no.51/0 by cutting trees for which no permission was obtained from the competent authority.
- (ii) The natural drain existing in the land on which construction was undertaken, was suppressed in the plans submitted by the respondent no.8 before the concerned authorities and that approvals were granted in ignorance of the existence of the natural drain.
- (iii) The sanad for change of user of the property in question i.e. survey no.51/0 was granted by the respondent no.3-Collector

without seeking permission or NOC from the respondent no.1-State Government.

- (iv) The construction licence or permission for construction obtained by the respondent no.8 in the year 2016 had expired and yet, the respondent no.8 had gone ahead with the construction, as a consequence of which this Court by an order dated 22/1/2021 had restrained the respondent no.8 from carrying out further construction. On this basis, the respondent no.8 ought not to be permitted to complete the project by carrying out further construction.
- (v) By an order dated 18/9/2018, this Court had specifically directed the respondent no.5 i.e. Goa Coastal Zone Management Authority (GCZMA) and the respondent no.4 i.e. Village Panchayat of Tivrem to carry out a spot inspection. Although report pursuant to such spot inspection was prepared as far back as on 3/10/2018, the GCZMA had taken no action in the matter and the respondent no.8 was continuing with the said project with impunity.
- (vi) The respondent no.8 has undertaken construction despite non-availability of water and electricity, for the reason that the

certificates issued by the competent authorities pertaining to the aspects of water and electricity show that that there is no assurance of availability of water and electricity. Yet, the respondent no.8 has continued with the aforesaid project.

7. As regards point no.(i), Mr. Parag Rao, the learned counsel appearing for the petitioners submitted that the respondent no.8 had permission to cut trees, only in respect of survey no.50/0 and yet, it was merrily constructing the project in survey no.51/0, after cutting trees in the said survey no.51/0. It was further submitted that survey no.50/0 had mangroves in it and being a fragile ecosystem there was every possibility that the same would be damaged by the construction of the aforesaid project. On this basis, it was submitted that the construction undertaken till date by unauthorized felling of trees, was wholly illegal and this was a ground for restraining the respondent no.8 from undertaking further construction in respect of the said project.

8. In response, Mr. Nitin Sardesai, the learned Senior Counsel appearing for the respondent no.8 invited attention of this Court to an order dated 2/5/2017, issued by the Tree Officer and Assistant Conservator of Forests, whereby permission was granted for felling trees in property bearing survey number 51/0. The said order was issued in favour of the Manging Director of respondent no.8, wherein it was stated that permission was being granted for felling of trees in survey no.51/0 situated at Tivrem village Ponda in the private property subject to specific terms and conditions. In this regard, the learned counsel for the petitioners

submitted that said permission appeared to be dubious because the said order referred to the application submitted by the Managing Director of the respondent no.8 as dated (Nil).

9. We have perused the said order. It specifically grants permission for felling of trees, details of which have been stated in the order itself, in the private property on survey number 51/0, undisputedly belonging to the respondent no.8. Specific terms and conditions have been imposed in the said order issued by the Assistant Conservator of Forests by exercising powers under the Goa Preservation of Trees Act, 1984. Merely because the application submitted by the respondent no.8 is stated to be on an application dated “Nil”, it cannot be said that the said permission is vitiated or that the document itself can be said to be fabricated. Even otherwise, Mr. Faldessai, the learned Additional Government Advocate appearing for the respondent no.6 has supported the said order, copy of which has been placed on record.

10. We are of the opinion that on this point, it cannot be said that the construction of the aforesaid project undertaken by the respondent no.8 can be faulted. Nonetheless, the respondent no.8 has to comply with the specific terms and conditions stated in the said order for felling of trees issued in its favour. Accordingly, the respondent no.6, Deputy Collector is directed to ensure that the terms and conditions specified in the said order are satisfied by the respondent no.2, particularly, the condition pertaining to replanting of the trees in the property from where the trees have been felled.

