



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.422 OF 2025

1. Mr. Bharatlal Halwai

54 years of age,
r/o. Flat No.MB-14,
Housing Board Colony,
Baina, Vasco da Gama- Goa.

**2. Mr. Birju Halwai alias Bijay
Prakash Halwai**

49 years of age,
r/o. Flat No.MB-14,
Housing Board Colony,
Baina, Vasco da Gama- Goa.

..... PETITIONERS

V E R S U S

1. Mormugao Municipal Council,
Through its Chief Officer,
Having office at Mormugao
Municipal Council, Vasco-da-
Gama, Goa.

2 Mr. Reynold Abranches,
Major of age,
on behalf of Ms. Celina Abranches,
H.No.488, Near Holy Cross
Church, Verna-Goa.

3. Mr. Charlton Mendes,
Major of age,
On behalf of Christalina Mendes,
Petvin Villa, H.No.253,
St. Francis Ward,
Goa Velha, Goa.

..... RESPONDENTS

Mr. Anirudh Salkar, Advocate for the Petitioners.

Mr. Ravi Anand, Advocate for the Respondent No.1.

Mr. Sudesh Usgaonkar, Senior Advocate along with *Ms. Marie Rosette Pereira* and *Ms. Swati Kamat Wagh*, Advocates for the Respondent Nos. 2 and 3.

CORAM: VALMIKI MENEZES, J.

ORAL ORDER: 11th November, 2025.

ORAL JUDGMENT:

1. The Petitioner has impugned in this petition order dated 19.05.2022 passed by the Chief Officer of the Mormugao Municipal Council, directing the Petitioner to stop the work of fabrication of an installation of solar power panel on an open terrace of Mendes Mansion building at Vasco Da Gama.

2. Heard learned Counsel for the parties.

SUBMISSIONS:

A. It is the submission of the learned Advocate Mr. Salkar for the Petitioner that the stop work order issued by the Municipal Council is passed without jurisdiction; it was contended that in view of the scheme of the Goa State Solar Policy, 2017 ('the Solar Policy', for short), there is a bar on the Chief Officer of Municipal Council to exercise powers vested in it under Section 184 of the Goa Municipalities Act, 1968.

B. It was contended that the Solar Policy provides for two categories of solar power generators, the first being, one termed

as “Prosumers” and the other category being one of “Producer”. It was the submission of the Petitioner that the Petitioner is a Prosumer being a person who has set up a solar rooftop power generating system through solar panels, for domestic use in his residential flat and shops/ restaurant which are situated in “Mendes Apartments” at Vasco city. It was further submitted that a Prosumer under clause 5.1(a) of the Solar Policy is also a producer and is exempted from obtaining permissions required for setting up and fabricating solar panels, as specified in sub-clauses (c) and (e) of clause (9) of the Solar Policy. He further submitted that the powers of the Chief Officer under Section 184 of the Municipalities Act could not be exercised by the Chief Officer, in view of the provisions of sub-clauses (c) and (d) of clause 9 of the Solar Policy which provide that no license is required from the statutory authority, hence, the stop work notice is totally without jurisdiction.

3. Per contra, the following submissions were advanced by Mr. Sudesh Usgaonkar, learned Senior Counsel for Respondent Nos. 2 and 3 in support of the stop work order:

A. It was submitted that the Respondent No.2 had filed a complaint objecting to the construction/fabrication of the solar panel on the terrace of the building Mendes Apartment on various grounds, amongst which two of the grounds were the following:

- (i) That the Petitioner had no right or title to construct on an open terrace of a building for which there was no transfer of title or any right created under a document in favour of the Petitioner.
- (ii) That the Solar Policy is only a policy document and does not have the force of law and cannot be interpreted to operate in a manner, such that it would suspend a State legislation i.e. Goa Municipalities Act; it was further submitted that, without prejudice to the earlier submissions, a plain reading of clause (5) and clause (9) of the Solar Policy would demonstrate that “Prosumers” under category I under sub-clause 5.1 are not entitled to the exemption granted to “Producers” defined under category II under clause 5.2 in clause 9 of the Solar Policy. It was further submitted that it was only Producers defined under clause 5.2 under category II of the policy that were entitled to the exemptions specified in clauses (a) to (g) of clause 9, which include the exemption from obtaining necessary licenses and NOC’s/Completion Certificates from statutory bodies such as Municipalities, Panchayats and Planning Authorities.

