

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.138 OF 2024

Virgina Fernandes @ Verginia Pereira

...Petitioner

Versus

State of Goa thr. Its Chief Secretary And 5
Ors.

...Respondents

Mr Narcinha A. S. Verenkar, Advocate for the Petitioner.

**Mr Prashil Arolkar, Additional Government Advocate for the
Respondents No.1, 6 and 7.**

Mr Prayash P. Shirodkar, Advocate for Respondent No.2.

**Ms A. Korjuvekar, Advocate holding for Mr Hanumant D. Naik,
Advocate for Respondent No.4.**

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

DATE: 4th MARCH, 2024

P.C.:

1. Heard Mr Narcinha Verenkar, learned Counsel for the Petitioner, Mr Prashil Arolkar, learned Additional Government Advocate for the Respondents No.1, 6 and 7 and Mr Prayash P. Shirodkar, learned Counsel for Mapusa Municipal Council (Respondent No.2). Ms A. Khorjuvekar, learned Counsel holds for Mr Hanumant D. Naik, learned Counsel NGPDA (Respondent

No.4). Mr John A. Lobo, learned Counsel appears for Comunidade of Mapusa (Respondent No.3.)

2. Mr Lobo, learned Counsel for the third respondent, states that the Comunidade of Mapusa has nothing to do with this matter and that the plot in question belongs to the Comunidade of Cunchelim. Accordingly, Mr Verenkar seeks leave to drop the third respondent and implead the Comunidade of Cunchelim. Leave is granted. Necessary amendment to be carried out forthwith.

3. The petitioner complains that the 5th respondent is undertaking construction without leaving necessary setbacks and also without obtaining necessary permissions from the Mapusa Municipal Council. He states that despite complaints to the Authorities, no action is being taken and in the meanwhile, respondent no.5 proceeds with the construction.

4. The petitioner did take steps to serve the 5th respondent. The Bailiff's report shows that the 5th respondent's husband, Mr Shripad Dhargalkar, accepted the notice. After that, one Shuchita Gawas wrote a letter dated 22.02.2024 to this Court stating that notice addressed to respondent no.5 was being returned because the same was "wrongly kept at the doors of my house". Mr Vernekar states that in the meanwhile, the fifth respondent continues with the construction.

5. Since the Bailiff's report shows that the notice was duly served to respondent no.5's husband, ordinarily, no cognisance needs to be taken of the letter dated 22.02.2024. Still, we direct the petitioner to serve respondent No.5

by all modes again and file an affidavit of service. In addition to the usual mode of service, private service/humdist is allowed.

6. The petitioner has placed on record communication dated 25.01.2024 addressed by the Public Information Officer of Mapusa Municipal Council stating that as per the records available with the Council, no permission has been taken by Mrs Shila Dhargalkar for repair or construction in the plot/land situated at Khadpawada, Cunchelim, Mapusa, Goa. The communication records that Mrs Dhargalkar had applied for repair permission but even such permission has not been granted to her.

7. The Comunidade of Cunchelim, vide its letter dated 17.01.2024 has written to the Administrator that respondent No.5 has constructed an illegal construction. The communication states that the Comunidade tried to stop the construction but was unsuccessful because the encroachers attacked the members of the Committee when conducting the inspection, etc. This communication is on page 128 of the paper book.

8. The petitioner has also placed on record a communication dated 15.01.2024 addressed by Member Secretary of NGPDA to the 5th respondent requiring her to remain at the site for joint inspection on 23.01.2024. Mr Verenkar further states that no such inspection could take place because the gate leading to the plot was locked. We believe the NGPDA should have gone on some other date and immediately held a site inspection.

9. Ms Khorjuvekar, who now appears for the NGPDA, is unable to state whether the NGPDA has issued any permission for this construction.

10. Considering the above circumstances, including, in particular, the fact that Mapusa Municipal Council has not granted any permission, we direct the 5th respondent to stop forthwith any further construction at the site in question until further orders are issued. The partly constructed structure must not be occupied. The Mapusa Municipal Council and the NGPDA should immediately visit the site and ensure the construction is stopped and sealed.
11. The compliance report must be filed latest by 07.03.2024.
12. Since Mapusa Municipal Council has not granted any permission, learned counsel for Mapusa Municipal Council must indicate the timeline within which action will be initiated and completed. The NGPDA Authorities must also go to the site and conduct the site inspection. If the 5th respondent does not wish to cooperate, the site inspection can be held in the absence of the 5th respondent.
13. Stand over to 13.03.2024. The petitioner is to immediately take steps to serve the 5th respondent and file an affidavit of service.
14. The notice must now indicate that this petition will finally be disposed of at the admission stage.
15. All concerned to act based on the authenticated copy of this order.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.