

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
PUBLIC INTEREST LITIGATION WRIT PETITION NO. 47 OF 2019
WITH
STAMP APPLICATION NO. 563 OF 2020 (FILING)
AND
WRIT PETITION NO. 325 OF 2010
WITH
MISC. CIVIL APPLICATION NO. 564 OF 2010
AND
MISC. CIVIL APPLICATION NO. 2454 OF 2022
IN
PIL WRIT PETITION NO. 47 OF 2019

PUBLIC INTEREST LITIGATION WRIT PETITION NO. 47 OF 2019
WITH
STAMP APPLICATION NO. 563 OF 2020 (FILING)

Melvin Francis Da Silva & 8 Ors. ... Petitioners

Versus

State of Goa, Thr. The Chief Secretary & Ors. ... Respondents

WRIT PETITION NO. 325 OF 2010

Smt. Clotildes @ Clotina Fernandes Rep. By ... Petitioners
Duly constituted Attorney Smt. Kshamata
Desai

Versus

The State of Goa, Thr. Its Chief Secretary ... Respondent

MISC. CIVIL APPLICATION NO. 564 OF 2010

IN

WRIT PETITION NO. 325 OF 2010

Shri Nelson Cabral ... Applicant

Versus

Smt. Clotildes @ Clotina Fernandes (Since ...Respondent
Dec.) Rep. By Smt. Kshamata Desai

AND

MISC. CIVIL APPLICATION NO. 2454 OF 2022

IN

PIL WRIT PETITION NO. 47 OF 2019

Dona Paula Residents and Interested ... Applicant
Stakeholders Rep. By Edgar Cabral

Versus

The State of Goa, Thr. Its Chief Secretary & 7 ...Respondents
Ors.

Mr. Amey Kakodkar, Advocate for the Petitioners in PILWP No. 47 of
2019 and for the Applicant in STA (F) NO. 563 of 2020.

Mr. Manish Salkar, Government Advocate for the Respondents No.
1, 2, 3 and 4 in PILWP No. 47 of 2019.

Mr. D. Pangam, Advocate General with Mr. S. P. Munj, Additional
Government Advocate for the Respondent No.5 in PILWP No. 47 of
2019.

Mr. D. Pangam, Advocate General with Mr. Nikhil Vaze, Additional
Government Advocate for the Respondent No.6 in PILWP No. 47 of
2019.

Mr. P. A. Kamat, Advocate with Ms. M. Shaikh, Advocate for
Respondent Nos. 7 and 8 in PILWP No. 47 of 2019.

Mr. V. Parsekar, Advocate for the Applicant in MCA No. 564 of
2010.

Mr. Y. V. Nadkarni, Advocate with Mr. Sanket Kamat, Advocate for
Petitioner in Writ Petition no. 325 of 2010 and Respondent in MCA
No. 564 of 2010.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. S. Karpe and Ms.
S. Vaingankar, Advocates for the Respondent nos. 4 and 5 in WP No.
325 of 2010.

Ms. Nandini Kadilaya, Advocate for the Intervenors in MCA No. 2454 of 2022.

**CORAM: G. S. KULKARNI &
 BHARAT P. DESHPANDE, JJ.
DATED: 18 November, 2022**

ORAL ORDER

1. The present public interest litigation was filed raising issues, *inter alia* in regard to non-availability of parking facilities in the proximity at a place of tourist interest namely at “Dona Paula”. The prayers as made in the petition are required to be noted which read thus :

- “a) For a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction commanding the Respondents to immediately create parking facilities and toilet facilities in the said acquired land under Chalta No. 1(part) of P.T Sheet 185 of City Survey Panaji and Survey no. 254 of Village Taleigao;
- b) For a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction restraining the Respondents from using the said acquired land under chalta No. 1 (part) of P.T Sheet 185 of City Survey Panaji and survey no. 254 of Village Taleigao for any purpose other than parking facilities, toilet facilities and rehabilitation of hawkers except with leave of this Hon'ble Court;

c) For a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction commanding the Respondents to regulate the smooth flow of traffic around NIO Junction at Dona Paula and enforce strictly the No Parking Zones around the NIO Junction and the roads converging to the junction.

