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# IN THE HIGH COURT OF BOMBAY AT GOA

## WRIT PETITION NO.147 OF 2025
## WITH
## MISCELLANEOUS CIVIL APPLICATION NO.765 OF 2025 (FILING)

1. MR SWAPNESH SHERLEKAR
Son of Mr. Bhanudas Sherlekar,
Age - 41 Years. Indian National,
R/o. H.no. 284, Shirodwadi,
Mulgao, Bicholim Goa.
Mobile: 9372730066.
Email - swapnesh.sherlekar@gmail.com
Aadhar Card - XXXX XXXX XXXX

2. MR. JOSE CARLOS DA VEIGA GRACIAS,
Son of ,Francisco Xavier Noe Gracias
Age -69 Years, Indian National,
R/o 54, Borda, Fatorda, Goa
Mobile: 9850471243
Email - zecarlos@rediffmail.com
Aadhar Card – XXXXXXXXXXXX

3. MR. RUPESH SHINKRE,
Son of Purxotoma Rama Porobo Sincro,
Age - 45 Years, Indian National,
R/o H. No. 1063, Povocao Curtorim,
Salcete, Goa
Mobile: 9850471754
Email - rpshinkre@gmail.com
Aadhar Card-XXXX XXXX XXXX ... Petitioners

Versus

1. THE STATE OF GOA,
Through the Chief Secretary,
Government of Goa,
Secretariat, Porvorim,
Bardez Goa.

2. THE SECRETARY OF THE TOWN & COUNTRY PLANNING DEPARTMENT,
   Government of Goa,
   Porvorim, Bardez Goa.

3. TOWN & COUNTRY PLANNING DEPARTMENT
   Through the Chief Town Planner,
   Government of Goa,
   2nd floor, Dempo Tower,
   Patto Plaza, Panaji Goa 403001.

4. MR RAJESH NAIK,
   Major in age, married, Indian
   Currently serving as Chief Town Planner
   Town & Country Planning Department
   Government of Goa, 2nd Floor, Dempo Tower,
   EDC Patto Plaza,
   Panaji, Goa, 403001

5. DIRECTORATE OF VIGILANCE,
   Through its Director,
   Altinho, Panaji Goa.

6. BRAHM AGRO TERRA PROJECTS LTD,
   Through Authorised Signatory Gavin D'Souza,
   G-1, SNS Manor, Brunton Road ,
   Bangalore, Karnataka India ... Respondents.

**Mr Rohit Bras De Sa, Advocate** with **Mr Joel Pinto, Advocate** for the Petitioners.

**Mr Venkatesh Dhond, Senior Advocate** with **Ms Rohini Jaiswal, Mr Manas Kotak, Ms Avantika Mehandiratta, Advocates** and **Mr Prashil Arolkar, Additional Government Advocate** for Respondents No.1 and 3.

