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IN THE HIGH COURT OF BOMBAY AT GOA
PUBLIC INTEREST LITIGATION WRIT PETITION NO. 49 OF 2024

1. MR. SWAPNESH B. SHERLEKAR, S/o. Mr. Bhanudas Sherlekar 41 years of age, Indian National, R/o. H.no. 284, Shirowadi, Mulgao, Bicholim -Goa. Phone No. 9372730066 PAN Number: BTAPS2713Q, National Unique Identity Number: 712837105340, Email: swapnesh.sherlekar@gmail.com Income: Rs. Approx 5 lacs /- p.a.

2. MR. SAMIL VOLVAIKER R/o H.No. 200/1/1, Plot No 17, Keni Colony, Corlim, Tiswadi, Goa 403 110. Phone No. 9822182582 PAN Number: ABBPV 6237A National Unique Identity Number: 742353622702, Email: samil.1127@gmail.com Income: Rs. Approx 24 lacs /- p.a. ... Petitioners

V e r s u s

1. STATE OF GOA, Through its Chief Secretary, having its office at Secretariat, Alto, Porvorim- Goa.

2. GOVERNMENT OF INDIA, MINISTRY OF ROAD TRANSPORT & HIGHWAYS (MORTH), Through its Chief Engineer, 5th floor, sector, C.B.D, Belapur, Navi Mumbai, 400614. Phone No. 022-27562370. Email Id: romum-morth@gov.in.

3. PUBLIC WORKS DEPARTMENT, Through its Principal Chief Engineer, Government of Goa, Althino-Panaji Goa.

4. TOWN AND COUNTRY PLANNING DEPARTMENT, Through its Chief Town Planner, Dempo Towers, Patto, Panjim Goa.

5. THE DEPUTY TOWN PLANNER TISWADI, Town & Country Planning Department, 5th floor, Kamat Center, Patto, Plaza, Panaji, Goa.

6. DIRECTORATE OF MINES & GEOLOGY, Through its Director, Panaji, Goa.

7. GOA STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY, Through its Member Secretary, Dempo Towers, Patto, Panaji, Goa.

8. MR. NITIN KENKRE, C/o Soares & Associates, G-1, Vikas Building, 18th June Road, Panaji, Goa 403 001.

9. THE VILLAGE PANCHAYAT OF ST.CRUIZ, Through its Secretary, St.Cruz, Tiswadi, Goa.

... Respondents

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

Mr. Sidharth Samant, Additional Government Advocate *for Respondent Nos. 1, 3, 4, 5 and 6.*

Mr. Nitin Sardessai, Senior Advocate *with Mr. Tarun Rebello, Advocate for Respoondent no. 8.*

Mr. Deepak Gaonkar, Advocate *for Respondent No. 9.*

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

DATE: 22nd July, 2025

JUDGMENT (*Per Bharati Dangre, J.*)

1. The Writ Petition instituted on 22.11.2024 by the two Petitioners, residents of Goa as Public Interest Litigation, seek direction to the Respondent Authorities to withdraw/revoke the technical clearance order for proposed construction of Commercial Building Blocks on land survey no.110/1 and 111/1, plot U-48 as well as the revised technical clearance, on the ground that it is ultra-vires, the provisions of the Regional Plan 2021, The Goa Land Development and Building Construction Regulation, 2010, applicable to the State of Goa and therefore is violated of Articles 14, 19 and 21 of the Constitution.

The Petition seek issuance of writ in the nature of Certiorari for quashing and setting aside the Relaxation of Highway setback line of 30 metres in favour of the Respondent as it is in violation of the Regional Plan 2021 as well as the Building Regulations, 2010.

The Petitioners have also sought issuance of writ of mandamus to TCP Department for revoking/withdrawing the completion order dated 19.11.2024 issued in favour of Respondent no. 8, the same being illegal.

A writ of mandamus is sought for against the Town and Country Planning Department to inspect the site and report on the violations enumerated in the Communication addressed by the Petitioner on 23.06.2025 and also to seek the necessary report from the Environmental Impact Assessment Authority-Respondent no. 7, as the Respondent no. 8 has exceeded the built up area of 20,000 square

metres which necessarily contemplated environmental clearance from the Environmental State Authority.

2. The Petition being filed as Public Interest Litigation, is alleged to be in the interest of general public, particularly the people of North Goa, who commute from North Goa, Panjim towards Cujira Educational Complex and Goa Medical College and Research Centre using the stretch of National Highway and Service Road at Calapur, Tiswadi Goa.

The Petition in paragraph 3 contains the following declaration, “Our aim is to expose the Arbitrary and influenced decision-making by the Department to reward the violators and for facilitating private interest take precedence over public interest. This is a matter of great significance for the public and the future of our State.”

3. The Petition involve properties bearing survey no. 110/1 and survey no. 111/1 of Calapur Village marked as partly 'Settlement Zone' and partly as ‘Transportation Zone’ with marking of the National Highway passing through it and a public road shown along its NorthEastern Boundary as per the Regional Plan for Goa 2021 of St. Cruz Village. In the Revenue Records maintained under the Goa Land Revenue Code, Form I and XIV of Calapur Village, the names of the Government of India, Ministry of Road Transport and Highways along with U. B. Kenkre and other private persons is recorded.

According to the Petitioners, the Regional Plan Goa 2021 shows that the National Highway passing through the said properties has a change of alignment, suggesting a sharp turn at the location within the said properties and this, according to the Petitioners, is definitely impacting the traffic as the road stretch approaching the Goa Medical College junction is one of the busiest junctions more prominently at the office hours and school hours and is susceptible of traffic jams. According to the Petitioners, all public and private vehicles including Ambulances and VIP/VVIP convoys going towards Goa Medical College, Goa Dental College, Cujira Education Complex, Raj Bhavan, Bambolim Village, Dona Paula, etc., has to necessarily pass through the bottleneck created due to illegally and illogically altered highway.

4. According to the Petition, in December 2017, the work of clearing the trees and land cutting started along the National Highway in the two properties mentioned and this contention of the Petitioners is supported by the Google Timeline images of November, 2017 and January 2018. It is pleaded that by December 2018, there was massive hill cutting beyond the highway alignment line and this was done under the pretext of the National Highway Project.

The Petitioner has annexed the Minutes of the 172nd Meeting of the Goa State Expert Appraisal Committee (Goa – SEAC) held in 2023, dealing with the illegal hill cutting in the said properties, on the basis of

a complaint filed by one Mr. Jose Vincent Gomes dated 20.10.2021 and after due deliberation, the Committee observed thus :

“SEAC came to the conclusion that deponent was illegal undertaking mining of a hill under the Garb of requiring the soil for making service road in Survey no. 110/1 and 111/1 in Kalapur Village. The back vision of the site clearly indicated pristine area with hills, trees, plantations and vegetables which were destroyed from the site which clearly violates Environmental Laws.”

In the wake of the aforesaid observations, the Committee recommended thus :

“In context of the above Committee has come to the conclusion that the said deponent has violated the norms and rules whichever stipulated in the Environment Protection Act, 1986 and also carried out activities causing major Environmental damages. After scrutinizing and perusing the matter very carefully and thoroughly, the Committee has unanimously decided to refer this matter to concerned Government Authorities (Goa State Environment Impact Assessment, Town and Country Planning Department, Directorate of Mines & Geology and Public Work Department) to take immediate action with the fastest urgency it deserves as it has destroyed the Environment.”

