

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**MISC. CIVIL APPLICATION NO. 176 OF 2022**  
**IN**  
**WRIT PETITION NO. 157 OF 2019**

Sunil Kohli Rep. By POA Naval Bowry      ... Applicant-Original  
Respondent No.1

*Versus*

Filomena Saldanha & 2 Ors.      ...Respondents

**Mr. A. R. Kantak, Advocate for the Applicant-Original  
Respondent No.1.**

**Mr. P. Talaulikar, Advocate for the Respondent Nos. 1 and 2.**

**Mr. Zeller D'Souza, Advocate for the Respondent No.3.**

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**CORAM: B. P. COLABAWALLA, J**  
**DATED: 28<sup>th</sup> FEBRUARY 2023**

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**P. C.**

1.           The above application is moved for speaking to the Minutes of the Order dated 2<sup>nd</sup> March, 2022, passed in Writ Petition No. 157 of 2019. The corrections sought are in Paragraph 9 of the Order.

2.           It is the contention of the Applicant-Original Respondent No.1, that initially on 12<sup>th</sup> January 2022, the Original Respondent No.1, on instructions of his client, stated that the said Respondent was ready to leave an access to the extent of three metres all along the western boundary of Survey No. 58/2, and if this proposal is accepted by the Petitioner, it would put an end to the litigation. Thereafter, the matter was adjourned to 14<sup>th</sup> January 2022, when further time was

given up to 27<sup>th</sup> January 2022. On 27<sup>th</sup> January 2022, in support of the statement made on behalf of Respondent No.1, [as recorded in the Order dated 12<sup>th</sup> January 2022], the learned Counsel appearing on behalf of Respondent No.1, handed over a copy of the plan showing the three metre access. This plan was taken on record and marked 'X' for identification. After this date, the matter came upon 2<sup>nd</sup> March 2022, when the final Order was passed and the Writ Petition was disposed of.

3. The learned Counsel appearing on behalf of original Respondent No.1 submitted that the statement made on behalf of Respondent No.1 that he shall provide access of three metres as per clause (4) of the Judgment and Order dated 3<sup>rd</sup> July 2015, is correct but it should be clarified that it is as per the plan which is taken on record by this Court on 27<sup>th</sup> January 2022 and marked 'X' for identification.

4. On the other hand, the learned Counsel appearing for the original Petitioners submitted that a conscious statement was made on behalf of the 1<sup>st</sup> Respondent that the road/access will be left open as per the Judgment dated 3<sup>rd</sup> January 2015, passed by the Director of Panchayat. Clause (4) of the said Judgment of the Director of Panchayats is reflected at Paragraph 2 of the Order dated 2<sup>nd</sup> March, 2022. Based on the statement of the Respondent made in Paragraphs

6 and 7 of the Order dated 2<sup>nd</sup> March 2022, the Petition was disposed of. The learned Counsel submitted that this Application is deliberately now filed in the garb of speaking to the Minutes under which the Applicant is seeking to defeat the proceedings filed by the Petitioner before the Trial Court, namely, Special Civil Suit No. 10 of 2013. For all these reasons, the learned Advocate submitted that there is no requirement for any clarification.

5. I have heard the learned Counsel for the parties at some length. I have also perused the papers and the proceedings. It is not in dispute that on 27<sup>th</sup> January 2022, the 1<sup>st</sup> Respondent had tendered a plan showing the access of three metres, which would be left open giving access to Survey No. 59/1 through Survey No. 58/2. That plan was taken on record and marked 'X' for identification. Even though the Order of the Director of Panchayats, [dated 3<sup>rd</sup> July 2015] records that the existing access of three metres to the property surveyed under No. 59/1 through the property surveyed under No. 58/2 be maintained before issuance of construction licence to the owners of the property surveyed under No. 58/2, from the record it is unclear as to what is the “**existing access**”. This in fact becomes clear from the plan submitted by Respondent No.1 to this Court and which was taken on record and marked 'X' for identification. This being the position, it would only be fair that the statement made by Respondent No.1 be clarified as sought for by the Applicant-Original Respondent

No.1. In other words, in paragraph 9, after the words “*passed by the Director of Panchayats*”, the following words shall be added, “*and as reflected in the plan taken on record by this Court on 27<sup>th</sup> January 2022 and marked as 'X' for identification.*” Once these words are added in Paragraph 9, the clarification is taken care of.

6. Simply put, Paragraph 9 of the Order dated 2<sup>nd</sup> March 2022 shall now read as under :

“9. In view of the above, the Writ Petition is disposed of by recording the statement made on behalf of the respondent no.1 that he shall provide access of 3 metres as per clause (4) of the Judgment and Order dated 3.7.2015, passed by the Director of Panchayats **and as reflected in the plan taken on record by this Court on 27<sup>th</sup> January 2022 and marked as 'X' for identification.** On the statement made on behalf of Respondent No.1, it is recorded that the Civil Revision Application filed by the Respondent No.1 before the District Court bearing Civil Revision Application No.5 of 2019 stands withdrawn. Accordingly, the said Civil Revision Application stands disposed of.”

7. The above Application is disposed of in the aforesaid terms. However, there shall be no Orders as to costs.

8. It is needless to clarify that this Order shall not in any way prejudice the proceedings filed by the Petitioners in Special Civil Suit No. 10 of 2013. Any Orders that are to be passed in that Suit shall be based on their own merits uninfluenced by the Orders passed in the present Writ Petition.

9. This Order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**B. P. COLABAWALLA, J**

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