

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 382 OF 2021

1. Shri Suraj Gad, Major, occupation business at House no. 220, Tinto Gorbhatt Waddo, Village Arpora, Taluka Bardez-Goa.

2. Pritam Gad, Occupation business at House no. 220, Tinto Gorbhatt Waddo, Village Arpora Taluka, Bardez-Goa.

... Petitioners

V e r s u s

1. Shri Dr. Thomas Paul D'Souza, Major, Resident of House no. 223, Gorbhatt Waddo Arpora, Bardez, Goa 403516.

2. Block Development Officer I and II, Office of the Block Development Officer, Bardez Block, Govt. Offices Complex, 2nd Floor Mapusa Bardez Goa.

3. Village Panchayat of Arpora Nagoa, Through its Sarpanch Office of the Village Panchayat of Arpora, Nagoa, Arpora, Bardez-Goa.

4. North Goa Planning and Development Authority, Archdiocese Bldg., 1st Floor, Mala Link Road, Panaji, Goa. ... Respondents

Ms. A. Agni, Senior Advocate with *Ms. Jay Sawaikar, Advocate for the Petitioners.*

Mr. A. D. Bhobe, Advocate with *Ms. Annelise Fernandes, Advocate for*

the Respondent no. 1.

Ms. Susan Linhares, Additional Government Advocate for the Respondent no.2.

Mr. Pankaj Pai Vernekar, Advocate with Ms. Cidalia Lobo, Advocate for the Respondent no.3.

Mr. H. D. Naik, Advocate for the Respondent no.4.

CORAM: A. K. MENON, J

DATED: 11th April 2022

JUDGMENT

1. Rule. Rule made returnable forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents, waive notice.

2. The challenge in this Writ Petition is to an order dated 24.09.2021 passed by the Block Development Officer, Respondent no.2, Mapusa, Bardez, Goa, and the Resolution dated 25.09.2021 passed by the Village Panchayat-Respondent no.3, of Arpora, Nagoa, by which an Order passed by the Block Development Officer on 01.12.2020 was restored. The Petitioners are tenants of Respondent no.1 who seek to carry out repairs of the tenanted premises being House no. 220 at Arpora Bardez, Goa.

3. The first Respondent, herein after referred to as the *Landlord*, is opposed to the Petitioners. The second Respondent, is the Block

Development Officer (BDO) and the third Respondent is the Village Panchayat. The allegation in the Petition is that the Landlord is “managing authoritties” into passing orders without hearing the Petitioners and, as a result of which, the Petitioners are required to file multiple Petitions and engage in litigations running from pillar to post only to carry out certain repairs to their structures.

4. The main ground of challenge to the impugned orders and as canvassed by Ms. Agni, learned Senior Counsel representing the Petitioners, is that the impugned orders were passed in violation of the principles of natural justice. No hearing was granted to the Petitioners prior to passing the impugned orders. Therefore, the impugned orders are vitiated and non est; that having been said that it is not seriously disputed that the order of the BDO could have been challenged before the District Court under Section 201 of the Goa Panchayat Raj Act 1994 and Rules (*Panchayat Raj Act*, for short) but since it is allegedly in breach of principles of natural justice. Ms. Agni submitted that it is appropriate that this Court examined the conduct of the authorities and grant relief.

FACTS IN BRIEF

5. It is the Petitioners' case that on 15.08.2019, a portion of the northern side wall of the house was endangered upon some mud falling out. The southern side wall also had developed cracks and therefore, these

two walls required repairs. It is contended that Respondent no.1 constructed sheds made of mild steel poles covered with acrylic sheets and galvanized sheets to both northern and southern sides of the tenement which had caused damage to the load bearing walls of the tenement. The Petitioners apparently served a notice calling upon the landlord to carry out the repairs to the walls. The Petitioners contended that the damage was caused due to the putting up of sheds by the landlord. They proceeded to get the premises inspected through the Architect one Mr. Dhuri, who opined that the walls had been affected on account of the sheds erected by the landlord. Apparently, the sheds were erected by the landlord without any permission from the Village Panchayat.