5. It is the allegation of the Petitioners that no further steps have been taken, despite the specific recommendations to the aforesaid effect and in fact there is massive destruction of the environment in the said properties, as on account of illegal hill cutting, illegal tree felling, illegal mining, etc., resulting into violations of the Environment Protection Act, 1986 as well as Section 17A of the Town and Country Planning Act, 1974 and there is an emergent need to restore the

aforesaid properties to its original position and the miscreants who are responsible for the same be punished.

6. According to the pleaded case of the Petitioners, the Ministry of Road Transport and Highways (MoRTH), Government of India, through Public Works Department, Government of Goa, had executed a contract of four laning through Engineering procurement and construction from KM 502.500 to KM 514.830 and KM 517.880 to KM 522.790 of NH 17 Karaswada-Porvorim-Panaji-Bambolim section in the State of Goa through Chief Engineer (NH) PWD, Government of Goa. Since it was resolved to develop four lanes with paved side shoulders on the National Highway No. 17, there was a change in the alignment and design at the stretch of National Highway and therefore the entry and exit to the National Highway while approaching from Panjim Bus Stand, resulted in the chaos. According to the Petitioners, it is not prior approved design but an adhoc arrangement provided as an afterthought due to change in design.

7. Interestingly, in an affidavit filed by Petitioner no. 1, in his affidavit he has referred to an incident which marked a turning point, as he depose as under :

“5. I say that on 27 September 2024; while accompanying my elderly aunt to the Goa Medical College/Hospital in Bambolim for OPD consultation, the Petitioner experienced personally the very chaotic situation at the ground. A gridlock at the junction adjacent to the

Project site led to a 15-minute traffic jam, underscoring the gravity of the unaddressed risk particularly in medical emergencies and high-density transit zones as these are the only access from Panaji side Bus Stand to the Medical College and Hospital.

6. I say that this incident marked a turning point. Faced with the failure of preventive action despite prior alerts and witnessing firsthand the impact on vulnerable road users, the Petitioner resolved to independently initiate judicial proceedings. The Petitioner's objective is solely to seek actionable, legally enforceable mitigation strategies to address the traffic hazard and prevent future occurrences. Upon initiating detailed research into the project, the Petitioner uncovered a pattern of procedural violations, regulatory breaches and substantive illegalities that undermines the integrity of the Development. These concerns have been meticulously documented and substantiated comprehensively and set forth in the Petition.”

8. One of the prominent grievance of the Petitioners in the Petition, is the relaxation of the setback line on the National Highway-17 in favour of the Petitioners at the instance of the Executive Engineer, WDVII(NH), PWD, Panaji, Goa, by its communication dated 30.03.2022 when the Government conveyed its approval of relaxation of Highway setback line of 30 metres from the centre line of NH-17 (New NH-66) at Calapur Village, Tiswadi Taluka in Survey nos. 110/1 and 111/1, by stipulating as below :

“(1) As per your UNDERTAKING, that in case of any further requirement for development/widening/realignment of Highway by MORTH/NHAI/Government or any other authority within the specified setback line of highway i.e. 40 mtrs., owner shall demolish

& remove the existing as well as newly developed structures at his own cost and without any claims & damages.

(2) The setback is relaxed to 30 mtrs. (marked green) from centre of highway in Survey No. 110/1 & 111/1 excluding the portion of land acquired for highway development beyond 30 mtrs. For the portion of land acquired beyond 30 mtrs. the setback line is Acquisition line, varying from 30 mtrs. Upto max. 45 mtrs. (approx.) as per annexed L.A. Plan. Further building setback to be maintained as per guidelines of planning authority.”

9. After filing of the Petition on 22.11.2024, the Petitioner gained knowledge about the grant of technical clearance as well as the revised technical clearance and the Petition was amended by inserting the pleadings to allege that the technical clearance order dated 25.10.2024 was obtained from Town and Country Planning Department, deliberately misrepresenting the Built-Up Area (BUA) of the proposed construction which has been under-reported to remain below the 20,000 square metre threshold and this misrepresentation is a calculated attempt to circumvent the mandatory requirement of obtaining prior Environmental Clearance under the EIA Notification, 2006 as amended.

The amended Petition, also allege that the ground coverage and floor area ratio (FAR) is also under-reported constituting a direct violation of the provisions of Goa Land Development and Building Regulations, 2010 and approvals granted on this basis deserved to be revoked. In addition, it is also alleged that despite the Technical

clearance dated 29.11.2022 (condition no. 47) and Technical Clearance Order dated 25.10.2024 (condition no. 42), clearly stipulate that the project proponent must obtain a conversion Sanad, till date, the said Sanad has not been obtained.

10. We have heard the respective parties and by consent taken up the Petition for final disposal by issuing 'Rule'.

11. The learned Counsel Mr. De Sa representing the Petitioners, would invite our attention to the Goa Daman and Diu Highways Act, 1974 and in particular Section 75 thereof in relation to the building and control lines along National Highway and he would read the proviso appended to the provisions to submit that it is necessary that the power to grant any relaxation for the setback could not have been exercised by the State Government and in fact it is only the National Highway Authority which is competent to exercise such power. He has placed heavy reliance upon the Circular dated 12.09.1990 as well as the communication dated July 1997 addressed by the Superintending Engineer to the Executive Engineer, PWD, Panjim, in relation to the setback of construction along the National Highway in Goa.

According to him, in continuation of the Circular dated 12.09.1990, the Government of Goa, laid down norms for giving permission to the construction of building therein near the National Highway and strict adherence thereon contemplated that no

construction shall be permitted within 40 metres from the central line of the road and construction beyond 40 metres and up to 75 metres can be easily permitted with the National Highway Authority although there shall be no restrictions and construction beyond 75 metres from central line.

By relying upon the communication addressed by the Superintending Engineer and Executive Engineer on 01.07.1997, he would submit that with reference to the earlier circular it is reiterated that to avoid any misrepresentation, the length of the National Highway has to be considered as passing through the area and where ever there are congested locations, by-passes are already proposed and therefore whenever an NOC is issued for construction, a setback of 40 metres from the centre line of the National Highway should be provided and it shall also be so provided for a distance of 150 metres from the old junction of the by-pass towards the old alignment in order to avoid any visibility problems at the junctions.

12. Mr. De Sa argued that it was not open for the Executive Engineer of the State Government to grant the relaxation of the setback line, which is in clear contravention of the aforesaid circular and the direction.

To emphasise his submission, Mr. De Sa has relied upon the images of the site placed by him on record along with the Additional

affidavit affirmed by the Petitioners on 16.07.2025 and by relying upon the photographs at page 314, he has attempted to justify the impact of the setback being relaxed, resulting into critical junction, which result into a deadlock with the addition of new traffic ahead. By relying upon a photograph at page 316, he sought to canvas before us the new structure/commercial complex, which is coming up at a distance of 30 metres from the centre line of the road, would result in a bottleneck and, according to him, the existing structure of Respondent no. 8 is situated at a distance of 20 metres which have been constructed in the year 1997-1998.

