

IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO.33 OF 2022

NITEEN SANT

... PETITIONER

Versus

THE STATE OF GOA, THR

THE CHIEF SECRETARY

AND 7ORS

... RESPONDENTS

Mr. N. Sardessai, Senior Advocate with G. Panandiker, Advocate for the petitioner.

Mr. G. Shetye, Addl. Govt. Advocate for the respondent nos. 1 to 5.

Mr. S. Karpe, Advocate for the respondent no. 6.

Mr. S. G. Desai, Senior Advocate with Mr. Pavithran A. V. Advocate for the respondent nos. 7 and 8.

**CORAM: G. S. KULKARNI &
BHARAT P. DESHPANDE, JJ.**

DATE: 2 DECEMBER 2022.

P.C.:

1. This petition in public interest was filed praying for following reliefs:

“a) Grant a writ of mandamus or a writ in the nature of mandamus or appropriate writ, order or direction directing the Respondent No. 2 to 6 herein to initiate the necessary action in the complaints dated 27.10.2021 [(EXHIBIT- B (COLLY) to EXHIBIT-F (COLLY)]; the reminder Letters dated 27.01.2022 [EXHIBIT-G (COLLY)] and Reminder Complaints dated 25.03.2022 [EXHIBIT-H (COLLY)] against the Respondent

no.7 – 8 herein and any other person/s in respect of the subject illegal Structure and the illegal activities carried out in the subject Structure.

- b) Grant a writ of mandamus or a writ in the nature of mandamus or appropriate writ, order or direction the Respondents No.7 – 8 herein from carrying out any new construction and/or additional constructions around the subject illegal structure/s pending the disposal of complainants filed by the petitioner herein with the Respondents nos. 2- 6 herein;*
- c) Grant such other and further reliefs, as this Honourable Court deems fit and proper.”*

2. The grievance of the petitioner is in regard to a structure which is alleged by the petitioner to be illegal being situated in property bearing survey no.249/1 of village Taleigao, Tiswadi Taluka. The Petitioner has asserted that there is an encroachment on the part of respondent nos. 7 and 8 on public property namely a pavement which is causing a nuisance and inconvenience to the residents.

3. Initially a Coordinate Bench of this Court on 17 August 2022 had heard the present proceedings. Notices were issued. Reply affidavits were directed to be filed. Thereafter on 15 October 2022 after hearing the parties, this Court had passed the following order:-

“The grievance of the petitioner is in regard to a structure which is stated to be illegal,

situated in property bearing survey no. 249/1-A at Taleigao Village. It is the petitioner's contention that there is an encroachment on the pavement and which is in fact the Government land.

- 2 *Mr. Pangam, learned Advocate General, has made a statement that recently an inspection has taken place from the office of the Mamlatdar. We expect that such inspection was in regard to the measurement of the concerned land so as to identify as to whether there is any encroachment on the government land, as contended by the petitioner. It is to be noted that the petitioner referring to photographs as placed on record, contends that it is clearly indicated that some portion of the pavement is occupied by the structure as protruding*
- 3 *Let any such report from the said authority be placed on record so that we can proceed to adjudicate this matter.*
- 4 *Mr Sardessai, learned Senior Counsel for the petitioner, has stated that the petitioner has no private interest whatsoever, and his concern is only with regard to the public land, being protected from any illegal encroachment. We record such statement.*
- 5 *It is stated by Mr. Desai, learned Senior Counsel for respondent nos. 8 and 9, that there was already an inspection carried out by the DSLR and a report based on such inspection is dated 7 October, 2021. A copy of such report be also shared with the Advocates as also with the learned Advocate General so that he can take instructions on the said report, and apprise the Court of the correct position.*
- 6 *A short consolidated affidavit along with the*

relevant reports be placed on record two days in advance to the adjourned date of hearing and the same be also served on the Advocates for the petitioner and the other respondents.

7 *Stand over to 20 October, 2022.”*

4. As the grievance of the petitioner was in respect of the property in occupation of respondent nos.7 and 8 as noted above, the Court had directed that a short consolidated affidavit be placed on record along with relevant record, to include a response to the case of respondent nos.7 and 8, that an inspection was carried out by the DSLR and report dated 7 October 2021, based on such inspection was prepared.

5. Thereafter on 17 November 2022 we had again heard the learned Counsel for the parties when the following order came to be passed:

“1. Despite our clear orders that a short consolidated affidavit along with relevant reports be placed on record two days in advance to the adjourned date of hearing i.e. 20.10.2022 as directed by us in our order dated 15.10.2022, the concerned Respondents have not placed on record such affidavit. The learned Additional Government Advocate is also not in a position to inform the Court as to when the inspection was undertaken and what is the nature of the inspection. In these circumstances, we grant a final opportunity to the Respondents to comply

with the earlier orders and file their affidavit failing which we direct the Mamlatdar, North Goa to remain present in the Court. Let an affidavit be served on all the parties two days prior to the adjourned date of hearing.