**Mr Prashil Arolkar, Additional Government Advocate** for Respondents No.2 and 5.

**Mr Shivan Desai, Advocate** with **Ms Tahira Menezes** and **Ms Riya Amonkar, Advocates** for Respondent No.4.

**CORAM : BHARATI DANGRE & ASHISH S. CHAVAN, JJ.**

**DATED : 08th OCTOBER 2025.**

**<u>ORAL JUDGMENT:</u> (Per. BHARATI DANGRE, J.)**

1. The Petitioners, have invoked writ jurisdiction of this Court praying for seeking the following reliefs:

> "A. For a Writ, Order or Direction in nature of Declaration under Article 226 of the Constitution of India declaring the Impugned Assessment Order dated 11/06/2024 made under Section 17 (2) of the Town & Country Planning Act 1934 as being unconstitutional, illegal and ultravires the provisions of law.
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> B. For a Writ of Certiorari or any other Writ Order or Direction in nature of certiorari quashing and setting aside the Impugned Assessment Order dated 11/06/2024 made under Section 17 (2) of the Town & Country Planning Act 1974.
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> C. For a Writ of Mandamus or any other Writ, Order or Direction in nature of Mandamus directing the Respondent State Authority to immediately initiate proceedings to recover the deficit in fees payable under Section 17 (2) of the Town & Country Planning Act 1974 from the erring Respondent No.6 as well as the Chief Town Planner Mr Rajesh Naik.
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> D. For a Writ of Mandamus or any other writ, order or direction in nature of Mandamus directing the Respondent State Authorities to immediately initiate disciplinary action against Rajesh Naik, Chief Town Planner (Planning) under Rule 14 of the CCS (CCA) Rules 1965.
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> E. For a Writ of Mandamus or any other Writ, Order or Direction in nature of Mandamus directing the Respondent State Authorities to revoke/cancel/withdraw the Impugned Assessment Order dated 11/06/2024 made under Section 17 (2) of the Town & Country Planning Act 1934.
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> F. For a Writ of Mandamus or any other Writ, Order or Direction in nature of Mandamus directing the Respondent State Authorities to immediately hold an inquiry to ascertain the loss caused in assessment of fees in the 120

> cases gazetted under Section 17 (2) since April 2024 and to initiate appropriate action to recover the said deficit in fees payable to the State Public Exchequer not only against the erring parties but also against the Chief Town Planner Mr Rajesh Naik.”

2. We have heard learned Counsel, Mr Rohit Bras De Sa, for the Petitioners and learned Senior Counsel, Mr Dhond along with Ms Jaiswal, learned Counsel for Respondents No.1 to 3 and Mr Prashil Arolkar, learned Additional Government Advocate for Respondents No.2 and 5 and Mr Shivan Desai, learned Counsel for Respondent No.4.

3. On the pleadings in the Petition being complete, by consent of the respective Counsel, the same is taken for hearing at the stage of admission and hence we issue Rule by making it returnable forthwith.

The Petitioners are aggrieved by the alleged deliberate act of Respondent No.4, working as Chief Town Planner (Planning) in the office of Town and Country Planning (T &CP), presently in service on extension beyond the date of his retirement on superannuation for a period of one year and it is alleged that he is in charge of assessing and collecting fees through challan for correction/rectification of zone under Section 17(2) of the Goa Town and Country Planning Act, 1974 (‘TCP Act) by issuing Assessment Order.

4. According to the Petitioners, the Government of Goa published (Notification dated 15.03.2023) in Official Gazette of Goa (Supplement) Series I No.50 dated 16.03.2023 in pursuance of Section 17(2) of the Act of 1974 read with sub-Rule (3) of Rule 3 of the Goa (Town and Country Planning alteration/modification in Regional Plan for rectification of inadvertent errors and correction of inconsistent/ incoherent zoning proposals) Rules, 2023, thereby notifying the processing fees and other fees as specified therein. The said Notification prescribed the fee for processing applications with reference to the area of the land in respect of which the correction was proposed and it prescribed different rates in form of fee for correction, depending upon the change proposed, e.g. change of zone of land to settlement zone/industrial zone/institutional zone or zone not specified in the table.

Category (3) with which we are concerned, read thus:

> "Fee for correction of inconsistent/incoherent zoning provisions which amount to change of zone of land to settlement zone or sub-zone settlement (Commercial), per sq. mtr. of land." The fee prescribed for area admeasuring 5,001 sq.mtr to 10,000 sq. mtr is Rs.125/- per sq.mtr whereas for area above 20,000 sq.mtr, the fee prescribed is Rs.200/- per sq. mtr.

The Notification published by order and in the name of the Governor of Goa and under the signature of the Chief Town Planner (Planning) and Ex-Officio Joint Secretary declared that it shall come into effect from the date it is notified in the Official Gazette.

5. This Notification, however, was superseded by a subsequent Notification dated 28.03.2024 published in the Official Gazette, coming into force from the date of its publication. Under this Notification, the fee prescribed for an area above 2001 sq. mtr to 20,000 sq.mtr and area above 20,001 sq.mtr for the category (3) is Rs.1000/- per sq.mtr.