13. From the photographs placed before us by Mr. De Sa, we are in a position to appreciate the situation on site and the position of the commercial structure of Respondent no. 8, along side of the National Highway, as we now find that in the wake of the relaxation of the setback that is granted, by reducing it from 40 metres to 30 metres from the centre line beyond the land acquisition, it has been so indicated on the survey plan and the Respondent no. 8 is proceeding with the structure based upon this relaxation.

According to Mr. De Sa, the SEAC in its 172nd Meeting held on 10.03.2023, while considering the complaint in respect of illegal hill cutting at Bambolim, upon the site inspection, as directed by the Chairman to verify the merits in the complaint, had noted that the cutting/excavation at the site was carried out by using heavy earth

moving equipment and large amount of excavated material was lying on the site and trucks were being loaded with the excavated materials using loaders.

Taking serious note of the aforesaid, the Committee, decided to refer the matter to the concerned Government Authority (Goa State Environment Impact Assessment Authority), Town and Country Planning Department and Director of Mines and Geology Department to take immediate action with utmost urgency deserved as it would destroy the environment. According to Mr. De Sa, despite this clear recommendation by the Committee on 10.03.2023, nothing was done and rather the Respondent no. 8 brazenly continued the construction activity on the site.

14. Inviting our attention to the Technical Clearance Order for construction of the commercial building blocks of A, B, C, D, E-1 and E-2 and the revised existing block F by Mr. Nitin Kenkre-Respondent no. 8, dated 29.11.2022, Mr. De Sa would submit that the technical clearance order clearly contemplated that in case of cutting of sloppy land or filling up of low lying land, beyond permissible limits, the permission of the Chief Town Planner shall be obtained under Section 17A of the Goa Town and Country Planning Act, 1974. In addition, an important condition, according to him, which is introduced in Form 27 is obtaining conversion Sanad for conversion purpose under the Goa Land Revenue Code, as the building project is for commercial use.

This condition, according to him, is once again reiterated in the revised technical clearance order dated 25.10.2024, but the Respondent no. 8 has failed to comply with this Sanad and in ignorance of this, the TCP Department on 19.11.2024, has issued a completion order.

It is also his submission that the completion order is based on the completion certificate issued by the project proponent dated 06.11.2024 as well as on the basis of the guidelines issued by the Secretary, Town and Country Planning dated 13.08.2018 and the structural stability certificate issued by the Project Engineer on 04.11.2024, which are placed on record at Exhibit 63-O and 63-P.

In addition, Mr. De Sa would also urge that the total built up area for the project has been depicted by Respondent no. 8 as 19,318 square metres in order to bring it within the limit of 20,000 square metres as he would submit that the Notification issued on 14.09.2006 under sub-rule (3) of the Environment Protection Rules 1986 for imposing restrictions and prohibitions on new projects on activities or expansion or modernization of existing projects or activities based on their potential environmental impacts, as indicated in the schedule, require a strict adherence. According to him, the schedule appended to the notification, contemplate environmental clearance and the project of the Respondent no. 8 would fall within clause 8A under the caption 'Building and Construction Projects' for which it is prescribed that for

area more than 2000 square metres and area less than 1,50,000 square metres built up area, the environment clearance is necessary and just to avoid this clearance being obtained, the areas have been manipulated to depict that the project has an FAQ of less than 20,000 square metres.

He would submit that on noticing this lacuna, the Petitioner no. 1 has preferred a detailed representation to the Chief Town Planner as well as Deputy Town Planner on 23.06.2025, inviting their attention to the scenes of critical violations and planning irregularities in the revised technical clearance order dated 25.10.2024 granted for the project on plot no. U-48 on land surveyed under no. 110/1 and 111/1 of Calapur Village, Tiswadi Taluka. In this representation, he has specifically raised an objection that the basement is not accounted in the FAR and the FAR is calculated twice for its floor height exceeding 5.0 metres. Apart from this, he has also pointed out the violations as regards the excess covered area in the basement above ground and has specifically alleged that the built up area has been understated as the pergolas on terrace are not included therein. Apart from this, it is also alleged by him that the submitted plan is not compliant with fire safety provisions nor the Fire No Objection Certificate is submitted for review. But, it is the submission of Mr. De Sa that no cognizance thereof has been taken by any of the Authority.

It is also orally submitted by Mr. De Sa that there is absolutely no parking provided despite of the fact that the proposed construction is a commercial structure and as a consequence, the vehicles shall be parked in the setback area which would lead to further more traffic congestion, as it would create choking point for traffic.

15. The reliefs in the Petition are strongly opposed by the learned Additional Government Advocate Shri Siddharth Samant representing the Respondent nos. 1, 3, 4, 5 and 6 as well as the Central Government Standing Counsel Mr. Chodankar representing the Government of India, Ministry of Road Transport and Highways. The Village Panchayat of St. Cruz is represented by Mr. Deepak Gaonkar, who also opposed the PIL Petition.

The Deputy Town Planner with Town and Country Planning Department, has filed an affidavit on behalf of Respondent nos. 4 and 5 and he state that plot no. U-48 form part of sub-division lay out finally approved by Town and Country Planning Department on 14.10.1993 and as per Regional Plan Goa 2021, the plot is designated as 'Settlement Zone'. According to him, the office of the Executive Engineer, WD-VII(NH) PWD on 30.03.2022, issued a letter regarding relaxation of the setback line along National Highway-17 prescribing 30 metres setback from the Highway centre line.

Admitting that a technical clearance order was issued on 29.11.2022 for the proposed construction of the commercial building on the subject plot, it is stated that the order was issued in favour of the Respondent no. 8 with the approval of the Government and the technical clearance order was issued in relation to the Settlement Zone of Regional Plan Goa 2021 as the project conforms to the Goa Land Development and Building Construction Regulations, 2010, which were in force at the relevant time. The technical clearance order based on conversion Sanad granted by Deputy Collector and SDO, Panaji, dated 20.09.1991, was for an area admeasuring 86,000 square metres in survey no. 5, 6, 110 and 111 of Calapur and Cujira Village of Tiswadi Taluka. According to the said affidavit, under the ODP for Panaji, the plot was marked as Settlement Zone (S2) with a maximum permissible FAR of 80. Accordingly, the Technical Clearance order was issued as a past commitment allowing a building height of 11.50 metres excluding stilt.

A categorical statement is made in the affidavit that the technical clearance order dated 29.11.2022 is in accordance with Regulation 6.A.4 (10) of the Goa Land Development and Building Construction Regulations 2010, which allows other uses on special grounds, subject to Government approval. It is also stated that on completion of the necessary procedural requirements, the completion order was issued on 29.11.2022.

16. An affidavit of the Secretary of the Village Panchayat is also filed, where a specific stand is adopted that Shri Nitin Kenkre applied for construction license for carrying out the proposed construction of commercial building blocks in plot no. U-48 of survey no. 110/1 and survey no. 111/1 of Calapur Village, Taluka Tiswadi, along with necessary documents, which included necessary permissions/NOC, authority(s) as required under the law and therefore the application was placed before the body of the Panchayat in the meeting held on 29.11.2022. After following the procedure contemplated under the Goa Panchayat Raj Act, 1994 and the Rules made thereunder, the construction license was issued in favour of Mr. Nitin Kenkre, C/o Soares Associates for proposed construction of the commercial building. However, based upon the approval plan and revised technical clearance order dated 25.10.2024, issued by the office of the Town Planner, Town and Country Planning Department, the revised construction license was issued on 15.11.2024.

