



Maria S./Jose

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.54 of 2023
WITH
WRIT PETITION NO.414 of 2023**

WRIT PETITION NO.54 of 2023

Dr Suresh B. Shetye, son
of Balchandra Shetye, 86
years of age, Indian
National, R/o H. No.771,
Opp. Water Tank, Near
Konkani Kendra, B. B.
Borkar Road, Porvorim,
Bardez-Goa 403521.

..... Petitioner.

Versus

1. State of Goa
Through the Chief
Secretary, Having office
at Secretariat, Porvorim,
Bardez - Goa.
2. The Chief Town Planner
Town and Country
Planning Department-
Government of Goa,
Panaji-Goa.
3. North Goa Planning And
Development Authority,

Through the Member
Secretary, Archdiocese
Bldg., Mala Link Road,
Panaji-Goa.

4. Goa University

A Body Corporate
represented through its
Registrar Office at Goa
University Campus,
Taleigao Plateau,
Tiswadi-Goa.

.... Respondents.

WITH
WRIT PETITION NO.414 of 2023

Goa University, a body
Corporate, Through its
Registrar having
registered Office at the
University Campus
Taleigao Plateau Goa.

..... Petitioner.

Versus

1. Town and Country
Planning Board with
Office at Patto Panaji-Goa

2. North Goa Planning And
Development Authority,
Archdiocese Building, 1st
Floor, Mala Link Road,
Panaji-Goa 403001.

3. Dr Suresh B. Shetye,

MZ-1 Sukerkar Mansion
M.G. Road, Panaji-Goa.

.... Respondents.

4. State of Goa through
Chief Secretary
Secretariate at Porvorim
Goa.

Mr Shivan Desai with Mr A. Sardessai, Ms M. Viegas and Ms T. Menezes, Advocates for the Petitioner in WP No.54/2023 and for Respondent No.3 in WP No.414/2023.

Ms A.A. Agni, Senior Advocate with Ms Afrin Khanm Harihar and Mr Junaid Shaikh, Advocates for the Petitioner in WP No.414/2023 and for Respondent No.4 in WP No.54/2023.

Mr Neehal Vernekar, Additional Government Advocate for the Respondent-State in WP No.54/2023.

Mr Prashil Arolkar, Additional Government Advocate for the Respondent-State in WP No.414/2023.

Mr Sahish Mahambrey, Advocate for Respondent No.3 in WP No.54/2023 and for Respondent No.2 in WP No.414/2023.

CORAM:

**M. S. SONAK &
VALMIKI MENEZES, JJ.**

RESERVED ON:

1st APRIL 2024

**PRONOUNCED
ON:**

**25th NOVEMBER
2024**

JUDGMENT: (Per Valmiki Menezes, J.)

1. Heard Ms Agni for the Petitioner/Goa University in WP No.414/2023 and for Goa University/Respondent No. 4 in WP No.54/2023, Mr Neehal Vernekar, Government Advocate for the Town Planning Board (Respondent No. 1) in WP No.414/2023 and for State of Goa and Chief Town Planner (Respondent Nos. 1 and 2) in WP No.54/2023, Mr Sahish Mahambrey, for the North Goa Planning and Development Authority (NGPDA)-Respondent No.2 in WP No.414/2023 and Respondent No.3 (NGPDA) in WP No.54/2023.
2. Rule. Rule made returnable forthwith and with the consent of the parties, these petitions are finally disposed of. Since these petitions involve common questions and a challenge by two sets of parties to the action of the Town and Country Planning Board affecting each of them, they were heard together and finally disposed of by this common Judgment.
3. In Writ Petition No.414/2023, the Petitioner, Goa University (“the University”) seeks a writ of certiorari to quash and set aside an order dated 20.12.2021

passed by the Respondent No.1, the Goa Town and Country Planning Board (“the Board”), directing the University to comply with certain directions contained in an earlier order dated 27.10.2015 of the Board; the University seeks a further direction to the Respondent No.2, North Goa Planning and Development Authority (“NGPDA”) to reconsider the regularization permission dated 24.07.2018 granted by the Greater Panaji Planning and Development Authority (“GPPDA”) to the University. A further relief is sought by the University to quash Direction (a) contained in the order dated 27.10.2015 passed by the Board or to clarify that Direction (a) is limited to the access from the Southern side of the property of the University to the property under Survey No.212, and for a further clarification that the Direction (a) is restricted to the removal of the barbed wire fencing put up along the periphery of the property of the University on its Northern side near Model Complex and Faculty Building B of the University.

4. In Writ Petition No.54/2023, the Petitioner, Dr. Suresh B. Shetye (“Dr. Shetye”) seeks a writ of mandamus to direct Respondent No.2, Chief Town

Planner and Respondent No.3, NGPDA to take action in accordance with law on the Petitioner's complaint dated 08.09.2022; by the complaint dated 08.09.2022 addressed by Dr. Shetye to the Chief Town Planner and the NGPDA, Dr. Shetye contended that the University had constructed a compound wall along the periphery of its property without leaving any openings therein to provide access to the neighbouring properties, which include land under Survey No.193, 197 and 198 of Village Calapur, owned by him; the complaint contends that the compound wall was constructed without any permissions from the GPPDA or NGPDA and that though the University claims that the construction of the illegal wall was regularized by order dated 24.07.2018 of the GPPDA, since there was no clarity in the order of regularization as to whether the construction of the wall along his properties was in fact legalised by that order, in effect such regularization, which was not in reference to any plan could not have been accorded any permissions without leaving access to these properties. Dr. Shetye seeks a direction to the NGPDA to take action and to demolish the compound wall constructed by the University.