X) Interim Reliefs.

d) Pending the hearing and final disposal of this Petition, to direct the Respondents to open the said acquired land under Chalta No. 1 (part) of P.T Sheet 185 of City Survey Panaji and Survey no. 254 of Village Taleigao for parking vehicles of tourists and locals visiting the Dona Paula Jetty;

e) Pending the hearing and final disposal of this Petition, to direct the Respondents to create temporary arrangements of toilets/ bio-toilets/ mobile toilets in the said acquired land under Chalta No. 1 (part) of P.T Sheet 185 of City Survey Panaji and Survey no. 254 of Village Taleigao;

f) Pending the hearing and final disposal of this Petition, to restrain the Respondents from doing any construction of restaurants or other commercial buildings in the said acquired land under Chalta No. 1 (part) of P.T Sheet 185 of City Survey Panaji and Survey no. 254 of Village Taleigao, except for parking facilities, toilet facilities and rehabilitation of hawkers.

g) Pending the hearing and final disposal of this Petition, to direct the Superintendent of Police (Traffic) and Respondent No.1 :

i. To have two traffic policemen assigned to control the traffic at the NIO Junction from 10

AM to 6 PM who shall man the barricade at the NIO Junction and shall also direct the traffic to the parking area in the said acquired land.

ii. To have on weekends and during school holidays, the traffic policemen on duty assisted by other traffic policemen.

iii. To have a two more traffic policemen deputed control the traffic on the narrow stretch of road from State Bank of India to Dona Paula Jetty and this stretch be manned even during lunch break hours by other traffic police or by police personnel from the Dona Paula Police Outpost.

iv. To challan the offending vehicles parked in No Parking areas, including towing and clamping of the vehicles.

h) Ex-parte ad-interim orders in terms of prayer (d)-(g) above;

i) Such other and further interim orders as this Hon'ble Court may deem fit and proper."

2. The Writ Petition was heard from time to time. On 7 October, 2022, this Court had passed an extensive order so that the issues which had arisen in public interest, could be resolved. The said order reads thus :

"We have heard the learned Counsel for the PIL petitioners and the learned Government Advocate for the State.

2. This is a petition of the year 2019 which has raised issues in regard to the non-availability of parking facilities and toilet facilities in the proximity of a place of tourist interest namely “Dona Paula”, which is abutting Panaji. There is prayer made in the petition that sufficient parking facilities and toilet facilities be created by the State. A prayer is also made to restrain the respondents from utilising the acquired land for any purpose other than for parking facilities, toilet facilities and rehabilitation of the hawkers. There is also a prayer that the directions be issued to the respondents to regulate the smooth flow of traffic around the NIO junction, Dona Paula and encroachment between the No Parking Zone around the NIO junction and the roads leading to the junction be removed.

3. We note from the record that the coordinate Benches of this Court from time to time have passed orders so that the public interest as espoused in the present proceedings is looked into/ attended by the authorities more particularly in regard to the areas of concerns as raised by the petitioners.

4. There is no doubt that the petition raises issues of public interest. From the submissions as made before the Court today by the learned Counsel for the parties, it appears that an area of more than 3000 square meters including the area which is presently barricaded, as seen from the photograph which has been placed on record (marked as X1 for identification) is immediately available to be utilised for parking purposes wherein the vehicles of the visitors can be conveniently parked. It is informed that such area would accommodate about 55 cars, 24

motorcycles and 4 buses. It appears that the barricades would further accommodate another 25–30 cars, hence, approximately parking area for about 70–85 cars would be readily available as also a certain number of buses can be parked.