The affidavit categorically state that the application seeking Occupancy Certificate with respect to the subject property is duly supported by the following documents; (a) Completion Order dated 19.11.2024 issued by office of the Town Planner, TCP Department, (b) NOC dated 06.12.2024 issued by the Director of Health Services, Primary Health Centre, Chimbél, Goa, conveying their NOC for sanitary point of view for issuance of Occupancy Certificate; (c) completion

certificate dated 22.11.2024 issued by Soares and Associates; (d) Structural Stability Certificate dated 04.11.2024 issued by Paresh Gaitonde, RCC Consultant, Approved Valuer; and (e) Technical Clearance Order(s) dated 29.11.2022 and 25.10.2024 along with approved Plans and revised approved plans.

17. The affidavit of Panchayat has set out that since the application for occupancy certificate was compliant by all the necessary requirements, by passing Resolution no. 3 on 13.12.2024, a site inspection was directed, and the report of the site inspection that the construction work of commercial building was carried out as per the approved plans and even parking was provided for the commercial building.

Considering that the Town and Country Planning Department, is the technical authority which had considered all the technical aspects relating to the Zoning, Private Forest, Regional Plan, Conservative Zone, CRZ, etc. for the issuance of technical clearance for the purpose of development, it is the stand of the Village Panchayat, that the building deserve an Occupancy Certificate.

The grievance of the Petitioner that because of the commercial project, additional number of vehicular load may be entering and exiting the alleged stretch of bottleneck of the National highway during the peak hours and worsen the situation and would adversely affect the public, is specifically denied by Panchayat.

18. What is most important, is the stand adopted by the Union of India as the Project Director, (PD), Project Monitoring Unit (PMU), Goa, Ministry of Road Transport & Highways (MoRTH), who has responded to the direction issued by this Court on 17.12.2024 to apprise it 'on the aspect of relaxation of setback', in the backdrop of the contention of the counsel for the Petitioner, that only the Central Government is empowered to grant the same. The affidavit categorically state thus :

“5. I say that, the Ministry has issued circulars from time to time in respect of recommended standards for building lines and control lines on National Highways. The recommended standards for building lines and control lines were defined in IRC 73-1980. As per the latest revision of IRC 73-2023 at para 10.4.3 (b) which states that, "Local Governments or Municipalities normally administer land-use control. Local Zoning ordinances and subdivision requirements can specify site design, setback distances, building and control lines, type of access, parking restrictions and other elements that influence the type, volume and location of generated traffic."

(Annexed herewith and marked as Annexure 'A colly' is the copies of the circulars dated 13/01/1997, 27/10/1998 and 16/08/2000, copies of the IRC 73-1980 and IRC 73-2023).

6. I say that the Ministry vide above circulars has defined the recommended standards for building and control lines and requested the State Governments for control of development activities along National Highways. The Ministry vide circular dated 16/08/2000 has requested the State Government to enact legislation for control of development activities on the land adjacent to the National Highways outside their ROW (since the regulation of

land outside the National Highways ROW vests with the State Government). It is respectfully submitted that the State Government vide circular dated 12/09/1990 has laid down the norms for setback distance along the National Highways in Goa.

(Annexed herewith and marked as Annexure 'B' is the copy of the circulars dated 12/09/1990)

7. The following norms are laid down for giving permissions to the buildings/constructions near the National Highways vide circular dated 12/09/1990:

"(i) In so far as the mountainous and steep terrain is concerned, Ministry of Surface Transport has desired that there should be a set back of 3 to 5 mts. from the edge of the National Highway. For the purpose of determining the edge of the National Highway, in the absence of adequate land width available at present in Goa, a minimum distance of 20 mts. (17 mts. + 3 mts.) From the centre of the road be kept on either side with the presumption that the road width will be widened in due course. The set back is taken as 3 mtrs.

(ii) In so far as the plain and rolling terrain is concerned, where there is no construction what-so-ever or where any sub division has not been approved by the Competent Authority, according to the guidelines, no construction shall be permitted within 40 mts. from the central line of the road. Construction beyond 40 mts. and upto 75 mts, can only be permitted with the approval of the National Highway Authority. There shall be no restriction on construction beyond 75 mts. from the central Line.

(iii) as regards the set back in plain and rolling terrain in build-up areas, set back of 3 metres to be maintained from the boundary of the National Highway subject to minimum of 20 metres (17 metres + 3 metres) from the central line.

(iv) in future, sub division within the central line of the National Highway may only be permitted with the specific concurrence of the National Highway Authority."

8. I say that while the Ministry has recommended standards for setback distance in respect to the building lines and control lines on NHs, the control of activities on the land adjacent to the NHs outside ROW is to be regulated by the State Government, since the

regulation of the land outside the NH ROW vests with the State Government. As such fixation of setback distance and its relaxation thereof, is to be decided by the State Government.

9. I state that whatever has been stated herein above is partly based on the records available with the Respondents to which I have access and which I believe to be true and correct; and partly based on legal submissions which I believe to be true and correct.”

19. Mr. Chodankar, the learned Counsel representing the Union of India has opposed the Petition, in the wake of the specific stand in the affidavit and he would submit that it was most appropriate for the State Government to consider the application for relaxation of the setback as only as regards the Highway, the power vests in the Central Government but in the structure adjoining the highway the prerogative is of the State Government.

20. The project proponent i.e. the Respondent no. 8 has also contested the claim in the Petition firstly by questioning the locus of the Petitioners as, according to Mr. Nitin Sardesai, the learned Senior Counsel would submit that the Petitioners are not the resident of the said area and what is most relevant is that the Petition is filed on 22.11.2024, when the project had advanced and was nearly at its completion as the completion order came on 19.11.2024.

According to him, if the Petitioners are vigilant citizens, they ought to have noted the on going construction and it is unbelievable to

accept the stand of the Petitioner no. 1, that only on September, 2024, while accompanying his elderly aunt to the Goa Medical College/Hospital in Bambolim for OPD consultation, he could realize the chaotic situation. That by itself cannot be a ground according to Mr. Sardessai for filing of the Petition without studying the impact of the construction on the frequency of the traffic on the highway.

21. According to Mr. Sardessai, the circular dated 12.09.1990 is misread by the authorities and even at a point of time, by the project proponent, as he would submit that the circular dated 12.09.1990 has prescribed the setback of 40 metres from the central line of the road up to 75 metres, in so far as the plain and rolling terrain is concerned, where there is no construction whatsoever or where any sub division has not been approved by the Competent Authority, according to the guidelines.

According to him, the project of Respondent no. 8 do not fall within its ambit and in fact it would be covered by either clause (i) or clause (iii) of the circular, which prescribe a setback of 3 metres where the terrain is mountainous and steep or it is plain and rolling terrain in built up areas. He would submit that since there are already buildings existing around the proposed structure, as according to the Petitioner, it was a rolling terrain, as it required permission under Section 17A for cutting of the trees, what would govern the construction of the

Respondent no. 8 is sub-clause (iii) of Clause 2 of the Circular dated 12.09.1990.