6. It is the contention raised in the Petition that after publication of the Notification dated 28.03.2024, it was imperative for the TCP Department to collect the processing fees in accordance with the rate prescribed therein but, the Respondent No.4 who is made party in person, is accused of collection of lesser processing fees thereby causing tremendous loss to the public exchequer.

By way of an illustration, the Petition is accompanied with an Assessment Order for fees for correction/rectification of zone under Section 17(2) of the Goa Town and Country Planning Act, 1974 ('TCP Act), passed on an application from Bhram Agro Terra Projects Ltd, i.e. Respondent No.6 and though this order is passed on 11.06.2024, much after the Notification dated 28.03.2024 was notified in the Official Gazette, the fee was calculated based on the rate of fee applicable as per the old Notification, i.e. Rs.200/- per sq.mtr. On the total area of the property being 264197 sq.mtr, and the area applied for correction/rectification of zone being set out as 102961 sq.mtr, by applying the rate of Rs.200/- per sq.mtr, the total fees payable was computed as Rs.1,79,00,000/- (Rupees One Crore Seventy Nine Lakhs only).

7. The Petition, therefore, raise a specific allegation to the following effect:

> "9. As per the Notification in force it was responsibility Mr Rajesh Naik, the Chief Town Planner to assess total fee payable as (89,500 m2 x Rs. 1,000) Rs.8,95,00,000/- (Rupees Eight Crores Ninety Five lakhs Only), however Mr Rajesh Naik in Assessment Order passed by him on 11/06/2024 dishonestly and fraudulently accessed/calculated the fee at the rate of Rs. 200 per square metre instead of Rs. 1000 per square metre and cheated the Government and caused damage/huge monetary loss to Government Treasury by fabricating incorrect/false document.
>
> 10. The amount/fee due to the Government as per the existing notified rate is Rs.8,95,00,000 (Rupees Eight Crore Ninety Five Lakhs Only) but as an outcome of the fraud committed by Mr Rajesh Naik Chief Town Planner only Rs.1,79,00,000 (Rupees One Crore Seventy Nine Lakhs Only) got deposited in Government Treasury, causing a huge loss of

Rs.7,60,00,000 (Rupees Seven Crore Sixty Lakhs Only) to the Government/Public Exchequer."

8. Learned Counsel, Mr De Sa, for the Petitioners would submit before us that he has cited only one illustration, where the fees are charged as per the old rates despite the new Notification issued by the Town and Country Planning Department being notified in the Official Gazette on 28.03.2024, in supersession of the earlier Notification dated 16.03.2023, and clearly implying that new rates for processing fees shall apply once the Notification comes into effect.

He would place reliance upon the decision of the Apex Court in the case of **State of Goa and Another v/s. Dr Alvaro Alberto Mousinho De Noronha Ferreira**[1], in particular, the observation in paragraph 13 which reads to the following effect:

> "13. Subsection (6) clearly lays down that once permission is granted to use the land for non-agricultural purpose, a sanad is to be granted to the holder thereof on payment of fees prescribed in the Code itself. Even after amendment, the position virtually remains the same. The question of payment of conversion fees arises only when a decision is taken to grant a sanad. Therefore, the relevant date for fixing the conversion charges will be the date on which the decision is taken to grant the sanad. In the present case, that date appears to be 19-9-2013. The amount determined by the Collector was deposited by the landowners on 9-10-2013 though under protest reserving their right to challenge the fixation of the date on which the conversion charges were to be levied."

[1] (2019) 10 SCC 465

It is in this background facts, the Petitioners seek a direction/declaration as regards the process adopted by the Chief Town Planner, Mr Rajesh Naik, intended to favour the Respondent No.6 by deliberately undervaluing and assessing it at Rs.200/- per sq.mtr instead of Rs.1000/- per sq.mtr in terms of the Notification dated 28.03.2024 to be set aside by holding him liable for deliberately causing loss to the Government Treasury to the tune of Rs.7,16,00,000 (Rupees Seven Crores Sixteen Lakhs only) and hence, the Petition seek a relief of quashing and setting aside the impugned order of assessment dated 27.11.2024 and to initiate proceedings to recover the deficit fees by taking into consideration the new rates of processing fee.

