

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.528 OF 2023

GODAVARI KAMU HALARNKAR

... Petitioner

Versus

**THE DEPUTY TOWN PLANNER TOWN AND
COUNTRY PLANNING DEPARTMENT AND 5
ORS**

... Respondents

Mr S.M. Walawaikar with Mr Mahesh Raikar, Advocates for the
Petitioner.

Mr Devidas Pangam, Advocate General with Mr Prashil Arolkar,
Additional Government Advocate for the Respondent Nos.1 to 3.

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

DATED: 30th August 2023

P.C.:

1. Leave to amend the prayer clause by including the date of impugned order.
2. Heard Mr Walawaikar who appears with Mr Raikar, learned Counsel for the petitioner and Mr Devidas Pangam, learned Advocate General who appears with Mr P. Arolkar, learned Additional Government Advocate for respondent Nos.1 to 3.
3. For the order that we propose to make no notice is necessary to the

respondent Nos.4,5 and 6.

4. The petitioner challenges an order dated 17/05/2023 made by the Deputy Town Planner, TCP Mapusa, Bardez, Goa.

5. The order states that the Deputy Town Planner will not go into the issue of civil disputes between the petitioner and respondent No.5 and declares that the NOC dated 17/12/2009 issued by the authority favouring respondent No.5 is valid.

6. Admittedly, Civil Suit No.29 of 2022 is pending between the petitioner and respondent No.5. The petitioner has also placed on record an interim order dated 17/09/2022 made by the District Court in the said suit.

7. Considering that disputes between the petitioner and respondent No.5 are pending before the appropriate Civil Court, there is no necessity to interfere with the impugned order made by the Deputy Town Planner. However, it needs to be clarified that the Civil Court should not be influenced by the impugned order dated 17/05/2023 of the fact that the Deputy Town Planner has validated the earlier NOC dated 17/12/2009. The Civil Court has to dispose of the civil dispute between the parties based upon the evidence that the parties produced in support of their respective versions. Merely because some NOC's may have been issued by the authorities, that will always be subservient to the civil rights of the parties which the Civil Court has to determine. With these clarification, there is no reason to entertain this petition any further.

8. Mr Walawaikar points out that an application made by respondent No.5

for regularization of the construction put up by respondent No.5. He submits that the petitioner should also be heard before such regularization is considered by the authorities.

9. The learned Advocate General states that both the petitioner and respondent No.5 can file their respective written submissions before the competent authority considering the issue of regularization. Learned Advocate General states that this authority will consider the written submissions filed by both the parties and decide the matter in accord with law.

10. Mr Walawaikar states that the petitioner will file written submissions within two weeks from today before the competent Authority.

11. The petition is disposed of in the above terms without any order for costs.

12. Though we have not interfered with the impugned order, this will not preclude the petitioner from agitating all issues before the Civil Court, including the issue concerning the order which is impugned before this Court. The issue of maintainability of such a relief is however kept open. This clarification is issued because one of the main reasons that persuaded us not to entertain this petition is the pendency of civil suit between the parties.

13. All concerned parties to act on the authenticated copy of this order.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.

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