



Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 782 OF 2024

Jose Revelino Cabral

... Petitioner

V e r s u s

1. State of Goa, Thr. The Chief Secretary & 3
Ors.

... Respondents

Mr. Sudesh Usgaonkar, Senior Advocate with Ms. Marie Rosette Pereira, Advocate for the Petitioner.

Ms. Sulekha Kamat, Additional Government Advocate for Respondent nos. 1 and 2.

Mr. Ryan Menezes, Advocate for Respondent no. 4.

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

DATE: 17th September, 2025

P.C.

1. The Petition is filed being aggrieved by the decision dated 23.03.2023 of the Deputy Town Planner, in the wake of the Order passed by this Court on 11.01.2023 in Writ Petition No. 1814 of 2022 where the High Court set aside the Technical Clearance Order dated 22.12.2020, granted in favour of the Petitioner and directed the Deputy Town Planner to afford an opportunity of hearing to the Respondent no. 5 as well as the Petitioner.

2. Heard learned Senior Counsel Mr. Usgaonkar for the Petitioner, Ms. Kamat representing the Respondents-authorities and Mr. Ryan Menezes representing the Respondent no. 4.

The genesis of the Order lies in a Writ Petition filed by the present Petitioner, as he approached this Court by filing a Writ Petition Stamp (Main) No. 1109 of 2020, stating that the application preferred by him on 01.06.2020, seeking regularization is not disposed off by the TCP Department and the Village Panchayat of Nagoa is in the process of implementing its demolition order at the request of Respondent no. 5.

Specifically observing that the demolition order has attained finality but since the Petitioner had applied for regularization of the structure, which is ordered to be demolished, it was argued that without decision being taken on the regularization application, the demolition shall not proceed.

The aforesaid submission resulted into passing of the following order :

"5. In the peculiar facts of the present case, we direct the Town and Country Planning Department to dispose of the petitioner's application for regularization one way or the other, as expeditiously as possible and in any case on or before 31.12.2020. In disposing of this application, the Town and Country Planning Department may afford an opportunity of hearing to both the

petitioner as well as respondent no.5. We make it clear that the petitioner, should not delay the proceedings before the Town and Country Planning Department now that we have granted an opportunity for hearing.

6. In case the Town and Country Planning Department rejects petitioner's application for regularization, the Panchayat, to proceed with the execution of its demolition order expeditiously.

7. The petitioner to communicate this order to respondents no. 3 and 5 as early as possible.”

3. Relying upon the aforesaid directions, a Technical Clearance was granted in favour of the Petitioner on 24.12.2020 by the Senior Town Planner, TCP Department, under the Heading, ‘carrying out the work of the proposed regularization and renovation/alteration and addition to the existing residential house and regularisation of the compound wall as per the enclosed approved plans in the property zoned as Settlement Zone in RP for Goa 2021 situated in survey no. 19/1 of Nagoa Village of Salcete Taluka’.

Needless to state that the Clearance was subjected to various conditions.

4. Upon this Order being passed, the Respondent no. 5 in the said proceedings, Mr. Agnelo Machado, filed Writ Petition no. 1844 of 2022, where he made a grievance that he was not heard by the authority when the Technical Clearance Order dated 24.12.2020 was issued in favour of Mr. Cabral by the Deputy Town Planner.

In these proceedings, Mr. Cabral marked appearance in person and tendered an apology stating that the Order was not communicated to the Respondent nos. 3 and 5 and that is the reason the Deputy Town Planner did not hear them.

Since it was noted that this Order was infraction of the principles of natural justice, the Technical Clearance Order dated 24.12.2020 was set aside and the Deputy Town Planner was directed to afford an opportunity of hearing to Mr. Cabral and the Petitioner and pass a fresh Order.

5. The above order resulted in passing of the impugned Order on 23.03.2025 and with the able assistance of learned Senior Counsel, we have perused the Order which has set out the background in which the matter was remanded to the authority and it is worth to note that Mr. Machado has submitted written submissions where he raised some 53 points which are recorded in the Order opposing the Technical Clearance being granted in favour of Mr. Cabral.

Dealing with the aforesaid, Mr. Cabral, however, made a categorical statement which is recorded in Paragraph V, as he stated that the compound wall is constructed in the property boundary and informed that the application is already made to the Collector for demarcation of the boundary but the same is not carried out and the copy of the application made to the Collector shall be submitted to the office. He also made a categorical statement that unless the property is

demarcated by DSLR, the issue of regularisation of compound wall shall not be resolved.

6. This concession or contention was construed by the authority as, there has to be demarcation of the entire property which, according to us, is an incorrect reading of the contention advanced by Mr. Cabral, which is specifically noted in paragraph V of the Order.

When we proceed, we find the authority recording that the Respondent did not produce any document pertaining to the application made to the Collector's office asking for 'demarcation of the property'. It was never the stand of Mr. Cabral that application was submitted for demarcation of the property but it was only an application for demarcation of the compound wall.

Proceeding under an assumption that no such application existed, the Deputy Town Planner was therefore of the opinion that it is necessary to carry out demarcation of the entire property and it was directed to be done within a period of four months.

It is also to be noted that the authority in the impugned order imposed another condition as regards verification of the ownership of the property from Village Panchayat before issuance of construction licence.

7. We must note that the authority has travelled beyond its jurisdiction, as the matter was remanded to the authority pursuant to

the Order passed by the High Court as while granting the Technical Clearance on 24.12.2020, the opportunity of hearing was not given to the complainant and it was only for this limited purpose the matter was remanded back.

We expect the authority to restrict the issue as to the issuance of Technical Clearance Order for the proposed regularisation and/or renovation/altercation and addition to the existing residential house and regularisation of compound wall as per the enclosed approved plans. Nonetheless, the Town Planner shall be duty bound to ensure that the construction whether altered or in addition, shall strictly conform to the approved plans. But, since we are of the view that the authority has exceeded its jurisdiction as it was only directed to reconsider the issuance of the Technical Clearance Order dated 24.12.2020, we expect it to restrict to that aspect.

8. Mr. Ryan Menezes would submit that he has raised several points and also raised a specific objection in writing that the construction of the surveyed plot was not in conformity with the approved plans and this was from the inception when the construction took place. However, we must make it clear that we are not looking into what was the original construction but we are only considering the Technical Clearance, which is granted for regularisation of the renovation/alteration and addition to the existing residential house and regularisation of

compound wall and we must clarify that if necessary shall conform to the approved plans.

We expect the Senior Town Planner to hear the Petitioner as well as the Respondent within a period of four weeks from today and pass an order within a period of three weeks thereafter.

Needless to state that the Town Planner shall restrict itself to the scope of the remand and shall even restrict the argument to that extent.

In the wake of the aforesaid, the Writ Petition stands disposed off.

ASHISH S. CHAVAN, J.

BHARATI DANGRE, J.