5. The brief facts as pleaded in Writ Petition No.414/2023 (Goa University) and by Dr. Suresh Shetye in Writ Petition No.54/2023 are as under:

- i. That the University was established in 1985 under the Goa University Act, 1984. The Government of Goa acquired several lands situated in the villages of Taleigao, Calapur and Bambolim for setting up the construction of the University, possession of which was handed to the University in 1986, pursuant to which construction of various buildings including the Administrative Block and Faculty Building was commenced and completed. Apart from several other buildings having been constructed by the Government of Goa for the University, the University has also constructed a compound wall along its periphery to a major extent in the year 2009/2010.
- ii. In 2013, the NGPDA informed the University that it had decided to construct a 30 metre wide Outline Development Plan (ODP) road along the Northern boundary of the University and it was further informed to the University

that since the barbed wire fencing erected by the University along its Southern periphery had blocked the 30 metre wide ODP road of Taleigao, the University was called upon to remove the barbed wire fencing where it blocked the road along the Southern periphery abutting land under Survey No. 206/10. The University contends that it objected to these directions, contending it had not blocked any access and requested the NGPDA to refrain from taking any action to dismantle the barbed wire fencing erected by the University.

- iii.** A show cause notice dated 20.02.2014 was served by the NGPDA on the University alleging that the University had unauthorizedly constructed buildings admeasuring 2200 sq. mts., which partly encroached upon the ODP road, and further alleged that a barbed wire fencing constructed by the University had blocked the 30 metre proposed ODP road along the Taleigao ODP. The University contends that after replies were filed by the University, taking a stand that the University being a statutory authority, it was exempt from

seeking any construction licences, including under the provisions of Section 66 of the Panchayat Raj Act. It further contended that a stop work order dated 04.12.2014 was issued by the NGPDA for carrying out the alleged unauthorized construction of buildings and barbed wire fencing without prior approval of the authority; the University contends that the stop work notice was restricted to the area under Survey No.206/10 and not to the area which Dr. Shetye is concerned with which falls to the North-East of the University.

- iv.** The stop work notice/order dated 04.12.2014 came to be challenged in Appeal under Section 52 before the Board, which, in the course of hearing of Appeal decided to constitute a Sub-Committee comprising of some of its members to inspect the site, which the University contended was restricted to the area on the Western boundary near Model Complex and along property under Survey No.206 belonging to one Shankhwalkar, and the Faculty Block B which was on the Northern side of the University, as also restricted to the area under

Survey No.211 and 212 on the Southern side. Amongst the grounds taken into appeal, two grounds raised therein would be of some relevance to the decision of this matter. Ground (E) of the Memo of Appeal avers that the University had filed an application for regularization of the building in Survey No.216/1 (Faculty Block), hence, Stop Work Order would not take effect in terms of Section 52 of the Goa Town and Country Planning Act (TCP Act); the second ground taken was in Ground (F) to Ground (J), to the effect that the University being an authority under Article 12 as also a statutory authority, there was no requirement for it to obtain any permission under the TCP Act for construction of the compound wall or any other structure.

- v. The Sub-Committee inspected the sites in question, under Survey No.206/10 and 216/1 of Village Taleigao and observed that the construction of the Building Block of the University, which was under way would cause two bottlenecks along the proposed ODP road of 30 metres near the overhead water tank

and the right of way along the ODP road would reduce to a maximum of 11.5 and 13.5 metres along these stretches.

- vi.** The TCP Board considered the report of the Sub-Committee and recorded in its meeting dated 27.10.2015, the submission of the University that it requests the Board to reduce the right of way along the ODP road from 30 metres to 12 metres since 12 metres space was available beyond the building block under consideration; a further submission was recorded from the University that they were ready to remove the portion of the compound as reported by the Sub-Committee. Consequently, the Board passed the following order:

- i. The University shall remove all blockages put up by them in the form of compounds/barbed wire fencing along their boundary, which are blocking access to neighbouring properties.*
- ii. They shall submit compliance to North Goa PDA within 30 days from date of this order.*

- iii. The North Goa PDA shall keep stop work notice dated 4/12/2014 in abeyance and see possibility of re-aligning proposed 30.00 mts. ODP road and reduction of right of way to 15.00 mts, at the time of review/revision of the ODP, which is currently in progress.*
- iv. The University shall take development permission/technical clearance, as the case may be, for any development in the University complex as per provisions of the Goa Land Development and Building Construction Regulations, 2010, including regularization of buildings already built.*

Thus, a clear direction was issued by the Board to the University to remove all impediments put up by it, whether in the form of a compound wall or a barbed wire fence along its boundary which blocks access to neighbouring properties. In addition, the Board imposed a condition on the University that it would be required to take development permission/ technical clearance for all its developments in its complex in terms of the

Goa Land Development and Building Construction Regulations, 2010 (Building Regulations), including regularization of buildings already built.

- vii.** The order of the Board dated 27.10.2015 and more particularly Direction (a) contained therein was not challenged immediately thereafter; instead, the University informed the NGPDA by communication dated 09.11.2015 that its Executive Council (EC), in its meeting dated 30.09.2015 had already taken a decision, prior to the Board's order, to abide by the Board's Direction and to remove the barbed wire along Model Status Building (towards the North) and would open access of two plots on the Southern side of its land. The resolution bearing No. XXX passed by the EC of the University dated 30.09.2015 specifically records that it would initiate action towards regularization of existing buildings and those under construction in the campus of the University, and if required, the entire University property should be surveyed again to obtain regularization. There was no other

decision taken by the University in its EC meetings after 30.09.2015 or after the order of the Board dated 27.10.2015, to challenge clause (a) of the order of the Board. Further, and pertinent to note, is the fact that no application or regularization plan was submitted by the University pursuant to the EC resolution for any of the structures/buildings/compound walls constructed by it in any of its land, to the concerned Village Panchayat or Planning Authority for several years after the order of the Court dated 27.10.2015 was passed.

