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**IN THE HIGH COURT OF BOMBAY AT GOA**

**MISC. CIVIL APPLICATION NO.315 OF 2022  
IN  
PIL WRIT PETITION NO.10 OF 2019**

NORTH GOA PLANNING AND  
DEVELOPMENT AUTHORITY,  
THR. ITS MEMBER  
SECRETARY, R.K. PANDITA

... APPLICANT

***Versus***

EDGAR RIBEIRO & 2 ORS.

... RESPONDENTS

**Mr D. Pangam, Advocate General with Mr Somnath Karpe  
and Mr. A. Sawant, Advocates for the Applicant.**

**Ms Norma Alvares and Mr Om D'Costa, Advocates for the  
original Petitioners.**

**Mr Deep Shirodkar, Additional Government Advocate for  
the Respondent Nos.3 & 4 – State.**

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

**Mr Parag Rao and Mr. Akhil Parrikar, Advocates for  
Respondent No.11.**

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

**DATE : 10<sup>th</sup> JANUARY 2023**

**ORDER :**

1. The applicant, North Goa Planning and Development Authority (NGPDA), by filing this Misc. Application in the pending PIL Writ Petition No.10/2019 seeks the following relief:

*(a) For order of this Hon'ble Court, granting leave to NGPDA to grant approval/development permission to Goa Tourism Development Corporation with respect to Development, Operation and Maintenance of Passenger Ropeway Project along with Tourism Activity between Panaji and Reis Magos in accordance with Law.*

**2.** The challenge in the PIL is to the Outline Development Plan, 2021, that is, ODP 2021. In his affidavit dated 09.09.2019, the Member Secretary informed this Court that no permissions had been granted for any development post 08.08.2019 under ODP 2021. This was recorded in the order dated 11.09.2019 whilst declining interim relief. However, the order clarified that should the Government issue any further instructions concerning the implementation of ODP 2021, the NGPDA should place such directions before the Court by filing an affidavit. Further, the Counsel for NGPDA also stated that NGPDA would not act on such directions for four weeks from their placement date by way of affidavit before this Court.

**3.** On 12.10.2020, this Court disposed of a Misc. Application seeking clarification on whether the NGPDA can consider applications for development under ODP 2011. Accordingly, it was clarified that there was no bar if the then-constituted Greater Panaji Planning and Development Authority (GPPDA) operates ODP 2011 and considers applications for development by following ODP 2011.

4. The order dated 12.10.2020, in the context of ODP 2021, records the following in paragraphs 5 and 6 :

*"5. Mr. Nitin Sardesai, the learned Senior Counsel who appears on behalf of Greater Panaji Planning & Development Authority, on instructions, makes a statement that until the petitioner's Application for interim relief bearing No.LD-VC-OCW-66-2020 is considered by this Court, the Greater Panaji Planning & Development Authority, will not operate the ODP 2021. He states that this means that no applications will be considered or granted on the basis of the changes effected by ODP 2021. He, however, wishes to make it clear that there are some government projects or projects involving public utilities, for which, some separate consideration is required. He states that in respect of such specific projects, the Greater Panaji Planning & Development Authority, will take out miscellaneous civil Application before this Court to seek exemption from the statement now made.*

*6. We accept the statements of Mr. Sardesai made on behalf of the Greater Panaji Planning & Development Authority and direct that until the petitioner's miscellaneous civil Application bearing No.LD-VC-OCW-66-2020 is heard and decided, the Greater Panaji Planning & Development Authority, should not entertain or process any applications on the basis of ODP 2021. In respect of any specified government projects concerning public utilities, the Greater Panaji Planning & Development Authority is granted liberty to take out applications seeking variation, which applications will be considered on their own merits."*

5. The Goa Tourism Development Corporation Limited filed Misc. Civil Application No.1671/2021(F) seeking directions to the GPPDA to consider and approve the proposal for a passenger ropeway and allied tourism activities between Panaji and Reis Magos. Misc. Civil Application No.1671/2021(F) was disposed of by order dated 14.03.2022 by granting liberty to GPPDA only to consider the GTDC proposal in terms of Law and if the GPPDA decides that such proposal can be granted or permitted then to apply for leave to grant such permission. This position was clarified in paragraph 7 of the order dated 14.03.2022.

6. The NGPDA, which is now concerned with this project, has tentatively approved the above project and, consistent with the liberty granted by order dated 14.03.2022, applied for leave to grant approval/development permission to the GTDC concerning *development, operation and maintenance of Passenger Ropeway Project along with allied tourism activities between Panaji and Reis Magos.*

7. The learned Advocate General submitted that the project is a public project to boost tourism activities in the State of Goa. He pointed out that this project was to be developed by the GTDC and a private entity on a public-private model basis. He submitted that this Court, in its previous orders, had already noted that separate considerations would arise for Government projects or projects

involving public utilities. Therefore, he submits that since this is a public project, NGPDA may be granted leave to consider and approve this project by following ODP 2021.

8. The learned Advocate General submitted that grant of permission as prayed for by NGPDA would, in no manner, preclude the original petitioners or any other parties from challenging the permission so granted on grounds available under the Law. He, however, submits that it would not be in the public interest to decline leave to NGPDA to approve this project, no doubt, by keeping open all the objections that parties may have coupled with liberties to all the parties to challenge such permission. Finally, the learned Advocate General submitted that this Court could also clarify that the activities that the GTDC or its private partner shall undertake under the NGPDA permission would be subject to final orders in Public Interest Litigation Writ Petition No.10/2019.