11. As regards point **no.(ii)**, pertaining to the alleged suppression of the natural drain located in survey no.51/0 while submitting plans for approval, Mr. Parag Rao, the learned counsel appearing for the petitioners submitted that even in spot inspection report prepared in pursuance of an inspection carried out in the presence of respondent no.8, it was recorded that the drain was filled with debris from the construction of the project. It was submitted that the suppression of the natural drain in the plans submitted by the respondent no.8 demonstrated that the said respondent was undertaking construction in violation of norms and that the concerned authorities were either negligent or hand in glove with the respondent no.8.

12. In response, Mr. Nitin Sardesai, the learned Senior Counsel appearing for the respondent no.8 brought to the notice of this Court that there was a specific statement made in the reply filed on behalf of the said respondent that the entire project is being carried out and it is restricted only to survey no.51/0 and that the natural drain does exist, but it is located in survey no.50/0. Therefore, there was no question of showing the said natural drain in the plans submitted to the concerned authorities for approval in respect of the project undertaken in survey no.51/0. There is nothing stated in the rejoinder filed on behalf of the petitioners regarding this aspect of the matter. Therefore, the allegation that the respondent no.8 had suppressed the said vital fact while submitting plans for approval to the concerned authorities cannot be accepted. The allegation of negligence of the concerned authorities or that they being hand in glove with the respondent no.8 has to be supported with cogent material on record. We find absence of such material on record.

13. As regards the allegation regarding spot inspection done in the presence of respondent no.8, wherein it was found that the natural drain was filled with debris, it would be appropriate that the concerned authorities, including respondent no.4-Village Panchayat take necessary steps to ensure that the natural drain existing in survey no.50/0 is restored. Respondent nos. 2, 3 and 4 shall verify the allegation in this respect by conducting an inspection of survey no.50/0, in the presence of respondent no.8, and if the natural drain is found to be blocked or filled with debris, appropriate directions shall be issued by the said authorities to the respondent no.8 to remove such debris and restore the natural drain, which according to the respondent no.8 exists in survey no.50/0.

14. As regards point **no.(iii)**, raised on behalf of the petitioners, Mr. Parag Rao, the learned counsel appearing for the petitioners vehemently submitted that in the present case, the sanad for change of user was issued by the respondent-Collector in respect of survey no. 51/1 at village Tivrem and yet the respondent no.8 had undertaken huge construction in survey no.51/0 with impunity. The sanad dated 26/12/2012 was placed on record with the writ petition. It was further submitted that the land in survey no. 51/0 was agricultural land specified as rice fields and that, therefore, permission of the State Government was necessary for issuing sanad, which the respondent-Collector had completely ignored. On this basis it was submitted that in the absence of a valid sanad for change of user, the project could not have been initiated by the respondent no.8.

15. Mr. Nitin Sardesai, the learned Senior Counsel appearing for the respondent no.8 in this context, invited attention of this Court to the copy of the aforesaid sanad dated 26/12/2012 filed in the above writ petition and submitted that the said sanad has to be read with a corrigendum dated 8/2/2018 issued by the respondent-Collector, clearly stating that in the said sanad dated 26/12/2012, the property has to be read as property in survey no.51/0 instead of 51/1 at Tivrem village, Taluka, Ponda. On this basis it was submitted that the contention raised on behalf of the petitioners was misconceived. As regards the document dated 6/4/2011, issued by the respondent-Town planning department, it was submitted that the petitioners were misreading the document to claim that the permission of the State Government was necessary before the Collector could issue the sanad.

16. We have perused the aforesaid documents, i.e. the sanad dated 26/12/2012, the corrigendum dated 8/2/2018 issued by the respondent-Collector and the document dated 6/4/2011 issued by the Town and Country Planning department. A perusal of the aforesaid document dated 6/4/2011 issued by the respondent-Town and Country planning department would show that there is an observation that the land in survey no.51/0 is classified as rice in the record and, hence, approval of the Government is necessary. This is in the context of the proposal moved for development of the said property. This appears to be a communication/order issued by the respondent-Town and Country Planning department in the context of the proposed change of user by issuance of sanad in respect of survey no.51/0. The reference to necessity of approval from the Government is nothing but the necessity in terms of law for applying for and