5. Mr. Salkar, learned Government Advocate has made a statement that immediate steps would be taken to open up such parking area/facility, which is specifically created for the benefit of the visitors to Dona Paula within two weeks from today. We accept the statement made by Mr. Salkar.

6. We may also note from the submissions as advanced before us that the State had acquired a total area of about 16600 square meters to be utilised for parking and for rehabilitation of hawkers. As observed by us presently an area of little more than 3000 square meters is available and the rest of the area is under development. It is stated that part of the acquired land is subject matter of a challenge in Writ Petition No.325 of 2010 filed before this Court, which is listed before us today. On such land there are two dwelling houses. As there is an order in such petition directing the parties to maintain a status quo the houses are yet to be demolished, and the area cleared for development of such land inter alia for the purposes of parking for which it has been acquired.

7. Mr. Nadkarni who appears for the petitioner in the Writ Petition No.325 of 2010 informs that his client would not have any further cause to be pursued in the said Writ Petition, hence, the State would now cannot have any impediment for demolishing these structures. Mr. Nadkarni has

stated that one of the structures (a small structure) is in the possession of the petitioners which can be immediately vacated by them. He states that there is another larger structure which is in occupation of one Gomantak Land Development Private Limited and Fomento Resorts and Hotels Limited. The said structure is in a dilapidated condition, these persons would now be required to vacate the structure as the land is already acquired and stood vested in the State. It is stated that this structure is presently not occupied and is lying in a state of being abandoned. Photographs are annexed to the petition at page No.60.

8. It thus appears that the State Government can immediately take further steps to remove these structures and by utilizing the said land achieve the public purpose for which such land was acquired.

9. We accordingly permit Mr. Nadkarni to amend the petition so as to implead the Gomantak Land Development Private Limited and Fomento Resorts and Hotels Limited as parties to Writ Petition No.325 of 2010. The amendment be carried out within two weeks from today. Amended copy of the petition can also be served on the newly added respondents. Humdast is permitted. In addition to the Court notice Advocate for the petitioner is permitted to serve the newly added respondents by private service by all permissible modes and place on record an Affidavit of service. In the event the newly added respondents despite service are not attending, we shall proceed to hear the petitioners and pass an appropriate order.

10. Insofar as the issue in regard to parking facility is concerned the issue is partially resolved

considering the statement made by Mr. Salkar. We would await compliance in this regard, from the State Government to be informed to us on the adjourned date of hearing. The petitioners shall also provide us with all details in regard to the operation of the parking facilities. We would also request the State Government to provide portable toilet blocks in the parking facilities, as it appears that presently such facilities are not available and even if they are available they are not being utilised in the normal manner as we see from the photographs.

11. Thus, what is expected is provision of a neatly organized parking facility, with all these essentials to be made available. Further progress in this regard be placed before us on the adjourned date of the hearing.

12. Insofar as the additional area is concerned we direct the State Government to take further steps to complete the development of the additional area as the status quo order which was passed earlier in the Writ Petition No.325 of 2010 is also not required to be continued, as Mr. Nadkarni has informed the Court that his client would not have any further grievances and the petition is intended to be withdrawn on the adjourned date.

13. Mr. Nadkani states that the petitioner/landowner in Writ Petition No.325 of 2010 would not have any grievance if the status quo order is vacated today itself. We accordingly vacate the interim order in Writ Petition No.325 of 2010. This would enable the State Government to proceed further and/or immediately in accordance with the law to take steps to develop the remaining area to be used for such

public facilities. It is informed by Mr. Salkar that already a contractor is appointed and his work was stopped as the area was not available. Such impediment no longer survives.

14. We have also been informed of another concern namely the traffic chaos which is created by the vehicles parked on the street as also in the by-lanes which have residential houses. To some extent, this issue would now stand resolved as the parking facilities are now being opened up. However, the concerned Authorities are required to have in place a concrete mechanism, as such issue would be a matter of concern for all times to come. The peace of the residents in the vicinity cannot be disturbed by visitors parking their cars in front of their houses. Also there cannot be a traffic congestion on the main road by which the residents of such area are required to suffer, due to the traffic congestion.

