

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO.1/2023

1. SANJAY ANKUSH REDKAR
Son of Ankush Redkar, 49 years of
age, R/o H. No. 360, Maimolem,
Vasco-da-Gama, Goa 403 802
Ph No. : 9422452257
Email: sanju redkar@yahoo.com

2. ASHWINI BHARAT
SHETGAOKAR, d/o of Kusta
Narvekar, About 62 years of age, R/o
Maimollem, Vasco-da-Gama, Goa
403 802, Ph No. : 9762639294

... PETITIONERS

Versus

1. THE SOUTHERN CENTRAL
RAILWAY, GOVERNMENT OF
INDIA, C/o South Western Railway
Division Office, Vasco-da-Gama,
Mormugao, Goa.

And having Head Office at
Office of the Division Railway
Manager, DRM Office Compound,
Keshwapur, Hubli - 580020.

2. RAIL VIKAS NIGAM LIMITED,
Through The Chairman & Managing
Director, Having its Goa Office at 3rd
Floor, 5 & 6 L&L Bldg., Near
Matanhy Saldanha Administrative
Bldg. Margao, Salcete, Goa.

And having it's Reg. Corporate Office at Plot No. 25, First Floor, August Kranti Bhawan, Bhikaji Cama Place, R. K. Puram, New Delhi — 110066.

Email : info@rvnl.org

3. TOWN & COUNTRY PLANNING DEPT., through the Chief Town Planner, Dempo Tower, 2nd Floor, Patto Plaza, Panaji — Goa.

4. MORMUGAO PLANNING & DEVELOPMENT AUTHORITY, Through the Member Secretary, Commerce Centre, Next to Old Bus Stand, Vasco-da-Gama, Goa 403802.

5. THE COLLECTOR, South Goa District 4th Floor, Conversion Cell Section, Matanhy Saldanha Administrative Complex, Margao-Goa.

6. THE DEPUTY COLLECTOR & S.D.O. OF MORMUGAO, SDM, Mormugao Office Vasco-da-Gama - Goa.

7. THE GOA STATE POLLUTION CONTROL BOARD, through the Member Secretary, Nr. Pilerne Industrial Estate, Opp. Saligao Seminary, Saligao, Goa 403511.

8. MORMUGAO MUNICIPAL COUNCIL, through the Chief Officer, Municipality Building, Vasco-da-Gama, Goa 403802.

9. THE ADMINISTRATOR OF
COMUNIDADES, SOUTH ZONE
Old Collectorate Building, Margao,
Goa 403601.

10. THE COMUNIDADE OF
MORMUGAO, through the
Attorney, Vasco da Gama, Goa.

11. THE GOA STATE
BIODIVERSITY BOARD, through
the Member Secretary, Saligao Road,
Pilerne, Bardez, Goa 403511.

12. THE VASCO POLICE
STATION, through the Police
Inspector, Vasco da Gama.

13. THE STATE OF GOA, through
the Chief Secretary, Secretariat,
Porvorim, Goa.

... RESPONDENTS

Ms Fawia Menezes Mesquita, Advocate for the Petitioners.

Mr Abhishek Sawant and Mr S. Karpe, Advocates for
Respondent No.1.

Mr Iftikhar Agha with Ms V. Fernandes, Advocates for
Respondent No.2.

Mr D. Pangam, Advocate General with Ms Maria Correia,
Additional Government Advocate for Respondents No.3, 5, 6, 11,
12 and 13.

Ms Neha Kholkar and Mr Nikhil Pai, Advocates for Respondent
No.4.

Mr Pavithran A. V. and Mr P. Kholkar, Advocates for Respondent
No.7.

Mr Ravi Anand, Advocate for Respondent No.8.