According to the learned Counsel, the clarification offered in the letter dated 01.07.1997 to the Executive Engineer is nothing but reiteration of these guidelines.

Mr. Sardesai would place reliance upon **Andrew Alvares & Ors. vs. State of Goa and Ors.**¹, where the contention was raised, about a structure being affected by 40 metres setback from the center line of the National Highway-17B and being in violation of CRZ Regulations, a reference was made to the Circular dated 12.09.1990 issued by the Department of Urban Development, Government of Goa. The said Circular was interpreted by the Division Bench in the following manner :

“The existing buildings and the structures on the adjoining plots have been shown in the plan, which is at page 104 of the writ petition. The Circular dated 12th September, 1990 on which reliance is placed by the petitioners shows that in the plain terrains in built up areas, setback of 3 meters shall be maintained from the boundary of the National Highways, subject to a minimum of 20 meters from the center line. Thus, the setback provided in the plan complies with the requirement of the circular. In fact, the letter dated 12th September, 2008 sent by the Project Director of the National Highways Authority of India records that the plan of the proposed Ravindra Bhavan at Baina was forwarded by the Project Director by recording that the setback line and the building line have been marked as

¹ 2010(5) Bom CR 479

per policy circular dated 12th September, 1990 issued by the Department of Urban Development. Therefore there is no illegality about the said aspect.”

22. Responding to the contention of Mr. De Sa as regards the Minutes of 172nd Meeting of the Goa State Expert Appraisal Committee, he would place reliance upon the Minutes of the 233rd Meeting of the Committee held on 14.02.2025 and in response the representation received from Mr. Nitin Kenkre, a decision was arrived at, to the following effect :

“7. To decide on the representation received from Mr. Nitin Kenkre.

The matter was placed before the Committee for discussion and it was decided as follows

Decision: The Committee after scrutinizing and duly considering the representations dated 13/01/2025 & 11/02/2025 & documents placed on record by Mr. Nitin Kenkre (Project proponent) and after considering the records of this committee has decided to close this case as the project proponent has complied with the conditions laid down by this committee and has submitted all the requisite Technical Clearances and Construction Licenses granted by the authorities as directed. The project of Mr Nitin Kenkre also being less than 20,000 sqmts does not require prior Environmental clearance in terms of Notification dated 14.09.2006. It is also noticed that the site inspection conducted by this committee on 06/01/2023 was without prior notice to the land owner. It is also noted that the project proponent has obtained all requisite licenses and NOCs from the appropriate Authorities.”

Thus, according to him, the objection which was raised in the earlier meeting is now closed as the Committee found that there was due compliance in regards the requisite technical clearance and construction license and since the project involved less than 20,000 square metre area, it did not require prior environmental clearance in terms of the Notification dated 14.09.2006.

23. Mr. Sardesai has fairly submitted before us that it is imperative for his client to comply with the stipulations in the technical clearance order and if the technical clearance order contemplate that a conversion Sanad for commercial purpose shall be obtained under the Land Revenue Code, before procuring the Occupancy Certificate, Respondent No. 8 must obtain the necessary Sanad and the Court may record his undertaking to that effect. As far as Fire NOC is concerned, he would rely upon Regulation 15.2.1 of the 2010 Regulations read with 6A.5 and submit that the Fire NOC and the requisite permissions are required to be obtained in buildings above 15 metres in height but since the building do not fall into height restrictions, there is no requirement of obtaining Fire NOC.

In short, the submission of Mr. Sardesai is that the Petitioners have attempted to misdirect the Court by pointing of flaws in the activity of development undertaken by the Respondent no. 8 but from the reply of the Village Panchayat, Town Planning Department and that of the Union of India (MoRTH) it is clear that the project is fully

compliant with the requisite norms and regulations and under the garb of 'public interest', the Petitioners intend to create an obstacle and therefore the Petition may be dismissed with heavy cost.

24. We have considered the rival contentions and we shall at outset deal with the preliminary objections of the locus of the Petitioners and particularly about the delay, when they have approached the Court, when the project of the Respondents is already complete and is awaiting Occupation Certificate.

The Public Interest Litigation, no doubt, has received a recognition as proceedings instituted for redressing the grievance of People but it is not uncommon to note that at times the proceedings instituted are abused by some interested persons and they are instituted sheerly for sake of publicity or a purpose of serving private ends of those who knock the doors of the Court with unclean hands and tainted minds.

The highest Court of this Country has taken cognizance of the misuse of the Public Interest Litigation, amounting to abuse of process of Court by expressing its anguish when it observed that Public Interest Litigation was a form adopted by the Court in the late 70's and early 80's to hear the grievances of the vast section of the society which were poor, marginalized and had no means to reach the Court for articulating their grievances however, since it was noted that frivolous cases were filed as Public Interest Litigation, need was felt to

discourage the same, as it was necessary to assess the credentials of the parties who file a PIL. It therefore assumed significance, to test the nature of the information given by such a litigant as nobody shall be allowed to indulge in wild and reckless allegations without any substance.

This situation resulted in issuance of directions by the Apex Court, so as to encourage only genuine and bonafide PIL and effectively discouraging and curbing the PILs filed for extraneous considerations.

The Constitutional Courts were directed to prima facie verify the credentials of a party before entertaining a PIL and only upon being prima facie satisfied regarding its contents and correctness, the Court shall look into the grievance brought before it only if it was aimed at redressal of genuine public harm or public injury and must ensure that the proceedings is not for personal gain, private motive or oblique motive. In no uncertain words Their Lordships of the Apex Court in case of **State of Jharkhand v. Shiv Shankar Sharma**², expressed thus :

“22. What is of crucial significance in a public interest litigation is the bona fides of the petitioner who files the PIL. It is an extremely relevant consideration and must be examined by the Court at the very threshold itself and this has to be done irrespective of the seemingly high public cause being espoused by the petitioner in a PIL.”

² (2022) 19 SCC 626

25. It is therefore an important step before entertaining a Public Interest Litigation to ascertain whether it is a bonafide attempt to seek redressal of a grievance for the public or the proceedings which are filed with ugly private malice, vested interest and/or publicity seeking.

A PIL is a double edged weapon and therefore the Courts are expected to act with great care and circumspection and at times must lift the veil of 'public interest' and ascertain the real purpose of a litigant in approaching the Court.

The Court must satisfy itself about, (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information provided shall not be vague and indefinite but it must show gravity and seriousness.

It is the duty of the PIL Court to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others: and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motive, justifiable executive actions.

26. The locus of the petitioners who approach the Court is therefore of great significance and definitely before we embark on the exercise of examining the merits in the Petition, we are duty bound to examine the credentials of the Petitioner and test the bonafides of the litigation filed by them as a 'Public Interest Litigation'.

The Petitioners make a declaration that the Petition is filed in public interest as they are committed to ensuring that justice is served and public interest is protected.