obtaining a sanad for change of user, in accordance with law. Therefore, the emphasis placed on behalf of the petitioners on the said document while claiming that the respondent-Collector ought to have taken permission or NOC from the State government before issuing the sanad for change of user is totally misconceived. The learned counsel for the petitioners was unable to point out any provision of law mandating that the respondent-Collector was required to obtain NOC from the State Government before issuing the sanad. A perusal of the sanad dated 26/12/2012 and the corrigendum dated 8/2/2018, issued by the respondent-collector does show that the error in the description of the property in respect of which the sanad was issued, stood corrected by the corrigendum and that the same is holding the field. As long as there is such a sanad for change of user, obtained by the respondent no.8, it cannot be said that the project in question deserves to be brought to a standstill at this stage, on the allegation that the construction of the said project has proceeded in absence of change of user of the land in accordance with law.

17. As regards point **no.(iv)**, raised by the petitioners about expiry of the construction licence or permission and yet the respondent no.8 undertaking construction with impunity, it is relevant that this very point was raised before this Court when the order dated 22/1/2021 was passed. Mr. Parag Rao, learned counsel appearing for the petitioners emphasized on the contents of the said order dated 22/1/2021 to submit that this Court had accepted the contention raised on behalf of the petitioners that further construction in the said project could not continue, as the permission and licence for construction issued in the year 2016

had expired with the passage of time. It was emphasized that this Court took note of the fact that the respondent-Village Panchayat had not renewed such permission or licence and that the respondent no.8 had challenged the said action of the respondent-Village Panchayat before the Director of Panchayats under the provisions of the Goa Panchayat Raj Act. It was brought to the notice of this Court that by the order dated 22/1/2021, the respondent no.8 stood restrained from carrying out further construction till the Director of Panchayat decided the challenge raised on behalf of the respondent.

18. Mr. Nitin Sardesai, the learned Senior Counsel appearing for the respondent no.8 brought to the notice of this Court that pursuant to the direction given by this Court in order dated 22/1/2021, the Additional Director of Panchayats-II, South Goa, Margao-Goa, had passed an order on 8/2/2021 allowing the appeal filed by the respondent no.8, consequently the impugned order/decision of the Village Panchayat was quashed and set aside and the Panchayat was directed to issue revised licence as per the approved revised plans of the Town and Country Planning department. It was also brought to the notice of this Court that on 20/3/2021, the Secretary of the village Panchayat had indeed issued a revised construction licence. As a consequence, the direction restraining the respondent no.8 from undertaking further construction had ceased to exist in terms of the order dated 22/1/2021 passed by this Court and that the said point sought to be raised on behalf of the petitioners was of no consequence.

19. We have perused the order dated 8/2/2021 passed by the Additional Director of Panchayats. It clearly allowed the appeal filed by the respondent no.8 and consequently the respondent Village Panchayat renewed construction licence as per the revised plans. In terms of the order dated 22/1/2021, the direction of restraining the respondent no.8 from further construction ceased to exist as the appeal filed by the respondent no.8 stood allowed by the Additional Director of Panchayats. At this stage, the learned counsel for the petitioners submitted that the petitioners would take recourse to such remedies as available in law for them to challenge the said order dated 8/2/2021 passed by the Additional Director of Panchayats, particularly, because the petitioners were parties to the said appeal.

20. We are of the opinion that since the appeal has been decided and renewed construction licence has been issued by the respondent-Village Panchayat in favour of the respondent no.8, nothing remains in this point. Liberty is reserved to the petitioners to take recourse to such remedy, as available in law for them to challenge the said order dated 8/2/2021 passed by the Additional Director of Panchayats.