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

DATED: 17th JULY 2023

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

1. Heard Ms Fawia Menezes Mesquita for the Petitioners, Mr Abhishek Sawant and Mr S. Karpe for Respondent No.1, Mr Iftikhar Agha with Ms V. Fernandes for Respondent No.2, Mr D. Pangam, learned Advocate General who appears with Ms Maria Correia, learned Additional Government Advocate for Respondents No.3, 5, 6, 11, 12 and 13, Ms Neha Kholkar and Mr Nikhil Pai for Respondent No.4, Mr Pavithran A. V. and Mr P. Kholkar for Respondent No.7 and Mr Ravi Anand for Respondent No.8.

2. Rule. The rule is made returnable immediately with the consent of the learned counsel for the Respondents.

3. The petitioners, in the purported public interest, complain about the illegal activities like landfilling, unauthorised constructions, reclamation of water bodies, etc., in property surveyed under Nos.5/2, 5/3, 5/4, 5/5, 5/6, 5/12, 5/13, 5/18 and 5/20 of P.T.S. No. 100 and Survey Nos. 11/1, 11/2 and 11/8 of P.T.S. No.99 of Vasco city. The allegation is that these properties are agricultural tenanted fields which can be used for no purposes other than agriculture. The allegation is that unauthorised landfilling and construction have come up in this area. Ms Mesquita states that even respondents no.1 and 2 (Railways) are involved in illegal activities, including dumping construction debris and demolition waste.

4. The petitioners have pleaded that the above areas are low lying paddy fields. It is also pleaded that the fields are known as khazan/Casana land and are flanked on the southern side by the twin lakes of Maimollem and Dhaktollem collectively referred to as the Maimollem Lake. It is pleaded that these lakes/water bodies are indicated as such in the ODP for Vasco.

5. The petitioner's grievance is that despite their complaints, no effective action was taken by the authorities. Ms Mesquita pointed out that some of the authorities did issue show-cause notices and invited action-taken reports. However, there was no follow-up. She submits that from the material on record, it is apparent that the authorities were only pushing the buck on each other without any serious action. Accordingly, she submitted that necessary directions be issued to the respondents to take emergent steps to ensure that this area is rid of encroachments, unauthorised filling and unauthorised constructions. She submitted that suitable directions must be issued to restore this area to its original position so that the low-lying fields and water bodies are used or retained for the purposes they were meant to be.

6. We have perused the record, and we find that the Deputy Collector, South Goa, in charge of the Flying Squad, based upon the petitioners' complaints, issued a show cause notice-cum-stop work order dated 22.04.2022. This notice refers to a site inspection which revealed illegal filling in Survey Nos. 5/2, 5/3, 5/4, 5/5, 5/6, 5/12, 5/13, 5/18, 5/20 of P. T. Sheet No.100 and

Survey Nos. 11/1, 11/2, 11/8 of P. T. Sheet No. 99 of Vasco City, Mormugao Taluka. The show cause notice also records no signboard at the site displaying permission from the Town and Country Planning Department. No permissions or NOCs from the statutory authorities were also produced. The show cause notice, therefore, adds that all this *prima facie* attracts Section 17(A) of the Town and Country Planning Act, 1974. The show cause notice records that breach of this provision is a cognisable offence.

7. The show cause notice dated 22.04.2022 directed all concerned to remain present in the office of the Member Secretary, South Goa Planning and Development Authority (SGPDA), either personally or through any authorised pleader with all necessary permissions, approvals, licenses, if any, failing which an FIR was directed to be filed.

8. A copy of this notice was marked to the Deputy Collector, Mormugao, Goa, for immediate action to stop the illegal construction/development and report compliance. A copy was also marked to the Member Secretary, SGPDA, Mormugao, for immediate action. The Police Inspector of Vasco Police Station was also directed to serve notices to the concerned parties to ensure no further hill cutting/filling. The Police Inspector was directed to keep a vigil on further illegal activities and report the same to the Deputy Collector for necessary action under Section 188 of the Indian Penal Code.

