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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.460 OF 2023

ROCQUE NOEL FERNANDEZ

... PETITIONER

Versus

STATE OF GOA THR. CHIEF SECRETARY
AND 6 ORS

... RESPONDENTS

Mr Shivraj Gaonkar and Mr Prabhav P. Sirvoicar, Advocates for the Petitioner.

Mr D. Pangam, Advocate General with Mr G. Shetye, Additional Government Advocate for Respondent Nos.1,3 and 7.

Mr A.D. Bhobe, Advocate for Respondent No.2.

Mr Rohit Frias, Advocate for Respondent No.6.

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

DATED :- 6th November, 2023

P.C.:

Heard Mr Gaonkar for the petitioner. Learned Advocate General appears along with Mr Shetye, the learned Additional Government Advocate for the first, third and seventh respondents. Mr Bhobe appears for the second respondent and Mr Rohit Frias appears for the sixth respondent.

2. Mr Gaonkar states that private service is effected upon all respondents including the fourth and fifth respondents and an affidavit of service is also filed.

3. The fourth and fifth respondents are not present in the Court today.
4. The petitioner's grievance is that the fourth and fifth respondents have put up an unauthorised construction in a property which was designated as an open space. Based on the petitioner's complaint, the Panchayat issued a show cause notice dated 05.11.2020 to the fourth and fifth respondents.
5. After a response was filed by the fourth and fifth respondents, the Panchayat by its communication dated 20.03.2023, has informed the petitioner that no action can be taken because the matter is subjudiced.
6. The sixth respondent, who is a developer and who had obtained the development plans from the planning authorities has filed a Civil Suit against the fourth and fifth respondents restraining them from carrying out any constructions in the designated open space. Interim relief which was sought in the said suit was refused. This is the reason why the Panchayat now states that the matter is subjudiced and, therefore, no action can be taken on the show cause notice until the matter is disposed of by the Civil Court.
7. According to us, the Panchayat cannot refuse to dispose of the show cause notice for the above reason. The Panchayat is duty-bound to consider the permissions granted by the planning authorities and the plan prepared by the planning authority. Further, since, Mr Bhobe

admits that the Panchayat had not granted any permission for such a construction, the Panchayat has to decide whether the construction is illegal and unauthorised in the absence of its permissions. The Panchayat cannot, under such circumstances, refuse to decide the show cause notice in accordance with law.

8. Admittedly, there is no restraint order in the suit against the Panchayat from deciding on the legality or otherwise of the construction put up by the fourth and fifth respondents. Therefore, simply because some dispute is pending between the fourth, fifth and sixth respondents, the Panchayat cannot shirk from discharging its statutory duties.

9. Accordingly, we quash and set aside the impugned communication dated 20.03.2023 and direct the Panchayat to dispose of the show cause notice dated 05.11.2020 in accordance with law and on its own merits within two months from today. The Panchayat must grant opportunity of hearing to the petitioner and the fourth, fifth and sixth respondents. The Panchayat must communicate its decision to the parties within this period of two months.

10. The petition is disposed of in the above terms.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

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HALDANKAR

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