The Petitioners have given a declaration that they have no personal interest in the proceedings and the Petition is filed on the basis of information secured under Right to Information Act, 2005, highlighting the fraud and manipulation played upon the Regional Plan 2021 of State of Goa and the Building Regulations, by the officials of the Town and Country Planning Department. About limitation, a specific statement made in paragraph 8.1 of the Petition reads thus :

“... The Petitioners state that there is no delay in filing the present petition as the Petitioners has filed the Petition promptly after learning of the illegality above.”

27. In additional affidavit filed by the Petitioner no. 1, a case is made out to scuttle the objections about delay in a very novel and innovative way, as the Petitioner no. 1 has deposed that it was on 27.09.2024, he experienced a chaotic situation as there was gridlock at the junction adjacent to the Project site leading to a 15-minute traffic jam, underscoring the gravity of the unaddressed risk particularly in medical emergencies and high-density transit zones as there can be only access from Panaji side Bus Stand to the Medical College and Hospital.

We find the statement to be rather strange as both the Petitioners, being residents of State of Goa are expected to have travelled on said road, as it is a highway and definitely could not have missed the ongoing construction. As long as the activity was going on, there was a possibility of having more traffic congestion but only because the Petitioner no. 1 experienced the congestion on a particular day, which according to him was a 'chaotic situation', and this gave him a cause for filing the public interest litigation, is not an argument, which anyway impress us.

In fact, we find the statement in the additional affidavit coming before us only on 16.07.2025 when the Petitioners realised that the Respondent no. 8 has specifically raised a ground of delay and had pleaded equity as he had expended huge money in the project.

28. A specific objection raised about delay, by Mr. Sardessai appeal to us.

It is equally true that while exercising writ jurisdiction, the Constitutional Court is not strictly bound by the rules of limitation and definitely not when the sacrosanct interest of Public is invoked, by a vigilant litigant for a public purpose as against the purpose of serving private ends. However, with the Apex Court coming to a conclusion that there is a paradigm shift in the approach of filing of Public Interest Litigation, which is tilted towards private interest litigation,

making it counter protective, the delay in instituting such litigation must be scanned with suspicion and at times, the delay aspect must deserve an appropriate scrutiny.

29. Though the power of the High Court to be exercised under Article 226 is discretionary, its exercise is expected to be judicious and timely as the Court may not exercise its discretion in favour of the party or a cause which suffer on account of laches or undue delay, in approaching the Court seeking the discretionary relief. In **State of Maharashtra vs. Digambar**³, the Apex Court in no uncertain terms, expressed thus :

“Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.”

The delay is therefore an important factor while considering exercise of writ jurisdiction under Article 226 of Constitution and it is based upon a well known principle of equity as the Court shall not disturb the third party interest created on account of delay and it shall not come to the rescue of a party which is not vigilant in protecting its rights.

³ (1995) 4 SCC 683

30. The question whether the delay and laches, would also impact the Public Interest Litigation, has also received attention on more than one occasion and in the case of **Govind Kondiba Tanpure vs. State of Maharashtra**⁴, the Bench headed by Hon'ble The Chief Justice Devendra Kumar Upadhyay (as His Lordship then was), observed thus :

“20. Individuals seeking relief under Article 226 of the Constitution of India, whether citizens or otherwise, must fully satisfy the Court that the facts and circumstances of the case justify any delay or laches in approaching the Court for such discretionary relief.

21. The principle of denial of relief on the grounds of laches is equally applicable to public interest litigation. If there is no proper explanation for the delay or laches, even public interest litigations are liable to dismissal due to unexplained delay or laches. In the absence of any explanation, this Court is not obligated to consider whether the petitioners' explanation is sufficient to condone the delay and laches in filing the present PIL Petition.

22. It is well established that the writ jurisdiction under Article 226 of the Constitution of India is discretionary. Thus, if a petitioner approaches the High Court under Article 226 after an unexplained delay, this Court may dismiss the petition without considering the merits of the case.”

The underlying principle involved in the doctrine of delay and laches in the Courts of equity is based upon principle of equity and fair play. Two circumstances, always important in such cases are, the length of delay and the nature of acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking one course or the other so far as it relates to the remedy.

4 2024 SCC OnLine Bom 2540

31. In so far as the project of construction of commercial complex by the Respondent no. 8 is concerned, the timelines would reflect that the Respondent No. 8 is the co-owner of the subject property, situated along side the National Highway which was upgraded to four lane and service road and the Project involved hill cutting. This Highway was completed and inaugurated in January, 2022.

In the year 2020, the issue of alleged hill cutting/mud excavation in Bambolim-St Cruz slope, was raised in the Legislative Assembly, to which a reply was given by the Minister for Town and Country Planning vide starred LAQ answer dated 29.01.2020 clarifying that the hill cutting and excavation of the mud was carried out on account of four laning of the National Highway and no 17A permission for hill cutting was required in terms of the Circular dated 28.08.2011 for the Government Projects.

Thereafter, on 12.12.2021, a flying squad inspection was carried out showing that no ongoing work of hill cutting was going at the site and on the directions of the superior, the Talathi associated with the Mamlatdar's office inspected the site and submitted a report that hill cutting was an old hill cutting and the said letter is placed on record with the reply/affidavit filed by Respondent no. 8.

32. The Project Proponent, i.e. Respondent no. 8, in the month of April 2022 applied for technical clearance for his project to the Town &

Country Planning Department, which involved construction of commercial building with distinct blocks and the permission was granted on 29.11.2022, following which an application was made for construction license to the Village Panchayat of St. Cruz, which was also granted on 14.11.2022. Thereafter, by the end of December, 2022, the Respondent commenced the construction in accordance with the licenses/permissions and received a completion certificate on 08.11.2024 and in the interregnum even the revised technical clearance and revised construction licenses were also granted.

33. The Petition is filed on 22.11.2024, when the project was almost completed and was awaiting Occupancy Certificate. It is not that the Petitioners were not aware of the construction of the project and in fact in paragraph 5 of the affidavit of Respondent no. 8, it is categorically stated that the Petitioner no. 1 had knowledge of the construction activity and this is evident from the video he had posted on 17.07.2024 and 26.09.2024 on social media platform in relation to the said project but still chose to wait till November, 2024.

34. The Petition contain a declaration that the necessary information had been collected by the Petitioners which form the basis of the Petition.

We find that the Petitioners have annexed the Google Timeline images of October, 2018 and April 2019 and this is definitely an

afterthought as the Petitioner was not aware of the actual position at site at that time and if they were aware of this, then the question is why did they not knock the doors of the Court at the relevant time when the project was still on going.

The Petition is also accompanied with various newspaper cutting which is easy to procure in the technology era, as a click of button, provide the warranted information of the past events and this form the basis of the Petition.

35. We find that to fill up the lacunas in the Petition, the Petitioners were required to file an additional affidavit as late as 16.07.2025 and this affidavit is accompanied with the necessary photographs giving the actual location of the site in an attempt to demonstrate as how the construction by Respondent no. 8 is the cause for traffic congestion.

36. We find that the attempt of the Petitioners to be half-hearted as firstly when they approached the Court by filing the Public Interest Litigation, they lacked the necessary material and thereafter they sought leave to amend the Petition and also filed an additional affidavit in support of the pleadings in the Petition. The Petition, according to us, therefore suffer from delay and laches and there is no explanation offered, as to what stopped the Petitioners from approaching the Court at the time when the Respondent no. 8 commenced its construction, except a bald statement in the Petition that there is no delay and

latches in filing the Public Interest Litigation, has failed to convince us, that it do not.

