

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.996 OF 2019

GAURISH NAIK, Sancoale,
Cortalim, major of age.

... PETITIONER

Versus

1. STATE OF GOA, Through Chief
Secretary, having office at
Secretariat, Panaji-Goa.

2. ADMINISTRATOR OF
COMMUNIDADE, South Goa,
having office at Margao, Goa.

3. THE DY. COLLECTOR &
SUB-DIVISIONAL OFFICER,
Government Of Goa, Margao-Goa.

4. THE ATTORNEY, Comunidade
of Sancoale, Sancoale, Mormugao,
Goa.

5. NARAYAN DATTA NAIK,
major of age, r/o H.No.278/1(3),
Savarfond, Sancoale, Goa.

... RESPONDENTS

**WITH
WRIT PETITION NO.987 OF 2019**

PRATAP A. MARDOLKAR,
r/o Alto Dabolim, Mormugao,
Goa, major of age.

... PETITIONER

Versus

1. STATE OF GOA, Through
Chief Secretary, having office at
Secretariat, Panaji-Goa.

2. ADMINISTRATOR OF
COMMUNIDADE, South Goa,
having office at Margao, Goa.

3. THE DY. COLLECTOR &
SUB-DIVISIONAL OFFICER,
Government Of Goa, Margao-Goa.

4. THE ATTORNEY, Comunidade
of Salcoale, Sancoale, Mormugao, Goa.

5. NARAYAN DATTA NAIK,
major of age, r/o H.No.278/1(3),
Savarfond, Sancoale, Goa.

... RESPONDENTS

**WITH
WRIT PETITION NO.997 OF 2019**

MR MARIANO B. COUTINHO,
H.No.222, Church street,
Cortalim Goa, major of age.

... PETITIONER

Versus

1. STATE OF GOA, Through
Chief Secretary, having office at
Secretariat, Panaji-Goa.

2. ADMINISTRATOR OF
COMMUNIDADE, South Goa,
having office at Margao, Goa.

3. THE DY. COLLECTOR &
SUB-DIVISIONAL OFFICER,
Government Of Goa, Margao-Goa.

4. THE ATTORNEY, Comunidade

of Salcoale, Sancoale, Mormugao, Goa.

5. NARAYAN DATTA NAIK,
major of age, r/o H.No.278/1(3),
Savarfond, Sancoale, Goa.

... RESPONDENTS

**WITH
WRIT PETITION NO.998 OF 2019**

MR RAMNATH NAIK,
through his legal heirs (deceased)

1.Mrs Vilasini Ramnath Naik,
w/o. Late Ramnath Naik, age 68 yrs

2.Mrs Rameshwari Kapil Phadte,
w/o. Kapil Phadte, age 40 yrs

3.Mr Kapil Chandrakant Phadte,
age 37 yrs

4. Mr Rahul Ramnath Naik,
age 37 yrs

5.Mr Rakesh Ramnath Naik,
age 32 yrs

All major in age and residing at
H.no.175/D, Alto Dabolim, Goa.

... PETITIONERS

Versus

1. STATE OF GOA, Through
Chief Secretary, having office at
Secretariat, Panaji-Goa.

2. ADMINISTRATOR OF
COMMUNIDADE, South Goa,
having office at Margao, Goa.

3. THE DY. COLLECTOR &
SUB-DIVISIONAL OFFICER,
Government Of Goa, Margao-Goa.

4. THE ATTORNEY, Comunidade
of Sancoale, Sancoale, Mormugao, Goa.

5. NARAYAN DATTA NAIK,
major of age, r/o H.No.278/1(3),
Savarfond, Sancoale, Goa.

... RESPONDENTS

Mr S. S. Kantak, Senior Advocate with Mr P. Talaulikar and Mr
S. Kher, Advocates *for the Petitioners*.

Mr Rohit Bras De Sa, *Amicus Curiae*.

Ms S. Linhares, Additional Government Advocate *for the State*.

Mr H. D. Naik, Advocate *for Respondent No.4*.

Mr Athnain Naik, Advocate *for Respondent No.5*.

Mr Jayesh Fadte, Attorney of Comunidade, was present in
person.

CORAM: M. S. SONAK, J.

Reserved on: 31st March 2023

Pronounced on: 13th April 2023

JUDGMENT:

1. Heard Mr S. S. Kantak, learned Senior Advocate who appears along with Mr Preetam Talaulikar and Mr S. Kher for the petitioners, Ms Susan Linhares, learned Additional Government Advocate for the State, Mr Hanumant Naik for respondent no.4 and Mr Athnain Naik for respondent no.5. Mr Jayesh Fadte, the Attorney of the Comunidade of Sancoale (present in person).

2. In all these petitions, the petitioners challenge the order dated 06.09.2019 made by the Administrator of Comunidades, South Zone, Margao Goa rejecting petitioners' applications for review of the order dated 03.11.2017 by which the Administrator had declined to regularize the brazen encroachments carried out by the petitioners upon the Comunidade's property surveyed under No.115/1, Sancoale, Goa. After encroaching upon Comunidade's property, the petitioners constructed unauthorized structures therein for commercial use.

3. Mr Kantak, based upon instructions from the petitioners however stated that the structures/shops are closed and not used for any commercial or other purposes given the pendency of regularization proceedings.

4. The petitioners contend that in the General Body Meeting of the Comunidade held on 01.06.2003, the Comunidade resolved to allot to each of the petitioners' plots admeasuring 400 sq. mtrs. at the rate of ₹75/- per sq. mtr. for commercial use. Accordingly, the petitioners paid some amount to the Comunidade and put up shops in the allotted plots.

5. By notice dated 27.10.2005, the Administrator of Comunidades initiated action for demolition of the suit

structures on the Comunidade property. The Administrator alleged that the petitioners had encroached upon the Comunidade properties. Accordingly, show cause notices were issued to the petitioners.

