

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.767 OF 2023

COMMUNIDADE OF SERULA, ...Petitioner
through its Attorney, Mr. Peter Martins,
having its office at West Coast Residency,
01st Floor, P.O. Porvorim, Bardez
Goa- 403 521

VS

1. STATE OF GOA
through its Chief Secretary,
having office at Secretariat,
Porvorim- Goa.
2. THE COLLECTOR,
North Goa District, Panaji- Goa.
3. ADMINISTRATOR OF
COMMUNIDADES OF NORTH ZONE, ...Respondents
Mapusa – Goa.

Mr. Y.V. Nadkarni with Ms S. Khadilkar, Advocates for the Petitioner.

Mr Devidas Pangam, Advocate General with Mr. P. Arolkar,
Additional Government Advocate for the respondents.

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

DATE: 8th NOVEMBER,2023

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

1. Heard Mr Y.V. Nadkarni who appears with Ms S. Khadilkar, learned Counsel for the petitioner and Mr Devidas Pangam, learned Advocate

General with Mr P. Arolkar, learned Additional Government Advocate for the respondents.

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

3. The petitioner is the Comunidade governed by the provisions of the Code of Comunidade. It complains that there are several encroachments noticed on its land. Mr Nadkarni points out that complaints (Exh. C from pages 27 to 42) have been made to the Administrator of Comunidade to take action under Articles 371 and 372 of the Code of Comunidade to remove such encroachments. However, he submits that no effective action is taken.

4. The learned Advocate General submits that before any action is taken, a detailed survey is necessary to ascertain the status of alleged encroachments. He says that the Comunidade was informed that it should undertake such a survey so that the Administrator would be in a position to take effective action under Articles 371 and 372 of the Code if found necessary. Learned Advocate General submits that since the Comunidade did not carry out this exercise, the matter has not proceeded further.

5. Mr Nadkarni submits that such a survey would involve expertise which is available with the Directorate of Settlement and Land Records Government of Goa at Panaji. He submits that if any payments have to be

made for this Directorate to undertake the survey, the petitioner Comunidade will make such payments. He, however, submits that it would be in the interest of justice if the Directorate of Survey and Land Records undertakes the survey so that there are no controversies about the survey and the position of encroachments on the Comunidade land.

6. The learned Advocate General has placed on record a communication dated 03/11/2023 from the Directorate of Survey and Land Records, Panaji Goa, addressed to the Administrator of Comunidade, informing the Administrator about the rates payable for the surveying work. The copy of the same is furnished to Mr. Nadkarni, learned Counsel for the petitioner.

7. Mr. Nadkarni, on instructions, states that the Comunidade will bear the necessary charges for the survey work at the rates indicated in the communication dated 03/11/2023. He also states that on account, the Petitioner Comunidade will deposit with the Directorate of Survey and Land Records an amount of Rs.1,00,000/- within 15 days from today. Mr. Nadkarni, on instructions, states that further payments will be made to the Directorate of Survey and Land Records as and when demanded in terms of the rates now indicated in the communication dated 03/11/2023. These statements are accepted.

8. Accordingly, we direct the Directorate of Survey and Land Records to depute competent Surveyors to carry out the survey to determine the status of encroachments, if any, on this Comunidade land and to file

detailed report/reports to the Administrator of Comunidade. Reports can be made in stages or in part so that the Administrator can proceed with the action under Articles 371&372 and the Goa Land (Prohibition on Construction) Act, 1995 in stages.

9. The Administrator of Comunidade must act based upon the petitioner's complaints read with such reports and take action under Articles 371 and 372 of the Code of Comunidade and under the Goa Land (Prohibition on Construction) Act, 1995.

10. The Directorate of Survey and Land Records must endeavour to complete the survey exercise within eight months, and the Administrator must dispose of the complaints within four months from the receipt of the report/reports. Needless to add, the Administrator must comply with the principles of natural justice and fair play before any action is taken under Articles 371 and 372 of the Code and the Goa Land (Prohibition on Construction) Act, 1995.

11. Accordingly, the Rule is made absolute in terms of prayer clause 'A' of this petition. There shall be no order for costs.

12. All concerned to act on an authenticated copy of this order.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

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