In addition, Mr De Sa would press the relief in terms of prayer clause (D) for initiation of disciplinary proceedings against Mr Rajesh Naik, Chief Town Planner, under Rule 14 of the CCS (CCA) Rules, 1965.

9. While the Petition was being heard, on 08.04.2025, on hearing the learned Senior Counsel Mr Narichania representing the State, we recorded thus:

> "3. Today, the State is represented by the learned Senior Counsel Mr. Narichania, who has categorically made a statement before us that as far as the grievance in the Petition qua Respondent No. 6 is concerned, the proposal which was forwarded for conversion, at a lesser rate of fees being paid has

been rescinded on 04.04.2025 by issuing a notification. Along with his affidavit in reply, he is desirous of placing this notification on record.

The learned Senior Counsel also make a categorical statement, that with all seriousness as highlighted by the Petitioners in the Petition, the Government has examined 47 files submitted by the Town and Country Planning Department to note that 32 Assesses have already paid the amount at the requisite revised rates whereas in respect of 14 cases where the amount is unpaid, one week time is granted for making the deficit payment or else, on instructions of his client, he state that the permission granted to them shall be rescinded by issuing an appropriate notification, the course of action the Government had followed in case of Respondent No. 6."

Similarly, during the hearing on the same day, a copy of the report dated 07.04.2025 of the Director of Vigilance was also placed before us where it referred to 46 files, where applications were received for correction of zones where the fees charged were at the old rates and a direction was issued to bring them on conformity with the amount fixed by the Notification dated 28.03.2024.

The Report also indicate 54 more files are received and they are under scrutiny and the report in that regard shall be placed before us in sealed envelope.

Accordingly, on the next date of hearing, i.e. on 29.04.2025, the files in sealed envelope were placed before us but we returned back the same as we indicated that the envelope will be opened when the matter is taken up for hearing.

10. When the matter is called out today, we have perused the Report of Director of Vigilance and we permitted Mr Rohit Bras De Sa, the learned Counsel appearing for the Petitioners, to inspect the said files and accordingly, he has gone through the preliminary inquiry report.

Mr Arolkar, the learned Additional Government Advocate appearing for the Government has also placed before us an order passed by the Director (Vigilance)/Link & ex-officio Joint Secretary to the Government dated 30.04.2025, contemplating disciplinary proceedings against Rajesh Naik, the Chief Town Planner and placing him under suspension with immediate effect in exercise of power conferred under sub-Rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

11. We have heard learned Senior Counsel Mr Dhond, who has marked his appearance through V.C. and has tendered before us a compilation of documents, through his instructing Counsel present before us, which include official notings of the State reflecting the

manner in which it has proceeded to rectify the error, and we have perused the said notings.

12. According to Mr Dhond, the Government of Goa notified the fees for processing applications for correction/rectification of zones of land/property in the Regional Plan of Goa under Section 17(2) of the Goa Town Planning Act, 1974 on 15/16/03/2023 and one year later, the Finance Department addressed a communication to the Chief Town Planner informing about its intention to revise the fees for processing applications. By the letter dated 15.03.2024, the Chief Town Planner was apprised of the revised fees proposed with a request to issue notification of the revised fees immediately.

The necessary file notings are placed before us as to how the matter was processed uptil the time when it reached the office of the Hon'ble Chief Minister, who approved the remarks and this resulted in issuing the Notification, prescribing new rates on 28.03.2024.

According to the learned Senior Counsel, after this Notification was published, some conundrum existed as to whether it shall be made applicable only from the date of its publication, i.e., 28.03.2024 or the said rate shall also be made applicable to the cases which were in pipeline, i.e., under process with the Town and Country Planning Department, carried an opinion that the applications which were received prior to the issuance of the Notification dated 28.03.2024 would continue to be governed by the old fees that were prescribed in the earlier Notification and by acting on this belief, processed 47 applications which were in the pipeline. On 01.08.2024, the Finance Department, however, addressed a letter to the Chief Town Planner informing that the fees should be charged as per the Notification dated 28.03.2024 for all proposals approved after this date and this offered some clarity and no doubt was left about the applicability of the Notification dated 28.03.2024.