9. Mr Parag Rao, the learned Counsel for GTDC, supported the interim application reliefs. He pointed out that the project is conceived in the public interest, and the GTDC will also offer substantial concessions to students, senior citizens, etc. He submitted that no equities would be claimed if the project is allowed to be developed based on the NGPDA permission if ODP 2021 is set aside.

**10.** Ms Alvares, learned Counsel for the original petitioners, submitted that this Court had granted NGPDA leave to apply only in respect of government or public utility projects. She referred to a definition of "Public projects/schemes/development works" in rule 2(j) of the Goa Town and Country Planning (Public Projects/Schemes/Development Works by the Government) Rules 2008 to submit that this project is not included within such definition. She pointed out that projects under private partnership (PPP) are expressly excluded from the definition. She urged the dismissal of this Application on this preliminary ground.

**11.** Ms Alvares also pointed out that ODP 2021 was never saved post the exclusion of Panaji from NGPDA and its inclusion in GPPDA. She submits that with the exclusion of Panaji from GPPDA, ODP 2021 would not survive, particularly in the absence of Notification under Section 18(4) of the Goa Town and Country Planning Act, 1974. She, therefore, submits that no leave can be granted to NGPDA to permit this project under ODP 2021.

**12.** Ms Alvares also attempted to urge the various objections set out in the affidavit filed by Sabina Martins on 19.11.2022 opposing the grant of leave. However, after we pointed out to Ms Alvares the learned Advocate General's clarification that the grant of leave by this Court or issue of permission by NGPDA would not preclude the original petitioners from challenging such permissions on all legally

permissible grounds, Ms Alvares did not proceed with the said line of arguments opposing the grant of relief in this Application.

**13.** In the orders made by us on 11.09.2019, 12.10.2020 and 14.03.2022, we had referred to government projects involving public utilities that might require separate consideration. By this, we wished to distinguish between public projects in their broadest sense and purely private projects. However, the words used by us in our orders were not in the context of words or a set of words used in any statutes or statutory instruments like rules and regulations. Therefore, we think there is no scope for reading our orders or the words used by us in our orders as some statutes and developing an argument on the said lines. Accordingly, there is no scope at this stage to rely upon the definition of Public projects/schemes/development works in rule 2(j) of the 2008 Rules. The orders referred to above have to be read holistically and in the context in which they were made. Therefore, there is no scope to read our orders as if they were statutes.

**14.** In *Union of India & Anr. V/s. Major Bahadur Singh*<sup>1</sup>, the Hon'ble Supreme Court has held that observations of the Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. The observations must be read in the context they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret a statute's

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<sup>1</sup> (2006) 1 SCC 368

words, phrases and provisions, it may become necessary for judges to embark on lengthy discussions. Still, the discussion is meant to explain and not to define. Judges interpret statutes. They do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

**15.** Accordingly, based on Ms Alvares's first objection, we see no reasons not to allow the present civil Application.

**16.** Even Ms Alvares's second objection need not detain us from deciding this Application because leave can always be granted to the original petitioners to challenge NGPDA's permission *inter alia* on the ground that ODP 2021 has lapsed in the absence of any Notification under Section 18(4) of the TCP Act. However, the learned Advocate General did not dispute the necessity of a Notification under Section 18 of the TCP Act and stated that such a Notification would indeed be issued before the NGPDA issues the permission. Thus, Ms Alvares's second objection also no longer survives.

**17.** The grant of relief as sought by this Application would in no manner confer any legitimacy or could be taken as an imprimatur of this Court on the permission so granted. As the learned Advocate General clarified, the original petitioners or any other affected parties or Public Interest Litigant could always question the NGPDA

permission or, for that matter, any other permissions, NOCs or clearances that might be issued for the project in question.

**18.** However, in this Application, it would not be appropriate for us to consider all such challenges on merits. But at the same time, we clarify that all contentions of all parties on this subject, including on the legality or validity of the permission that the NGPDA might now issue, are kept open for agitation before the appropriate forum in appropriate proceedings. Thus, it is not as if by the grant of any relief in this Application, this Court is upholding the legality of the permission that might be granted or preventing any parties from challenging the legality and validity of such permission. Such clarification sufficiently protects the interest of the original petitioners.

**19.** Besides, the learned Advocate General and Mr Rao, on behalf of the GTDC, made it clear that the GTDC or private entity that would partner with GTDC would claim no equities but undertake the project subject to final orders in Public Interest Litigation Writ Petition No.10/2019. This is accepted. Thus, if the PIL succeeds and the ODP 2021 is struck down, the permission would fall, and the project would have to be halted or removed without claiming equities.

**20.** For the above reasons and with the above clarifications and liberties, we allow this civil application by granting leave to NGPDA to consider and dispose of GTDC's Application for

approval/development permission concerning the development, operation and maintenance of Passenger Ropeway Project along with allied tourism activity between Panaji and Reis Magos in accord with the Law. However, it is once again clarified that the issue of legality and validity of such permission, if granted, is kept open. The Misc. Civil Application is disposed of in the above terms with liberties and clarifications.

**BHARAT P. DESHPANDE, J.**

**M. S. SONAK, J.**

NITI K  
HALDANKAR

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