15. To cater to such situation, the Traffic Department is required to take appropriate steps which would involve creating 'No Parking Zone' for outside vehicles on the internal roads leading to the Dona Paula Jetty. The Traffic Department also needs to make sure that there are no traffic issues or congestion which would cause inconvenience to the movement of the traffic. It is also suggested that insofar as the access to the vehicles belonging to the residents of such area are concerned they can be provided with the appropriate "stickers" so that there is proper identity of the cars of these residents and parking of the outside vehicles which would cause a nuisance is avoided. We find that there is a Dona Paula Residents Group, the Traffic Commissioner or

the concerned Officer from the Traffic Department can coordinate with such groups so as to provide stickers to the cars of the residents of the concerned area so that the concern of the petitioner in regard to the traffic chaos in the area is addressed effectively.

16. All these are temporary measures as the State is now undertaking the development of the larger parking lot and once that is available things would improve permanently.

17. We would accordingly direct the competent Officer of the Traffic Department to place on record an affidavit on or before the adjourned date of hearing proposing an appropriate scheme as to how the Department would intend to regulate the traffic. However, this would not mean that the day to day requirements of congestion of the traffic is not attended, which needs to be attended earnestly by providing an effective mechanism and without any delay.

18. We expect that the State Government shall take immediate steps to make available the parking facilities as observed by us above.

19. Another matter of a serious concern as noticed by us is that the place of tourist interest namely Dona Paula is about a distance of 1Km. from the parking area. It may not be possible for senior citizens and a category of disabled persons to cover such a distance on foot so as to visit the said tourist place, unless there are some internal transport facilities being made available. The requirements of such senior citizens and the disabled, cannot in any manner whatsoever be neglected by the State. Adequate

transport facilities are required to be made available by the State Government so that such persons also can visit the Dona Paula Jetty. As informed to us, from the parking area to Dona Paula the road has a substantial slope and on its return one needs to climb the steep road. We, therefore, direct the State Government to consider providing electric mini buses to cover such distance to and fro, to be made available being the special need of such citizens which be provided at a reasonable cost.

20. Accordingly, adjourn the petition to 20/10/2022 at 2.30 p.m.

21. Transport Department to act on the authenticated copy of this order.”

3. Thereafter, on 20 October, 2022, the parties were heard on their respective pleas as raised in their affidavits, when the following order came to be passed on 20 October, 2022 :

“1. In our order dated 07.10.2022, we had issued directions inter alia in regard to the concerns as raised for making available parking facilities at Dona Paula, as also on the issues of traffic management. Today, Mr. Pangam, learned Advocate General has stated that the parking facilities as discussed in our order are made operational. The recent photographs showing that the parking of vehicles has commenced are also placed on record.

2. Now the concern which remains is in regard to the issues on traffic congestion and the alleged illegal parking. Mr. Pangam states that S.P. Traffic can meet

the local residents and such issues could also be resolved. Let such dialogue take place between the officials and the residents and all other interested stakeholders. Let meetings be convened by the S.P. Traffic at mutually convenient dates. A report of any parking/traffic regulation plan as may be discussed be prepared and shared with the Court on the adjourned date of hearing.

3. Mr. Pangam has drawn our attention to para 13 of the said order to state that inadvertently a statement came to be made on behalf of the State that the contractor was appointed and the work was stopped as the area was not available. He states that in fact there is no contractor at present and tenders are proposed to be issued now to undertake the further work. This clarification is accepted. Paragraph 13 of the said order be accordingly read.