6. Apprehending that the structures would be demolished even before the show cause notice was disposed of, some of the petitioners instituted petitions before this Court. In these petitions, a statement was made on behalf of the Administrator that no demolitions would take place until the disposal of the show cause notices. After recording this statement, the petitions were disposed of.

7. The Administrator, after due compliance with the principles of natural justice, made an order dated 02.03.2006 directing the petitioners to demolish the structures in the encroached plot and restore the encroached plot to its original state i.e. to the Comunidade.

8. The petitioners appealed to the Administrative Tribunal against the order dated 02.03.2006. However, such appeals were dismissed on 05.03.2010. No further proceedings were taken out by the petitioners against the Administrator's or the

Administrative Tribunal's orders. Accordingly, the issue of encroachment and the illegality of the structures stood finalized.

9. Even otherwise, there was no legal basis whatsoever for the petitioners to brazenly encroach upon the Comunidade's property and put up structures therein for commercial use. The Code of Comunidades is quite clear in that no such allotments can be made without the approval of the Government and following the prescribed procedure. In this case, neither was the prescribed procedure followed nor was any approval from the Government obtained. Therefore, this was a case of rank encroachment on Comunidade property and the Administrator was justified in holding so. Even the petitioners did not question this position once their appeal was dismissed by the Administrative Tribunal in 2010.

10. The petitioners, it is apparent, are influential persons, some of whom are presently, in the management of the Comunidade of Sancoale, whose lands they have encroached upon. For example, Mr Pratap Mardolkar, the petitioner in Writ Petition No.987/2019, is the President of the Comunidade of Sancoale and also an admitted encroacher on the same Comunidade's property.

11. Even though the demolition/restoration order was made in 2006 and attained finality in 2010, no action was taken against any of the petitioners, who continued to enjoy the fruits of their brazen encroachment upon the Comunidade's property. Therefore, the Intervenor/respondent no.5 – Narayan Datta Naik, a component of the Comunidade, instituted Writ Petition No.452/2016 complaining that the demolition/restoration orders were deliberately not being implemented to favour the petitioners in their continued user of the encroached property and the unlawful construction made therein.

12. This petition was disposed of by order dated 27.06.2017 after the petitioners and the learned Advocate General pointed out that petitioners' applications for regularization were pending before the Administrator and such applications would be disposed of within four weeks. Learned Advocate General also made a statement that in case a decision was taken not to regularize the encroachments/structures, further action in accordance with the law would be taken within four weeks thereafter.

13. Consistent with the above statement recorded in the order dated 27.06.2017 disposing of Writ Petition No.452/2016, the Administrator by order dated 18.07.2017 rejected the petitioners'

applications for regularization *inter alia* on the ground that such applications were time-barred.

14. The petitioners instituted Writ Petitions No.809, 810, 816 and 817 of 2017 to question the Administrator's order dated 18.07.2017. In these petitions, the learned Advocate General made a statement that the petitioners' cases for regularization would be considered on merits without reference to Notification dated 04.07.2001 (Regularization Scheme). This was because all concerned (including the Petitioners) agreed that the scheme in the notification dated 04.07.2001 did not apply to the case of the Petitioners. Accordingly, by recording all this, the Writ Petitions were disposed of by order dated 03.10.2017.

15. The Administrator, upon once again considering the case of the petitioners, by order dated 09.11.2017 rejected the claim for regularization. The petitioners neither appealed the order dated 09.11.2017 nor challenged the same by instituting any petition. Instead, on 21.11.2017, the petitioners applied for a review or reconsideration of the Administrator's decision dated 09.11.2017.

16. Again, the petitioners instituted before this Court, Writ Petitions No.1099, 1100, 1101 and 1102 of 2017 apprehending that coercive action might be taken against them pending the

decision on their applications for review/reconsideration. Again, the learned Advocate General made a statement that the State will not take any coercive steps against the petitioners till their applications for reconsideration are disposed of. Based on this statement and without going into the issue as to whether the applications for reconsideration or review were maintainable this Court disposed of the Writ Petitions by order dated 11.12.2017.

17. The petitioners filed detailed written submissions and were also heard by the Administrator. By order dated 20.04.2018, the Administrator, rejected petitioners' applications for reconsideration/review.

18. The petitioners thereupon instituted Writ Petitions No.542, 543 and 544 of 2018 complaining that there was a breach of principles of natural justice because the officer who granted a personal hearing to the petitioners, was not the officer who made the order dated 20.04.2018. On this short ground, the Administrator's orders dated 20.04.2018 were set aside and the matter was once again remanded to the Administrator to consider petitioners' applications for reconsideration/review.

19. The Administrator, by the impugned order dated 06.09.2019, has rejected petitioners' applications for review/reconsideration on merits. Hence these petitions.

20. Mr Kantak learned Senior Advocate for the petitioners submitted that the rejection is based on alleged non-compliance with the provisions of Article 380 of the Code of Comunidades. He however submitted that the Administrator had failed to appreciate the scope and import of these provisions. He pointed out that the Administrator had failed to consider this Court's decision in *Adv. Aires Rodrigues v/s. Comunidade of Serula (PIL Writ Petition No.25/2013)*. He pointed out that no cadastral survey as contemplated by Article 210 of the Code of Comunidades was carried out and therefore, the reason for the rejection of the applications for reconsideration/review was not proper. Mainly for this reason, Mr Kantak contended that the impugned orders made by the Administrator warrant interference.

21. Mr Kantak submitted that the Administrator's impugned orders are vitiated by non-application of mind and whatsoever may have been the stance of the previous managing committees of the Comunidade, the present managing committee of the Comunidade is inclined to consider the petitioners' case

favourably. He submitted that due credence should be given to this aspect and based upon the same the impugned orders must be set aside and if necessary, the matter could be remanded to the Administrator once again. Mr Kantak relied upon the decision of this Court dated 25.02.2014 in PIL Writ Petition No.25/2013 (*Adv. Aires Rodrigues v/s. Comunidade of Serula*).

