

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.25 OF 2022

The Village Panchayat of
Velsao – Pale – Issorcim,
Through its Sarpanch,
Mr. Henrique De Mello,
aged 54 years, Velsao, PO
Cansaulim, Goa – 403712.

... Petitioner

Versus

1. The Ministry of Railways,
Through its Secretary,
Rail Bhavan, 256-A, Raisina
Road, Rajpath Area,
New Delhi – 110001.

2. South Western Railway,
Through its General Manager,
Gadag Road, Hubli,
Karnataka – 580020.

3. Rail Vikas Nigam Limited,
Through its Addl. General
Manager, Project – Office,
Margao Goa, Block A, 3rd floor 5
& 6 L& L building, Near
Matanhy Saldanha,
Administrative Building,
Margao, Goa – 403601.

4. The State of Goa, Through
its Chief Secretary, Secretariat,
Porvorim, Goa – 403 521.

... Respondents

**Mr. C.A. Ferreira with Ms. Norma Alvares and Mr. Om
D'Costa, Advocates for the Petitioner.**

Mr. P.P. Singh, Advocate for Respondent Nos.1 & 2.

Mr. Iftikhar Agha with Ms. V. Fernandes, Advocates for Respondent No.3.

Mr. D. Pangam, Advocate General with Ms. M. Correia, Additional Government Advocate for Respondent No.4.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

**Reserved on: 10th OCTOBER 2022
Pronounced on: 11th OCTOBER 2022**

ORDER : (*Per M.S. SONAK, J.*)

1. Heard learned Counsel for the parties.
2. The Petitioner is a Village Panchayat. The Petitioner has objections to respondent nos.1,2 & 3 undertaking works concerning the railway track doubling project within areas of the Panchayat jurisdiction. The Petitioner contends that permissions from the Panchayat are necessary before the railways can undertake any such works, particularly now that the Panchayats have been conferred a constitutional status by the 73rd amendment to the Constitution of India.
3. Based on the above, the Petitioner, by instituting the present petition, has sought the following reliefs:

"(1) For directions to the Respondents to remove the structures and material placed within the jurisdiction of the Petitioner authority in a time bound manner and report compliance;

(2) For a declaration that no construction or development work can be carried out by the Respondent Nos.2 & 3 without a licence of the Village Panchayat."

4. According to us, the issue raised in this petition is entirely covered against the Petitioner, in our judgment and order dated 03.08.2022 in Public Interest Litigation Writ Petition No.15/2021 (*Ganv Bhavancho Ekvott & 4 Ors. V/s. South Western Railways & 7 Ors.*). In the said judgment and order, the Division Bench of this Court (comprising of Dipankar Datta, CJ. & M.S. Sonak, J.) has rejected a similar contention having regard to the provisions in Section 11 of the Railways Act, 1989. In particular, the Division Bench referred to and relied upon the non-obstante clause with which Section 11 of the Railways Act 1989 begins and the legal effect of such a clause.

5. However, Mr Ferreira, learned Counsel for the Petitioner, submits that the present petition is instituted by a Panchayat, unlike the previous petition that NGO and some private parties instituted. He submits that the argument based on Article 243ZD of the Constitution was neither addressed nor considered by the Division Bench. He urged leave to only address this argument while admitting

that the other issues raised in the petition might be substantially covered by the decision earlier referred to. He also relied on a decision of the Hon'ble Supreme Court that we shall discuss later.

6. Mr Ferreira submits that in terms of Article 243ZD, the State must constitute a District Planning Committee at the District level to consolidate plans prepared by Panchayat and Municipalities in the District and to prepare a draft development plan for the District as a whole. The State legislature is required, by law, to make a provision concerning the composition of the District Planning Committees, how the seats in such Committees are to be filled, the functions relating to District Planning which may be assigned to these Committees and how Chairpersons of such Committees shall be chosen. He submits that every District Planning Committee in preparing the development plan must have regard to matters of common interest between Panchayats and Municipalities, including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation, the extent and type of available resources whether financial or otherwise. The District Planning Committees are also required to consult such institutions and organisations as the Governor may, by order specify. He submits that the Chairperson of every District Planning Committee should then forward the development plan as recommended by such Committee to the Government of the State.

