

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO. 11 OF 2023

SHADOW COUNCIL FOR
MARGAO, REP. BY JOSEPH
PAUL.

... Petitioner.

Versus

THE STATE OF GOA, THR. ITS
CHIEF SECRETARY AND 3
OTHERS.

... Respondents

Mr Shivraj Gaonkar, Advocate *for the Petitioner.*

Ms Sapna Mordekar, Addl. Govt. Advocate *for*
Respondents No.1 and 2.

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

DATED: 20th MARCH 2023.

P.C. :-

1. The present petition has been purportedly filed in public interest, questioning the decision of the official Respondents to construct a storm water drain leading to issuance of a tender notice dated 15/02/2021. It was urged that the storm water drain, for which an amount of ₹81,30,500/- was to be spent, was nothing but a fraud on the exchequer. It was urged that the existing storm water drain along the property bearing P.T. Sheet No.272, Chalta No.1(part) of the City of Margao is originating

from the Margao Old Railway Station and ending this near the Sewerage Treatment Plant at Sirvodem, Margao, Goa.

2. The learned Counsel for the Petitioner urged that as per the official communication exchanged by the Petitioner, the storm water drain was being constructed inasmuch as the existing one was not sufficient to meet the requirement. The learned Counsel for the Petitioner has urged that as per the communication received from the official Respondents, the work was necessitated on account of insufficient discharge capacity of the existing drain.

3. The apprehension of the Petitioner appears to be that even when there was existing storm water drain, the new drain was being constructed so that there could be an accretion to the estate of the private Respondent No.4 who was more keen to fell the trees on her land, making way for construction of the proposed drain without insisting upon payment of compensation. It was also urged that even when the Petitioner had sought an answer from the official Respondents regarding the fate of the existing drain, they had maintained mute silence on that issue which, according to the Petitioner's Counsel gave rise to a suspicion that the works were being executed solely for the benefit of Respondent No.4.

4. We have gone through the reply dated 31st May 2022 submitted by the Office of Executive Engineer, Works Division, Water Resources Department, Ponda, Goa. In the said communication, the Department has tried to justify the construction of a fresh storm water drain on the ground that the total water discharge in the area was 16.58 cumecs; whereas the existing drain had a carrying capacity of 10.8 cumecs only, which was less than the required capacity. The communication dated 31st May 2022 and the explanation rendered therein by the concerned department and the executing agency, cannot be brushed aside lightly. As to whether there existed a need for constructing a new storm water drain of a higher capacity, is a matter solely within the discretion of the concerned department.

5. In this case, the entire basis of the Petitioner to file the present Petition, is a mere suspicion that the works in question had been advertised for the purpose of benefiting the private Respondent No.4, who would then extend the boundaries of the land by filling up the existing drain and stretching it along the proposed storm water drain.

6. The fresh works being executed pursuant to the Tender Notice dated 15/02/2021 along side the existing drain, is apparently of a size bigger than the existing drain. From the

pleadings, it can be gauged that Respondent No.4 has permitted the official Respondents to carry out the works in question over her land without any formal acquisition proceedings and perhaps without payment of compensation. Even the existing drain is stated to have been constructed on the land of private Respondent No.4. The fact that no compensation was claimed or received by Respondent No. 4 would not, therefore, lead to a presumption that the new storm water drain of a higher capacity was not required or that the works tendered were to be executed only to give some benefit to Respondent No.4.

7. In any case, the mere fact that the Petitioner has not received any suitable reply from the official Respondents in regard to the ultimate fate of the existing storm water drain, would not be a reason enough for us to entertain the present Petition, in the so called public interest, more so, at this stage when the existing storm water drain has not been utilized by Respondent No.4 by filling up the same and is a mere apprehension expressed. We feel that the execution of the works advertised and questioned in the present Petition, cannot be mixed up with the issue of utilisation of the existing drain. We have no reason to disbelieve the decision of the concerned Department that there was need to construct the storm water drain of a high capacity in the area.

8. We, accordingly, dismiss the present Petition, with no order as to costs.

M. S. SONAK, J.

DHIRAJ SINGH THAKUR, J.

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S MHAMAL

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