

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.265 OF 2015

1. Mr Antonio Joao Bosco Lobo,
Son of Jose Leles Lobo,
Major, Advocate, r/o. Feira Alta, Mapusa,
Bardez, Goa,

2. Mr Cynus Sanches,
Son of Mr Francisco Jose Sanches,
Major, H no 9841, Aldona, Bardez, Goa

3. Mr Eurico Judas Mascarenhas,
Son of Mr. Celestino Mascarenhas ,
Major, r/o Behind Holy Family Church
Alto Porvorim, Bardez, Goa,

4, Mr. Jose Carlos Ury Lobo,
Son of Antonio Joao Bosco Lobo, major, r/o
Feira Alta, Mapusa, Bardez, Goa

5. Mr Melchier J Pinto do Rosario,
Major, son of late Mr Caraciolo Pinto do
Rosario r/o Carrem, Socorro, Bardez, Goa,

6. Mr Edgar Frias Pinto,
Son of late Francisco Frias Pinto,
Major, r/o H No 109 Opp GPO,
Panaji, Goa,

7, Mr Norman Albuquerque,
Major, son of Mr Baldwin Alburquerque,
r/o H. no. 215 A, Church Street,
Alto Porvorim Bardez, Goa.

... Petitioners.

Versus.

1. The State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa.

2. The Administration of Comunidades of
North Zone, Office of Administrator of
Comunidades of North Zone Mapusa,
Bardez, Goa.

3. The Comunidade of Serula,
Through its Attorney, Porvorim, Socorro,
Serula, Bardez, Goa.

..... Respondents.

Mr. Nigel Da Costa Frias, Advocate *for the Petitioner.*

**Mr. D. J. Pangam, Advocate General with Mr. Deep
Shirodkar, Addl. Govt. Advocate *for Respondents No.1 & 2***

Mr. Y.V. Nadkarni, Advocate *for Respondent No. 3.*

CORAM:

**M. S. SONAK AND
R.N. LADDHA, JJ.**

DATE :

1st February 2022

ORAL JUDGMENT:- (Per M.S. Sonak, J.)

1. Heard Mr. Nigel Da Costa Frias for the Petitioners, Mr. D. Pangam learned Advocate General who appears along with Mr. Deep Shirodkar, Addl. Govt. Advocate for Respondents No.1 and 2 and Mr. Y.V. Nadkarni for Respondent No. 3.

2. The Petitioners, who claim to be the Gaunkars/ Jonoeiros/Jonkars and legitimate Components of the Comunidade of Serula, have instituted this Petition, seeking the following reliefs :

“a) That this Hon'ble Court may be pleased to call upon the Respondent No. 1 to produce before it the records pertaining to the various amendments moved before the Code of Comunidades including the statements of objects and reasons, a record of deliberations, etc and on perusing the same be pleased to issue an appropriate writ order or direction thereby quashing and striking down all the amendments effected to the Code of Comunidades listed at Annexure D colly.

b) For a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order thereby directing the Respondents no.1 to

forthwith comply with and implement the provisions of article 652 of the Code of Comunidades,

c) For such other and further reliefs as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.

d) For an appropriate writ, order or direction thereby quashing and striking down the Goa Legislative Diploma No. 2070 dated 15/04/1961 (Amendment) Ordinance 2015 (Ordinance no. 9/15)."