22. Ms Susan Linhares learned Additional Government Advocate pointed out that there was no error whatsoever in the Administrator's decisions. She pointed out that the petitioners were rank encroachers who admitted to the encroachment in the year 2001. Accordingly, she submitted that there was no provision under the Code of Comunidades to regularize these types of brazen encroachments. Accordingly, she submitted that these petitions must be dismissed.

23. Mr Hanumant Naik, learned counsel for the Comunidade submitted that the Administrator's orders were correct and the petitioners must remove the encroachments and restore the property to the Comunidade in its original state.

24. Mr Athnain Naik, learned counsel for respondent no.5 pointed out that the petitioners were abusing the process by stalling the demolition/restoration since 2006 even after

admitting their status as rank encroachers on the Comunidade property. He pointed out that some of the petitioners were now in the managing committee of this very Comunidade and the entire attempt was to further delay the removal of encroachment/illegal construction on the Comunidade property.

25. Mr Athnain Naik pointed out that Shri Pratap Mardolkar, the petitioner in Writ Petition No.987/2019 was presently the President of the Comunidade. He submitted that apart from the encroachment which is the subject matter of these petitions, the Administrator had issued yet another notice dated 13.12.2021 to Shri Mardolkar about further encroachment on the Comunidade property surveyed under No.83/1 of Sancoale Village. He submitted that stern action may be taken against such petitioners because of the conflict between interest and duty.

26. Mr Athnain Naik pointed out the resolutions to remove the previous advocate of the Comunidade because the advocate had put forth the legal position correctly before this Court and refused to tow the petitioners' line and delay demolition/restoration. He pointed out how even without the resolution for the said advocate's removal having been confirmed in the Court of law, attempts were made to serve the same on the advocate during the hearing of these petitions.

27. Mr Athnain Naik finally submitted that these petitions must be dismissed and a message must go that Comunidade properties should not be encroached on, more so, by the components of the Comunidade or by persons holding positions in the managing committee of the Comunidade. Mr Athnain Naik submitted that these petitions must be dismissed with exemplary costs.

28. Mr Jayesh Fadte, Attorney of the Comunidade apologized for attempting to interfere with the Court proceedings and serving upon the previous advocate of the Comunidade a notice to cease appearing based upon resolutions that were never approved or confirmed. Mr Jayesh Fadte admitted that this resolution was never approved and therefore, was not effective. He tendered an apology for his conduct tending to obstruct the part heard judicial proceedings.

29. In the context of the Administrator's notice dated 13.12.2021, Mr Jayesh Fadte admitted that the property surveyed under No.83/1 is a Comunidade property. But he tried to defend his President Pratap Mardolkar by saying that he had already transferred the property to one Mr Ramakant Borkar.

30. The rival contentions now fall for my determination.

31. The impugned order dated 06.09.2019 records in more places than one the petitioners' admission about having constructed structures on the comunidade property in the year 2001. In the petition, the petitioners have not retracted from this position. In the petition and also in the synopsis, the petitioners have contended that the general body of the comunidade in its meeting held on 01.06.2003 resolved to allot plots admeasuring 400 sq. mtrs. to each of the petitioners for a rate of ₹75/- per sq. mtr. for commercial use.

32. This means that the petitioners first encroached upon the comunidade property by constructing shops in the year 2001 and only after that, in 2003 the comunidade resolved to allot the plots where such encroachment was made by the petitioners. This resolution of the general body is *ex-facie* illegal and without jurisdiction. No comunidade property can be allotted based upon such resolutions of the general body and without obtaining prior approval of the Government. The general body cannot make such allotments for a commercial or non-commercial user by determining the rate of the comunidade property on an ad-hoc basis at a paltry ₹75/- per sq. mtr. Significantly, none of the petitioners even seek to defend the resolution of the general body dated 01.06.2003, perhaps realizing that the same is *ex-facie* indefensible.

33. Presently, the administration of Comunidades is governed by Legislative Enactment No.2070 dated 15.04.1961 and is known as the “Code of Comunidades”. Recognizing the vital role played by these comunidades at the village levels and the interests of the village communities in the institution of the Comunidades and its properties, Article 5 of the said Code, has made it clear that the Comunidades shall be under the administrative tutelage of the State, in terms established in the said Code, and its immovable properties may be granted on emphyteusis and alienated in the manner provided in the Code.

34. The scheme of the Code of Comunidades suggests that the Comunidades are not free to deal with their properties in the same manner as a private individual or entity. The Comunidades have to deal with their properties following the provisions contained in the said Code. There are checks and balances provided in the said Code to ensure that the Managing Committees of the Comunidades do not fritter away Comunidade's properties for their private gains or without regard to the interest of the Comunidades and its members.

35. The aforesaid is quite evident from the several provisions of the said Code. For example, while Article 30 of the Code of Comunidades empowers the Comunidade to deliberate upon

the issues of emphyteusis (long leases), sale or exchange of lands, or the grant of rebate (quita) to the leaseholders, Article 153 of the said Code confers the power on the Governor-General (now Government) to grant emphyteusis (long leases), long term leases, authorize the exchange of lands of the Comunidades or even order their reversion.

36. Chapter VI of the Code of Comunidades provides detailed provisions concerning grants of comunidade property. such applications for grants have to be made to the Government and the final decision on the issue of such grants is to be made by the Government. Therefore, based upon a simple resolution of the general body of the comunidade, there is no question of allotment of comunidade lands for commercial or other purposes.

