



Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 190 OF 2024

NINETTE J. MENEZES THR POA
BASILIO FUTARDO ... Petitioner.

V e r s u s

THE STATE OF GOA THR CHIEF
SECRETARY AND 8 ORS. Respondents.

Ms B. Andrade and Mr V. Sawant, Advocate for the petitioner.

Mr N. Vernekar, Addl. Govt. Advocate for respondent nos. 1 and 2.

Mr Z. De Sousa, Advocate for respondent no. 4 and 5.

Mr C. A. Coutinho, Senior Advocate with Mr I. Santimano, Advocate
for respondents.

**CORAM: BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

Date: 26th March 2025.

P.C.

1. The present petition is filed being aggrieved by the Technical Clearance order dated 1.10.2021 passed by the Senior Town Planner, Town and Country Planning Department, South Goa, for work of proposed reconstruction of the house under Atal Ashra Yojana Scheme in terms of the enclosed approved plans in the property zoned as settlement zone in Regional Plans for Goa 2001 and 2021 in respect of plot bearing survey no. 202 sub division 1(part) of Raia village of

Salcette Taluka subject to the imposing of the conditions, the present Writ Petition is filed.

2. Heard the learned counsel for the parties.

Learned counsel for the petitioner vehemently opposed grant of technical clearance on two grounds, firstly that the technical clearance is in violation of Regulation no. 4.2 of the Goa (Regulation of Land Development and Building Construction), Act 2008 which clearly contemplate that every person who erects a building shall provide a means of access to such building by way of a clear way of not less than 3.00 mts. Yet another argument advanced on behalf of the petitioner is, that there is no sub division of the plot of the defendants and therefore, the technical clearance can be just described to be erroneous.

The learned counsel has invited our attention to the copy of the plan of 1972 placed on record, prepared by the Director of Survey and Land Records, Margao Goa reflecting the position of the plot of the petitioner being survey no.201/2-B and that of the respondents being survey no.202. The dispute according to her is in respect of the plot is the space i.e shown between two plots in the said Map IPT/IH. It is her specific contention that the respondents while securing the necessary permissions have shown this area within their plot i.e. survey no. 202 on the basis of a deed of gift dated 27.2.2001 executed by mother in favour of the respondents and this is challenged to be null and void by the petitioner by instituting a Civil Suit no.12/2023 wherein a specific

declaration is sought that the gift deed as well as deed of sale dated 22.4.1996 registered in the office of Sub Registrar of Margao on 3.5.1996 to be null and void for all purposes.

Copy of the plaint placed on record at Exh.C. Relief is also sought against defendant nos. 4 to 13 i.e. respondent nos. 4 to 9 in the present writ petition, to be restrained perpetually from going ahead with the suit work taken up illegally by the defendants in the suit property and to issue a mandatory injunction to remove the encroachments done in the suit property bearing no.201/2-B and the remaining property of survey no. 201/2 of village Raia and to restore the land to its original condition.

3. We have carefully perused the pleadings in the plaint which is pending for adjudication, in which it is pleaded that the cause of action has accrued to the plaintiff on 24.4.2019 when the plaintiff had sent a notice to defendant no. 21 to remove the erected electricity poles in the suit property.

The claim in the suit is based upon a pleading that the defendants had violated proprietary rights of the plaintiff by encroaching into her property bearing survey no.201/B and remaining portion (access to over plot of survey no. 201/2 of village Raia.)

4. It is not the case of the petitioner that she has been able to secure any injunction against the defendants pursuant to the filing of the suit.

5. In the wake of the aforesaid, the respondents preferred an application for seeking a technical clearance and our attention was invited to the application preferred to the Deputy Town Planner in the month of January 2021 for the purpose of reconstruction of the residential house under Atal Ashra Yojana Scheme.

The application is accompanied with the checklist for carrying out necessary construction which clearly set out the area of the plot as well as the permissible and proposed FAR and the set back area.

6. Upon site inspection report, the Town Planner has made the following endorsement “site inspection was carried out along with applicant and it is noticed that the plot is accessible by existing 3.00mtr wide road. The house proposed is for reconstruction as existing in the plot. The proposal is for proposed reconstruction of the existing house under Atal Ashra Yojana Scheme.” The endorsement is also to the effect that the application is accompanied by documents including order issued by the Director of Tribal and Welfare for reconstruction of the existing house under Atal Ashra Yojana Scheme as well as the house tax receipts and the ownership documents such as the sale deed and the gift deed and form I and form no. 13. In addition, the endorsement specifies that in the reconstruction plan the covered proposed area is 91.30 mts with the form area with 91.30 sq. mts.

7. Based upon the inspection report which clearly makes a mention of a three mts wide road, the first objection of the learned counsel do not survive.

8. As far as the second objection about the sub division of the plot being not carried out, the learned Addl. Govt. Advocate has invited our attention to the Regulations and in particular to the definition of the term 'plot' to mean a continuous portion of the land held in one's ownership. However, as per the note appended, for the purpose of development control, even a parcel of an approved sub divisional plan or each parcel of land resulting into the several plots by way of family inheritance is also considered to be a 'plot'. He would therefore submit that 'plot' has to be given a wider meaning and therefore when clause 4.2 makes its imperative the building or its part is a plot, wider definition of the term will have to be construed.

9. Respective counsel appearing for the respondent nos. 6 to 9 have specifically submitted that respondent no. 6 and 7 had constructed the house in the year 2007, whereas respondent no. 9 has constructed a house in the year 2004, whereas respondent no. 8 has constructed houses in the year 2014 and since the houses on the said plot are already in existence, taking into consideration the requisite compliance of the Act of 2008 as well as Regulation of 2010, the requisite permission is granted. In any case, as far as other relief sought by the plaintiff restraining the reconstruction activity is the matter of suit filed

by the plaintiff which will receive due adjudication and since we are clear that the disputed question of facts cannot be gone into, in exercise of writ jurisdiction under Article 226 of the Constitution of India, we find no merit and substance in the case and by upholding the impugned order granting technical clearance in favour of the respondents, the petition is dismissed.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.