

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.350 OF 2023

CHANDRASHEKHAR
PRABHAKAR GAWAS

... PETITIONER

Versus

VILLAGE PANCHAYAT
OF NAVELIM THR ITS
SECRETARY AND 2 ORS.

... RESPONDENTS

Mr Gaurang Panandiker with Mr S. Fadte, Advocates for the
Petitioner.

Mr Allan F. C. Andrade holding for Mr Richard Almeida,
Advocate for Respondent No.1.

Mr. Devidas J. Pangam, Advocate General with Mr. N.
Vernekar, Additional Government Advocate for Respondent
No.2.

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

DATE : 12th JULY 2023

ORAL ORDER : (Per M.S. Sonak, J.)

1. Heard Mr Panandiker for the petitioner and Mr A. Andrade holding for Mr R. Almeida for the Panchayat. The Sarpanch of Village Panchayat of Navelim, Mr Kalidas A. Gauns, is also present in the Court.

2. Mr Panandiker tenders affidavit of service in which it is stated that respondent no.3 refused to accept the notice on the ground that he is not carrying out any construction. The affidavit states that respondent No. 4 has been duly served. Accordingly, respondent No. 4's name was called out, but he is not present in the Court today. For the order that we propose to make, we need not wait for respondent No. 4 to appear.

3. The petitioner complains about inaction on the part of the Panchayat of Navelim. Mr Panandiker, yesterday submitted that despite the petitioner's complaint, no action was taken by the Panchayat of Navelim to facilitate an illegal construction by respondent no.3 and/or respondent no.4. Impressed by Mr Panandiker's submission, we made an order dated 11.07.2023, which is transcribed below:

"P.C.:

1. Leave is granted to implead Mr Sakharam Bhengo Gawas as respondent. Amendment to be carried out forthwith.

2. Issue notice to respondent Nos.3 and the newly impleaded respondent No.4, returnable on 12/07/2023. In addition to the usual mode of service private service/Humdast is allowed.

3. Mr Andrade appeared for the Village Panchayat Navelim. He places on record an order cum notice under Section 66(3) of the Goa Panchayat Raj Act requiring the newly impleaded respondent No.4 to show cause as to

why the illegal construction which is coming up should not be demolished.

4. Mr Andrade admits that construction is coming up without any permission from the Panchayat. Mr Panandikar points out that the previous unlawful construction at this very spot was ordered to be demolished and was in fact demolished. He submits that at the same spot illegal construction has commenced without obtaining any permission from the Panchayat or other authorities.

5. In the above circumstances, the least that was expected from the Panchayat was to stop the illegal construction going on in the presence of all the members of the Panchayat. Still, surprisingly, no stop work order is issued as a result of which respondents No.3 or 4 continue with the illegal construction despite the receipt of a Show Cause Notice.

6. Therefore, we direct the Panchayat to immediately depute its personnel on the site and ensure that the construction is completely stopped. If necessary the Panchayat must seal complete construction. If the Panchayat requires any police protection, the police should grant the same to the Panchayat.

7. The panchayat must also serve a copy of this order on respondent Nos. 3 and 4 so that they could attend the proceedings tomorrow if they desire to. This is an additional step the petitioner must take to effect service upon respondent Nos.3 and 4.

8. The Sarpanch must file an affidavit by tomorrow why no action was taken from March 2023 till the construction could come up to the present level. The affidavit must be filed by the Sarpanch by tomorrow because if we find that there was dereliction, we proposed to refer the matter to the Director of Panchayats so that

some action can be taken against the Sarpanch for remiss in his duties.

9. Stand over to 12/07/2023.

10. The parties to act on an authenticated copy of this order.”

4. From the affidavit, we find that the Panchayat has taken action, and the petitioner's contentions were not quite well founded. The record shows that on one of the occasions when the Panchayat proposed an inspection, the petitioner sought a postponement. This is not at all appreciated. On the one hand, the petitioner complains about inaction on the part of the Panchayat and the other hand, the petitioner seeks postponement when the Panchayat proposes to act.

5. Be that as it may, the record shows that the Panchayat did issue a Stop Work Order followed by the Show Cause Notice why the construction should not be demolished. Mr Andrade, the learned Counsel for the Panchayat, based on instructions from the Sarpanch, who is present in the Court, submitted that presently there is no construction going on. He states that the construction stopped no sooner than the Stop Work Order was issued. Mr Andrade states that Show Cause Notice will be disposed of in accordance with the law, and the decision will be communicated to respondent no.3/4 and the petitioner. He states that a Show Cause Notice will be disposed of within 30 days from today, and until the same is disposed of, the Panchayat will ensure no construction at the site.

6. Mr Andrade's statements are accepted, and the Panchayat is directed to act consistent with such statements. This petition is disposed of without any order for costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.