6. It is contended that the landlord having failed to carry out the repairs despite requests, the Petitioners approached the Rent Tribunal, North Goa, Mapusa, seeking interim relief. However, pending this application, on or about 26.10.2019, a large portion of the southern wall collapsed; that portion was being used by Petitioner no.2. Initially the architect had advised that the wall only required plastering however, before that could be done, part of the southern wall collapsed. Meanwhile, the landlord filed an application under Section 33 of the Rent Control Act proposing to reconstruct the house. In fact, the landlord had mischievously demolished House no. 220 in an attempt to create obstacles in the Petitioners' attempt to repair the wall. Soon thereafter, the pandemic

driven lock down frustrated all the attempts to get the walls repaired. The Petitioners approached this Court in the year 2020 and the Court expedited the hearing of the rent application. An application for interim relief sought by the Petitioners was rejected on 27.05.2020; that resulted in a challenge under Section 46 of the Rent Control Act. The appellate body directed the premises to be covered with tarpaulin. The Rent Revision Application was allowed by the appellate body thereby granting interim relief to permit the Petitioners to carry out the necessary repairs. The landlord however continued in his efforts to frustrate the attempts of repair. After the order of the Rent Tribunal, the Petitioners approached the Village Panchayat on or about 03.10.2020 seeking permission to start the repair and renovation work. The landlord objected, requesting to the Panchayat not to grant permission till the Writ Petition then pending in this Court was heard. Meanwhile, the Petitioners were directed to approach the North Goa Planning and Development Authority(NGPDA)- Respondent no. 4, for permissions.

7. On 17.11.2020, the NGPDA clarified that for repairs such as re-plastering, no NOC would be required from the NGPDA and the Petitioners had to apply before the Village Panchayat. Further re-construction of the structure required permission under Section 44 of The Goa, Daman and Diu Town and Country Planning Act, 1974 and Rules, 1976, (*Goa TCP Act*, for short). The Petitioners then approached this Court, filing a Petition

bearing no. WP No. 1527 of 2020, which came to be dismissed. In the meanwhile, the Petitioner sought permission to cover the premises during the monsoons and by an order dated 06.05.2021, the Court permitted the Petitioners to cover the entire roof with tarpaulin. Later it transpires that as a result of cyclonic winds, some tiles and battens of the house were damaged. The Petitioners sought permission from this Court to replace the tiles and battens which was allowed and the Petitioners carried out that work. Meanwhile, the landlord apparently realized that it would not be possible for him to reconstruct the structure. It transpires that in this state of affairs, the Village Panchayat wrote a letter dated 25.11.2020 to the BDO. Ms. Agni pointed out that the said letter was unprecedented; that the BDO had no role to play at the material time. However, the BDO vide letter dated 01.12.2020, granted permissions to carry out repairs. According to the Petitioners, the office of the BDO had prepared estimate for construction of 40 cm thick laterite stone walls of the house no.220 and the BDO issued permission on that date. Thereafter, the BDO conducted the site inspection and vide letter dated 07.12.2020, directed the Village Panchayat to issue permission. The Panchayat decided to do so only after the outcome of Writ Petition no. 1527 of 2020 and in view of the said letter of 07.12.2020, the BDO passed yet another order on 29.12.2020 vacating the order by which the matter was directed to be kept in abeyance till the final outcome of the Writ Petition. The order dated 29.12.2020 was once again modified on 30.12.2020 and the Village

Panchayat was directed to stay its hands till a decision in the aforesaid Writ Petition.

8. The Civil Revision application then came to be filed questioning the order dated 29.12.2020. In the meanwhile, it transpires that the Panchayat considered the grant of sanction to the Petitioners but the meeting dated 16.07.2020 did not pass any Resolution for want of a quorum.