13. During his arguments, Mr Dhond would rely upon the affidavit filed by Town and Country Planning Department affirmed on 25.04.2025, which made a reference to 120 cases, the status of which is indicated in the chart annexed to the affidavit with reference to the name of the applicant, the date of assessment order/date of payment/correction fees prescribed as per new Notification. According to Mr Dhond, in these 120 cases, 60 cases were where the assessment was done before 28.03.2024 and therefore, there is no question of applicability of new rates. 73 cases of the 120 cases are the cases where no processing fee is payable and therefore, there is no question of any revenue loss.

Submitting that out of the 47 cases remaining, fresh notices were issued to the assessees in accordance with the new Notification, the processing fee being calculated based upon it and upon notices being issued to 40 assessees out of 47 had paid the deficit processing fee as they were assessed at a lower rate based on the earlier Notification. Seven assessee to whom notices were issued, did not deposit the requisite processing fee which constrained the TCP Department to cancel the orders issued and this included the case of Respondent No.6, who was assessed on 05.02.2024, by applying the rate of Rs.200/- per sq.mtr, as the application was filed on 05.02.2024 but the assessment order being passed on 11.06.2024, i.e. after coming into effect of the Notification dated 28.03.2024. A categorical statement is made before us that the application for correction/rectification of the zone of property No.17/1 of Chopdem Village of Pernem Taluka preferred by the Respondent No.6 was therefore recalled and therefore it did not result in any loss of public revenue.

14. On hearing the respective Counsel for the parties and on hearing the counter arguments advanced, we also perused the preliminary inquiry report of the Directorate of Vigilance dated 25.04.2025 placed before us as the Directorate of Vigilance initiated preliminary inquiry by calling comments/detailed report from the Chief Town Planner and the Deputy Town Planner along with the relevant records. Pursuant to

the necessary documents being furnished which included the certified photocopies of 46 files received on 25.03.2025 and 50 files received on 03.04.2025 and 24 files being forwarded vide letter dated 07.04.2025, the Vigilance noted that the file of Respondent No.6-Bhram Agro Terra Projects Ltd, was missing and was not submitted earlier.

The Vigilance report thus took into consideration 119 files, including the file of Respondent No.6 and classified the same into four categories:

(i) 32 files received pertaining to applications received prior to issuance of Notification;

(ii) 33 files pertaining to applications received and approved for correction of zone prior to issuance of new Notification, where the old rates are to be made applicable.

(iii) 48 files received after the issuance of the new Notification and being assessed and approved as per new Notification.

(iv) 6 files received, processed and approved for correction according to new Notification and hence reassessment and recovery not applicable.

15. The detailed report of Vigilance, report about every individual file with certain observations being made about Respondent No.4, the Chief Town Planner who had assessed the properties based on the old Notification which stood superseded on 28.03.2024, with the rate of processing fee being revised from Rs.200/- per sq.mtr to Rs.1000/- per sq.mtr, resulting into short levy of fees and warranting re-assessment and recovery.

16. We permitted Mr De Sa to have inspection of the file which was placed before us in a sealed envelope but on going through the file, Mr De Sa had reiterated his submission that appropriate action be initiated against Respondent No.4, the Chief Town Planner, though he expressed satisfaction over the fact that now there is no loss of revenue, but he would submit that the assessment done by Respondent No.4, was at a lower rate and this was done with a criminal intent and therefore his prayer in the Petition to initiate action against him shall survive.

17. It is a well-settled position that while the levy made towards conversion charges or processing fee shall be determined on the date on which the charges are payable, i.e. the date on which the decision is taken and shall not be based upon the date of application, which may relate back to an earlier date.

This proposition in law being well settled, we find that when the Notification issued by the Government on 15/16/03/2023 was superseded by Notification dated 28.03.2024, and on the date when the applications are processed by the TCP Department, the new rates have to be taken into consideration and any application processed after 28.03.2024 therefore shall be governed by the rates prescribed in the said Notification.