2. *Stand over to 24 November 2022, High on Board.”*

6. Accordingly, today we have a report filed on behalf of the State Government which is annexed to the affidavit filed on behalf of the respondent no.4 namely of Mr. Kaushik B. Dessai, Mamlatdar of Tiswadi. The affidavit annexes a report which states that initially inspection of the land in question was undertaken through Talathi and field surveyor, it is stated that however, after going through the reply filed on behalf of the respondent no. 8 and various documents produced along with reply, it was realized that a fresh inspection taking into account land acquisition plans was necessary. It is stated that as the allegation was of an encroachment on the road widening area, it was necessary to consider the land acquisition plan and so also assistance from other departments such as PWD, TCP, NGPDA, Panchayat etc. It is stated that accordingly joint inspection along with all relevant documents with notice to the petitioner and respondent was undertaken on 1 November 2022, however, as the petitioner was

not present on the said day the inspection was proposed to be carried out on very next date, at which point of time letter was received from the petitioner requesting for a fresh inspection in his presence. It is stated that accordingly, a joint inspection along with all Departments and both the parties were held on 10 November 2022 and 21 November 2022. Such inspection was conducted in the presence of the concerned representatives department and both the contesting parties.

7. In paragraph 9 of the affidavit it is stated that upon surveying the site with the help of a total station machine, it was revealed that there is an encroachment of 17 sq. mts in survey no.249/1 of village Taleigao. It is stated that after noticing this encroachment, a report in this regard has been submitted to the Deputy Collector and SDO, Panaji for initiating action for violation of the Goa Land Revenue Code. Copy of the report along with relevant documents has been annexed to the affidavits.

8. There is additional affidavit in reply on behalf of respondent nos.7 and 8 dated 1 December 2022 *inter alia* disputing the contents of the affidavit filed by Shri Kaushik B. Dessai, Mamlatdar of

Tiswadi, as noted by us above, as also the new report. Respondent nos.7 and 8 have contended that the report dated 22 November 2022 as annexed to the said affidavit is a tailored and one that it does not reflect truth and is required to be rejected. Affidavit sets out the justification and reason as to why there is an encroachment. Affidavit has also annexed number of documents in support of such assertion.

9. During the course of hearing the learned Addl. Govt. Advocate has tendered a show cause notice dated 28 November 2022 issued by Deputy Collector and SDO Panaji to respondent no. 7 calling upon him to show cause as to why an action of removal of such encroachment within 7 days from the receipt of the said notice be not adopted, and failing a reply an action of demolition/removal and confiscation as contemplated under Section 6 of the Goa Land (Prohibition of Construction) Act, 1995 shall be resorted. It is stated by Mr. Desai, learned Senior Counsel for the respondent nos.7 and 8 that a copy of the show cause notice has not been officially served/received by the respondent no. 7 and a copy of the show cause notice was received by him in the Court.

10. In the aforesaid circumstances, in our opinion, if a show cause

notice is intended to be served on the respondent no.7, let the same be served by Deputy Collector and SDO Panaji as per law, and once issued, and the same be taken to logical conclusion and appropriate decision be taken thereon in accordance with law.

11. Learned Addl. Govt. Advocate states that although a copy of the show cause notice has been furnished to Mr. Desai, learned Senior Advocate for the respondent nos. 7 and 8, the Deputy Collector and SDO Panaji shall now be officially issuing the said show cause notice along with all relevant documents and serve the same upon respondent nos. 7 and 8. Mr. Desai, learned Senior Counsel states that after receiving the show cause notice his client shall file a detailed reply to the show cause along with documents and thereafter the authority can proceed to pass appropriate orders.

12. At this stage Mr. Nitin Sardesai, learned Senior Counsel for the petitioner states that as the petitioner is the complainant an opportunity of hearing also needs to be given to the petitioner in taking a decision on the show cause notice. We are of the opinion that such opportunity be also made available to the petitioner to participate in such hearing.

13. In the above circumstances, while we do not wish to express

any opinion on the merits of the respective contentions, we leave it to the Deputy Collector and SDO Panaji to hear all the parties and pass appropriate orders in accordance with law on the show cause notice. Needless to observe that after the conclusion of hearing an order in that regard be passed within 15 days thereof.

14. Accordingly, we propose to dispose of the petition by following order:-

- i. Deputy Collector and SDO Panaji shall issue a show cause notice to the respondent nos. 7 and 8 along with all documents within 10 days from today.
- ii. A reply to the show cause notice be filed by the respondent nos.7 and 8 within 7 days of the receipt of the show cause notice. The petitioner also is permitted to file his say within a period of 20 days from today.
- iii. The Deputy Collector and SDO Panaji shall call the parties for hearing within 15 days from the date of the replies being filed to the show cause notice and pass appropriate orders within one month from the conclusion of the hearing in accordance with law.
- iv. It is clarified that there shall not be a further extension of time, for the concerned authority to pass appropriate orders in the manner as directed by us.
- v. All contentions of the parties to be urged before the Deputy Collector and SDO Panaji are expressly kept

open.

- vi. We clarify that we have not expressed any opinion on the merits of the rival contentions of the parties.

15. Petition is disposed of in the above terms. No cost.

BHARAT P. DESHPANDE, J

G. S. KULKARNI, J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS
NAIK
Date: 2022.12.07 19:05:26 +05'30'