

Niti

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO.163/2021**

SHAMSUNDER V. KERKAR

... PETITIONER

*Versus*

THE STATE OF GOA,  
THR. ITS CHIEF SECRETARY  
AND 5 ORS.

...RESPONDENTS

**Mr. L. Raghunandan, Advocate for the Petitioner.**

**Mr. Prashil Arolkar, Additional Government Advocate for  
Respondent Nos.1 to 3.**

**Mr. A.D. Bhohe, Advocate for Respondent Nos.5 & 6.**

**CORAM: M. S. SONAK &  
R. N. LADDHA, JJ.**

**DATED: 9<sup>th</sup> March 2022**

**ORAL ORDER :**

1. Heard learned Counsel for the parties.
2. On 03.11.2020, we made the following order :-

*“Heard Mr. L. Raghunandan, the learned  
Counsel for the petitioner. Ms. Ankita Kamat, the  
learned Additional Government Advocate appears for  
respondents No.1 to 3.*

2. *Mr. Raghunandan points out that there is already a demolition order with regard to the construction by the respondents No.5 and 6. He submits that the respondents No.5 and 6 have instituted an appeal before the Director of Panchayat. Though no interim relief as such was granted, the Panchayat, made a statement that the demolition will not be carried out until the disposal of the appeal. Mr. Raghunandan now points out that the respondents No.5 and 6 have commenced yet another construction in addition to the construction which is ordered to be demolished. He also points out to the photographs of the upcoming construction. He submits that even the Panchayat have confirmed that it has not issued any permissions for such construction.*

3. *Accordingly, we issue notices to the respondents No.4, 5 and 6 returnable on 23.11.2020. Until the returnable date, we restrain the respondents no.5 and 6 from proceeding with the construction. The Secretary of the Village Panchayat will have to visit the site immediately and prepare a report as to the status of the construction. The Secretary, to also inform the respondents No.5 and 6 about this stay order and ensure that no further construction takes place at the site until the returnable date.*

4. *Mr. Raghunandan states that the petitioner will take immediate steps to serve the petition as well as the copy of this order upon the respondents.*

5. *Ms. Ankita Kamat, the learned Additional Government Advocate to also take instructions as to*

*the timeline within which the appeal instituted by the respondents No.5 and 6 will be disposed of by the Director of Panchayat.*

*6. Parties are put to notice that this Court may be inclined to dispose of this petition finally at the stage of admission. Therefore, if any of the respondents wish to file any replies, they may do so by serving advance copies upon the learned Counsel for the petitioner.*

*7. Stand over to 23.11.2020.”*

3. Today, Mr. Arolkar, the learned Additional Government Advocate, states that the Additional Director of Panchayat will dispose of the appeals instituted by respondent nos.5 & 6 within three months from today. We accept this statement and direct the Additional Director of Panchayats to dispose of Panchayat Appeal Nos.ADP-II/P.A.27/2016 and ADP-II/P.A.28/2016 within three months from today.

4. The restraint order that we have issued in our order dated 03.11.2020 shall operate until the Additional Director disposes of the aforesaid appeals. In fact, we direct that the restraint order shall operate for a period of further 15 days in case any relief is granted to respondent nos.5 & 6 in the said appeals.

5. Mr. Raghunandan points out that yet another illegal construction has already been completed by respondent nos.5 & 6. Mr. Bhobe states that this construction has already been regularized by the appropriate authority under the provisions of Goa Regularisation of Unauthorized Construction Act, 2016. Mr. Raghunandan points out that this regularization has been set aside by the appellate authority. Mr. Bhobe, thereupon points out that this order of the Government has been challenged by the respondent nos.5 & 6 before this Court and even interim orders have been granted.

6. The provisions of the Goa Regularisation of Unauthorized Construction Act are quite clear in that regularisations can be only in respect of residential structures and not commercial structures.

7. Mr. Raghunandan contends that respondent nos.5 & 6 are operating the hotel in this premises.

8. Mr. Bhobe, on instructions from respondent no.5, who is present in the Court, makes a statement that the premises are being used only for residential purposes and not for any commercial purposes like hotel, restaurant, etc. This statement is accepted as an undertaking from respondent no.5. Respondent

no.6 is also restrained from carrying out any commercial activity from the said premises.

9. Mr. Raghunandan points out that the premises where the construction is complete are the subject matter of Panchayat Appeal No.28/2016. He points out that the constructions which are coming up are the subject matter of Panchayat Appeal No.27/2016.

10. With the aforesaid directions, we dispose of this petition. All contentions of all parties are however left open for determination by the Additional Director of Panchayats in the pending appeal.

**R. N. LADDHA, J.**

NITI K  
HALDANKAR

Digitally signed by  
NITI K HALDANKAR  
Date: 2022.03.09  
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**M. S. SONAK, J.**