Mr Dhond do not deny and the files also reflect that there was disconnect in the understanding of the TCP Department and Finance Department, on whether the old rates would apply to the applications which are received prior or the rates should be applied by considering the dates on which the applications are approved. The TCP Department, therefore prepared file notings recording that it had received a Finance Department's letter where it was charging the revised rates only on the applications received after this date and the applications received prior to 28.03.2024, the old rates were being charged.

After due deliberation which is reflected in the file notings on the concerned subject of revision in the processing fees applicable under Section 17(2) of the TCP Act, due consideration was given to the revised rates prescribed in the new Notification and in fact, on 01.08.2024 the Under Secretary, Finance (R&C), addressed a communication to the Chief Town Planner, Town and Country Planning Department, Panaji, Goa bringing out the shortfall in the following words:

> "I am directed to refer to the Notification No.21/1/TCP/GTCPACT/2023/579 dated 28th March, 2024 issued by your Department which was published in the Official Gazette Series I, No.52 dated 28th March, 2024 and to inform you that despite the fees mentioned in the Notification regarding change of zone coming into force w.e.f 28/03/2024, the same is not being reflected in the receipts of your Department.

You are therefore requested to collect these fees as published in the Official Gazette dated 28/03/2024 for all the proposals approved after this date."

Thereafter, the file noting put up by the Deputy Town Planner, where the Department informed that it is implementing revised rates as notified on 28.03.2024, only for applications received after this date, whereas the old rates were being followed for applications received prior to 28.03.2024, the Hon'ble Minister for Town and Country Planning, put up the following note:

> "Fees to be collected as published in the Official Gazette dated 28.03.2024 for all proposals considered for assessment of fees after this date."

This noting is further approved by the Finance Department and on 24.09.2024, the Under Secretary, Finance, issued a communication to the Chief Town Planner, TCP Department stating thus:

> "As per the clarification sought by you in various meetings including the meeting chaired by the Hon'ble Chief Minister, it is to clarify that all the applications for conversion under Section 17(2) of the Goa Town and Country Planning Act, 1974 approved after the date of the Notification No.21/1/TCP/GTCPACT/2023/579 dated 28th March, 2024 published in the Official Gazette Series I, No.52 dated 28th March, 2024 are to be charged as per the rates prescribed in the said Notification as was also mentioned in the letter referred above."

18. It is no doubt that but for the aforesaid communications and the files moved, the processing fees would have been assessed on the basis

of the opinion of the TCP Department that all the applications which were received prior to 28.03.2024 shall have applicability of the rates as set out in the old Notification and only the applications which are received subsequent to 28.03.2024 would be governed by the new rates but upon the deliberation and clarification offered by the Finance Department and from that moment the things were viewed with clarity.

In any case, we find that in respect of the 47 cases, the assessees were subjected to reassessment as per the new rates and the amount is sought to be recovered from them, amongst whom, 40 assessees have cured the lacuna pointed out as they paid the deficit processing fee and in respect of those who did not, the TCP Department has chosen to recall the permission granted in their favour.

In the wake of the aforesaid, since we find that much financial loss could have been caused to the State of Goa, but by timely intervention of the Finance Department, it could be avoided and as on date, there is no confusion in the Department about the rate at which the processing fee is to be charged, we deem it appropriate to dispose of the Writ Petition by expressing our satisfaction about the action initiated by the Respondents in correcting the opinion held by the TCP Department and re-opening the files to prevent any financial loss.

However, at this stage, we must make it clear that since we are already informed that Mr Rajesh Naik, the Chief Town Planner, is already placed under suspension contemplating departmental inquiry, we leave it open to the State Government to take stock of the situation, dependent upon the outcome of the report of the Director of Vigilance, Panaji, Goa to take appropriate steps against him.

With these observations, the Writ Petition is disposed of.

Miscellaneous Civil Application No.765 of 2025(Filing) also stands disposed of.

**ASHISH S. CHAVAN, J.** **BHARATI DANGRE, J.**