

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 674 OF 2023
WITH
MISC. CIVIL APPLICATION NO. 585 OF 2023

Mr. Rosario Valadares, Son of late Agostinho Valadares, Age 79 years, retired, married, Indian National, Resident of House no. 435/31, Alto Savlem, Pilerne, Chogam Road, Near ... Petitioner
Canara Bank, Porvorim, Bardez, Goa.

V e r s u s

1. The Chief Secretary, Secretariate, Porvorim Bardez, Goa.
2. The Collector, North Goa Collectorate Building, Panjim, Goa.
3. Mr. Sunil Sanjay Dessai, Son of Sanjay Dessai, 40 years of age, business r/o House no. 435/37, Alto Savlem, Pilerne, Chogam Road, Near Canara Bank, Porvorim, Bardez, Goa.
4. M/s. Niyaaaz Restaurant, Through its partner Mr. Irshad Soudagar, r/o. House no. 435/37, Alto Savlem, Pilerne, Chogam Road, Near Canara Bank, Porvorim, Bardez, Goa.
5. M/s. B. R. Enterprises, Through its proprietor Mr. Kamal Koli, Resident of Flat No. E-303. Devashree Garden, Porvorim, Bardez, Goa.
6. The Attorney, Comunidade of Pilerne, Pilerne Bardez, Goa.
7. The Administrator of Comunidade, North Zone, Mapusa Bardez, Goa.
8. The Health Officer, Public Health Centre

Saligao, Saligao, Bardez, Goa.

9. The Directorate of Health Services, Through its Director, Campal, Panaji, Goa.

10. The Secretary/Sarpanch, Village Panchayat of Pilerne, Pilerne, Goa.

11. The Dy. Town Planner, Town and Planning Department, Mapusa, Bardez, Goa.

12. The Director, Directorate of Food and Drug Administration, Bambolim, Goa.

13. Member Secretary, Goa Pollution Control Board, Saligao, Goa.

14. NI Ventures Pvt. Ltd. A Company incorporated under the Companies Act, 2013 and having its Registered office at 4697B, Opp. Market Police Station, Old P. B. Road, Belagavi, Karnataka, and represented herein by its Managing Director, Mr. Niyaz Abdulsalam Soudagar.

15. M/s. T. I. Enterprises, A partnership firm, Mr. Tahir Vasanali Isani and Mr. Irshad Abdulsalam Spudagar, having its current office Partnership firm Is at Manek Mansion, House no. 189A, Ward no. 5, Altinho, Mapusa, Bardez, ... Respondents Goa. 403 507.

**WITH
MISC. CIVIL APPLICATION NO. 585 OF 2023
IN
WRIT PETITION NO. 674 OF 2023**

T. I. Enterprises, A partnership firm, represented by its Manager Mrs. Ramesh ... Applicant/ Original Damodar Bhakta, Age 59 years, r/o. H. No. Respondent no.15 8/147, Altinho, Mapusa, Bardez, Goa.

V e r s u s

1. Mr. Rosario Valadares, Age 79 years, retired, married, Resident of House no. 435/31, Alto Savlem, Porvorim, Bardez, Goa.
2. The Chief Secretary, Secretariate, Porvorim Bardez, Goa.
3. The Collector, North Goa Collectorate Building, Panaji, Goa.
4. Mr. Sunil Dessai, Son of Sanjay Dessai, 40 years of age, business r/o House no. 435/37, Alto Savlem, Pilerne, Chogam Road, Near Canara Bank, Porvorim, Bardez, Goa.
5. M/s. Niyaaz Restaurant, Through its partner Mr. Irshad Soudagar, r/o. House no. 435/37, Alto Savlem, Pilerne, Chogam Road, Near Canara Bank, Porvorim, Bardez, Goa.
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7. The Attorney, Comunidade of Pilerne, Pilerne Bardez, Goa.
8. The Administrator of Comunidade, North Zone, Mapusa Bardez, Goa.
9. The Health Officer, Public Health Centre Saligao, Saligao, Bardez, Goa.
10. The Directorate of Health Services, Through its Director, Campal, Panaji, Goa.
11. The Secretary/Sarpanch, Village Panchayat of Pilerne, Pilerne, Goa.
12. The Dy. Town Planner, Town and Planning Department, Mapusa, Bardez, Goa.