37. The normal rule is that the lands of the comunidade are to be allotted by public auction. However, there are some exceptions carved out under Articles 334-A and 334-B of the Code of Comunidades where comunidade lands may be granted without auction. One of the categories is landless joneiros, which none of the petitioners claim to be. Besides, grants under Article 334-A even to landless joneros cannot be for commercial purposes.

38. All these provisions suggest that though the lands are owned by the comunidade, it is not as if the comunidades are free to dispose of their lands just like the private individuals or private entities. There are restrictions on the comunidades disposing of their lands and such restrictions are found in several provisions of the Code of Comunidades including the provisions that require approvals and permissions from the Government before any such grant can be effective.

39. The above position was clarified in *Raghupati R. Bhandari v/s. Comunidade of Bandora & Ors. - First Appeal No.250 of 2009 and Comunidade of Bandora v/s. The President, The Administrative Tribunal & Ors. - Writ Petition No.983 of 2019 decided by the Division Bench of this Court on 08.02.2021*. The Special Leave Petition No.6767 of 2022 against the said decision was dismissed by the Hon'ble Supreme Court on 19.09.2022.

40. Thus, it is apparent that the very entry of the petitioners into the comunidade property and the forceful construction of shops therein was *ex-facie* an unlawful encroachment on the comunidade property. Such encroachment was brazen since it now transpires that the petitioners are extremely influential persons concerned with the governance of the Comunidade of

Sancoale, upon whose properties they have encroached. Based upon their influential position, the petitioners have stalled action against their encroachment for the last 22 years by one means or the other. These petitions are yet another attempt in the same direction.

41. The petitioner in Writ Petition No.987 of 2019, presently enjoys the position of President of Comunidade of Sancoale. Some reference will be made to the resolutions of the managing committee by which an attempt was made to replace Advocate Rohit Bras de Sa who used to appear in these matters on behalf of the Comunidade of Sancoale, no sooner the said advocate made some submissions on 23.03.2023 on behalf of the comunidade and such submissions may not have entirely favoured the interests of the petitioners, including the President of the comunidade.

42. Even before the resolutions in the meeting held on 15.03.2023 (from which Mr Pratap Mardolkar nominally recused himself), could be confirmed and approved by the Administrator of Comunidades, Mr Jayesh Fadte, the Attorney of the Comunidade approached Advocate Rohit Bras de Sa on the evening of 23.03.2023, when the matter was part heard, and served upon him a letter informing him that the comunidade had resolved to change the advocate in the present matters. In

this letter, reference was made to the resolution of the general body in its meeting held on 19.06.2022.

43. The general body meeting of 19.06.2022 makes an interesting reading. Pratap Mardolkar and Gaurish Naik, petitioners in Writ Petitions No.987 of 2019 and 996 of 2019 respectively, took part in this meeting. Pratap Mardolkar, being the President, presided over this meeting. On the resolution of change of advocate, at least *prima facie* it appears that Pratap Mardolkar took part in the discussions and the ultimate decision.

44. In the same meeting, at Point No.8, there was a discussion on the grant of plots to the petitioners in Survey No.115/1. On this subject, Pratap Mardolkar recused. However, the general body, *“by taking into consideration the contribution of Shri Pratap Mardolkar in getting back comunidade land in Survey No.59/0 or Survey No.59/1 admeasuring to 9300.00 sq.mtrs. of land and protecting the land under Survey No.218/1 of Sancoale Comunidade admeasuring to 40925 sq.mtrs. as pointed out respectively in Point No.5 and Point No.6 of the agenda above, the members of the General body meeting unanimously resolve to settle the matter with the concerned persons, possibly by payment of the specified price as per the Government rate declared in the year 2014. In this regards it was further resolved*

that four case of (1) Late Shri Ramnath R. Naik, (2) Mr Mariano Bonifacio Coutinho, (3) Shri Gaurish D. Naik and (4) Shri Pratap A. Mardolkar be settled as special case on the condition that they will not be entitled for any future plots developed by Comunidade of Sancoale.”

45. Although Pratap Mardolkar, the petitioner in Writ Petition No.987 of 2019 and the current President of the Comunidade, nominally recused from participating in the above agenda item, from the minutes of the meeting dated 15.03.2023 and 19.06.2022, it is apparent that it is Pratap Mardolkar who is in complete control of the affairs of the Comunidade of Sancoale. Further, it does appear that it is Pratap Mardolkar, who was behind these proposals of holding on to the encroached properties even though the authorities have time and again held that such encroachments were illegal and did not even qualify for regularization.

46. There is no provision in the Code of Comunidades to treat cases of encroachers as “*special cases*” either because they hold influential positions like the President of the Comunidade or because such encroachers have assisted in restoring Comunidade lands from other encroachers. On the contrary,

those that wield the power of governing the Comunidades and yet encroach upon its properties must be judged by stricter standards.

47. Accordingly, at least *prima facie*, this appears to be a case of conflict between interest and duty where the President of the Comunidade is acknowledged encroacher upon the comunidade property. The findings about encroachment have attained finality. The regularization was rejected on 09.11.2017 by the Administrator of Comunidades. The review petitions against this order were also rejected by the Administrator after providing detailed reasons and consideration of all aspects. Yet this President, with utter disregard for the Comunidade Code and sacrificing the interests of the Comunidade is bent upon not restoring the encroached property to the Comunidade.

48. Based upon the resolutions that were never confirmed or approved by the Administrator, an attempt was made in these petitions to replace Advocate Rohit Bras de Sa whilst the matter was part heard. At least *prima facie*, this amounts to interference with the administration of justice because even advocates are officers of the Court. Merely because Mr Rohit Bras de Sa was defending the interest of the Comunidade by pointing out how the acts of the Petitioners were indefensible or how regularization

was impermissible and such submissions were not palatable to the petitioners, including Pratap Mardolkar, (the President of the Comunidade), based upon resolutions that were not even confirmed or approved, no attempts could be legitimately made to change Advocates in part-heard matters. This attempt was only to scuttle the proceedings and thereby interfere with the administration of justice. This instance shows the kind of control and influence the Petitioners, admitted encroachers, have on the affairs of the Comunidade of Sancoale.