37. Testing the grievance of the Petitioners and firstly to deal with the allegation of the supposed traffic congestion on the road, we have referred to the images produced by the Petitioners themselves along with their additional affidavit.

A photograph at page 314, has reflected the site of construction i.e. plot no. U- 48 surveyed under no. 110/1 and 111/1 and the said image also show a critical junction and what we notice is, barely a small part of the plot no. U-48 is shown to have contributed to the critical junction and it is without assessing the practical situation on the spot. A further insight is offered by the Petitioners themselves at page 316 of the Petition, where we can clearly see that the subject property is situated behind the service road and at a far distance from the highway.

As far as the existing structure constructed in the year 1997-1998, it is located at a distance of 20 metres from the central line of the highway and between the highway and the structure lies this service lane.

As far as the proposed construction which is behind the existing structure, it is situated at a distance of 30 metres from the central line and from the photograph, it can be evidently seen that in no way has

the potential to impact the traffic on the highway, which is the most strong contention in the Petition.

Sufficient space is left within the property and the service road behind which lies the highway and the photographs filed by Petitioners depict so.

Therefore, from the case of the Petitioners themselves, we do not see any merit in the contention of the Petitioners about creation of a bottleneck on the spot as it can be seen that the critical junction, to which the Petitioners have made reference towards the Goa Dental College and the Goa Medical College block, lies much ahead of the property of the Petitioners.

Moreover, it is worth to note that the Respondent no. 8 has provided sufficient parking for the commercial complex, which has received approval and the project according to us, stand at a distance from the Highway and sufficient enough, to avoid any traffic congestion.

38. Dealing with the contention as regards relaxation of setback line of NH-17 by the Executive Engineer, as it is the grievance of the Petitioners that the distance which is ought to have been maintained as 40 metres have been relaxed to 30 metres and the State Government do not have any authority to do so, we must refer to the specific stand adopted by the Respondent no. 2 in its affidavit, when it has categorically denied the said allegation and specifically state that by

issuing circulars, the Ministry had defined the recommended standards for Building and Control Lines and requested the State Government for control of development activities along the National Highways.

Reliance is placed upon the Circular dated 16.08.2000 requesting the State Government to enact and control the development activity on the land adjacent to National Highway outside their right of way (ROW), as the Regulation of land outside the National Highways (ROW) vests with the State Government.

A reference is also made to the Circular of the State Government dated 12.09.1990, which has laid down the norms of setback distance along the National Highway-17 in Goa.

39. Turning our attention to the Circular dated 12.09.1990, on which Mr. Sardesai has placed heavy reliance, it is to be noted, that this Circular is issued by Department of Urban Development, in regards to the providing of adequate setback along the National Highway and it set out, that the issue was examined at length in consultation with the Chief Town Planner as well as the Chief Engineer to work out realistic yardsticks keeping in view the conditions prevailing in the State of Goa and the instructions issued are based on the recommendations of Indian Road Congress and the Ministry of Road Transport, Government of Goa.

40. A careful reading of the Circular dated 12.09.1990 would make it apparent to us that it is the State of Goa which has availed the power conferred on it by the Government of India, since the States are in a better position to determine the norms in regards to grant of permission to the buildings/constructions near the National Highway, but not as regards Right of Way (ROW), which is the prerogatives of the National Highway.

The Circular has stipulated three contingencies, namely :

“(i) In so far as the mountainous and steep terrain is concerned, Ministry of Surface Transport has desired that there should be a set back of 3 to 5 mts. from the edge of the National Highway. For the purpose of determining the edge of the National Highway, in the absence of adequate land width available at present in Goa, a minimum distance of 20 mts. (17 mts. +3 mts.) From the centre of the road be kept on either side with the presumption that the road width will be widened in due course. The set back is taken as 3 mtrs.

(ii) In so far as the plain and rolling terrain is concerned, where there is no construction what-so-ever or where any sub division has not been approved by the Competent Authority, according to the guidelines, no construction shall be permitted within 40 mts. from the central line of the road. Construction beyond 40 mts. and upto 75 mts, can only be permitted with the approval of the National Highway Authority. There shall be no restriction on construction beyond 75 mts. from the central Line.

(iii) as regards the set back in plain and rolling terrain in built-up areas, set back of 3 metres to be maintained from the boundary of the National Highway subject to minimum of 20 metres (17 metres +3 metres) from the central line.”

41. It is pertinent to note that the three contingencies are the specific instances which could be perceived in the State of Goa i.e. where the

terrain is mountainous or steep or it is plain and rolling terrain with no construction whatsoever or it is plain and rolling terrain in built up areas.

For the first and third scenarios, a setback of 3 to 5 metres is prescribed, whereas in plain and rolling terrain where there is no construction what-so-ever and where even sub-division has not been approved by the Government authority, that is the area which is virgin, with no development having taken place, a setback of 40 metres from the central line of the National Highway have been prescribed but in areas which are already occupied and there exists built up structures, on a plain and rolling terrain, a setback of three metres is directed to be maintained from the boundary of the National Highway subject to minimum of 20 metres (17 + 3 metres).

42. We, therefore, find substance in the submission of Mr. Sardesai, that everyone has misread the Circular and this included even the Respondent no. 8, who had made an application seeking relaxation and the Public Works Department assuming that the setback in respect of the said area has to be 40 metres has granted the desired relaxation, by reducing it into 30 metres.

This whole exercise is unwarranted as we find that on correct reading of the Circular dated 12.09.1990, what was applicable to the case of the Respondent no. 8 was stipulation no.3, which contemplated a setback of three metres to be maintained from the boundary of the

National Highway subject to a minimum of 20 metres of NH-17 (17 + 3 metres) from the central line and therefore there was no need for any relaxation. We therefore are not required to get into the objection whether the State Government had the power to do so and even if we were to pronounce upon the same, we are of the view that since determination of the setback is for giving permissions to the buildings/constructions near the National Highway, and this power which was relegated by the Union of India to the State Government and in exercise thereof, the Government of Goa had fixed the parameters on 12.09.1990.

43. Much emphasis have been laid down by Mr. De Sa on further communication dated 01.07.1992 with reference to the setback of construction along with National Highway, Goa, it becomes irrelevant as we have already construed the Circular itself and hold that the case of the Respondent no. 8 was governed by stipulation no. (iii) of Clause 2 thereof requiring a setback of 20 metres from central line and three metres from the boundary of the National Highway and the Respondent no. 8 complied with the same. In arriving at this conclusion, we find ourselves fortified by the observations of the Division Bench in the case of **Andrew Alvares & Ors. vs. State of Goa and Ors.** (supra), which we have already reproduced.

44. Now coming to the objection raised in the Petition about the technical clearances/revised technical clearance and the construction licences, we find that the Petitioner has failed to make out any case in support thereof they make a feeble attempt to allege violation of the Regional Plan of Goa and the Goa Land Development and Building Construction Regulation, 2010, based on a vague allegation.