13. The Director, Directorate of Food and Drug Administration, Bambolim, Goa.

14. Member Secretary, Goa Pollution Control Board, Saligao, Goa.

15. NI Ventures Pvt. Ltd., represented by its Managing Director, Mr. Niyaz Abdulsalam Soudagar, having its registered office at 4697B, Opp. Market Police Station, Old P. B. Road, ... Respondents Belagavi, Karnataka.

Mr. S. Walwaikar, Advocate with Ms. Sukant Halankar Tari, Advocate for the Applicant-Original Respondent no. 15.

Mr. Arjun Naik, Advocate Advocate for the Petitioner.

Mr. P. Arolkar, Additional Government Advocate for the Respondent nos. 1, 2, 7, 8, 9, 11 and 12.

Mr. Y. V. Nadkarni, Advocate with Ms. Simran Khadilkar, Advocate for Respondent nos. 4 and 6.

Mr. P. A. Kamat, Advocate for the Respondent no.10

Mr. Pavithran AV, Advocate with Mr. P. Kholkar, Advocate for the Respondent no.13-GSPCB.

**CORAM: M. S. SONAK &
VALMIKI SA MENEZES, JJ.**

DATED: 5th DECEMBER 2023

ORAL JUDGMENT

1. Heard Mr. Arjun Naik, learned Counsel for the Petitioner, Mr. Arolkar, learned Additional Government Advocate for the Respondent

nos. 1, 2, 7, 8, 9, 11 and 12, Mr. Pavithran AV, learned Counsel for the Respondent no.13, Mr. Nadkarni, learned Counsel for Respondent nos. 3, 5, and 14, Mr. Kamat, learned Counsel for Respondent no.10 and Mr Walwaikar, learned Counsel for Respondent no.15 and for the Applicant in MCA no. 585 of 2023.

2. Rule. The rule is made returnable immediately with the consent and at the request of the learned Counsel for the parties.

3. The Petitioner's grievance in this Petition was that the 15th Respondent was continuing with commercial operations in the suit premises despite the fact that the Goa State Pollution Control Board (GSPCB), by its Order dated 03.08.2023 had directed the closure of operations. The GSPCB ordered the closure because the 15th Respondent had not bothered to obtain any consent to operate before commencing commercial operations through the suit premises.

4. The Petitioner also filed a complaint to the Health Officer under the provisions of the Goa Public Health Act, 1985, and the Rules thereunder complaining about violations concerning overflowing of the soak pit and leakages from septic tanks connected to the suit premises held by the 15th Respondent. Acting on such complaint, the Health Officer by Order dated 22.09.2023, ordered the disconnection of the water supply and electricity connection to the 15th Respondent's suit premises. The Petitioner complained that despite such disconnection

notice, the 15th Respondent, with impunity, continued with the commercial activities by commissioning a generator.

5. Based on the allegations in the Petition and the prima facie proof in support of the same, this Court made an Order dated 11.10.2023, which reads as follows :

“1. Heard Mr Arjun Naik for the Petitioner, the learned Advocate General who appears along with Mr Arolkar, the learned Additional Government Advocate for Respondent Nos. 1, 2, 7, 8, 9, 11 and 12 and Mr Pavithran appearing for Respondent No. 13 (GSPCB).

2. Issue notice to Respondent Nos. 3, 4, 5, 6, and 10, returnable on 18.10.2023. In addition to the usual mode of service, private service/humdist is allowed. The Petitioner to file an affidavit of service. Notice to indicate that this Petition will be disposed of finally at the stage of admission.

3. Mr Arjun Naik, the learned Counsel for the Petitioner points out that the Health Authority being satisfied with the complaint made by the Petitioner, disconnected the water and electricity supply to Respondent No. 4. Even the learned Advocate General placed on record, the disconnection notice dated 22.09.2023 issued to Respondent No. 4.

