

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 175 OF 2023

RASIKLAL GANGANI

... Petitioner.

Versus

THE STATE OF GOA THR.

CHIEF SECRETARY AND 6 ORS

... Respondents

Mr Rohit Bras de Sa, with Mr Pushkar Narayan Navti,
Advocates *for the Petitioner.*

Mr D.J. Pangam, Advocate General with Ms Akhata N.
Bhat, Addl. Govt. Advocate *for Respondents No.1, 3 & 5.*

Mr Sahish Mahambrey, Advocate *for Respondent No.2.*

Mr P.A. Kamat, Advocate *for Respondent No.6.*

Mr Raunak Rao, Advocate *for Respondent No.7.*

CORAM: DHIRAJ SINGH THAKUR &
M. S. SONAK, JJ.

DATED: 20th MARCH 2023.

P.C. :-

1. The present petition has been filed challenging the order dated 9th January 2023, passed by the Town and Country Planning Board in an appeal preferred by the private Respondent No.7. It appears that Respondent No.7 had undertaken a construction activity which was found to be not in consonance with the site plans approved by the Respondent No.2 i.e. the North Goa Planning and Development Authority (NGPDA).

The inspection reports prepared by the Corporation of the City of Panaji, NGPDA and the Town and Country Planning Board highlight the fact that while undertaking the construction, Respondent No.7 had in fact not maintained the required distance from the centre of main road i.e. Dr. Atmaram Borkar Road.

2. It is submitted by the learned Counsel for the Petitioner that as per the Outline Development Plan (ODP) the minimum distance that was required to be maintained from the centre of the main road should have been 13.5 metres; whereas as per the inspection report submitted by the Corporation of the City of Panaji, the distance was only 8.5 metres. Not only this, the report submitted by the Town and Country Planning Board, the distance was stated to be only 9.7 metres. Therefore, apparently there was violation of the ODP in regard to the distance that was required to be maintain from the centre of the road.

3. Based upon the above inputs and the inspection reports, a demolition order came to be passed by the NGPDA dated 19/8/2022, which came to be challenged by Respondent No.7 before the appellate authority i.e. the Town and Country Planning Board. The Town and Planning Board-Respondent No.3, by virtue of the impugned order dated 9th January 2023 remanded

the matter to the NGPDA as during the pendency of the proceedings, revised plans had been submitted before the NGPDA, which had to be considered in terms of the provisions of Rule 3.8 of the Goa Building Rules and Regulations, 2010.

4. Learned Counsel for the Petitioner Mr Rohit Bras de Sa, however, submitted that the NGPDA could not have been ordered to decide the application for revision in the absence of the revised plans showing correctly the extent of deviation made as per the original approved plans, as also in the absence of revised plans clearly reflecting the major, as well a minor deviations. It was also urged that the major deviations like distance from the public road cannot at all be relaxed in terms of the Judgment of the Supreme Court in the case of *Friends Colony Development Committee vs. State of Orissa and ors.* (2004) 8 SCC 733 and that some minor violations only could be considered for compounding strictly in accordance with the Building Regulations. It was vehemently argued by Mr De Sa that no encroachment could be allowed on a road and that too a main arterial road, which was being used by citizens on a daily basis and, therefore, sending the matter back to the NGPDA for consideration of the revised plans, was essentially meaningless. It was also stated that private respondent No.7 had also not

maintained the requisite set backs, as also failed to provide the requisite parking spaces.

5. Learned Counsel for Respondent No.7, on the other hand, vehemently urged that there was no encroachment at all on the public road, as was asserted by the learned Counsel for the Petitioner and that the construction was being raised strictly in accordance with the approved plans.

6. At the moment, we do not wish to comment on the merits of the case, yet cannot ignore the fact that there are three inspection reports on record, which do reveal that the minimum distance from the centre of the road has not been maintained by the private Respondent No.7. We also notice that there is an obligation on the part of the Authority i.e. NGPDA to consider the revised plans, in accordance with the Regulation 3.8 of the Building Rules and Regulations 2010 and that the Authority, in the light of the afore mentioned regulations, in our opinion, has not committed any illegality in remanding the matter. We, however, wish to state that the matter would be considered by the NGPDA strictly in accordance with the Rules and Regulations on this subject. No part of the deviation, which is otherwise a major deviation, including the encroachment on the public road, be condoned by the NGPDA considering the various judgments on

the point, including the one rendered by the Apex Court in *Friends Colony Development Committee vs. State of Orissa and ors.* (supra). The Authorities would also consider whether the revised plans comply with the requirement of setbacks and parking spaces.

7. During the course of consideration of the revised plans by the NGPDA, the Petitioner or his authorised representative may also be given an opportunity of being heard. In the event, any cause of action still survives for the Petitioner, based upon the decision which ultimately is taken by the said Authority, it would be open to the Petitioner to take recourse to such remedies as may be available to the Petitioner, in accordance with law. The NGPDA to take an appropriate decision in the matter within one month.

8. It is made clear that Respondent No.7 shall not raise any further construction. The Authorities shall ensure that no further construction is raised on the plot in question pending the final decision by the appropriate authority.

9. The Petition is disposed of.

M. S. SONAK, J.

DHIRAJ SINGH THAKUR, J.