49. On 24.03.2023, Mr Jayesh Fadte, the Attorney of the Comunidade withdrew the letter dated 21.03.2023 addressed to Advocate Rohit Bras de Sa. This letter was surprisingly served upon Advocate Rohit Bras de Sa on 23.03.2023 after the hearing had commenced in these petitions. This is recorded in the order made on 24.03.2023. Mr Jayesh Fadte also tendered his apology and claimed that he was acting in the *best interest of the Comunidade*. Mr Fadte however could not respond to the question of whether the interests of Comunidade were being served by the petitioners continuing with the encroachment on the comunidade properties for all these years. The Attorney who functions under the encroacher President had mistaken the best interests of the Comunidade with the best interests of

Pratap Mardolkar and other encroachers (Petitioners) on Comunidade's Properties.

50. Although Advocate Rohit Bras de Sa was not bound to withdraw his appearance, but based on the best traditions of the Bar, he made it clear that he would no longer appear on behalf of the Comunidade in the above circumstances. Mr Hanumant Naik, who filed an appearance on behalf of the Comunidade of Sancoale also submitted that whatever may have been the motives for the change of advocate, as an officer of the Court, he stands by the Administrator's order rejecting the petitioners' applications for reconsideration/review of the earlier orders declining regularization. Mr Naik also submitted that the petitioners were encroachers on comunidade land and further, such encroachments did not qualify for any regularization.

51. The records show that the Administrator by his order dated 02.03.2006, after due compliance with the principles of natural justice and fair play concluded that the petitioners were encroachers and directed them to demolish the structures in the encroached plot and to restore the encroached portion to the original state i.e. to the Comunidade. The appeal against this

order was dismissed by the Administrative Tribunal on 05.03.2010.

52. Considering the influence of the petitioners including the influence of Pratap Mardolkar, quite surprisingly, neither the comunidade nor the Administrator took any action for the enforcement of its orders and resuming the encroached portion for almost five to six years. No sooner some action commenced based upon the persistence of respondent no.5 (original complainant), the petitioners instituted a series of petitions before this Court to stall such action.

53. Respondent no.5 had to institute Writ Petition No.452/2016 in this Court to urge the comunidade and the Administrator to implement its orders and resume possession of the Comunidade lands encroached upon by the petitioners. In this petition, the petitioners pointed out that they had applied for regularization and urged that until their regularization applications were considered and disposed of, no coercive action may be taken against them.

54. The Administrator by order dated 18.07.2017 dismissed the applications for regularization. This order was set aside in Writ Petitions No.809, 810, 816 and 817 of 2017 and the matter

was again remanded to the Administrator for consideration of the issue of regularization on merits. All this was based upon the statement of the learned Advocate General and not upon this Court considering the merits and demerits of the petitioners' case.

55. The Administrator once again, by order dated 09.07.2017 rejected the petitioners' claim for regularization. This order was never challenged by the petitioners by instituting any petition, but the petitioners applied for review/reconsideration. Mr Kantak was unable to point out any provisions in the Code of Comunidades that empower the Administrator to review his decision. Powers of review are never inherent and have to be specifically conferred. Therefore, at least *prima facie* even the petitioners seeking review were intended to only delay and stall the execution of orders that had directed the petitioners to restore the encroached property of the Comunidade.

56. The petitioners, by filing Writ Petitions No.1099, 1100, 1101 and 1102 of 2017 once again stalled action by contending that no coercive steps should be taken against them until their applications for review/reconsideration are disposed of by the Administrator again, not on merits, but based only on the statement of the Advocate General, these petitions were disposed

of with directions not to take coercive steps until the applications for review/reconsideration were disposed of. This Court did not go into the issue of whether such applications for review/reconsideration were at all maintainable.

57. Again, the Administrator rejected the petitioners' claim for review/reconsideration. The petitioners, instituted Writ Petitions No.542, 543 and 544 of 2018, this time contending the failure of natural justice because oral arguments were heard by one incumbent (Administrator) and the rejection order dated 20.04.2018 was made by another incumbent (Administrator). On this short ground, the order dated 20.04.2018 was set aside and the matter was once again remanded to the Administrator to consider petitioners' applications for review/reconsideration.

58. Finally, by the impugned order dated 06.09.2019 the Administrator has after giving detailed reasons rejected the petitioners' applications for review/reconsideration. This is the order which is impugned in each of these petitions. Significantly, there is no challenge to the Administrator's order dated 09.11.2017, rejecting petitioners' applications for regularization. However, even though there is no specific challenge to this order, looking at the propensity of the petitioners to keep on filing multiple petitions to stall the removal of encroachments made by

them on the comunidade property, it is proposed to consider whether there was any error in the Administrator's order dated 09.11.2017, declining regularization.

59. Insofar as the impugned order dated 06.09.2019, firstly, such order warrants no interference because Mr Kantak was unable to show a single provision in the Code of Comunidades empowering the Administrator to reconsider or review his decision on merits. Powers of review are never inherent and are required to be specifically conferred. Therefore, the petitioners' applications seeking review were misconceived and not maintainable. They could have been dismissed by the Administrator on the said ground itself. However, the Administrator has considered the review applications and dismissed the same on merits.

60. On merits, Mr Kantak's entire argument was based upon the provisions of Articles 380 and 210 of the Code of Comunidades.