4. Mr Arjun Naik points out that based upon the Petitioner's complaint, even the Deputy Collector in accordance with the order of GSPCB (Respondent No. 13) had sealed the Restaurant premises on 07.09.2023. Mr Arjun Naik, however, submits that despite the disconnection notice and sealing, Respondent Nos. 3, 4 and 5 have acted high-handed and are operating the Restaurant by breaking the seal and by making alternate arrangements for electricity and water supply. He points out that the Restaurant is working on a generator and the nuisance complained by the Petitioner continues unabated.

5. The learned Advocate General submits that the disconnection notice is issued in the matter and there is a report from the Deputy Collector dated 15.09.2023 showing that the Restaurant has been de-

sealed by the Proprietor without obtaining any permission from any Authorities and re-commenced the Restaurant.

6. Similarly, Mr Pavithran for GSPCB has also received the report from the Deputy Collector about the unauthorized de-sealing of the Restaurant premises. Mr Pavithran submits that the GSPCB also held an inspection and found that the Restaurant has re-commenced in spite of the sealing. Mr Pavithran points out that there is no consent to operate.

7. Considering the above circumstances, we direct immediate closure of M/s Niyaaz Restaurant, House No. 435/37, Chogum Road, Porvorim, Bardez, Goa. This sealing shall be carried out by the Deputy Collector of Bardez, if necessary, by taking the assistance of the Police from the area. This order will have to be complied with by 12.10.2023 and a compliance report will have to be placed on record.

8. Mr Arjun Naik states that today itself, process fees and copies will be supplied to serve the unserved Respondents including Respondent Nos. 3, 4, and 5. Mr Arjun Naik assures this Court that there would not be any delay in effecting service on these Respondents. Now that we have granted the above interim directions, the Deputy Collector must consider the attachment of the DG set/generator based upon which the Restaurant was functioning despite the disconnection notice.

9. The above interim directions shall operate until further orders which will be made after Respondent Nos. 3, 4, and 5 appear and explain their version of the matter.

10. Accordingly, we have posted this matter on 18.10.2023.

11. The Respondents to file their responses by 18.10.2023 because we propose to dispose of this Petition finally at the admission stage.”

6. Based on the above order, the suit premises were sealed and the commercial activities that the 15th Respondent was carrying out through them, were halted.

7. Mr. Walwaikar learned Counsel for the 15th Respondent, referred to MCA no. 585 of 2023 filed by the 15th Respondent, seeking a vacation or at least a variation of our Order dated 11.10.2023. He submitted that the GSPCB's Order dated 03.08.2023 was without jurisdiction, and therefore, based upon the same, the 15th Respondent was not required to close the operations. He submitted that there was no requirement of obtaining any consent to operate and the GSPCB's contention to the contrary lacks merit. Mr Walwaikar pointed out that there was a failure of natural justice before issuing the impugned Order because no notice was served upon the 15th Respondent.

8. Mr Walwaikar admitted that the Petitioner has not challenged the GSPCB's Order dated 03.08.2023 even though the said Order was appealable before the National Green Tribunal (NGT) and the Administrative Tribunal. He clarified that the Order made under the Water (Prevention and Control of Pollution) Act, 1974, is appealable to the NGT, and the Order under the Air (Prevention and Control of Pollution) Act, 1981, is appealable to the Administrative Tribunal. He stated that the 15th Respondent is in the process of instituting such appeals and will seek appropriate interim reliefs from the Appellate Authorities. He submitted that the 15th Respondent apprehends that this Court's Order dated 11.10.2023 might come in the way of instituting such appeals and seeking interim orders therein. He,

therefore, submitted that necessary clarifications be issued by this Court so that the 15th Respondent can exercise his rights of instituting appeals and seeking interim reliefs from the Appellate Authorities.

9. Mr Walwaikar submitted that the sealing of the suit premises may be lifted for a limited period of three days to enable the 15th Respondent to clear the food items in the freezers. On the express instructions from the partners of the 15th Respondent, he submitted that the 15th Respondent will not use the suit premises for any commercial purpose until necessary interim or final orders are obtained from the Appellate Authorities.