- viii.** On 20.11.2015, the University requested the TCP Board to “reword” its order of 27.10.2015 which directed the University to remove all blockages in the form of compounds/barbed wire fencing along its boundary which blocked access to neighbouring properties, and to restrict this order to the areas inspected by the Sub-Committee under Survey No.215 and 216 of Village Taleigao and Survey No.212 of Village Calapur. The letter was written, as stated therein, on the premise that the

University was encircled on all sides by private lands and was fighting legal cases in various Courts filed by private parties demanding access through University property.

There was no response to this communication and a further reminder sent by the University to the Board.

- ix.** On 06.01.2016, Dr. Suresh Shetye wrote a letter to the University bringing to its notice that he was the owner of lands under Survey No.193, 197 and 198 of Village Calapur which were adjacent to the Eastern boundary of the University land; in that communication, he stated that upon his visit to these properties in September, 2015, he had found that the University had erected a compound wall along his properties blocking his access. He requested the University to demolish the compound wall to provide the access to his properties.
- x.** In reply to Dr. Shetye's letter dated 06.01.2016, by communication dated 13.05.2016, the University denied the

existence of any access through its property as also denied that it had blocked any access to the properties under Survey No.193, 197 and 198. In the same letter, the University claimed that it had constructed the compound wall way back in the year 2010 along the boundary of its campus, consequently it denied the request of Dr. Suresh for demolishing the wall for providing access to his properties.

- xi.** Dr. Suresh Shetye then made three representations to the Chief Town Planner dated 29.07.2016, 14.06.2018 and 02.07.2018, requesting that the compound wall constructed by the University along their Eastern boundary had blocked access to his landlocked properties.
- xii.** In the meanwhile, the University filed an application dated 31.08.2017 before the NGPDA for regularization of various structures constructed by it on its lands. Whilst the application for regularization was pending before the NGPDA, by a notification dated 15.02.2018 a new Planning Authority, the

Greater Panaji Planning and Development Authority (GPPDA) was created and the areas within which the pending regularization application fell, were included within the new planning area now constituted as the GPPDA; on 12.04.2018, the GPPDA issued to the University Form F which contained the assessment of development charges and penalties to be imposed on the regularization of buildings sought by the University. The assessment order contained an annexure of all the built up areas sought to be regularized, survey-wise, running to a total coverage of 101,363.66 square metres covering an FAR of 89,842.40.

- xiii.** On 24.07.2018, after the University had paid a total amount of Rs.74,30,203/- as regularization fees, the GPPDA issued an order under Section 52(2)(a) of the Town and Country Planning Act regularizing the building/block/bungalow as detailed in Annexure "A" enclosed with the order. The order however contains an additional word "compound wall" in the order; however, a

perusal of Annexure “A” to the order refers to buildings or blocks or flats but nowhere refers to a compound wall. The annexure to the assessment order which refers to the “units to be regularized” also does not refer to any compound wall, though, it is the claim of the University in its petition that the order of regularization includes the compound wall which was subject matter in dispute between the University and Dr. Suresh Shetye.

- xiv.** At this juncture, we record that, though the Regularization Application was not produced by the University as part of the record of its petitions, in order to ascertain the scope of the application for regularization of the constructions by the University at site and whether the University had actually applied for regularisation of the compound wall on Survey Nos. 194, 195, 196, 226, 229 and 230 (owned by University), we requested the University to place on record the regularisation application along with the endorsed copy of the plans submitted by it for the purpose of regularization of the structures.

- xv.** The University placed on record the application dated 31.08.2017 in its compilation dated 05.03.2024, however no site plan or any plans which were inwards to the NGPDA under the application have been produced by the University. The application covers the lands of the University in Taleigao, Calapur and Bambolim Village. During the course of the hearing, we had requested the University to produce the original coloured version of the regularisation plan received by it under regularisation order dated 24.07.2018, however the University was unable to produce the original plan received by it under the order of regularization of the Greater Panaji Planning and Development Authority (GPPDA) in whose jurisdiction the land of the University fell when the order of regularization dated 24.07.2018 was passed.

Considering the above situation, we then called upon the learned Advocate appearing for the NGPDA to produce the original file of the regularization application pending before the Planning Authority, and a copy of the plans

submitted for regularization along with the application came to be filed before us, which we have considered whilst disposing of these petitions.

- xvi.** On 15.10.2018, the TCP Board considered the representations of Dr. Suresh Shetye and was appraised of the fact that the NGPDA had passed a stop work order dated 14.12.2014 which was kept in abeyance by the Board with regard to the very same representations. Accordingly, the Board, by its directions dated 15.10.2018, making a reference to its 152nd Board meeting in which the University was involved in a similar matter of blocking of access, and directed the University to remove all the blockages and to clear the access roads to the neighbouring properties bearing Survey Nos.193, 197 and 198 and to see that no properties are landlocked by virtue of the development undertaken by the University. This order was communicated to the University on 28.12.2018.
- xvii.** In reply, the University, by its letter of

11.02.2019 informed the Chief Town Planner that it will not be in a position to give any access to Dr. Shetye. On 14.02.2019 the University sent clarification to the Chief Town Planner with regard to its earlier letter dated 11.02.2019. There is no reference made or any claim by the University in these letters that the compound wall in its lands under Survey No.194, 195, 196, 226, 229 and 230 which are bounding the properties claimed by Dr. Shetye under Survey Nos.193, 197 and 198 had been regularised under order dated 24.07.2018.