61. Article 380 of the Code of Comunidades reads as follows:

“Art. 380 - The encroacher may, at any stage of the administrative inquiry, sign a declaration undertaking to

surrender the land or to pay its value, when it does not exceed ²²⁷~~1800~~\$ [Rs.300]. However he shall not be allowed to do so in any circumstance, when the encroached land is subsequent to the cadastral survey done for the purpose of preparing the register in respect of that land or when he might have earlier been involved in another case of encroachment of land.

§ 1. If the encroacher admits the encroachment of land, by undertaking to surrender the land, the administrator shall order that the attorney of the comunidade, along with the clerk of the same, take possession of the said land, writing the competent report, which shall be incorporated in the file.

§ 2. The record in which the encroacher undertakes to pay the value of the land, shall not have any legal effect, without the approval of the Administrative Tribunal, on the basis of prior report of the administrator, after hearing the managing committee and the comunidade which shall state whether it is convenient to restore the land to the comunidade or accept its value.

§ 3. If the Administrative Tribunal does not approve the record mentioned in the preceding paragraph, judicial proceedings shall be initiated against the encroacher, irrespective of the authorization referred to in the article 349 and following ones.

§ 4. In the case of return of the land or of payment of its price, the encroacher shall not be subject to the penalties provided for in article 379, but shall pay only the costs and stamp duty.

§ 5. When the encroachment of land had taken place prior to taking of the cadastral survey and its value does not exceed ²²⁸900\$ [Rs.150]. The Administrative Tribunal may authorize or determine the respective comunidade to grant the land to the denounced person for the price determined during the investigation.”

62. Article 380 provides that the encroacher may at any stage of the administrative inquiry, sign a declaration undertaking to surrender the land or to pay its value, when it does not exceed ²²⁷1800\$ [Rs.300]. Mr Kantak submitted that under Article 380, an encroacher has been given the option of surrendering the land or paying its value, which means regularizing the encroachment.

Assuming such an interpretation is correct, Article 380 provides that this option of paying value applies when the value of the encroached land does not exceed ₹300/-. No provision was shown enhancing this amount of ₹300/-. Admittedly, the value of the encroached properties exceeds ₹300/-. Therefore, on merits, there was no question of considering the petitioners' case for regularization.

63. Article 380 of the Code of Comunidades further provides that this option of paying the value of the encroached property not exceeding ₹300/- will not be allowed when the encroached land is after the cadastral survey done to prepare the register in respect of that land or when he might have earlier been involved in another case of encroachment of land.

64. Mr Kantak referred to Article 210 of the Code of Comunidades and submitted that a detailed procedure has been provided for undertaking a cadastral survey. He submitted that such procedure was not followed and therefore, petitioners' encroachment cannot be considered as an encroachment after the cadastral survey.

65. The above contention, with respect, is entirely misconceived and amounts to an unfortunate attempt to continue

the encroachment without semblance to legal authority. This provision is made so that persons who encroach upon acknowledged and demarcated comunidade lands cannot be shown any indulgence. The cases of persons who bonafide and under some genuine misimpression extend into unmarked comunidade property or put up some structures under bonafide impression that it is theirs, are treated slightly differently. Here, there was no dispute or even the slightest confusion about the brazenly encroached property, being comunidade property. The Petitioners involved in the administration of this very comunidade have never pleaded any such circumstances. There was no bonafide but only a firm resolve to encroach on the comunidade properties and to somehow or the other retain the encroached properties at any cost and means.

66. Therefore, Granting any regularization under such circumstances, even assuming that same could be granted under Article 380, would send a completely wrong message and contribute to the continuance of the degradation of the Comunidades. This is a heritage institution, in which the village communities have a vital stake. The statutory framework provides stringent provisions so that comunidade properties are protected. But if the fences are brazenly allowed to eat the crop and managing committee members are encroachers who seek

regularization as special cases, then this threatened institution of comunidades will die agonizingly. It is high time that such fences are strengthened with upright committee members who have the interests of the institution at heart so that these 123-year-old heritage institutions live.

67. The petitioners have admitted to having encroached upon the comunidade property in the year 2001. Accordingly, it is apparent that the encroachment is after the cadastral survey. Therefore, assuming that any regularization was possible based upon the first part of Article 380 of the Code (which it was not) the bar about regularising encroachments after the cadastral survey was done would be attracted. Based upon the same, the Administrator was entirely justified in rejecting applications for regularization.

68. Even the review petitions, which were not even maintainable, were considered and rejected on merits by the Administrator correctly. This argument based on the interplay between Articles 380 and 210 of the Code of Comunidades was duly considered by the Administrator and for cogent reasons, the same has been rejected. There is no error whatsoever in the impugned order dated 06.09.2019. Similarly, there is no error whatsoever in the order dated 09.11.2017 by which the initial

applications for regularization were rejected by the Administrator. These were brazen encroachments without any authority of law and by persons who wield obvious influence in the management of the comunidades for commercial profits. The orders dated 09.11.2017 and 06.09.2019 are correct and warrant no interference.

69. Article 380(5) of the Code of Comunidades provides that when encroachment on the land has taken place before taking of the cadastral survey and its value does not exceed ²²⁸~~900\$~~ [Rs.150]. The Administrative Tribunal may authorize or determine the respective comunidade to grant the land to the denounced person for the price determined during the investigation. Again, even if it is assumed that the encroachment was before the cadastral survey (which it was not) the Administrative Tribunal can authorise some sort of regularization provided the value of the encroached land does not exceed ₹150/-. The value of the encroached lands in the present petitions far exceeds ₹150/-. Therefore, even if it is assumed that the encroachment was before taking the cadastral survey, such encroachment could not be regularized under Article 380 of the Code of Comunidades.