21. As regards point **no.(v)**, Mr. Parag Rao, the learned counsel appearing for the petitioners invited the attention of this Court to the order dated 18/9/2018, whereby the respondent no.5 GCZMA was directed along with respondent no.4-Village Panchayat to carry out site inspection, in order to examine whether the conditions imposed on the respondent no.8 while granting permissions had been adhered to. The learned counsel has then invited attention of this Court to the spot inspection

report prepared by the expert member of the respondent no.5 GCZMA, pursuant to the site inspection carried out on 3/10/2018, as per the aforesaid order passed by this Court on 18/9/2018. It was submitted that in the said site inspection report, the expert member had specifically stated that certain aspects were ignored while demarcating the NDZ line and that the respondent no.13 i.e. Director of Settlement of Land Records (DSLRL) would have to carry out fresh measurements so that appropriate findings could be rendered with regard to the project being compliant with the requirements of law. The learned counsel then invited attention of this Court to the letter dated 17/10/2018, sent by the respondent no.5 GCZMA to the respondent no.13, Director of DSLRL for carrying out mapping/survey of the property at survey no.50/0 and 51/0 of village Trivem, Taluka Ponda. By inviting attention to the said communication, the learned counsel submitted that the said exercise was to be carried out immediately after indicating the CRZ line so that respondent no.5- GCZMA could take appropriate action in the matter. Yet, according to the learned counsel, till date no action was taken by the respondent no.13-Director-DSLRL in the matter and respondent no.5- GCZMA also did not pursue the matter, indicating that the said authorities were deliberately inactive at the behest of the respondent no.8.

22. Mr. Nitin Sardesai, the learned Senior Counsel appearing for the respondent no.8 submitted that there could be no two opinions about the fact that the respondent no.13-Director-DSLRL ought to take necessary action in respect of the aforesaid letter dated 17/10/2018, sent by the respondent no.5- GCZMA so that fresh measurements could be undertaken for bringing facts

on record, to indicate as to whether any action was required in the matter. It was submitted that appropriate directions may be given to the respondent nos.5 and 13 in this regard, for a time bound resolution of the said point raised on behalf of the petitioners.

23. We have perused the order dated 18/9/2018 passed by this Court. The site inspection report was prepared in pursuance of the inspection carried out as far as back as on 3/10/2018. The report of the expert member of the respondent no.5-GCZMA records certain facts noticed in pursuance of the site inspection. Some of the observations appeared to be indicate that the respondent no.8 may have to respond to the same. In fact, the respondent no.8 has filed objections to the said report by way of affidavit before this Court. But, it is crucial that the respondent no.5-GCZMA itself had written to the respondent no.13-DSLR, as far back as on 17/10/2018, to carry out mapping/measurements of the survey nos. 50/0 and 51/0 of the said village for indicating the CRZ line, so that the respondent no.5-GCZMA could take necessary action in the matter in accordance with law.

24. The respondent no.13-Director-DSLR has taken no action in respect of the said communication dated 17/10/2018, issued by the respondent no.5-GCZMA and equally the respondent no.5 took made no efforts to pursue the matter with respondent no.13. This indicates laxity on the part of the said respondents, if not connivance with the respondent no.8. In any case, it is necessary that the exercise required to be carried out by the respondent no.13-Director-DSLR in terms of the communication

dated 17/10/2018, is undertaken at an early date, for the respondent no.5- GCZMA to examine as to whether any action needs to be taken in respect of the said project in property at survey no.51/0, village Tivrem, Taluka Ponda.

25. In view of the above, we direct the respondent no.13-Director DSLR to carry out expeditiously mapping/fresh measurements and the exercise indicated in the communication dated 17/10/2018 issued by the GCZMA, and in any case, to complete the said exercise and submit report to the respondent no.5-GCZMA within two weeks from today. Upon receipt of the report from the respondent no.13-Director-DSLR, the respondent no.5- GCZMA shall grant hearing to the petitioners as well as the respondent no.8 on the said report. The exercise of granting hearing and passing appropriate order in accordance with law shall be completed by the respondent no.5- GCZMA within four weeks of receiving the report from the respondent no.13-Director DSLR. In order to facilitate expeditious hearing, and adherence to the time line, the respondent no.13-Director DSLR is directed to serve copies of the said report on the petitioners as well as respondent no.8 while communicating the same to the respondent no.5- GCZMA. The order that shall be passed by the respondent no.5-GCZMA after completing the aforesaid exercise of grant of hearing to the petitioner as well as respondent no.8, shall obviously be subject to challenge by the aggrieved parties, in accordance with law. Needless to say, liberty is reserved for such aggrieved parties i.e. either the petitioners or the respondent no. 8 to avail such remedy as provided in law for challenging the order that shall be passed by the respondent no.5-GCZMA.