- xviii.** The University then filed on 11.03.2019, Writ Petition No.317/2019 to challenge Direction (a) of the order dated 27.10.2015 passed by TCP Board in the appeal filed under Section 52 by the University; this challenge was thrown to Direction (a) of the order almost four years after it was passed. In the very same writ petition, the University also challenged the communication dated 28.12.2018 which reflected the resolution of the TCP Board dated 15.10.2018 on the representations filed by Dr.

Suresh Shetye.

This writ petition was disposed of on 30.07.2019 without entering into the merits of the challenge, setting aside only order dated 15.10.2018 and order dated 12.11.2018, only on the count that the orders were passed without giving the University a hearing. The TCP Board was directed to hear the University afresh and also dispose of the representations of Dr. Suresh Shetye whilst passing fresh orders. The order dated 27.10.2015 of the Board, passed in the University's appeal under Section 52, was however not set aside, though the University was granted the liberty to revive the challenge raised in Writ Petition No.317/2019.

- xix.** From the record, we have observed that in paragraph 36 of Writ Petition No.317/2019, the University took a stand that it took a decision to file an application for regularization before the **Town and Country Planning Department** not only for regularization of the compound wall but also with regard to other

structures in its property and paid a fee of Rs.74,30,230/-. Further statement is made in this paragraph that in respect of the structures regularization was granted by the **Town and Country Planning Department**, though documents with regard thereto had not been received by the University; as regards the compound wall, it was pleaded that the application for regularization of the compound wall was still pending before the Town and Country Planning Department for the last four years.

- xx.** In contrast, in the present petition, the University departs from its earlier stand and in paragraph 21 thereof, avers that it filed an application for regularization before the Department regarding the compound wall and other structures, paid a fee of Rs. 74,30,230/-, and the construction of the buildings **and compound wall was regularized vide order dated 24.07.2018.**

The stand now taken by the University appears to be a different one, in that it now

claims that regularization was also granted to the compound wall constructed along Survey Nos.193, 197 and 198 and the entire periphery of its property along with other structures.

- xxi.** Thereafter, the Board appointed a sub-committee to inquire into the representation of Dr. Shetye, which in turn directed him to file a surveyor's report to depict the exact location of the blockage of the access to his properties under Survey Nos.193, 197 and 198. A survey report with a plan was submitted to the sub-committee, whilst the University submitted on 17.06.2020 its regularization plan/permission issued by the Planning Authority on 24.07.2018 claiming that part of the compound wall had been regularized by this order. On going through these documents, the sub-committee opined that the alignment of the access as shown in the survey report of Dr. Shetye partly tally with the proposed 10 metre road shown in the Regional Plan 2021 passing through property under Survey No.198 belonging to him. The sub-committee then opined that the compound wall was almost

over the alignment of the proposed road shown on the regional plan, and that the GPPDA should be directed to review its development permission. Accordingly, the Board, by its order dated 28.08.2020 passed on the representations of Dr. Suresh Shetye, directed the GPPDA to review its development permission for construction of the compound wall after considering the representation of Dr. Shetye as to the blockage of his access. This order was granted approval of the Government, and was communicated to the University on 21.12.2020.

- xxii.** The University then filed Writ Petition No.855/2021 (F) throwing a challenge to the order dated 28.08.2020 passed by the Board; a further challenge was also thrown to the order dated 27.10.2015 passed by the Board on the premise that this Court had earlier granted liberty by its order dated 30.07.2019 to revive the challenges raised in Writ Petition No.317/2019. In Writ Petition No.855/2021 (F), the University now took a stand that the compound wall along Survey Nos.193, 197 and

198 belonging to Dr. Shetye was in fact regularized by the NGPDA vide its order/ approval dated 24.07.2018, which was quite contrary to its earlier stand taken in Writ Petition No.317/2019 that its application for regularization of the compound wall was still pending. The pleadings at para 34 of this petition suggest that a submission was made on 27.01.2020 by the Advocate for the GPPDA before the Board, that no application at all had been filed by the University for regularization of the compound wall.

- xxiii.** By this Court's order dated 19.08.2021, the order dated 28.08.2020 of the Board was set aside and the Board was now directed to consider the matter afresh and to dispose of the representation made by Dr. Shetye and also to dispose of the representation dated 20.11.2015 made by the University requesting to reword order dated 27.10.2015.
- xxiv.** On 20.12.2021, the Board took a fresh decision in the following terms:
 - i.** That the order dated 27.10.2015 has not

been challenged by the University in any Court and having attained finality, was required to be complied with.

- ii.** That the regularization order dated 24.07.2018 passed by the GPPDA of regularization does not come in the way in seeking compliance of the order dated 27.10.2015.
- iii.** The University shall remove blockages as per order dated 27.10.2015 and report compliance.
- iv.** The PDA shall take a relook into its permission granted for the compound wall vis-à-vis the provisions of the ODP.
- xxv.** By a complaint dated 08.09.2022 addressed to the NGPDA and the Chief Town Planner, Dr. Suresh Shetye alleged that the compound wall constructed by the University on land under Survey Nos. 194, 195, 196, 226, 229 belonging to it was illegal and constructed without any requisite permissions; in the complaint, Dr. Suresh Shetye has alleged that though the University has been contending that the

construction of this wall has been regularised by the then existing GPPDA by order dated 24.07.2018, the regularisation order was not with reference to any plan cleared and relatable to the subject construction of the compound wall. In the same complaint he alleged that apart from there being no reference in the regularisation order to a plan pertaining to a compound wall in that area, the said area where the wall was constructed pertain to a non-planning area falling under the jurisdiction of the TCP Department, and therefore the order of regularisation dated 24.07.2018 could not relate to the compound wall in that area. Dr. Suresh Shetye then filed Writ Petition No.54 of 2023 claiming a writ of mandamus to the NGPDA and Chief Town Planner to take action on his complaint to demolish the compound wall of the University to create an access to his lands under Survey Nos.193, 197 and 198 of Village Calapur.

xxvi. During the course of the arguments the University, along with its compilation of documents dated 05.03.2024, produced a

construction licence dated 16.11.2023 issued by the Office of the Village Panchayat of Santa Cruz, which purports to regularise structures covered by regularisation order dated 24.07.2018 of the GPPDA. The construction licence is with reference to a construction plan which has not been produced by the University, nor has it produced its application in terms of Section 66 of the Goa Panchayat Raj Act seeking permission for such construction. There are no pleadings of the University in either of the petitions in support of this construction licence or in plaint that the same relates to the compound wall in question.