70. In *Advocate Aires Rodrigues v/s. Comunidade of Serula (supra)* the question which arose for consideration had nothing to do with the questions which arise for consideration in the present petitions. That was a case where respondent no.4 was granted a valid lease initially for a small portion of the disputed property. He extended the area and then applied for regularization. The Court found that the encroacher not only failed to offer and pay the prescribed amount but further, the encroacher also failed to comply with the provisions of the Code of Comunidades including provisions for consent of the Government. The Court, therefore, set aside the order of regularization. The facts in the present petitions are in no manner comparable to the facts in *Aires Rodrigues v/s. Comunidade of Serula (supra)*.

71. The Court, in *Aires Rodrigues v/s. Comunidade of Serula (supra)* relied upon the decision of the Hon'ble Supreme Court in *Jagpal Singh & Ors. v/s. State of Punjab & Ors. - Civil Appeal No.1132/2011 @ SLP(C) No.3109/2011 dated 28th January 2011* concerning lands of village communities in India. In the said decision, the Hon'ble Supreme Court deplored that public utility lands in villages used for centuries for the common benefit of the villagers giving them inalienable right thereto came to be grabbed by unscrupulous persons using muscle power, money power or political clout, and in many States now

there is not an inch of such land left for the common use of the people. The Supreme Court observed that such persons, who are neither owners nor tenants, encroached upon the community land for personal aggrandizement, obviously in connivance with the State authorities and powerful local interests. Instead of having those unauthorized evicted, the Gram Panchayat sought to recover costs of the land, upon regularizing the encroachment. The act of trespassers who had encroached upon the land came to be continued without authority of law.

72. The Supreme Court agreed with the Commissioner that regularization of such land was not in the interest of the Gram Panchayat and that even if the encroachers had built houses upon the land, they must be ordered to remove the construction and the land must be handed back to the Gram Panchayat. The Supreme Court frowned upon the very act of regularization. In the penultimate page of the judgment, the Supreme Court ruled that regularization should only be permitted in exceptional cases i.e. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.

73. The above observations apply in the present case because some parallels can be drawn between community lands and the lands owned by the comunidades. In *Raghupati Bhandari v/s. Comunidade of Bandora & Ors. (supra)*, the Division Bench of this Court has held that even though the comunidades may be the owners of their lands, still, the comunidades hold such lands or manage such lands in trust for the village communities. Therefore, there is an obligation upon the Managing Committees of such Comunidades to ensure that the Comunidade lands are not frittered away for some private gains but that dealings with the Comunidade lands are guided to achieve the best interests of the Comunidades and its members. This is the reason why certain fetters are imposed on Comunidades when it comes to dealing with their properties. The Government and the Administrative Tribunal has to be alive to this position even while considering the request from the Comunidades for disposal of its properties or for approval to admit any claims or enter into any compromises which will affect the land rights of the Comunidades. In the present cases, the President of the managing committee, instead of preventing or acting against encroachments, is himself an admitted encroacher and seeks regularization of such encroachment as a 'special case'.

74. In *Raghupati Bhandari v/s. Comunidade of Bandora & Ors. (supra)*, the Division Bench relied upon the decision of the Hon'ble Supreme Court in *Chenchu Rami Reddy and another v/s Government of Andhra Pradesh and others – (1986) 3 SCC 391*, wherein the Hon'ble Supreme Court, in the context of devasthan property, observed that more often than not a detriment to what belongs to 'many', collectively, does not cause pangs to 'any', for no one is personally hurt directly. That is why public officials and public-minded citizens entrusted with the care of 'public property' have to show exemplary vigilance. What is true of 'public property' is equally true of property belonging to religious or charitable institutions or endowments. This particular observation applies to comunidade properties because the village communities have a considerable stake in the institution of comunidades and their properties.

75. The Hon'ble Supreme Court concluded by observing that the property of such institutions or endowments must be jealously protected. It must be protected, for, a large segment of the community has a beneficial interest in it (that is the *raison d'etre* of the Act itself). The authorities exercising the powers under the Act must not only be most alert and vigilant in such matters but also show awareness of the ways of the present-day world as also the ugly realities of the world of today. They cannot

afford to take things at their face value or make a less-than-the-closest-and-best-attention approach to guard against all pitfalls. The approving authority must be aware that in such matters the trustees, or persons authorized to sell by private negotiations, can, in a given case, enter into a secret or invisible underhand deal or understanding with the purchasers at the cost of the concerned institution.

76. Just yesterday, i.e on 12th April 2023, the headline in the Times of India (Goa Edition) read: **“Over 35 lakh sqm comunidade land lost to encroachers”**. The report by Murari Shetye elaborates that Goa’s ancient comunidade system is being lost to encroachment, with over 35 lakh sq.mtr. grabbed. In nearly 50% of the 123 age-old self-sustaining systems, land has been illegally usurped, and despite several complaints, cases are either pending resolution or action is yet to be initiated. A senior officer is reported to have said *“that the pendency is due to incomplete document verification, inspections not being carried out, or parties seeking time to submit additional documents or file replies. Though there are directions in place to dispose of cases without delay and in a time-bound manner, these directions are not followed. In some matters, especially where it is a clear case of encroachment, the party will try everything possible to keep the case pending by seeking adjournment after adjournment*

on flimsy grounds". This report highlights the magnitude of the problem of encroachments on comunidade lands and the disastrous effect on these 123 age-old institutions.

77. The Hon'ble Supreme Court has observed that Courts cannot be oblivious that there has been a steady decline in public standards or public morals and public morale. It is necessary to cleanse public life in this country along with or even before cleaning the physical atmosphere. The pollution in our values and standards is an equally grave menace as the pollution of the environment. Where such situations cry out the Courts should not and cannot remain mute and dumb. (See *Shivajirao Nilangekar Patil v. Mahesh Gosavi, 1987-1 SCC227*)

78. In the present petitions, unfortunately, the petitioners who are influential persons virtually governing the affairs of the comunidade, have encroached on the comunidade property and have even succeeded in retaining the encroached portions for all these years. All this is extremely unfortunate. Yet Mr Jayesh Fadte, the Attorney for the Comunidade stated that the actions of the managing committee which comprises of Pratap Mardolkar, who has admittedly encroached upon the comunidade land and held on to the same for all these years

without authority of law, were in the “interest of the comunidade”.