9. Despite the apparently prompt action by Ms Jyoti Kumari, IAS, Deputy Collector South-I and in-charge of Flying Squad, Margao Goa, the authorities concerned did not take serious action on the petitioners' complaints. A case of inaction is therefore made out.

10. The petitioners have placed on record a communication dated 31.05.2022 addressed by the Planning Assistant from the Mormugao Planning & Development Authority (MPDA) to the PI, Vasco Police Station requesting the latter to take some action. However, the MPDA has not taken any serious action in the matter. The communication also requested the PI to register an FIR against unknown persons. We are not sure whether such FIR has indeed been registered. If the FIR is not registered, the PI, Vasco Police Station, must take necessary action at the earliest and, in any case, within a month from today.

11. The petitioners have also placed on record communication dated 22.09.2022 addressed by the Chief Officer, Margao Municipal Council (MMC) to the Town Planner simply forwarding petitioners' and other complaints to the Town Planner. The Chief Officer of MMC has also forwarded such complaints to the Station Manager of the South Central Railways and perhaps even to the police authorities. However, the MMC or its Chief Officer have not bothered to take any action on the complaints.

12. The petitioners have also placed on record communication dated 23.11.2022 addressed by the Member Secretary, Goa State Pollution Control Board (GSPCB) to the Chief Officer MMC forwarding petitioners' complaint about illegal dumping of construction and demolition waste in Maimollem Khazan land/ agricultural tenanted/low lying paddy fields. However, the GSPCB has not bothered to inspect the site or take serious action on the complaint.

13. Therefore, from the material placed on record it does appear that the petitioners' complaints are unattended even though the Flying Squad on inspection found *prima facie* merit in them. The MMC, the MPDA and the GSPCB have only apprised each other of the complaints but refrained from taking any serious action. A case of inaction and passing of the buck is therefore made out.

14. The Railways have denied any illegal activity on their part. Mr Agha submitted that some parties had established unauthorised roads in the area. He pointed out that several illegal constructions have also come up in this area for which the Railways are not responsible. He pointed out that some commercial activities are also undertaken in this area, which, according to him, in all probabilities, would be unauthorised. Mr Agha made these submissions to point out that the petitioners must not target only the Railways and ignore such patent illegal and unauthorised activities by all other parties, in case the

petitioners were genuinely interested in protecting the low lying paddy fields, khazan, tenanted lands and water bodies.

15. Mr Agha, on instructions, submits that the Railways have laid a pile foundation and built a retaining wall in the Railway property itself. Mr Agha, on instructions, categorically states that Railways have not dumped any construction material or debris in the area, which the petitioners complain of. Further, on instructions, he states that the Railways will not dump any construction waste, debris, or other waste in this area. These statements are accepted. The railways are bound to comply with such statements made on their behalf.

16. Having regard to the material on record, we direct the MPDA, GSPCB and MMC to take serious action based on the petitioners' complaints and complete such action within four months from today. If the authorities have to hear the parties responsible for such activities, they may do so within this period. Besides, petitioners should also be heard by these authorities. The final decisions that the authorities take must be communicated to the parties, including the petitioners herein. All parties must be given a fair opportunity, but if illegalities are established, strict action must be promptly taken.

17. The Deputy Collector in charge of the Flying Squad should also keep a constant vigil through the Flying Squad in this area to ensure that there is no unauthorised landfilling, illegal constructions or dumping of construction or other waste/debris.

18. The MMC, MPDA, GSPCB and the State must ensure the restoration of this area if it is found that the same is affected by illegal landfilling, illegal conversion, illegal constructions, etc. Such restoration must be ordered and executed expeditiously.

19. At this stage, we do not wish to go into Railway's allegations about the selective targeting by the petitioners. However, if the petitioners are genuinely interested in protecting such areas, then the petitioners cannot adopt a selective approach.

20. With the above directions, we dispose of this petition. The Rule is made absolute in above terms.

21. There shall be no order for costs.

22. All concerned to act on the authenticated copy of this Order.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

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