4. In so far as Writ Petition 325/2010 is concerned, the Court had permitted the Petitioner in the said petition to implead Gomantak Land Development Private Limited and Fomento Resorts and Hotels Limited as added Respondents. The added Respondents were accordingly served. Affidavit of service is placed on record. Mr. Coelho Pereira, learned Senior Advocate is representing the Respondents. He seeks time to take instructions.

5. Mr. Nadkarni, on instructions, states that in so far as the smaller structure is concerned his clients are willing to vacate the said structure and hand over the possession of the same to the State Government on or before 31.12.2022.

6. Mr. Coelho Pereira, learned Senior Advocate for the added Respondents can also take instructions

whether a similar position can be taken by his clients without prejudice to any other rights they may have on the issues.

7. The Parties would be heard on such issues also on the adjourned date of hearing as the anxiety of the State is that the land is made available to the State Government to utilize for the public purpose.

8. Stand over to 18.11.2022."

4. On the backdrop of the above orders, today, we have heard the learned Counsel for the parties. Mr. D. Pangam, learned Advocate General, has placed on record an affidavit of Mr. Bouseut D'Silva, Superintendent of Police, Panaji, Goa, stating that on 29 October, 2022, a meeting was convened with the local residents, petitioners and the other stakeholders to resolve the issues of traffic congestion at the Dona Paula/NIO Circle and the road leading to Dona Paula. It is stated in the affidavit that detailed discussions were held in pursuance of which the following measures are now sought to be adopted in consultation with all the stakeholders :-

"(i) Traffic Staff will be deployed to ensure No Parking from Green Rosary School to NIO Circle, NIO Circle to Dona Paula Jetty. Staff will also be deployed at NIO Circle and Dona Paula Jetty to regulate traffic.

(ii) No parking will be ensured on the road leading to jetty. However, as suggested by the residents, the

available space along the road from NIO Circle to Prainha Hotel will be denotified in stretches to be made parking space only for the residents living along the jetty road.

(iii) Car stickers will be issued to the residents living along the Dona Paula Jetty road, and only these vehicles will be allowed to proceed beyond NIO Circle.

(iv) Application forms along with residential proof and vehicle details for issue of Car passes will have to be addressed to the Superintendent of Police, Traffic, Altinho and can be submitted at Dona Paula Outpost.

(v) As informed by the petitioner Shri Rainer Dias, he along with other businessmen will sponsor the Car Stickers. These Car stickers will only be issued by the office of SP Traffic.

(vi) As a temporary measure, till the shuttle service is made available, vehicles carrying senior citizens and disabled persons will be allowed to drop the persons at Dona Paula Jetty and vehicles will be directed to be parked at the Parking lot near Green Rosary School.

vii) Devotees attending mass at Our Lady of Perpetual Succor Chapel, Dona Paula in the morning on Sundays and Wednesdays and for the annual feast mass will be allowed to take their vehicles up to the Chapel.

(viii) School bus will be allowed up to the Govt. Primary School, Dona Paula. Likewise, the vehicles of the parents, who come to drop/pick their children will be allowed up to the school.

(ix) Utility vehicles will be allowed to load/unload their goods and return within limited span of time.

(x) No route buses will be allowed to be parked on the road leading to Dona Paula.”

5. Mr. Amey Kakodkar, learned Counsel in PILWP No.47 of 2019, would also not dispute that the grievances of the petitioners are substantially redressed by the aforesaid mechanism, which has now been put into operation by other concerned State Authorities. He however submits that insofar as the acquired land is concerned, the State Government needs to take appropriate steps at the earliest, so that sufficient parking facilities are permanently available at such a busy place of tourist interest. He submits that this would further resolve the traffic issues and the feasibility of the tourists to visit the said place. We appreciate such concern as raised on behalf of the petitioners.