It is in the context of the above-undisputed facts that we are called upon to decide the various contentions raised by the parties before us.

6. In Writ Petition No.414 of 2023 (Goa University), Dr. Suresh Shetye has filed an affidavit in reply dated 13.06.2022 in which he takes a categorical stand that the compound wall in question constructed by the

University abounding his three Survey Nos. 193, 197 and 198 was illegal. He has contended that the regularisation permission granted by GPPDA could be applicable, if at all only to the area within its jurisdiction and was not applicable to the part of the illegal compound wall constructed outside the planning area i.e. in the area falling along the proposed Regional Plan Road.

7. In Writ Petition No.54 of 2023 filed by Dr. Suresh Shetye, the University has filed an affidavit in reply of Prof. Vishnu Nadkarni, Registrar dated 05.01.2023 wherein, at paragraph 25 it takes a stand that the compound wall constructed by it in the year 2010 around the boundary of its property under Survey Nos.194, 195, 226 and 225 was regularised vide permission dated 24.07.2018 and lie within the territorial jurisdiction of **Bambolim Planning and Development Authority** and are included in ODP 2014. It admits the fact that there was a proposal of the Planning Authorities to construct a peripheral road along the northern boundary of its property including the area which is the subject matter of this petition, to which it had initially given its consent, which it later

on withdrew in view of the fact that the peripheral road was never constructed. The affidavit further denies that the compound over these survey numbers is illegal and claims that the same is covered under regularisation order dated 24.07.2018.

In the light of these rival contentions raised in the two petitions the following submissions were made by the learned Counsel for the respective parties.

SUBMISSIONS:

8. Learned Senior Advocate Mrs Anarkali Agni for the University advanced the following submissions:

A. That the order dated 20.12.2021 passed by the TCP Board and impugned in Writ Petition No.414/2022 is not in exercise of any power vested in the Board under The Goa Town & Country Planning Act nor is it traceable to any statutory provision. It was submitted that this order is not passed in terms of Section 52 of the Act as those provisions vest powers to remove an unauthorised development in the Planning And Development Authority (PDA) and not in the

Board; it was further submitted that the impugned order could not be attributed to exercise of powers of the Board under Section 8 of the Act, in view of the fact that the power to remove an unauthorised structure (in this case, the wall along Survey Nos.193, 197 and 198) would only vest under Section 52 with the PDA. There being a specific provision conferring such powers on the PDA, powers vested in the Board under Section 8 are not called into play, hence the impugned order is passed in excess of jurisdiction/powers vested in the Board.

B. The manner in which the impugned order dated 20.12.2021 has been passed, would amount to the Board controlling the exercise of jurisdiction vested in the PDA, which is impermissible at law and to some extent would amount to usurpation of the powers of the PDA to take action, which in any case could be undertaken under Section 52 only after giving the University a hearing in the matter. Thus, the impugned order, to the extent that it directs the PDA to review its earlier order of grant of post facto permission under Section 52, regularising the construction of the wall, is

totally beyond the power vested in the Board. It was further submitted that the impugned order suffers from procedural impropriety calling for the interference of this Court in its writ jurisdiction.

C. The directions issued by the Board in both its orders i.e. dated 27.10.2015 and 20.12.2021 are devoid of any reasons and are therefore unsustainable. It was submitted that even an administrative order is required to be supported by reasons to reassure that the discretion exercised by the Authority are based upon relevant grounds and by disregarding extraneous considerations. It was submitted that the four directions contained in the impugned order dated 20.12.2021 do not make reference to any material before the Board to arrive at the conclusion that the compound wall was constructed along the alignment of ODP road or that the area in question fell within the ODP area. It was further submitted that the direction to the PDA, to reconsider and to review its order of regularisation, in the light of the Planning Regulations applicable to the area was uncalled

for in the absence of challenge of any challenge to the order of regularisation dated 24.07.2018 by Dr. Suresh Shetye.

D. That the Outline Development Plan (ODP) prepared on 18.02.2019 does not show any road through the property of University under Survey Nos. 194, 195 and 226 nor has Dr. Shetye filed any objections under Section 27 or Section 35 or an appeal under Section 38 objecting to the ODP. Consequently, all of this disentitles Dr. Shetye from agitating any grievance regarding an easement or access to his properties and the correct forum to do so will be before the Civil Court.

E. In Writ Petition No.54 of 2023, it is the submission of learned Senior Advocate Mrs Agni for University that the claim of Dr. Shetye is essentially one for an easementary right of access in his properties and the Civil Court would be an appropriate forum to decide the same. It is contended that though doubts have sought to be raised by Dr. Shetye as to whether the regularisation order covers the portion of the

compound wall on lands under Survey Nos. 194, 195, 196, 225, 226, 229 and 230, the perusal of the regularisation plan leaves no doubt that the portion of the compound wall in question was in fact covered by the regularisation order. It was contended that this stand having been accepted by all parties, including by the Planning Authorities and Board, in the absence of any challenge being thrown by Dr. Shetye to the regularisation order dated 24.07.2018, it could not be contended that the wall in question was illegal.