B. Going through the scheme of the policy, it was submitted that clause 5 of the Policy creates a clear classification of “Prosumers” and a separate classification for “Producers”; it was contended that “Producers” of solar powers do not consume

power in their own establishment but produce solar power as a pure commercial venture and sale of solar power to a Purchaser, which in this case would be the Electricity Department. For that purpose, clause 9 of the policy refers specifically to “Producers” and does not confer the exemptions which are found in clauses (c) and (e) of the categories of “Prosumers”. It was further submitted that where the policy categorizes the entities or persons into two categories i.e. “Prosumers” and “Producers” and clause 9 makes specific reference only to “Producers”, there can be no manner of interpreting that clause 9 to confer the right to seek exemption from obtaining necessary licenses and NOC’s for fabrication of the solar panel structure from the statutory authorities, which is an exemption granted only to the category of “Producers”. Reliance was placed on the judgment ***Krishi Upaj Mandi Samhiti, New Mandi Yard Alwar V/s Commissioner of Central Excise and Service Tax, Alwar 2022 (5) SC 62***

CONSIDERATIONS:

4. The point which falls for my determination in this petition is whether the Petitioner, who is admittedly a “Prosumer”, could claim the exemption under sub-clauses (c) and (e) of clause 9 of the Solar Policy and whether the Solar Policy would operate as an embargo or suspension on the powers of the Chief Officer under sub-section 2 of Section 184 of the Municipalities Act.

5. The Goa Municipalities Act 1968 (“Municipalities Act” for short), was enacted by the State legislature to consolidate the existing

laws relating to the Municipalities in the State of Goa and to make better provisions thereof. The Act came into force on 02.07.1969. Sub-section 2 of the Section 184 of the Municipalities Act, requires any person, who intends to construct the building in a municipal area, to give notice to the Chief Officer in writing, to seek a construction licence on the basis of structural plan to be submitted to the municipalities. In other words, the legislation prohibits any construction within a municipal area, without obtaining a construction licence in terms of section 184 of the Act. Sub-section 8 of section 184 empowers to the Chief Officer of the Municipal Council to demolish or take action against any construction or structure or building which has been constructed unauthorisedly and contrary to the provisions of sub-section 2 of Section 184. It inheres the power in the Chief Officer to stop any unauthorised construction or to have the same removed. Appeal against all orders of the Chief Officer are provided for in sub-section 13 of Section 184. Section 184 therefore, is a complete scheme or Code, which deals with the manner in which new constructions are to be erected within a municipal area and provides for remedy against any orders passed by the Chief Officer under this legislation.

6. The Goa (Regularisation of Land Development and Building Construction) Act, 2008 ('Building Regularisations', for short) was brought into force, to provide for the regulation and control on building construction and land development in the State of Goa and to deal with all incidental and ancillary matters connected therewith. The Building Regulations were brought into force on 08.11.2010. The Building Regulations provide for a comprehensive legislation by which

all development and construction of buildings within the State of Goa are to be regulated by one single law, whether the construction is within the panchayat area, municipal area, planning area or within the jurisdiction of the Town Planner. The word “building construction” which is defined under section 2 (a) of the Regulations, assigns the meaning to the said word as found in four different legislations which regulate construction, being the Goa Panchayat Raj Act, Municipalities Act, the Goa, City of Panaji Corporation Act, 2002, and the Goa Town and Country Planning Act. Sub-section 1 of Section 3 of the Building Regulations stipulates that all land development and building construction in the State of Goa shall be subject to provisions of the regulations while sub-section 2 of section 3 stipulates that all provisions of any law in force in the State of Goa governing land development and building constructions which are inconsistent with the provisions and regulation shall stand repealed.

