

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.79/2023

DEEPAK LAXMAN USGAONKAR,
son of Mr Laxman Usgaonkar, aged 55
years, Indian National, residing at
H.No.416, Metawada, Collem,
Dharbandora, Goa.

... Petitioner

Versus

1. THE SECRETARY, Village
Panchayat of Collem-Sigao, Collem,
Tal. Dharbandora, South-Goa, Goa.

2. THE BLOCK DEVELOPMENT
OFFICER, 2nd floor, Government
Office Building Complex, Tamsodo
Dharbandora-Goa.

3. THE DEPUTY DIRECTORATE
OF PANCHAYAT, South Goa
District, Matanhy Saldanha
Administrative Complex, 2nd floor,
Room No.228, Margao-Goa.

4. MR MANOHAR HARISHCHANDRA
NAIK, major of age, Indian National,
R/o. Metawada-Collem, Ward No.7,
Dharbandora-Goa.

... Respondents

Mr Jitendra Supekar, Advocate *for the Petitioner.*

Mr Tarun Patel, Advocate *for Respondent No.1.*

Mr Deep Shirodkar, Additional Government Advocate *for Respondents No.2 and 3.*

Mr Balkrishna Sardessai with Mr Vikram Prabhu, Advocates *for Respondent No.4.*

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

DATED: 13th FEBRUARY 2023

ORAL ORDER: (Per M. S. Sonak, J.)

1. Heard Mr Supekar for the petitioner, Mr Patel for respondent no.1, Mr Deep Shirodkar, learned Additional Government Advocate for respondents no.2 and 3 and Mr Balkrishna Sardessai with Mr Vikram Prabhu for respondent no.4.

2. The petitioner complained about inaction against an illegal and unauthorized construction that was being put up by respondent no.4 without obtaining any permissions from any authorities.

3. Based on the petitioner's complaints, the Block Development Officer and the Deputy Director of Panchayats directed the Panchayat to inquire and take action. These directions were issued because the Panchayat, despite receipt of the complaints, failed to initiate any action. The petitioner, by filing repeated complaints, pointed out that on account of the

failure on the part of the Panchayat to take action, the respondent no.4, without any permission from any authority was proceeding with the unlawful construction at the site. Finally, since there was no effective action on the part of the Panchayat, the petitioner was forced to institute the present petition.

4. On 06.02.2023 we made the following order:

“P.C.:

1. Prima facie, we think that this is a case of serious dereliction of duties by the Village Panchayat of Collem Sigao. Despite several complaints by the petitioner and even directions from the B.D.O and the Deputy Director of Panchayats, this Panchayat did not bother to take any action against the construction being put up by respondent no.4.

2. Mr Sardesai, learned counsel for respondent no.4, today, admits that no permission has been obtained by respondent no.4 for putting up this construction. Thus, prima facie, it appears that because of the inaction on the part of the Panchayat despite directions from the B.D.O and Deputy Director, the construction could proceed.

3. Therefore, the Sarpanch and the Secretary of the Village Panchayat Collem Sigao are directed to remain present in this Court tomorrow, i.e. on 07.02.2023. This direction is issued because the learned counsel for the Panchayat reports no instructions and even went to the extent of seeking 5 weeks time in a matter which indicates that, at least, prima facie, the Panchayat was derelict in discharge of its duties. Mr Patel, learned counsel for the Panchayat

agrees to communicate this order to the Sarpanch and the Secretary.

4. Mr Sardesai, on instruction states that respondent no.4 has already stopped the construction and will not occupy the same. Photographs placed on record along with the additional affidavit show that the structure is not yet ready for occupation. This statement of Mr Sardesai on behalf of respondent no.4 is accepted and the interim order granted earlier is continued.