10. Mr Nadkarni learned Counsel for the 3rd Respondent submitted that the suit premises were licensed to the 5th Respondent, and the said licence has since been revoked. He pointed out that the 5th Respondent has also revoked the so-called sub-license favouring the 15th Respondent. He further pointed out that the 14th Respondent has also revoked the Franchise Agreement favouring the 15th Respondent. Based on all this, Mr Nadkarni submitted that the 15th Respondent must not be allowed to deal with the suit premises any further. In any case, Mr. Nadkarni submitted that this Court should clarify that the 3rd, 5th, and 14th Respondents, would be free to pursue their legal remedies against the 15th Respondent in the context of the suit premises.

11. Mr. Arjun Naik, learned Counsel for the Petitioner, submitted that the 15th Respondent has indulged in several other illegal activities. He pointed out that the Petitioner has accordingly filed complaints to the Panchayat, the GSPCB, the Health Authorities, the FDA, and the Administrator of Comunidades. He submitted that all these authorities must be directed to act upon the Petitioner's complaints and take action as permitted under the law against the 15th Respondent. He pointed out that the 15th Respondent had also damaged the compound wall and property, for which it must be directed to pay damages to the Petitioner.

12. Mr. Arolkar, learned Additional Government Advocate, submitted that the Health Authorities have already issued a disconnection notice based upon the Petitioner's complaint. He submitted that pursuant to orders made by this Court, the Deputy Collector of Bardez has already sealed the suit premises and stopped commercial activities therein.

13. This Petition was entertained because the Petitioner had complained that the 15th Respondent was continuing with the commercial activities from the suit premises despite Orders made by the GSPCB and the Health Authorities. This Court was constrained to seal the suit premises because the 15th Respondent without challenging the Orders made by the GSPCB and the Health Authorities continued

with the commercial activities from the suit premises, in defiance of the orders made.

14. At this stage, it is not for this Court to go into the 15th Respondent's contentions that the orders made by the GSPCB are without jurisdiction or that they are in breach of principles of natural justice and fair play. Admittedly, such Orders are appealable, and Mr. Walwaikar, on behalf of the 15th Respondent, has made it clear that the 15th Respondent is in the process of instituting the necessary appeals.

15. No case is made out to vacate the sealing order dated 11th October 2023 because, as of this date, the GSPCB closure order is very much in force. The 15th Respondent, based upon its understanding about the jurisdiction of the GSPCB could not have ignored the GSPCB closure order and continued with the commercial activities in defiance. But nothing prevented the 15th Respondent from appealing the GSPCB order and securing appropriate orders in the appeal. Therefore, as long as the GSPCB closure order is not set aside or stayed, the sealing must continue.

16. Therefore, it is clarified that the 15th Respondent would be at liberty to institute appeals against the Orders made by the GSPCB before the appropriate Appellate Authority. In such appeals, it will be open to the 15th Respondent to seek appropriate interim reliefs. If such appeals are instituted and if any interim relief is applied for in such

appeals, we are sure that the Appellate Authorities will decide such matters in accordance with law and on their own merits after hearing all the parties. At this stage, it is not for this Court to go into the rival contentions or the merits and demerits of the GSPCB's orders.

17. This Court's Order dated 11.10.2023 need not come in the way of the 15th Respondent instituting appeals before the Appellate Authorities or seeking any interim relief therein. The circumstances in which the Order dated 11.10.2023 was made are evident from the said Order itself. The observations in the Order dated 11.10.2023 are only *prima facie*, and such observations need not influence the Appellate Authorities when deciding the appeal or the application for interim relief. If the Appellate Authorities find that a case is made out to set aside or stay the GSPCB closure order, they can direct the lifting of the sealing, subject no doubt to any orders from the civil courts in the proceedings to be instituted by 3rd, 5th and 14th respondents.

18. The Petitioner has filed a complaint dated 12.09.2023 before the Panchayat, i.e. Respondent no. 10, in addition to other complaints. Mr. P. Kamat, on behalf of Respondent no.10-Panchayat, makes a statement that such complaints will be looked into and disposed of in accordance with law within two months from today. If the Panchayat proposes to take any action, we are sure that the Panchayat will comply

with the principles of natural justice and fair play. This statement is accepted, and the Panchayat is directed to act accordingly.