9. On 23.07.2021, the Additional District Judge directed the Village Panchayat and the BDO to maintain status quo; that order came to be confirmed on 06.08.2021. The orders dated 23.07.2021 and 06.08.2021 were then challenged before this Court in Writ Petition no. 293 of 2021. On 13.09.2021, this Court allowed the Writ Petition thereby directing the Village Panchayat to dispose the application for sanction within two weeks. After this order was passed, the landlord applied to the BDO to revoke the order dated 01.10.2020. This application was not served upon the Petitioner who received a copy only after an order was passed thereon. In the meanwhile, the Village Panchayat, Arpora, was to consider the grant of sanction pursuant to the directions of this Court. On 23.07.2021, the Petitioners were informed about the inspection that would be conducted by EORE attached to the office of the BDO, the second Respondent. The Petitioners were surprised since the BDO had already conducted inspection of the premises and had prepared an estimate.

10. Ms. Agni submitted that the BDO was aware about the damage and the wall was partly damaged and it was necessary to carry out repairs and reconstruct the wall. However, since the copy of the complaints of the landlord addressed to the BDO and Panchayat, were not served on the Petitioners, Petitioners could not respond thereof. Later it was learnt that the BDO passed an order revoking the earlier order dated 01.12.2020. An RTI application came to be filed after which the Petitioners received the copies of the order dated 25.09.2021, the complaints/letters written by Respondent no.1. As a result of this revocation of the earlier order on 25.09.2021, the third Respondent rejected the Petitioners' application for licence for repairs.

11. Ms. Agni submitted that this was completely unprecedented. There was no occasion for the Petitioners to apply to the BDO since it is only for the Panchayat to grant permission for repairs. The Panchayat wrote to the BDO on its own. The BDO having granted permission, the Petitioners were anticipating completion of repairs, however, the BDO had since revoked its own order and consequent upon such revocation, the Village Panchayat withdrew the permission. In this strange set of circumstances, Ms. Agni submitted that the Petitioners are being driven from pillar to post on a mistaken interpretation of the provisions of law and, according to her, the impugned orders cannot be sustained since all that the Petitioners used to do is to repair these two walls but the delay caused for no fault of the

Petitioner have led to further damage to the walls which are to be rebuilt. Ms. Agni has relied upon the judgment in the case of *Kalabharati Advertising vs. Hemant Vimalnath Narichania & Ors.*¹, *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.*², and *Keraba Dattu Borachate & Ors. vs. Sheshashai & Vishnu Trust*³

12. On the other hand, the Respondents having opposed this proposed repair, have contended that under the guise of repairs, the Petitioners are proposing reconstruction of the walls which cannot be permitted unless the procedures specified by the NGPDA are followed. In support of the opposition, Mr. Bhobe has invited my attention to the letter dated 17.11.2020 addressed to the Petitioners. Contents of that letter reveal that the Applicant had not clarified whether the permission sought was for repairs/re-plastering or reconstruction of the existing structure. If the NOC sought was for repairs and re-plastering, such NOC was not required and it was only the Panchayat that would grant permission. However, if permission was required for reconstructing the existing structure, the Petitioners were directed to approach the authorities under Section 44 of the Goa TCP Act. I find that grant of permission for person intending to carry out any development in respect of, or change of use of, any land shall make an application in writing to the Planning and Development Authority

1 Civil Appeal (Arising out of SLP(C) Nos. 25043-25045 of 2008

2 (1998) 8 SCC 1

3 1990 (3) Bom.CR 656

for permission in such form and containing such particulars and accompanied by such documents and plans as may be prescribed. Thus Mr. Bhobe submits that what the Petitioners intend to do is clearly '*development*' work and the Panchayat could not have granted them permission. Mr. Bhobe made reference to the relevant provisions of the Panchayat Raj Act; Section 64 of the Panchayat Raj Act, provides that the Sarpanch of the Panchayat shall be entitled to stop any unauthorised construction erected notwithstanding anything contained in sub-section (3) of section 66 of this Act and place the matter before the Panchayat for taking suitable decision and also remove encroachment and obstruction upon public property and open sites not being private property. It is also empowered to ensure due compliance of the provisions of the Act. Section 66 pertains to Regulations of the erection of buildings and no person shall erect any building or alter or add to any existing building or reconstruct any building without the written permission of the Panchayat. The permission may be granted on payment of such fees as may be prescribed, provided that alteration of a building which consisted of single dwelling unit or construction in existence before commencing of the Act is permitted to replace RCC slab roof upon production of certificate of structural stability of the said building. An appeal lay on a decision under Section 66 to the Director whose decision was final.