6. Insofar as the small structure is concerned, as noted by us in the earlier order, Mr. Y. V. Nadkarni, learned Counsel appearing for the petitioner in Writ Petition no. 325 of 2010, had made a statement

that the petitioners/owners were ready to surrender the said premises to the State Government by 31 December, 2022. Insofar as the larger structure is concerned, although owned by the petitioners in Writ Petition No.325 of 2010, it was stated to be in occupation of respondent nos. 4 and 5, who are represented by Mr. J. E. Coelho Pereira, learned Senior Counsel. It appears to be an admitted position that respondent nos. 4 and 5 are not using the said premises, as the premises are in a dilapidated condition. We were also shown the photographs of the premises.

7. We had accordingly observed in paragraph 6 of our order dated 20 October, 2022, that respondent nos. 4 and 5, in these circumstances, could adopt a similar position, to surrender the premises to the State as taken by the petitioners (owners) in Writ Petition no. 325 of 2010, as these are the premises acquired by the State under the land acquisition procedure, adopted by it. However, this would be without prejudice to the rights and contentions on the issues. Responding to this, Mr. J. E. Coelho Pereira, learned Senior Counsel, has stated that respondent nos. 4 and 5, intend to assert their rights in relation to the acquisition in independent proceedings. We are of the opinion that if respondent nos. 4 and 5 now intend to take recourse to the remedies available in law to assail the acquisition,

we cannot stop them from doing so. Considering the fact that there is no material before us to show that the land acquisition proceedings have not attained finality, we do not carry the contentions of respondent nos. 4 and 5 any further, leaving them to assert these contentions in appropriate proceedings as may be permissible in law. If any such proceedings are filed, all contentions of the State Government as also of respondent nos. 4 and 5 are expressly kept open.

8. Insofar as the public interest litigation is concerned, as observed above, as the petitioners' grievances stand substantially redressed, we accordingly would dispose of this Writ Petition, accepting the measures as taken by the State Government/Traffic Department and as set out in paragraph 4 above. The Superintendent of Police (Traffic) shall take all steps to effectively implement the mechanism which is already put in operation, so that in future there are no grievances/issues in relation to traffic or any other issues, which would cause inconvenience either to the respondents or to the tourists, so that a permanent arrangement/smooth mechanism is always in operation, for all times to come.

9. Insofar as the intervention application, purported to be filed by Dona Paula Residents and Interested Stakeholders, (MCA No. 2452 of 2022-F), is concerned, the intervenors have already made a representation dated 31 October 2022 to the Superintendent of Police, Traffic Cell, Altinho, as also to other authorities of the State Government. What we note from the representation is that, the contention of the intervenors that the visitors/tourists of Dona Paula ought not to be stopped from entering the Dona Paula area and the pick up and drop facility should be available to the tourists/visitors. Considering such statement as contained in the the representation, *prima facie* we have doubt as to whether this is really a grievance of the residents in the vicinity. We, however do not wish to express any opinion, either on the locus or on the case which the intervenors intend to assert in the intervention application, suffice it to observe, that we leave the grievance of the intervenors to be addressed by the Superintendent of Police (Traffic) who can grant an opportunity of a hearing to them and take appropriate decision as the situation would mandate. It is however clarified that the Superintendent of Police (Traffic) is permitted to take an appropriate position and/or the situation be strictly dealt with if any attempt on the part of the intervenors or any other person is being made to disturb the smooth flow of traffic and/or ingress or egress to Dona Paula and/or the

aforesaid mechanism put in operation in connection of the stakeholders.

10. In the above circumstances, the petitions would not warrant any further adjudication. They are accordingly disposed of in terms of the above observations. No costs.

11. Pending applications, if any, stand disposed of.

12. We appreciate the social concern and the assistance provided to us by the learned Counsel for the petitioners, learned Advocate General Mr. Pangam, Mr. Nadkarni, learned Counsel for the private parties and all the other learned Counsel appearing for the parties.

BHARAT P. DESHPANDE, J

G. S. KULKARNI, J

(Corrections carried out as per order dated 24 November, 2022)

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA
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