19. The Petitioner has also filed a complaint to the GSPCB urging the GSPCB to launch a criminal prosecution against the 15th Respondent for defying the GSPCB's Order. The GSPCB must look into this complaint and take some decision on the matter as expeditiously as possible, preferably within two months from today.

20. The Petitioner has also filed complaints dated 12.04.2022 and 02.05.2023 to the Administrator of Comunidades. Mr. Arolkar pointed out that the Administrator of Comunidades, acting on such complaints, has already issued a show cause notice on 31.05.2023. Accordingly, the Administrator is directed to dispose of this show cause notice in accordance with law and on its own merits within three months from today. If any adverse action is proposed, the Administrator must comply with the principles of natural justice and fair play.

21. The Health Authorities have already initiated action in this matter, as pointed out by AGA. Mr Walwaikar states that the directions issued by the Health Authorities have already been complied with. The Health Authorities must look into the status of alleged compliance and dispose of Petitioner's complaints in accordance with the law and on their own merits within three months from today.

22. If the Health Authorities find that its directions have not been complied with and the nuisance due to the overflowing or leakage from the septic tanks and sewers continues, the direction for disconnection can continue. The 15th Respondent must not defeat this direction by making alternate arrangements for power and water supply. However, after compliance with the directions issued by the Health Authorities and abatement of nuisances, it would be open to the 15th Respondent to request the Health Authorities to revoke the disconnection notices. Again, it is clarified that the 15th Respondent cannot be the unilateral judge regards compliances. The Health authorities must satisfy themselves about the status of compliance. If the 15th respondent or the Petitioner is aggrieved, they can always appeal or take out legal proceedings in the matter.

23. The Petitioner has also prayed for damages to his compound wall allegedly caused by the 15th Respondent to the compound wall/property. Such relief cannot be granted in a Writ Petition. However, the Petitioner is at liberty to institute appropriate proceedings before the appropriate Forum for claiming of such alleged damages or any other appropriate reliefs.

24. At the request on behalf of the 15th Respondent, The Deputy Collector of Bardez is directed to de-seal the suit premises on 7th December 2023 at 10.30 a.m. and re-seal the same on 9th December

2023 at 4.00 p.m. A representative of the 15th Respondent will remain present at the site on 07.12.2023 at 10.30 a.m. The Petitioner can also remain present if he chooses to. The de-sealing for this limited period is only to permit the 15th Respondent to clear the deep freezers and clean the suit premises and for no other purposes.

25. Mr Walwaikar's statement, made on behalf of the 15th Respondent, that the suit premises will not be used for any other purpose, including in particular for any commercial purposes, is accepted as an undertaking on behalf of the partners of the 15th Respondent. This Court would seriously view any breach or resistance to the re-sealing on the 10th of December.

26. The further and continued sealing of the suit premises will abide by interim or final orders that the Appellate Authorities may make in the appeals that the 15th Respondent proposes to institute against the Orders of the GSPCB and orders of the Civil Courts in proceedings by the 3rd, 5th and 14th Respondents. This position is clarified in paragraph 17 above.

27. Considering the peculiar facts and circumstances of the present case, the 15th Respondent is directed to implead the Petitioner as Respondent in such appeals along with GSPCB. Further, the Respondent no. 15 will have to issue notices to the Respondents in the

appeal, i.e. Petitioner herein and the GSPCB, before seeking any interim orders from the Appellate Authorities. Such directions are necessary, given the 15th Respondent's tendency to defy or overreach the orders made by the Authorities.

28. In this Petition, it is not for this Court to go into the civil disputes between the 3rd, 5th, 14th, and 15th Respondents. All these parties are at liberty to institute appropriate proceedings before the appropriate Fora for protecting their rights, if any, in the suit premises. If any orders are made in such proceedings, needless to add, such orders will have to be implemented. Therefore, it is already clarified that the de-sealing orders, if and when made by the Appellate authorities, would be subject to orders by the Civil Court if and when made.

29. The rule is made absolute in the above terms without any order as to costs. The Writ Petition and also the Misc. Civil Application stands disposed of.

30. All concerned to act on the basis of an authenticated copy of this Order.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.

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