Their first objection, is about the building being situated at 30 metres setback line and therefore violating Regulation 4.4.2 Side and Rear Setbacks, as prescribed in Regulation of 2010. We have already dealt with the said argument and we do not want to reiterate the same.

Another objection raised is that the FAR prevailing as per Regional Plan 2021 is only 50 for plots having area more than 4000 square metres, however, the plot approved, has FAR at the rate of 80, which violates the Regional Plan.

45. In this regard, the Respondent no. 8 has placed before us the copy of the note NH-13 / NH-14 of the TCP Department in regards the FAR granted to the construction at the rate of 80. The noting in that regard in the file record thus :

“The applicant vide his letter dtd. 25/10/2022 has stated that the property under Sy. No. 110/1 and 111/1 Plot No.U-48 of Calapor village Tiswadi Taluka is classified as Settlement zone (S2) in the ODP of Panaji and has submitted Form 'F' issued by Panaji Planning and Development Authority vide letter No. PDA/T/6119/710/93 td. 24/5/1993 obtained for re-construction of

plots wherein it is clearly mentioned that the zone of the property as Settlement (S-2) zone. As per the regulation, the FAR applicable for Settlement (S-2) zone is 80.

Further the applicant has also submitted a copy of the approved building plan vide No. DE/5533/ATP/444/97 dtd. 19/6/1997 obtained for commercial/ residential building in the same property and on the same plans, the area statement mentions the existing FAR as 80 (copy placed at C/86).

Also, the Conversion Sanad dtd. 20/9/1991 submitted by the applicant (placed at C/6 to C/20) mentions the use of property as for residential housing and as seen from the documents such as the plans and Form - F, etc. At the relevant time, zone of the property was Settlement (S-2) having permissible FAR of 80.

Having reference to the above background, the provisions under Regulation No. 6.1.1 (c) of Goa Land Development and Building Construction Regulations, 2010 are applicable, which states as under:

"The Outline Development Plans of withdrawn planning areas/zoning Plans: These are the areas for which Outline Development Plans were prepared, when they were notified as planning areas and subsequently withdrawn/de-notified under Section 19 of The Goa Town & Country Planning Act, 1974. As the planning areas were de-notified (reduced) and as per Government decision, the ODPs prepared remained in force. These Regulations shall also be applicable for these areas/plans for all developments. In such areas outside Planning & Development Authority jurisdiction, zone with FAR s beyond 80 if specified shall be reduced by 20% for development of plot areas of 4000 m² and above. For example, 100 shall be 80, 150 shall be 120, 120 shall be 96". (Copy placed at C/180)

Further, Regional Plan for Goa 2021 Policy and Note No. 6 on notified Regional Plans mentions as under:

"All past commitments/developments like Sub-division approvals by competent authorities, Conversion sanad under LRC, building approvals/NOC's granted shall be honored for specific uses, if not reflected in this plan/Regional Plan for Goa 2021"

As mentioned earlier and in view of regulation 6.1.1(c) of GLDBCR-2010 the FAR applicable for the property under reference, shall therefore be treated as 80."

As Block F was constructed in the year 1998 on plot U-48, which was sub-divided and at that relevant time the property was covered under Panjim ODP and is now it is covered under the Regional Plan and therefore the additional third floor granted to the existing Block F did not violate the setback distance within the framework of law. The above note, take care of the objection about FAR 80, being made available to the Project of Respondent No. 8.

46. Dealing with the objection that there is no access road to the project site, it is the response of the Respondent no. 8 that the access is provided as per the approved plan and in any case there is an adjoining 8 metre tarred/asphalted road maintained by the local authorities which is in use by the public.

The Petitioners themselves have placed on record the approved plan on permitting to amend the Petition and this has given the statement of plot area under U-48 and with a net plot area with 10,940.00 M2 and the built up area as 19,318.08 M2. The approved

plan also refer to the respective area of the Complex A, B, C, D, E-1 and E-2 and also mention about the parking required of 250 cars and the parking provided in the basement on the surface is of 283 cars in excess of what was required.

47. The Petitioners, while amending the Petition have raised several technical objections and when we specifically inquired with Mr. De Sa about the qualifications of the Petitioner, he has pointed out to the statement in the affidavit filed by the Petitioner no. 1 that he is a Mechanical Engineer specialized in material handling technology, with experience of Senior Manager Engineer in a leading pharmaceutical company. Had it been a case that the Petitioner no.1, was a Civil Engineer or had expertise in buildings/structures or he was an Architect, who would have been in a position to find flaws in the plans, approved by the Planning Department, the situation would have been different.

We do not possess an expertise in a building plan and we find that the plan submitted having been approved by the experts of the TCP Department and unless and until it is demonstrated before us that they are manifestly incorrect or based on incorrect computation or not feasible to be implemented, we would have shown some indulgence but in absence of any such allegations being made except a bald statement that in order to get out of the liability of seeking environmental

clearances, the built up area has been understated below 20,000 we refuse to indulge the Petitioners.

This statement cannot be believed and if one look at the plans which has given a bifurcation of the entire area by dividing into an area statement in respect of all the blocks, parking/basement floor and in addition floor-wise plan, which has received an approval.

We are therefore not inclined to consider the allegation in the Petition by the Petitioners that it is with the connivance of the officials of the Town and Country Planning Department, the Respondent no. 8 has succeeded in getting the plans approved.

In any case, in exercise of our writ jurisdiction, we will not be in a position to delve more deep, as we find that the plans have been placed before the appropriate body/authority and they have received approval in commensuration with the technical clearance order and the construction license and Respondent no. 8 proceeded with the construction strictly in accordance with the building plans that have been approved for development.

The allegations raised that there is no parking for the vehicles coming to the commercial premises constructed by the Respondent no. 8, is also without any merit and substance as we find that the approved plan comprise of sufficient number of car parking spaces.

48. In the wake of the aforesaid discussion, we find that the entire attempt of the Petitioners to diffuse the project of Respondent no. 8 must fail, as no concrete material is brought before us, sufficient enough to reject the technical clearance/construction license and prevent the structure from getting the Occupancy Certificate from the Village Panchayat.

The Counsel for the Village Panchayat has categorically made a statement before us that the Village Panchayat of St. Cruz has already passed a resolution for grant of occupancy but in the wake of the pendency of the Petition and the statement being made before the Court on 17.12.2024, that it shall not issue the Occupancy Certificate, it was prevented from releasing the Occupancy Certificate in favour of Respondent no. 8.

Since the Petitioners have failed to make out any case so as to justify exercise of our writ jurisdiction under Article 226 of the Constitution on the premise that the Petition is filed in public interest and for the causes set out therein, while we dismiss the Public Interest Litigation Writ Petition.

We direct the Village Panchayat to issue the Occupancy Certificate in favour of the Respondent no. 8 within a period of six weeks from today.

We must however clarify that before the Occupancy Certificate is issued, the Respondent no. 8 shall ensure that it shall produce a

commercial Sanad, as this was one of the condition which is required to be complied as a part of the Technical Clearance order as well as revised Technical Clearance issued in its favour.

49. With the above discussion and for reasons stated above, the Public Interest Litigation Writ Petition of the Petitioners is dismissed, since it lack both, bonafides and merit.

Rule is discharged. No order as to cost.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.