13. Mr. Bhobe therefore contended that the work that is proposed to be undertaken is clearly for reconstruction of the wall and that cannot form under the description of repairs. He, therefore, submits that the BDO has rightly revoked his permission and the Petitioners would have to proceed under Section 44 of the Goa TCP Act.

14. Ms. Agni, in rejoinder submitted that repair and renovation would include restoration of the reconstruction of the wall. She invited my attention to the definition of repair/renovation in clause 2(112) of The Goa (Regulation of Land Development and Building Construction) Act, 2008, (*Act 6 of 2008*, for short). She submitted that repairs and renovation included alterations and the word '*Alteration*' was also defined in Section 2(13), which defines an "*alteration*" to mean a change from one use to another or a structural change, such as a change to the area or height, or the removal of part of a building, or a change to the structure, such as, construction of cutting into or removal of any wall, partition, column, beam, joint, floor, etc. She therefore submitted that rebuilding of the wall was clearly contemplated under the expression repairs itself and there was no occasion to deny the permission to carry out repairs to the Petitioners.

15. The NGPDA, the Panchayat and the BDO, are all represented in this Court. Surprisingly, none of these Respondents have taken a stand on affidavit. On the other hand, multiple affidavits and documents have been

filed by the contesting parties namely the Petitioners and the contesting Respondents and the landlord.

16. I have proceeded to examine the records before me and have taken into account the Petition, its annexures and affidavits in reply on behalf of Respondent no.1, dated 26.11.2021. An affidavit in rejoinder of one Pritam Gad dated 04.12.2021 and additional affidavit dated 20.12.2021 of the landlord and a host of documents including part of the record before the Rent Tribunal in Mapusa. This Court has already examined the Petitioners' case and had issued clear directions in Writ Petition no. 1527 of 2020 directing the Panchayat to demolish the structure.

17. In the meanwhile, at the instance of the Petitioners, the Architect Mr. S. A. Dhuri, has also filed an affidavit dated 24.01.2022 in support of the Writ Petition. The issue before the Court is therefore two fold. Firstly, whether the Petitioners were entitled for a hearing before the BDO prior to revocation of the order dated 01.10.2020 and if so, whether the earlier order of revocation granted is bad in law and is required to be quashed and set aside. The other aspect is as to whether the permission required is to be granted at all and if so, whether this Court can grant such permission. In view of this impasse and the dispute which was by then assuming proportions of a Battle Royale, I called upon the Counsel for the NGPDA to explain the position.

18. Mr. Naik, on behalf of the NGPDA, was very clear on the position that NGPDA had taken. According to the NGPDA, there was no occasion to grant any permission or NOC in a case of any repairs such as re-plastering that has to be undertaken. That having been said, he submitted to the orders of the Court. According to the learned Counsel appearing for the NGPDA, if the Court came to the conclusion that there was no reconstruction of the structure, NGPDA would have no objection in the work to be carried out. He therefore submitted that NGPDA will comply with the directions of this Court. During the hearing, having found that the paper trail was incomplete and in order as to ascertain as to why the Panchayat led to the BDO and how the NGPDA occasioned.

19. Mr. Vernekar for the Respondent no. 3, submitted a flow chart for obtaining repair permission which could not exceed cost of Rs.50,000/-. He submitted that an application in the prescribed form is required to be provided with a complete check list of the document. The application is then scrutinized by the Village Panchayat Secretary and after deliberations, the Village Panchayat grants approvals and forwards it to the BDO for necessary action and report thereof. If the application is complete, the BDO forwards the application with his inspection report to the Sarpanch and after deliberations, the Village Panchayat grants repairs permission upon payment of prescribed fees. He submitted a chart which indicated that the costs should not exceed Rs.50,000/.