3. The perusal of Annexure "D" collectively referred to in the index as appearing on pages 204-213, indicates that there is no list as such of the amendments to the Code of Comunidades which are sought to be struck down. However, on pages 181-A, we find the following list :

- 1. The Goa Daman and Diu Legislative Diploma No. 2070 dated 15/4/1961 (Amendment) Act, 1984.*
- 2. The Goa Daman and Diu Legislative Diploma No. 2070 dated 15/4/1961 (Amendment) Act, 1985.*
- 3. The Goa Daman and Diu Legislative Diploma No. 2070 dated 15/4/1961 (Amendment) Act, 1986.*
- 4. The Goa Legislative Diploma No. 2070 dated 15/4/1961 (Amendment) Act, 1988.*

5. *The Goa Legislative Diploma No. 2070 dated 15/4/1961 (Amendment) Act, 1993.*
6. *The Goa Legislative Diploma No. 2070 dated 15/4/1961 (Amendment) Act, 1995.*
7. *The Goa Legislative Diploma No. 2070 dated 15/4/1961 (Amendment) Act, 1996.*
8. *The Goa Legislative Diploma No. 2070 dated 15/4/1961 (Amendment) Act, 1997.*
9. *The Goa Legislative Diploma No. 2070 dated 15/4/1961 (Amendment) Act, 2001.*
10. *The Goa Legislative Diploma No. 2070 dated 15/4/1961 (Second Amendment) Act, 2001.”*

4. Similarly, prayer clause (d), seeks a writ to strike down Ordinance no. 9/2015. This ordinance no longer survives since the Legislative Assembly enacted a law in terms of what was provided by the ordinance. There is no challenge to such law in the Petition.

5. The pleadings in this writ petition in the context of a challenge to the validity of the various legislative amendments to the Code of Comunidades are also quite sketchy. The Petitioners have not pleaded in precise terms how according to them, the

several amendments which they have challenged, contravene Part III of the Constitution or are beyond the legislative competence of the State. In the absence of proper pleadings, we do not think that it would be appropriate for us to entertain the challenges to the constitutional validity of the several amendments to the Code of Comunidades.

6. Mr. Costa Frias, however, referred to the provisions of Article 652 of the Code of Comunidades, which read as follows :

“Art. 652 - Every five years, in city of Panjim, on 2nd Sunday of January, a meeting shall be held of the delegates of all the Comunidades to deal with matters of general interest to them to foster its progress and propose to the Governor-General, some measures in this connection.

§ 1. In the first fortnight of November, the Governor-General shall appoint a commission comprising of five members chosen from among the members of the managing committee of the comunidades, in order to make arrangements for the meeting referred to in this article.

§ 2. In the first fortnight of December, the comunidades, or in their absent, the respective managing committee, shall chose the delegates to represent them at that meeting and shall approved the

necessary expenses for such representation within the funds available in the respective budgets.

§ 3. The first meeting shall be held in 1962.”

7. Mr. Costa Frias submits that for the last several years, there has been no compliance with the provisions of Article 652 of the Code of Comunidades since the meeting of the delegates of the Comunidades to deal with the matters of general interest to them to foster its progress and propose to the Governor-General some measures in this connection, has not at all been held. He submits that the various amendments to the Code of Comunidades should have been made only after such a meeting was convened and held so that the delegates of all the Comunidades could have offered their viewpoints and inputs on these vital matters affecting the governance of Comunidades. Mr. Cost Frias submitted that since this was not done, the amendments to the Code of Comunidades, are required to be struck down.

8. Mr. Costa Frias also referred to the prayer clause (b) of the Petition and submitted that the Petitioners have applied for a writ of mandamus seeking implementation of the provisions of Article 652 of the Code of Comunidades.

9. Although we agree with Mr. Costa Frias that the provisions of Article 652 of the Code of Comunidades are required to be implemented, we are not prepared to strike down the various legislative amendments to the Code of Comunidades simply because such amendments or the proposed amendments were not considered by the delegates in the meeting that was required to be held in terms of Article 652 of the Code of Comunidades. According to us, that by itself, would not be a ground to strike down the legislative measures in the absence of any proper pleadings on how these legislative measures contravene Part III of the Constitution or are otherwise beyond the legislative competence of the State. On such a ground, therefore, we cannot strike down the legislative measures.

