

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 264/2023

JANICE HYCINTH DE SOUZA

... Petitioner.

Versus

GUNAJI BICHOLKAR AND 7 ORS

... Respondents.

Mr J.A. Lobo, Advocate *for the Petitioner.*

Ms L. Budke, Advocate *for Respondent No.1*

Mr D.J. Pangam, Advocate General with Mr Shubham Priolkar,
Addl. Govt. Advocate *for Respondents No.2, 3,5,6 and 7.*

Mr H.D. Naik, with Mr A.D. Naik, Advocates *for Respondent No.4.*

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

DATE : 4th July 2023

ORAL ORDER :

1. Heard Mr Lobo for the Petitioner. Ms L. Budke appears for Respondent No.1. Learned Advocate General appears along with Mr Shubham Priolkar, Addl. Govt. Advocate for Respondents No.2, 3, 5, 6 and 7. Mr Naik appears for Respondent No.4.
2. Mr Lobo states that the Panchayat has been duly served. But there is no appearance on behalf of the Panchayat.
3. The Petitioner has made complaints about Respondent No.1 carrying out alleged illegal construction in the paddy field bearing Survey No.161/6 of village Bastora, Goa. He pointed out that the Panchayat issued a notice under Section 64(J), read with Section 82 of the Goa Panchayat Raj Act, 1994. But, no follow up action was

taken. As a consequence, Respondent No.1 continued with the construction, which the Petitioner alleges is illegal and unauthorised. Mr Lobo pointed out that on 26/2/2022, even stop-work order was issued and even inspection was carried out on 2/3/2022. Despite all this, Mr Lobo complains that the construction continued.

4. Accordingly, on 19/6/2023, this Court made the following order :

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CORAM : M.S. SONAK &
BHARAT P. DESHPANDE, JJ.
DATED : 19th JUNE 2023

1. Heard Mr Lobo appearing for the Petitioner. It is the contention of the Petitioner that Respondent No.1 is carrying out illegal construction in an agricultural tenanted property bearing Survey No.161/6 of Bastora village. In spite of filing complaints to the various Authorities and the inspection carried out by the Village Panchayat of Bastora, no action has been taken till date.

2. The documents placed on record, prima facie, show that the construction is coming up in the tenanted agricultural property and even the inspection of the Village Panchayat shows that such structure appears to be illegal and without any permissions.

3. Issue notice to the Respondents, returnable on 4th July 2023. Ms Maria Correia, learned Addl. Govt. Advocate appears and waives notice on behalf of Respondents No.2, 3 and 5 to 7. Apart from regular service, service by Registered Post A/D, and humdast is also permitted.

4. Respondent No.7, the Block Development Officer (BDO) is, hereby, directed to visit the site and carry out the inspection, along with the Sarpanch and the Secretary of the Village Panchayat. In the meantime, Respondent No.1 is directed to stop the illegal construction and maintain status quo. The BDO shall file a report on the next date.

5. Stand over to 4th July 2023.”

5. The learned Advocate General has today tendered before us a site inspection report dated 3/7/2023 prepared by the BDO. The learned Advocate General submits that the report shows *prima facie* merit in the Petitioner's allegations.

6. Ms Budke, learned Counsel for Respondent No.1, however, submits that there is no illegality in the construction undertaken by Respondent No.1. She, however, adds that the construction is now stopped and status quo is maintained given the orders of this Court and other authorities. She seeks leave to file reply to the allegations in this Petition.

7. The Petitioner has complained to various authorities, including the Panchayat and the Deputy Collector. The complaint to the Panchayat alleges breach of the provisions of the Panchayat Raj Act and the complaint to the Deputy Collector alleges that the tenanted paddy field is being converted in defiance of the provisions of The Goa Land Use (Regulation) Act, 1991. Such complaints are annexed to the Petition.

8. Accordingly, the interests of justice would be met if the Panchayat and the Deputy Collector concerned are directed to

dispose of the Petitioner's complaints on their own merits, in accordance with law, as expeditiously as possible and, in any case, within 3 (three) months from today. The Authorities must comply with the principles of natural justice and afford an opportunity of hearing to the Petitioner and Respondent No.1, so that Respondent No.1 can raise all permissible defences.

9. However, in the meanwhile, construction will have to stop and a status quo will have to be maintained by Respondent No.1. Further, the Panchayat is restrained from issuing any occupancy certificate until the Petitioner's complaints are decided. Issue of occupancy certificate or further construction will abide by the final orders that the Panchayat and the Deputy Collector shall make on the Petitioner's complaints. If, any parties are aggrieved by the decisions of the Panchayat and the Deputy Collector, they would be at liberty to pursue appropriate remedies provided to them.

10. We clarify that we have not examined the merits or demerits of the Petitioner's complaints because, these are matters which should be first looked into and decided by the Panchayat and the Deputy Collector. Accordingly, all contentions of all parties, on merits, are left open.

11. The Petition is disposed of in the above terms, without any order for costs.

12. All concerned to act on an authenticated copy of this order.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.