20. On a query as to on the basis of quantification of the cost of repairs, Mr. Vernekar fairly submitted that there is no statutory provision that he has been able to find to cap the cost at Rs. 50,000/-. He, therefore, submitted that the Panchayat was not wrong in having approached the BDO for opinion. Mr. Vernekar having so submitted, I called upon Ms. Linhares who is appearing for the Respondent no.2, to a specific question as to why the BDO had to give an opinion, she submitted that it is in the normal course that the request was received from the Village Panchayat on a direction of the Court to the BDO which is produced and that reveals that the inspection team had visited the site and had prepared a report which was enclosed alongwith photographs for the information of the BDO. The said inspection Report reveals that the EORE, EOVP and V. P. Secretary, visited the site at 3.15 p.m. in the presence of the Petitioner nos. 1 and 2 and the landlord. The house was identified by the Village Panchayat Secretary and it is observed that the northern side wall and western side was in dilapidated/deteriorated condition and the southern side wall had collapsed completely and the roof of the house was covered with tarpaulin sheet. The inspection team came into an agreement that the walls were required to be rebuilt and photographs were annexed. It observed thus, *“Inspection team visited the site on 23.09.2021 at 3.15 p.m. and after detailed inspection, came to the conclusion that the walls of the said building are required to be rebuilt. (Inspection report dated 23.09.2021 enclosed with photographs).”*

21. On the basis of the above facts, the revocation appears to be fueled by the fact that the BDO was of the opinion that the re-building of the walls is not repair of the walls. The Memorandum dated 23.09.2020 came to be issued by the BDO on the basis of a complaint by the landlord dated 22.09.2021 in which the landlord has applied for cancellation of the approval on the basis that the photographs will establish; that the "*entire structure*" has to be reconstructed from foundation and that condition no.6 issued by the BDO required that only minor repairs are permissible which do not allow for alterations/ reconstruction/RCC construction to the existing structure and should not exceed the existing plinth area or affect the structural stability of the structure. This condition is evident from the permission granted by the Panchayat. It is therefore contended by Ms. Linhares that the BDO had not preferred either party's version.

22. In the course of submissions, Mr. Bhobe filed a compilation of relevant material and that includes copy of a communication from the office of Village Panchayat of Arpora, addressed to the BDO enclosing therewith a file containing permission for house repairs, copy of the letter from the Panchayat to the Sarpanch and the Secretary Village Panchayat inviting their attention to the revocation application for repair of the two walls and how the Petitioners had been directed by the Village Panchayat to seek permission from NGPDA, that permission was filed under inward no. 1862. NGPDA had informed that if the NOC was for repairs then

permission is not required. The Petitioners clarified what they were entitled to do in terms of the order passed by the High Court on 28.09.2022 and therefore sought permission for repairs. The compilation also contains copy of the application seeking permission for repair to which Mr. Bhobe has invited my attention. It is a standard form application in which the applicant has filled in hand, particulars of the repairs which is described in clauses 14, 15 and 16. The need to undertake repairs being the fact mud came out from plinth area on northern side wall and southern side wall collapsed. The compilation encloses a copy of the Judgment dated 28.09.2020 passed by the District Court, Mapusa, in Rent Revision No. 3 of 2020, by which the revision was allowed and the application at Exhibit 17-D was allowed and the Petitioners/Applicants were permitted to repair/reconstruct the southern wall and the northern side of House no. 220 subject to obtaining the necessary permission at the cost of the applicants. From this one thing is clear, that the Court had permitted repairs including re-construction of the wall. The Petitioners thus were *prima facie* entitled to do so without any hindrance from the landlord except that they were required to obtain the necessary permission. It was pursuant to this that the applications are seemed to be made.

23. Mr. Bhobe had in opposition relied upon the fact that even according to the Architect's report, it is the case of re-construction. He

states that the proposed repairs and renovation plan shows elevation of the building and the fact that re-construction of the wall is contemplated and if re-construction is contemplated, then the NGPDA is required to consider the application under Section 44 of the Goa TCP Act.

24. Ms. Agni meanwhile relied upon a circular dated 28.09.1998 in the form of a standing order by which the Directorate of Panchayats informed all Block Development Officers that it has been held by the Director in Appeal that there was no provision to issue NOC to repair for building under the Panchayat Raj Act and the Panchayat is directed not to grant NOC certificate for repair but only under Section 66 of the Panchayat Raj Act.