F. Learned Senior Advocate for the University has cited the following judgments in support of the submissions made:

- (i) *Kranti Associates Private Limited & Anr. v. Masood Ahmed Khan & Ors.*¹**
- (ii) *Smt. Sebastiana Cardozo & Ors. v. State of Goa & Ors.*².**
- (iii) *Anil Kumar Singh v. Vijay Pal Singh*³.**
- (iv) *Shridhar C. Shetty (Deceased) through Legal Representatives v. Additional***

¹ (2010) 9 SCC 496

² 2015 SCC OnLine Bom 8373

³ (2028) 12 SCC 584

Collector and Competent Authority & Ors⁴.

(v) Harshit Agarwal & Ors. v. Union of India & Ors.⁵

(vi) Municipal Council, Neemuch v. Mahadeo Real Estate & Ors⁶.

(vii) Vinod Kumar v. State of Haryana & Ors⁷.

(viii) Punjab State Power Corporation Ltd. & Anr. v. Emta Coal Ltd. & Ors⁸.

(ix) Lok Prahari v. State of Uttar Pradesh & Ors⁹.

(x) Dharani Sugars and Chemicals Ltd. v. Union of India & Ors¹⁰.

(xi) V. K. Ashokan & Ors. v. Assistant Excise Commissioner & Ors¹¹.

(xii) Mr. Serrao Francis Socorro v. Town and Country Planning Board & Anr.¹²

(xiii) Opto Circuit India Ltd.v. Axis Bank & Ors¹³.

(xiv) Mohinder Singh Gill & Anr. V. The Chief Election Commissioner, New Delhi & Ors.¹⁴

⁴ (2020) 9 SCC 537

⁵ (2021) 2 SCC 710

⁶ (2019) 10 SCC 738

⁷ (2013) 16 SCC 293

⁸ (2022) 2 SCC 1

⁹ (2016) 8 SCC 389

¹⁰ (2019) 5 SCC 480

¹¹ (2009) 14 SCC 85

¹² 2000 SCC OnLine Bom 436

¹³ (2021) 6 SCC 707

¹⁴ AIR 1978 SC 851

9. Learned Advocate Shri Shivan Desai, appearing for Dr. Suresh Shetye has advanced the following submissions:

A.The regularisation order of the GPPDA dated 24.07.2018 does not cover the areas of the compound wall in question in Survey Nos. 194, 195, 196, 225, 226, 229 and 230 as the plan submitted for regularisation does not seek regularisation of this stretch of the compound wall but seeks regularisation of the compound wall constructed along Survey Nos.201, 202, 219, 215, 216, 272 along the northern boundary of the property of University and along its entire southern and eastern boundary. The regularisation plan did not claim that the compound wall along Survey Nos. 229, 230, 194, 195, 196, 226, 225, 202, 201, 200 and 143 was proposed to be regularised. He submits that the compound wall in question was therefore illegally constructed without lawful sanction of any authority and consequently, the Writ Petition filed by the University ought to be dismissed and the mandamus sought to the NGPDA and to the Chief Town Planner to take

action against the construction of the illegal compound wall along these Survey numbers, thereby blocking access to the properties of Dr. Shetye under Survey Nos. 193, 197, 198 ought to be granted.

B. It was submitted that the University was taking contrary stands on the question as to whether its compound wall constructed along Survey Nos. 193, 197, 198 had been regularised; the University, in answer to the show cause notice dated 20.02.2014, had taken a categorical stand in its reply dated 09.04.2014 that it was an “Other Authority” under Article 12 of the Constitution of India and did not require any permissions under the Panchayat Raj Act or the Town and Country Planning Act and was therefore within its right to construct any structure or even a compound wall along the territory of its property. At the hearing of the matter before the Board, the representative of the University had requested the Board to reduce the right of way of the 30 metres wide ODP road to 12 metres along the Northern periphery of its land and had agreed that the

University removed a portion of the compound wall as per the report of the sub-committee. On the order of the Board being passed on 27.10.2015 directing the University to remove all blockages in their compound along their boundary, which were blocking access to neighbouring property, the order was not challenged and instead accepted the same by recording in its letter dated 09.11.2015 that the barbed wire fencing along Model Status Building would be removed and that it had decided to open access in its compound wall to two plots in its Southern side.

Learned Advocate Shri Desai submitted that in its letter of 09.11.2015 to the NGPDA, the University took up a stand that it was fully committed to comply with the order dated 27.10.2015 of the Board and to fulfil that end were waiting for confirmation of the Executive Council meeting of the University. The University, at the relevant time, clearly had accepted the order of the Board directing removal of all blockages in the form of compounds or barbed wire fencing along their

boundary, blocking access to neighbouring properties and had challenged these directions no further. Subsequently, the University took up a stand in answer to the representation of Dr. Shetye dated 06.01.2016 that there never existed any access through their property along their compound wall to land under Survey Nos. 193, 197 and 198. It was further submitted that resiling from their earlier stand, the University then sought, on 31.08.2017, regularization of part of the compound wall on the North and Southern side of their property and in Writ Petition No. 317/2019 took a stand that though the University sought regularization of the compound wall, which according to it, included the wall along Survey Nos.193, 197 and 198, it had not received any formal order regularizing the same, though regularization of the other building structures under the application dated 31.08.2017 had been received from the GPPDA. It was further submitted that the University has been indulging in approbate and reprobate, by changing its stand, wherein, in the present petition, the University now contends that the

order of regularization dated 24.07.2018 of the GPPDA also regularizes the compound wall along the survey Nos. 193, 197 and 198 of Dr. Suresh Shetye. The learned Counsel therefore submits that this Court, in its writ jurisdiction under Article 226 ought not to permit the University to take such contrary stand and should refuse any relief to the University, on this count.