26. As regards point **no.(vi)**, pertaining to non-availability of water and electricity, Mr. Parag Rao, the learned counsel appearing for the petitioners invited attention of this Court to the certificates issued by the concerned departments. By relying on them, the learned counsel submitted that the contents of such certificates demonstrated that the concerned departments had issued such documents casually, without examining the aspect as to whether sufficient water and electricity is available for the aforesaid project. It is submitted that the availability of such resources was not taken into consideration in the proper perspective while granting such permission.

27. On the other hand, Mr Nitin Sardessai, learned Senior Counsel appearing for the respondent no.8 specifically referred to the certificate question as regards to the question of water availability. He invited attention of this Court to communication dated 5/8/2016 issued by the concerned Assistant Engineer. It was stated that the said authority had granted no objection with regard to the availability of water for the proposed project in survey no.51/0 of Tivrem village, Taluka Ponda, on the condition that the said respondent would make its own arrangements of water till completion of 27 MLD water treatment plant project at Opa and 10 MLD water treatment plant project at Panchwadi and, further, that the water would be released at the metering point subject to availability of water. It was also stated that the respondent would make provision for suitable sump and overhead tank and also intimate any intended change in the inter distribution network of the proposed building. The learned Senior Counsel submitted that no objection certificates for projects like the one undertaken by the respondent no.8 are

issued in this manner for the reason that the concerned authority, always makes sure that its obligation to provide water would be subject to availability thereof. It was submitted that the project of construction undertaken by the respondent no.8 could not be brought to a standstill on the ground that the water treatment plant mentioned in the said communication was yet to be completed. It was submitted that the said project was to be completed by December 2019, but it could not be completed and then the pandemic intervened. In any case it was submitted that this could not be a ground to bring the project to a standstill.

28. As regards the power availability certificate issued by the Assistant Engineer of the concerned department, by inviting attention to said certificate dated 2/5/2015, it was submitted that there was nothing in the said document to show that the project of the respondent no.8 could be brought to a standstill, because there was likelihood that the electricity supply may not come through.

29. We have considered the aforesaid water and electricity connection certificates issued by the concerned departments. We agree with the contention raised on behalf of the respondent no.8 that the contents of the said documents also do not show that the project of the respondent no.8, which has reached substantial completion, can be brought to a standstill because there would be lack of supply of water or electricity. There can be no doubt that such resources are strained because of development projects, but the certificates issued by the concerned departments only indicate that the respondent no.8 would have to make necessary arrangements and that it cannot hold the said department fully

responsible for supply of water and electricity at the time of completion of the project. The permission for construction of the said project cannot be undone for the said point raised on behalf of the petitioners.

30. All the points specifically raised on behalf of the petitioners stand answered as above. As regards the contention vehemently raised by the learned counsel appearing on the petitioners that the respondent no.8 being a powerful builder was getting away with flouting the requirements of law with impunity, we are of the opinion that the material on record does not support the said contentions raised on behalf of the petitioners. It is also relevant to note that the petitioners chose to file the petition after substantial construction of the project had been already undertaken. The general contention raised on behalf of the petitioners with reference to google maps placed on record while alleging depleting green cover in the property in question, suffice it to say that tree cutting permission has been placed on record. There is no allegation that the respondent no.8 has removed tree cover beyond the permission granted to it.

31. Wherever we have found on the aforesaid points that the issues sought to be raised by the petitioners have to be taken to their logical end in accordance with law, we have given directions hereinabove for the matters to be pursued before the concerned authorities. The aggrieved party i.e. either the petitioners or the respondent no.8 have been granted liberty to seek such remedies as available in law in respect of those specific issues.

32. Hence, the Writ Petition stands disposed of in terms of the findings, observations and directions given herein above.

M. S. JAWALKAR, J

MANISH PITALE, J