25. I have perused the copy of this letter and it is evident that no NOC was required to be issued by the Panchayat. It is seen that the aforesaid circular came to be issued pursuant to order passed by Director of Panchayats in Panchayat Appeal No. 76 of 1997. Copy of that appeal memorandum is available for perusal and that reveals that no permission/approval is required from the Town and Country Planning Department (TCP Department), for granting permission for repair of building if construction is restricted to existing plinth area only. However, the approval for TCP Department is required for reconstruction. It was clarified that the Panchayat Body may grant permission for repairing of house without approval of TCP Department within the existing plinth area

however the Panchayat shall satisfy itself that the applicant is owner and submit such documents before grant of such permissions that in order to prevent abuse or misuse of permission, Panchayat should obtain site plan from the licensee so that the plinth area is not extended. This Memorandum thus clarifies the extent of the work that can be carried out and in my view, it is material to arrive at a decision in the present case.

26. Having considered that all factual aspects, it becomes evident that the Petitioners were entitled to be heard and to present their case to the BDO prior to the revocation of permission especially since the revocation had occasioned at the instance of the landlord and as on the basis of a written complaint dated 22.09.2021, copy of the complaint is not addressed to the Petitioners, thus evidently unknown to the Petitioners. The compliant was delivered to the BDO Officer on 22.09.2021 under inward no. 10134. The very next day, the BDO issues the memorandum dated 23.09.2021 subject being "*Application for cancellation of above referred*" but what is referred is below the subject is relevant and that refers to the approval granted to re-construction/repairs. Thus, even the BDO was clear that what he had allowed was for reconstruction/repairs to the house. It directs the Village Panchayat to carry out a joint inspection and submit report whether "*building requires repairs or reconstruction*". Thereafter, on the next date i.e. 24.09.2021, the office of the BDO addresses a letter to the Sarpanch Village Panchayat revoking the permission on the basis of the

site visit on the previous day and BDO Officers “considered opinion” that the approval stands revoked subject to satisfaction that he records is that *“the walls of the said building are required to be re-built”*. It is not that the structure has to be reconstructed.

27. In this behalf, when we examine various statutes and other relevant provisions, it is appropriate to reproduce Section 2(13), alterations, 2(112) of Goa Act of 2008 :

“Section 2(13) - “Alteration” means a change from one use to another or a structural change, such as, a change to the area or height, or the removal of part of a building, or a change to the structure, such as, construction of, cutting into or removal of any wall, partition, column, beam, joint, floor or other support, or a change to or closing of means of ingress or egress;

2(112) : “Repairs/Renovations” means any alteration/improvement and maintenance care of any building, which affects only its interior but does not affect materially, the exterior provided that it does not violate the provisions of coverage, right of way,

set backs, floor area ratio and height of building as prescribed under these regulations;

Note: The repairs/renovation should not affect the structural stability of the structure."

28. 'Alterations' means structural change such as removal of part of a building or change to the structure of a building, or a change to the structure, such as construction of roof/RCC material. The definition of 'alteration' in the Panchayat Raj Act does not in any way materially affect the definition of alteration under Section 2(13) of the Goa Act 6 of 2008, which clearly indicates that alteration means construction of (cutting into or removal of) any wall, that is, in my view, the material definition of 'alteration', to be read with Section 2(112) which read together would mean that the construction of a wall would be included in the definition of repairs under Section 2(112) provided it does not affect the exterior materially and does not violate provisions of right of way, set back, floor area ratio and height of the building prescribed under the said Regulations.