C. Without prejudice to this contention, it was submitted that on examining the records, it is found that the order of regularisation dated 24.07.2018 did regularise the construction of the wall along survey Nos. 193, 197 and 198, the order of the Board dated 20.12.2021 directing the NGPDA to relook into its regularisation order in the light of the observations made by it therein must be sustained, since in any event the contentions of Dr. Shetye raised in his various objections were required to be considered.

D. It was further submitted that the University having completed construction of the

compound wall in question without obtaining any permissions whatsoever from the Authorities, and further in the light of the fact that the stop work notice issued by the NGPDA was kept suspended subject to condition (a) to (d), was estopped from challenging the order dated 27.10.2015 of the Board. It is further contended that the stop work order dated 04.12.2014 and Show Cause Notice dated 20.02.2014 continued in force and were never set aside nor did the University challenge the conditions specified in order dated 27.10.2015 in any petition until the year 2019 in Writ Petition No.317 of 2019; even then, the order dated 27.10.2015 was not set aside and only the orders dated 15.10.2018 and 12.11.2018 of the Board were set aside remanding the matter back to the Board for reconsideration of the representations of Dr. Shetye. In the view of these facts, no indulgence and discretion ought to be exercised by a writ Court in favour of the University.

E. In terms of Section 8, 10 and 12 of the Town and Country Planning Act, the Board has

sufficient power to enforce all provisions of the Act irrespective of whether the property of the University was within a planning area or an area under the Regional Plan. It is contended that the directions of the Board contained in order dated 27.10.2015 have to be construed to be in exercise of its overarching powers over Planning Authorities as contiguous areas may fall partly under a planning area and partly under a Regional Plan; the powers of the Board are not limited in such cases and the Board is entitled, in the interest of bringing planned development in contiguous areas to pass such directions, as in the case of those under its order of 27.10.2015, directing the clearing of any blockage of access to landlocked plots which were not covered in a planning area and which derived access from contiguous plots which fell within a planned area.

F. Learned Advocate Shri Desai then contends that the Board, whilst deciding and passing the impugned order dated 20.12.2021 has not invoked its jurisdiction under Section 52 of the Town Planning Act but was deciding the three

representations of Dr. Suresh Shetye and the representation of the University. The representation was directed to be placed before the Board by order dated 19.08.2021 of this Court. It is submitted that it is recorded in paragraph 16 of the order that the University had submitted that the representation dated 20.11.2015 of the University ought to be considered by the TCP Board along with that of Dr. Shetye so that both could be granted a fresh opportunity of representing their cases. In that view of the matter, it was contended that the Board was well within its jurisdiction to decide the issues raised by both the parties and therefore the order dated 20.12.2021 was legal and with jurisdiction.

G. In support of his submissions Shri Desai relies upon the following citations:

i) UOI v/s. N. Murugesan & Ors¹⁵.

ii) S. N. Mukherjee v/s. UOI¹⁶.

iii) Shangrila Food Products v/s. LIC¹⁷.

iv) Ramesh Chandra Sankla & Ors v/s.

¹⁵ (2022) 2 SCC 251

¹⁶ (1990) 4 SCC 594

¹⁷ 1996 (5) SCC 54

Vikram Cement & Ors¹⁸.

v) Bangalore Development Authority v/s. Vijaya Leasing Ltd & Ors¹⁹.

vi) Central Council for Research in Ayurvedic Sciences and Anr. v/s. Bikartan Das and Ors²⁰.

10. Learned Advocate Shri Neehal Vernekar, appearing for the TCP Board has advanced the following submissions:

A. Shri Vernekar has taken us through the regularisation plan produced before us by the NGPDA to contend that the order of regularisation in fact does not cover the area of the compound wall in question along the periphery of the land of the University under Survey Nos.194, 195, 196, 226, 229 and 230. He submits that the plan submitted for regularisation by the University numbering 33 in all covers 46 blocks spread over areas falling in the Village of Taleigao, Calapur and Bambolim. He has submitted a break-up of the land of the compound wall proposed to be

¹⁸ (2008) 14 SCC 58

¹⁹ (2013) 14 SCC 737

²⁰ 2023 SCC OnLine SC 996

regularised by the University in its regularisation application which starts at the corner of Survey No.201 moving westwards to Survey No.272 and then along the periphery of the property towards the South ending on the East at Survey No.136 which is presently occupied by the Shyama Prasad Mukherjee Stadium occupied by the Government of Goa. He further submits that under the caption “Project” on the plan, the proposed regularisation is for existing blocks in the Village of Taleigao, Calapur and Bambolim and not for any compound wall as contended by the University.

B. Shri Vernekar takes us through the Goa Land Development and Building Construction Regulations, 2010 and more particularly Regulation 3 which deals with the procedure and requirements for securing development permissions, technical clearance and construction licence for any development; he submits that any development permission including one for regularisation of existing structures requires the applicant to submit

plans/drawings for approval in terms of Regulation 3.2 C1. The drawings/plans are to be marked in the standard colour notation specified in Regulation 3.4 which prescribes a plot boundary to be in black colour while a proposed work is required to be shown in red outline. It is the contention of Mr Vernekar that the plan sought to be approved do not demarcate any compound wall proposed to be regularised at the behest of the University on the submission plan in red colour as required by the regulation in area under Survey Nos. 194, 195, 196, 226, 229 and 230. The contents that the compound wall in question was not subject matter of the regularisation order dated 24.07.2018.

