

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 204 OF 2023

Comunidade io Pilerne, Rep. By its ... Petitioner
Attorney, Estifano C. D'Mello

Versus

Administrator of Comunidades of North ... Respondents
Zone & 2 Ors.

Mr. Y. V. Nadkarni, Advocate with Mr. A. Noronha and Ms.
Simran Khadilkar, Advocate for the Petitioner.

Mr. Geetesh Shetye, Additional Government Advocate
for the Respondent Nos. 1 and 2.

Mr. V. A. Lawande, Advocate with Mr. S. Redkar, Advocate
for the Respondent No.3.

CORAM: M. S. KARNIK, J
DATED: 11th APRIL 2023

ORAL ORDER

1. Heard learned Counsel for the Petitioner and learned Additional Government Advocate for the Respondent Nos. 1 and 2.
2. The challenge to this Petition is to an Order dated 12.02.2020 passed by the Administrative Tribunal, Goa.
3. The Petitioner is the Comunidade of Pilerne. An application was made by the Petitioner seeking permission of the Tribunal under Article 154(3) read with Article 350 of the Code of Comunidades to

compromise arbitration proceedings pending between the Commuidade of Pilerne and Solanki & Sons before the Sole Arbitrator J. P. Mulgaonkar.

4. In the impugned Order, there is a reference to the letter dated 29.03.2004, which conveys the decision of the Government that the terms and conditions as cited in the Agreement dated 05.01.2004, have been approved. Pursuant to the Agreement, the construction proceeded. There were however some disputes between the Comunidade and the Contractor. The dispute came to be referred to Arbitration. During the pendency of the Arbitration, the Comunidade and the Contractor proposed to enter into Consent Terms, the terms of which are at page 127 of the paper-book.

5. A reading of the Consent Terms reveals that there is no variation to the Agreement which was initially approved by the State Government. The parties do not seek any variation in the Agreement. It is just that the Comunidade pointed some deficiencies in the construction which resulted in the dispute. The deficiencies are now sought to be rectified and the issue is sorted out as spelt out in the Consent Terms. The Contractor in the process is not in a more advantageous position than what is provided in the Agreement which was approved. On the contrary, the Contractor has agreed to remove the deficiencies and compensate the Comunidade in some measure

thereby honouring the Agreement which is to the satisfaction of the Comunidade. This does not amount to variation of the earlier Agreement which was approved.

6. The finding of the Tribunal that there are several variations in the terms and conditions of the Agreement between the Comunidade of Pilerne and the builder for which approval of the Government is required to be taken in accordance with the Code of Comunidades is erroneous and therefore calls for interference.

7. The Writ Petition is allowed in terms of prayer clause (a), which reads thus :

“A. For a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order to call for the records of the case and on examining the legality thereof be pleased to quash aside the Impugned Order dated 12.02.2020 passed by the Administrative Tribunal, Panaji–Goa in Case No.1/2019/ADM/COM/SUIT/PERMISSION and consequently direct the Administrative Tribunal, Panaji-Goa to decide and dispose the Case No.1/2019/ADM/COM/SUIT/PERMISSION without insisting on the Comunidade of Pilerne to get the necessary approval from the Government of Goa.”

8. The Petition is disposed of. No costs.

M. S. KARNIK, J