29. In my view, the authorities themselves appear to have failed to apply their minds in concluding that the repair to the wall including rebuilding of the walls in *situ* without there being any material change to the external area and without effecting right of way, set backs, floor area ratio and height of the building, would involve '*development*' or change of use of any land as contemplated under Section 44 of the TCP Act. The principal

ground of opposition in the present case from the landlord is that the proposed rebuilding of the wall/reconstruction of the wall would amount to Development as contemplated in Section 44 and unless such permission is granted by the NGPDA, the work cannot be carried out. This is clearly a flawed interpretation. Taking into account the various communications *inter se* the parties, the reports that we have referred to including the technical reports that have been placed before the Courts, it is clear that even assuming the BDO Officer was entitled to revoke his earlier permission, that permission could have been revoked only after hearing the Petitioners. Not having done so, the revocation vide order dated 24.09.2021, cannot stand. All of these should be viewed in the light of fact that the Court of the District Judge at Mapusa had allowed the Rent Revision Application, Order of the Rent Tribunal Mapusa dated 27.05.2020 was quashed. Repairs were allowed to proceed subject to permissions. Having crossed that hurdle, further hurdles are being set up seemingly by the machinations of the landlord. The BDO's approach is far from an independent assessment.

30. Mr. Bhobe had contended that even according to Architect Dhuri, the work involved costs of about 1.50 lakhs, the work of rebuilding the walls would be substantially higher than the Rs. 50,000/- projected by the Panchayat but that as we have seen, has no basis. The limit of Rs.50,000/-

has no basis in law atleast none has been shown to me during the course of this hearing.

31. In the conclusion, therefore, I am of the view that the Petition must succeed to the extent that the order of BDO Officer impugned in this Petition dated 24.09.2021 and the Resolution passed on 25.09.2021 by the Panchayat on the basis of the order of the BDO whereby the Panchayat declined to issue licence as demanded by the Applicant must also be struck down. In the facts of the case, even the BDO Officer in his order dated 24.09.2021 has observed that the walls in question had to be rebuilt. The rebuilding in the facts of the present case does not amount to development as contemplated under the TCP Act, which defines '*development*' as under :

Section 2(10) – "*development*" with its grammatical variations and cognate expressions, means the carrying out of building, engineering, mining, quarrying or other operations in, on, over or under, land, or the making of any material change in any building or land, or in the use of any building or land, and includes sub-division of any land;

32. It is pertinent to note that the TCP Act does not define the expression “*repair*” or “*reconstruction*” or “*re-build*”. The TCP Act was thus concerned with the larger issues and not rebuilding two walls of a tenanted structure. That having been said, it is necessary to ensure that there is absolutely no change that the Petitioners shall be permitted to make which will affect only its interior and did not affect the exterior materially and cannot increase the coverage right of way, set backs, floor area ratio and height of the structure including that repair and rebuilding the walls should not affect the structural stability of the structure. If the building is seemingly unsafe, the definition in Retrofitting in 2(115) is also relevant which would mean upgrading the strength of unsafe building by using suitable engineering techniques. Other expressions such as coverage area is captured by the definition Section 2(43) of Covered area. Right of way is covered by Section 2(113), Set backs is covered by 2(122), Floor area ratio is covered by 2(63) A to Q, Height of the building is covered by 2(76) read with Section 2(23). Thus, all these expressions contemplated in the definition of the repair renovations under Section 2(112) will on a reasonable construction clearly establish the work that the authorities contemplated in the various orders that have been passed in the instant case, all allude to rebuilding of a wall simpliciter which is really restoring the wall to its original condition and as long as the permissions are granted for that purpose, the Petitioners must be permitted to do so. Accordingly, I pass the following order :

ORDER

(i) The impugned Order dated 24.09.2021 passed by the Block Development Officer-Respondent no.2, Mapusa, Bardez, and the Resolution dated 25.09.2021 passed by the Village Panchayat-Respondent no.3, of Arpora, Nagoa, are quashed and set aside.

(i) The NGDPA, the Panchayats and the BDO shall ensure that the work of rebuilding the damaged/collapsed walls shall be permitted, subject to compliance with all formalities being completed within one week from date of uploading this order. The said authorities shall ensure that no interference will be permitted by the Respondent No. 1. Any attempt by Respondent No. 1 to raise objections before the authority to the extent of work as contemplated, will be viewed seriously.

(ii) All authorities are directed to act accordingly. It is clarified that these directions are issued in the peculiar facts of the present case and shall not be treated as a precedent.

(iii) Rule is made absolute in above terms.