10. Mr. Costa Frias, on instructions, then submitted that the Petitioners be permitted to restrict their challenges to the amended Article 41 of the Code of Comunidades. He referred to the unamended provisions of Article 41 of the Code of Communicates, transcribed in paragraph 16 of the Petition, and then referred to the amended provisions of Article 41 of the Code of Comunidades, transcribed in paragraph 17 of the Petition. He pointed out that there is a significant change between the unamended and the amended provisions. He pointed out that the shareholders are now made electors together with able Components of the Comunidades in the matters of election to the Board of Comunidades. He submits that the amended provisions run counter to or, in any case, ignore the provisions of Article 29 of the Code of Comunidades and on this ground, the amended provisions of Article 41 of the Code of Comunidades are required to be struck down.

11. Again, we find that there are no proper pleadings to raise the constitutional challenges to the provisions of amended Article 41 of the Code of Comunidades. Simply because there is a

change or even significant change between the unamended provisions and the amended provisions, that by itself, is normally not a ground to strike down the legislative measures. Similarly, the issue of any alleged conflict between the provisions of the Code of Comunidades, cannot normally be gone into in the absence of a live *lis* before the Court. The issues of constitutional validity are normally never to be decided in a vacuum or as an academic exercise. The issues of constitutional validity are normally to be decided when there is a live *lis* between the parties and such a *lis* warrants a pronouncement on the constitutional validity of the provisions. This is the reason why normally the issues of constitutional validity are not gone into in public interest litigation unless it is demonstrated that there is a live *lis* involved.

12. In the present case as well, considering the state of pleadings and the fact that there is no live *lis*, we do not think that it would be appropriate for us to go into the question of the constitutional validity of any of the provisions of the Code of Comunidades as have been challenged in the present Petition, including Article 41 of the Code of Comunidades. This does not

mean that we have rejected the Petitioners' challenges. But, it only means that such challenges can be effectively gone into in an appropriate case where there is a live *lis* between the parties and where there are proper pleadings in support of such a challenge.

13. Accordingly, we decline to go into the issue of challenge to the various amendments to the Code of Comunidades in this Petition, primarily for two reasons. Firstly, in this case, the Petitioners have not demonstrated the existence of a live *lis* which necessitated any decision on the constitutional validity of the amendment, and secondly because there are no proper pleadings in support of the challenges raised. In an appropriate case, with proper pleadings, the issue of constitutional validity can be gone into. This is clarified because we have not, in this Petition, rejected the challenges to the constitutional validity of the various amendments to the Code of Comunidades, but, we have simply refused to entertain this Petition, having regard to the absence of any live *lis* and the state of pleadings.

14. In so far as implementation of the provisions of Article 652 of the Code of Comunidades is concerned, even the learned Advocate General agreed that such provisions are required to be implemented. He submitted that on 13/1/2019, the meeting as contemplated by Article 652 of the Code of Comunidades, was in fact held. The learned Advocate General submitted that the provisions of Article 652 of the Code of Comunidades will be complied with and the meeting, as contemplated by the said Article will be held as and when the same is due.

15. Accordingly, we accept this statement of the learned Advocate General and direct the concerned authorities of the State Government to ensure that the provisions of Article 652 of the Code of Comunidades are duly implemented and the meeting as contemplated by Article 652 of the Code of Comunidades is duly held on the 2nd Sunday of January, once in every 5 years, or if for any unavoidable reason it can not be held on the prescribed Sunday, then, on some Sunday in the immediate near future. The Collectors of the two Districts and the Administrators of the

Comunidades will be responsible for ensuring compliance with the provisions of Article 652 of the Code of Comunidades.

16. Therefore, we partly allow this Petition by directing the concerned Authorities to implement the provisions of Article 652 of the Code of Comunidades, but we decline to go into the issues of the constitutional validity of the various amendments to the Code of Comunidades, at this stage and in this Petition.

17. The rule is made absolute in the aforesaid terms.

18. There shall be no order for costs.

R.N. LADDHA, J.

M. S. SONAK, J.