5. Stand over to 07.02.2023.”

5. After the matter was heard on two or three occasions and the respondent no.4, faced with the predicament that the construction put up by him was wholly illegal and unauthorized, filed a declaration cum undertaking before us stating that he will remove the incomplete construction within a month from today. Mr Manohar Harishchandra Naik, the respondent no.4 was present in the Court and together with his advocate Mr Balkrishna Sardesai, stated before the Court that the construction would be removed and the area would be restored to its original position.

6. The declaration cum undertaking filed by respondent no.4 on 13.02.2023 reads as follows:

“I, Shri Manohar Harishchandra Naik, s/o Late Harishchandra Naik, 61 years of age, r/o H.No.413, metta

wada, collem within jurisdiction of Village Panchayat collem sigao, Respondent no.4 herein above on solemn oath state as below:-

1. I say that I am arrayed as respondent no.4 in above writ petition.

2. I say that the above writ petition came to be filed in view of the fact that the panchayat failed to take action against the undersigned on the complaint filed by the petitioner in connection with illegal construction.

3. I say that the undersigned begs unconditional apology for the circumstances that have resulted in an inconvenient situation and undertakes to abide by every order/direction this honourable court deems fit in the interest of justice.

4. I crave leave of this Hon'ble court to provide a months time to enable the undersigned to remove the construction which is subject matter of this petition.

5. I say that the contents of para 1 to 4 of the above undertaking is true to the best of my knowledge and nothing pleaded is false.

Solemnly affirmed on 13.02.2023 at Porvorim Goa.”

7. The undertaking tendered by respondent no.4 in writing as well as orally is accepted as an undertaking given to this Court. Consistent with this undertaking, the respondent no.4, should remove the incomplete construction and restore the site to its original position.

8. If after restoring the site, the respondent no.4 applies to the Panchayat and other authorities for permission to construct, then, such authorities, can consider such application in accord with law and on its own merits.

9. Insofar as the Panchayat is concerned, we are sorry to say that there was *prima facie* dereliction of duty on its part. Mr Patel, the learned counsel for the Panchayat based on instructions from Mr Govind Shigaonkar, the incumbent Sarpanch and Ms Sushma Kuvelkar, the incumbent Secretary has tendered an unconditional apology backed with the assurance that the henceforth complaints about illegal constructions would be expeditiously attended to. They have stated that if any constructions come up within the jurisdiction of the Village Panchayat of Collem Sigao, without obtaining any permissions then, immediate action would be taken to stop such constructions and this would be followed by a show cause notice. In short, Mr Patel has stated that illegal constructions would not be encouraged on account of inaction or dereliction on the part of the Panchayat officials and members of the Panchayat.

10. Mr Patel pointed out that Mr Govind Shigaonkar was elected as Sarpanch for the first time and henceforth, will be

Careful when it comes to attending complaints concerning illegal constructions.

11. Mr Shigaonkar and Ms Kuvelkar are present in the Court and they state that henceforth they will attend to complaints about illegal constructions with utmost dispatch and take all necessary steps to see that the Panchayat areas under their jurisdiction are not destroyed by illegal constructions.

12. The statements made by Mr Patel, Mr Shigaonkar and Ms Kuvelkar are accepted. In the fond hope that the Panchayat and its elected members/officials will not henceforth derelict in discharge of their duties, we refrain from directing the Director of Panchayats to initiate action in the matter. The apologies tendered are also accepted.

13. With the undertaking filed by respondent no.4 who is present in the Court, the reliefs applied for by the petitioner in this petition stand substantially redressed.

14. The Panchayat should ensure that the respondent no.4 complies with the undertaking and the necessary compliance report is filed with the Director of Panchayats within six weeks from today. A copy of such compliance report should be

furnished to the petitioner before the same is filed before the Director of Panchayats. Further, the Panchayat should also monitor the demolition works so that there is full compliance with the undertaking now tendered by respondent no.4.

15. This petition is disposed of in the aforesaid terms without any order for costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

SUCHITRA Digitally signed by
NANDAN SINGBAL
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