79. In *Raghupati Bhandari v/s. Comunidade of Bandora & Ors. (supra)*, the Division Bench referred to the views of **Serra e Moura**, a commentator on Portuguese Law:-

“To raze to the ground that centuries old edifice with a hammer of destruction, is easy. But, to raise on its ruins a more perfect and better finished work, a work resulting in greater glory to the architect and greater advantage to the inhabitants of the villages, is a very difficult task.”

80. In the course of arguments, the learned counsel for respondent no.5 placed on record a notice issued by the Administrator to Pratap Mardolkar about encroachment on yet another comunidade property surveyed under No.83/1 of Sancoale village. This notice was issued on 13.12.2021. The Attorney Jayesh Phadte admitted that this was comunidade property but tried to defend his President Mardolkar by saying that he has transferred this land to one Ramakant Borkar. Though, this notice is not the subject matter of any of these petitions, Mr Pratap Mardolkar has filed an affidavit explaining how the property surveyed under No.83/1 was no longer a comunidade property but was the property acquired by the

Government for rehabilitation of some persons who were affected due to construction of NH 17-B.

81. The affidavit surprisingly states that Pratap Mardolkar purchased the property from the persons who were rehabilitated therein. At least *prima facie*, all this appears to be extremely suspicious because it is inconceivable that a party who is rehabilitated can transfer the rehabilitated Government property to some other person. Be that as it may, these are matters which will be examined by the Administrator while disposing of the notice dated 13.12.2021 alleging encroachment on another property of the Comunidade of Sancoale of which he is the President. The Administrator must, however, not allow himself to be influenced by the cursory police report produced by Mr Mardolkar. The show cause notice must be expeditiously disposed of on its own merits.

82. Therefore, a copy of this Judgment and Order has to be placed before the Revenue Secretary, Government of Goa, to consider whether any action under the Code of Comunidades must be taken against Pratap Mardolkar in the context of his continuance as President of Comunidade of Sancoale. Issues of conflict between interest and duties will have to be examined. The reports about rampant and large-scale encroachments on

comunidade lands will have to be considered. All this is vital if the Comunidades as a 123-year-old institution is to survive.

83. The Revenue Secretary or any other competent authority under the Code of Comunidades must apply mind to the admitted facts of encroachment on comunidade property and other relevant matters and consider (i) whether the continuance of Pratap Mardolkar as the President of the Comunidade of Sancoale is in the interest of the comunidade. (ii) whether the matters need to be referred to the SIT and/or the Commission of Inquiry which is presently investigating large-scale land-grabbing instances in the State of Goa, and (iii) recovering from the petitioners' suitable amounts for having encroached upon the comunidade property and using the same for commercial purposes from the date of such encroachment till the petitioners restore the property to the Comunidade of Sancoale. Action under (i) and (iii) must involve due compliance with the principles of natural justice and fair play. Further, considering the Times of India report referred to above, the Revenue Secretary must also monitor the progress of matters against encroachers on the comunidade lands and ensure that they are taken to their logical conclusion at the earliest. A report of the action taken must be filed by the Revenue Secretary in this Court latest by 31st July 2023 and a copy served upon respondent no.5, who has all

these years pursued the issue of encroachment on comunidade lands.

84. Ms Linhares learned Additional Government Advocate is requested to forward a copy of this Judgment and Order and also all the relevant case papers and material to the Revenue Secretary for necessary action.

85. These petitions are dismissed with costs. Each of the petitioners must deposit in this Court costs of ₹10,000/- within four weeks from today with due intimation to the learned Additional Government Advocate and the advocate for respondent no.5.

86. Upon deposit, the State and respondent No. 5 will be entitled to withdraw ₹5,000/- each. This means that the petitioners will have to deposit in all, costs of ₹40,000/- within four weeks from today. Upon deposit, the State can withdraw ₹20,000/- and respondent no.5 can withdraw the balance amount of ₹20,000/-.

87. The petitioners are directed to demolish the structures in the encroached portion and to restore the encroached portion to the Comunidade within four weeks from today. The

petitioners must file compliance reports within four weeks after serving copies to the learned Additional Government Advocate and the advocate for respondent no.5.

88. All these petitions are disposed of by making the following order:-

- (a)** The petitions are dismissed with costs and the Rule is discharged. Interim orders, if any, are hereby vacated;
- (b)** Petitioners must deposit costs of ₹10,000/- each within four weeks from today in this Court with due intimation to the learned Additional Government Advocate and the learned counsel for respondent no.5; Upon deposit of a total amount of ₹40,000/-, the State is permitted to withdraw ₹20,000/- and the balance of ₹20,000/- can be withdrawn by respondent no.5;
- (c)** Ms Linhares learned Additional Government Advocate is requested to forward a copy of this Judgment and Order along with all relevant materials to the Revenue Secretary, Government of Goa at the

earliest; The Revenue Secretary or the competent authorities under the Code of Comunidades are directed, to consider the matters referred to in this judgment and order, including in particular in paragraphs 82 and 83 of this judgment and order and file an action/compliance report by 31st July 2023 in this Court. An advance copy must be served upon Respondent No.5.

- (d) The petitioners are directed to demolish the structures on the encroached portion and to restore the encroached portion to the Comunidade latest by 10th June 2023. The petitioners must file compliance reports in this Court on or before 16th June 2023 after serving copies on the learned Additional Government Advocate and the advocate for respondent no.5;
- (e) Though these Petitions are disposed of, place matters for directions/reporting compliances on 10th August 2023.

M. S. SONAK, J.