7. A conjoint reading of provisions of the Municipalities Act and the Building Regulations, would therefore require that any person seeking to develop a land or construct a building thereon, be it in a Municipal area or Panchayat area or under the Town Planner or in a planning area, would have to seek requisite building permissions under the regulations. In the present case, the Petitioner has constructed/ fabricated a solar power panel system on the terrace of the building, which, looking at the definition of “building construction” would clearly be within the meaning of the words “to construct a building” under sub-section 1 of Section 184 of the Municipalities Act and would therefore require a building licence from the concerned municipal council and a license or a technical approval

from the Mormugao Planning and Development Authority which is the concerned planning authority for that area.

8. The Solar Policy, has been formulated by Department of science, technology and environment of the Government of Goa. Its preamble suggests that Government of Goa have formulated the policy keeping in mind it's intent to promote the generation and use of cleaner sources of energy, one of them being solar energy. In keeping with this intent, clause 3 of the policy sets out the legislative framework under which the policy operates and refers to the Electricity Act, 2003. Reading the entire policy however, would leave no manner of doubt that the policy is not enacted or formulated pursuant to any specific power under a legislation, including the Electricity Act, 2003, whether delegated or otherwise. The policy therefore is neither in the form of delegated legislation or in the form of legislation by enactment of the state legislative assembly and is only a document setting out the intent of the Government of Goa in relation to its policies for promotion of solar power generation and use. The policy therefore cannot be construed either as a legislation, original, delegated or otherwise.

9. Clause 5 of the policy provides for categorization of person seeking to generate electricity through the use of solar. Clause 5.1 of the policy creates a category of "Prosumer" who is defined as a consumer of electricity load, provided by the Goa Electricity Department (GED) and who also produces solar power. In other words, "Prosumer" is a person who is a consumer of electricity supplied under the provisions of Electricity Act 2003 from GED but

who also sets up a solar power electric generation unit and who supplies this power back into the grid, which is the State of Goa run by the GED as a sole distributor. Under the category of Prosumer two sub-categories of Prosumer are created, one under clause (a) of clause 5.1 which is a small prosumer, a person already having a low tension connection of up to 100kw from GED for residential, commercial or institutional use. Thus, the second sub category is of a “large Prosumer” who is a person having a High tension connection with the connected load of above 100 Kilo Watts from the department.

10. The second category +is Category II is the “Producer” which is defined as an entity intending to set up a solar Power plant with a capacity of more than 100 Kilo Watts exclusively for sale of power to the Distribution Licensee. A “Producer” is therefore specifically defined as a different category from a “Prosumer” and its separate classification is on the basis of the fact that it is not itself a consumer of electricity from the department, but indulges only in the production of solar electricity of more than 100 Kilo Watts, which is exclusively for sale to the “distribution licensee”, the sole distributor in the State of Goa being the GED. Another feature to classify a “producer” under the Category II of the policy, is that the solar Power plant, setup and installed by the “Producer” on a rooftop or on the ground is for production of solar power /electricity which is to be exclusively purchased under a Power Purchase Agreement (PPA) under the Electricity Act 2003, by the sole distributor, GED. In contrast none of these specific features are found to be attributable to a “Prosumer” under clause 5.1 in Category I, whether for a “small prosumer” or a “large prosumer”. The policy therefore creates a clear and defined

classification between a “producer” who is also a consumer (Prosumer) and a “Producer”.

11. Clause 9 of the policy specifically refers to “a Producer” and nowhere in clause 9 can one find reference to the same being applicable to a “Prosumer”. Clause 9 having made specific reference to a “Producer” as classified specifically under clause 5.2 (category II), none of the provisions applicable to a Producer can be said to apply to a “Prosumer”. Consequently, a Prosumer cannot claim the exemptions or benefits which are referred to in clause 9 of the policy. This would mean that a Prosumer would not have the benefit to the exemption from seeking permissions, NOCs’ or building licenses for construction and the fabrication of the structures of solar panels and other structures which would be erected either on a rooftop of a building or in an open land.