7. Mr Ferreira submitted that the Panchayat Raj Act, 1994 makes provisions for such District Planning Committees. He presents that no development can occur in a Panchayat area that will conflict with the plans to be prepared by the District Planning Committee. He submits that since the constitution and functions of a District Planning Committee have been prescribed under a constitutional provision, Article 243ZD, the plans prepared by the District Planning Committee will prevail over the provisions of Section 11 of the Railways Act. He, therefore, submits that the rule in this petition may be made absolute and the railways be restricted from undertaking any works without obtaining permission from the Panchayat.

8. The learned Advocate General, Mr P.P. Singh and Mr I. Agha oppose the grant of any relief in this petition. They submit that the issues raised are entirely covered by the decision in *Ganv Bhavancho Ekvott* (supra). They submit that no pleadings back in the issue now raised. Therefore, they submit that such an issue does not even arise. In any case, they submit that the non-obstante clause in Section 11 of the Railways Act will prevail over any of the provisions or actions under the Panchayat Raj Act of 1994 as clearly held in *Ganv Bhavancho Ekvott* (supra). Accordingly, they submit that this petition may be dismissed.

9. The rival contentions now fall for our determination.

10. As noted earlier, most of the contentions urged in the petition are entirely covered by our decision in *Ganv Bhavancho Ekvott* (supra). Even the argument now raised was considered and rejected by us. This is apparent from reference to paragraphs 5(xi), 5(xii), 54,55 and 60 of our judgment and order delivered on 03.08.2022. There was a reference to the Constitutional status of Panchayats, though there may not have been a direct reference to District planning committees.

11. In any case, the contention now raised is nothing but another shade of the similar arguments raised and considered in *Ganv Bhavancho Ekvott* (supra). Therefore, we will have to dismiss the present petition by adopting the reasonings in the said decision.

12. Further, if the pleadings in this petition are perused, it is apparent that the contention now raised by Mr Ferreira finds no place in the pleadings. None of the grounds refers to the argument now raised. Paragraph 4(b), relied upon by Mr Ferreira, only raises the legal issue as to whether the provisions of the Goa Panchayat Raj Act, 1994, brought into force after the 73rd constitutional amendment, could be disregarded by the Railway Authorities acting under the Railways Act which the Parliament passed in the year 1989. Again, there is no reference to any District Planning Committees or any plans made by such Committees.

13. In the petition, the Petitioner has not even pleaded that some District Planning Committee in terms of Article 243ZD of the Constitution was constituted and that this Committee has prepared some plans for the petitioner Panchayat area. Moreover, there were no pleadings that the activities now undertaken by the railways conflict with such plans. In the absence of such pleadings, we are afraid we cannot examine the contention now raised.

14. Besides, even if we were to assume that the District Planning Committees were constituted in terms of the Panchayat Raj Act, 1994, any action of such planning authorities at least prima facie, might have to yield to the acts of the railways if permitted under Section 11 of the Railways Act, 1989. The concept of the "*non-obstante clause*" and its impact on the provisions of the Panchayat Raj Act has been discussed by us in *Ganv Bhavancho Ekvott* (supra). Based on such discussion and reasoning, the contention without pleadings will have to be rejected.

15. The learned Advocate General relied on the decision of the Division Bench in *Dada Fire Works Pvt. Ltd. & Ors. V/s. State of Maharashtra & Ors.*¹. The said decision may not be very relevant as the issue involved in the said matter was about the legal status of the planning authorities under the planning regulations after the provisions in Article 243ZD entered force.

¹ 2005 (4) Bom CR 50

16. Mr Ferreira relied on some observations in *Rajendra Shankar Shukla & Ors. V/s. State of Chhattisgarh & Ors.*² concerning the provisions of Article 243ZD of the Constitution. However, the observations were made in a context that was not even remotely comparable to the context of the present case. Again, in the said case, the Hon'ble Supreme Court was not concerned with the interplay between provisions in a Parliamentary legislation containing a non-obstante clause and State Legislation like a Panchayat Raj Act. Accordingly, even the decision in *Rajendra Shankar Shukla* (supra) can be of no assistance to the Petitioner in the present case.

17. We dismiss this petition for the above reasons and the reasons discussed by us in *Ganv Bhavancho Ekvott* (supra).

18. However, there shall be no order for costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

NITI K
HALDANKAR

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