

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 648 OF 2019**

Mrs. Dioguinha Fernandes,
H. no. 931, Karabhat,
Chorao, Tiswadi, Goa

..... Petitioner

Versus

1. Town & Country Planning
Department,
Tiswadi Taluka Office, Kamat Tower,
5th floor, Patto, Panaji Goa.

2. Village Panchayat of Chodan Madel,
Through its Sarpanch/Secretary,
Chorao, Tiswadi, Ilhas Goa

... Respondents.

**Mr Anthony D'Silva, Advocate appointed under the Legal
Aid Scheme for the Petitioner.**

**Mr Geetesh Ramesh Shetye, Addl. Govt. Advocate for
Respondent No.1.**

CORAM : M. S. SONAK, J.

DATED : 3rd FEBRUARY 2023

ORAL JUDGMENT:-

1. Heard Mr Anthony D'Silva, Advocate appointed under the Legal Aid Scheme for the Petitioner and Mr Geetesh Shetye, learned Addl. Govt. Advocate for Respondent No.1. Respondent

No.2-Panchayat is served, but there is no appearance on behalf of the Panchayat.

2. On 14/1/2021, this Court made the following order :

“ Heard Mr. A. D'Silva, learned counsel who is appointed under the Legal Aid Scheme for the Petitioner.

2. Issue notice to the Respondents, returnable on 4th February, 2021.

3. Notice to indicate that subject to constraints of time an endeavour shall be made to dispose of this petition finally at the stage of admission. If any of the Respondents wish to file any reply they are at liberty to do so on or before 1st February, 2021 by furnishing an advance copy upon the learned counsel for the Petitioner.

4. Since, Mr. D'Silva has been appointed in the matter under Legal Aid Scheme, the registry, to issue notices to the Respondents without insisting upon payment of any process fees by Advocate Mr. D'Silva. If necessary, the process fees may be recovered from the Goa State Legal Services Authority.”

3. Considering the above order and the fact that the service is complete, Rule is issued in this Petition. Further, Rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties. In any case, the order dated 14/1/2021 had already stated that this Petition would be disposed of finally at the stage of admission.

4. The Petitioner challenges the letter/order dated 16/4/2018, by which the Deputy Town Planner has dismissed the Petitioner's

application for construction of a compound wall. Admittedly, no opportunity of hearing was granted to the Petitioner before the impugned order was made.

5. Mr Shetye, learned Additional Govt. Advocate submits that the rejection was based on the resolution of the Panchayat stating that there is a footpath/pathway and, therefore, no permission could be granted for construction of the compound wall. Mr Silva, learned Counsel for the Petitioner submits that there is a decree of the Civil Court which holds that there was no footpath/pathway or a right of way. He points out that there are previous permissions granted by the Authorities. He submits that all these could have been pointed out by the Petitioner to the Deputy Town Planner, had an opportunity been given to the Petitioner.

6. At this stage, it is not for this Court to go into all these contentions. However, the impugned communication/order is set aside for failure to comply with the principles of natural justice. The concerned officer/Deputy Town Planner is now directed to reconsider the Petitioner's application for construction of the compound wall, after granting the Petitioner and, if necessary, the Village Panchayat of Chodan Madel, an opportunity of hearing. This exercise must be completed by the concerned officer/Deputy Town Planner as expeditiously as possible and, in any case,

within two months from today. The decision should be communicated to the Petitioner within two months from today.

7. The Petitioner is granted liberty to produce further documents, including the decree of the Civil Court before the concerned Officer/Deputy Town Planner. If the Panchayat wishes to produce any further documents, the Panchayat is granted liberty to do so.

8. Registry to send a copy of this order to the Village Panchayat of Chodan Madel. Mr Shetye states that an authenticated copy of this order would be communicated to the Deputy Town Planner.

9. The Petition is disposed of with the above directions. Rule is made absolute in the above terms, without any order for costs.

10. The Goa State Legal Services Authority must pay Mr Silva's fees in accordance with the Rules. These fees are in addition to the gratitude which this Court expresses to Mr Silva for appearing on behalf of the Petitioner under the Legal Aid Scheme.

11. All concerned to act on the basis of an authenticated copy of this order.

M. S. SONAK, J.