However, even considering that the policy does not appear to have the force of a legislation or even in pursuance of any delegated power under either Electricity Act, 2003 or any other enactment, it is doubtful that the Solar Policy could operate in a manner so as to suspend specific power conferred upon the Chief Officer, Town Planner, Panchayat or the Commissioner of the Corporation of the City of Panaji, under each of the enactments under which they would be empowered to grant building permissions or to order removal of unauthorised structures. In my opinion, therefore, the Chief Officer was well within his powers under sub-section 8 of Section 184 to issue the impugned order dated 19.05.2023.

12. The next question would be whether the impugned order, which is within the jurisdiction and powers conferred on the Chief Officer, has been issued contrary to the material before the Chief Officer. The Petitioner claims to have obtained the permission of the Executive Engineer of the GED to construct/fabricate a solar power panel, which according to him has been installed on the rooftop of the Mendes Apartment. He further claims that obtaining these permissions would be enough, without specifying the load of the structure or certify the stability of the structure on top of the building or terrace of the building on which it stands. The Petitioner further claims that he has obtained these permissions on the force of an Agreement dated 20.07.2012 between the person who claims to be the co-owner of the building and one Shantidevi Ramchandra Halwai, who the Petitioner claims is his mother. The Petitioner further claims that he has purchased in “Mendes Apartments” a residential apartment and three shops by various registered Deeds of Sale which are in favour of the parents of the Petitioner. The Petitioner therefore submits that he has a valid title to apply for the permissions under the solar policy.

13. Perusal of the Agreement dated 20.07.2012 which is on record would show that the document purports to be a transfer of the right to use the terrace of Mendes Apartment in the name of the mother of the Petitioner. The document is unregistered. If the document operates as a transfer of the ownership right or title to the terrace, which itself, in my opinion was impermissible, the same, in any event is not registered under Section 17 of the Registration Act. Having not been registered in terms of law, the document in any event would not

operate as a transfer of the property and would create no right in favour of the mother of the Petitioner, much less in the Petitioner himself. Even if, one considers that the Petitioner now claims to be successor in title on the demise of the mother, to the rights under the said agreement, the agreement itself not operating as a transfer of title, would not create a title in the Petitioner. Further, the three Sale Deeds are also not in the Petitioner's name, and one does not understand under what title the Petitioner could have even applied for a license to construct or fabricate the solar power panels with the Electricity Department; the policy requires that the Petitioner must demonstrate a basic title to the area over which he intends to construct the solar panel system. Without going into the legality of the grant of the license to set up the solar power panel issued by the Executing Engineer by letter dated 22.06.2022, there was absolutely no question of setting up an entire structure, which is load bearing structure, over a building, without licenses and permissions which are required, both under Section 184 of the Municipalities Act and under the Building Regulations from the Mormugao Planning and Development Authority.

14. For all the above reasons, the impugned stop work order dated 19.05.2023 is held to be within powers conferred on the Chief Officer under sub-Section 1 and 2 of the Section 184, and has been correctly issued based upon the material before the Chief Officer. Therefore, there can be no infirmity found to the legality of the order issued by the Chief Officer. The order is therefore within the jurisdiction and powers conferred on the Chief Officer and cannot be faulted. Consequently, the Writ Petition is dismissed. Rule stands discharged.

15. The Petitioner has given an undertaking to this Court which was recorded in the order of 31.05.2023 at paragraph 8 thereof that in the event he does not succeed in this petition, he would dismantle the solar panel structure on the rooftop of Mendes Apartments. In view of the undertaking given by the Petitioner which is recorded in paragraph 8 of this Court's order dated 31.05.2023, the Petitioner shall dismantle the solar panel structure fabricated by him on rooftop of Mendes Apartment by 12.12.2025 and report compliance by filing an affidavit supported by photographs to this Court.

16. The Chief Officer of the Mormugao Municipal Council who is the Respondent No.1 herein, is directed to confirm the removal of the structure by filing a report in this Court by 12.12.2025.

17. List this matter for compliance of this order on 15.12.2025.

(VALMIKI MENEZES,J)