C. It was further contended by the learned Counsel for the Board that the Board is within its powers under the scheme of the Town and Country Planning Act, and more particularly in terms of Section 8 thereof to issue directions to the Planning and Development Authorities in matters relating to planning and use of land; in the present case the Board has acted within the

bounds of the powers vested under the Act to issue necessary directions to the Planning Authority to take a relook at its regularisation order of 24.07.2018 in the light of the plaint of the parties.

D. It was further contended that it falls within the power and in fact the duty of the Board to function for the public benefit, and as in the present case, the Board, after considering the rival contentions and the fact that the properties in question are covered under different planning areas and the Regional Plan at different points of time, to bring about better planning. In pursuance of this function, the Board has in its wisdom directed the Planning Authority to take a relook at its regularisation order and directed the University to implement condition (a) of the Board order dated 27.10.2015. These directions are within the bounds of the Board's powers and cannot be held to be in transgression of the scheme of the Act.

E. In support of his submissions, Shri Vernekar

relies upon the following citations:

- i) Kaalkaa Real Estates Private Limited & Anr v/s. Municipal Corporation of Greater Mumbai & Ors²¹.**
- ii) Mahendra Baburao Mahadik And Others v/s. Subhash Krishna Kantikar And Others²².**

Shri Saish Mahambrey for the NGPDA supported the contentions argued on behalf of the Board.

11. Based upon the rival contentions raised by the parties before us, the following broad points arise for our consideration:

- i.** Based upon the records produced by the University, the Board and the Planning Authority before us, and on consideration of the pleadings in these petitions, can the University's claim that the order of regularization dated 24.07.2018 issued by the GPPDA, has accorded post facto sanction and regularization permission to the construction of the compound wall of the University in its land

²¹ 2022 SCC OnLine Bom 2536

²² (2005) 4 SCC 99.

- under Survey Nos. 194, 195, 196, 226, 229 and 230 along land bearing Survey Nos.193, 197 and 198 belonging to Dr. Suresh Shetye?
- ii. Has the Board acted within the bounds of its powers conferred under the Goa Town and Country Planning Act whilst passing the impugned order dated 20.12.2021?
 - iii. In the facts and circumstances pleaded in the petition of the University (WP 414/2023), does the Direction (a) in order of the Board dated 20.07.2015 call for any interference or need any clarification as prayed for in the petition?
 - iv. Would the Petitioner (Dr. Suresh Shetye) in WP 54/2023 be entitled to a writ of mandamus directing Respondents No. 2 and 3 to take action in terms of the provisions of the Town and Country Planning Act on the complaint dated 08.09.2022 (Annexure P-1)?

CONSIDERATIONS:

12. Before proceeding to consider the rival submissions of the parties, it would be apposite to consider certain provisions of the Town and Country

Planning Act, 1974 (The Act) and of the Goa Development and Building Construction Regulations, 2010 (The Regulations), since these would have a direct bearing on the scope, powers and the jurisdiction exercised by the Board and the Planning Authority.

13. The Act was enacted by the Legislative Assembly of Goa to provide for planning the development and use of rural and urban land in the State of Goa and for purposes connected therein. With this purpose in mind, under Chapter II of the Act, the Government is empowered to appoint a Chief Town Planner in terms of Section 3 thereof and to constitute in term of Section 4, a Board, known as the Goa Town and Country Planning Board, which in the present case is Respondent No.2 and Respondent No.1 in Writ Petition No. 54 of 2023 and Writ Petition 414 of 2023 respectively.

14. The Board is constituted of several Ex-officio members which includes the Minister in-charge of Town and Country Planning as its Chairman, Secretaries of the Government in the Departments

dealing with Town and Country Planning, Local Self Government (Village Panchayat and Municipalities), Planning and Industry; in addition, the other members appointed to the Board Ex-officio are the Heads of various Departments and Directorates, which includes Public Works Department, Forest Department, Agriculture Department, Tourism, Transport, Health Services, Fisheries and Bureau of Economic, Statistics and Evaluation. Further, an addition to the above, the Central Government nominates four members to the Board to represent the Ministries of the Central Government dealing with Railways, Defence, Transport and Tourism besides which two members elected from amongst members of the Legislative Assembly are also members. One person deputed by the Chamber of Commerce and Industries, Goa is also a member of this Board, while the Chief Town Planner (Planning) is its Member Secretary.

15. The functions and powers of the Board are specified under Section 8 of the Act and read as under:

- 8 *Functions and powers of Board.*
 - (1) *Subject to the provisions of this Act and the rules made there under, the functions of the*

Board shall be to guide, direct and assist the Planning and Development Authorities, to advise the Government in matters relating to the planning, development and use of rural and urban land in the [State of Goa], and to perform such other functions as the Government may, from time to time, assign to the Board.

2) In particular, and without prejudice to the generality of the foregoing provisions, the Board may, and shall if required by the Government so to do-

(a) direct the preparation of development plans by the Planning and Development Authorities;

(b) undertake, assist and encourage the collection, maintenance and publication of statistics, bulletins and monographs on planning and its methodology;

(c) co-ordinate and advise on the planning and implementation of physical development programmes within the [State of Goa];

(d) prepare and furnish reports relating to the working of this Act; and

(e) perform such other functions as are incidental, supplemental or consequential to any of the functions aforesaid or which may be prescribed.

(3) The Board may exercise all such powers as may be necessary or expedient for purpose of carrying out its functions under this Act.

16. Under Chapter III, and more specifically in terms of Section 12 thereof, the Regional Plan for the State of Goa or for any part of the State prepared by the Chief Town Planner (Planning) is required to be considered by the Board who may suggest changes to such plan as it may find necessary, based on the views expressed, and the Regional Plan may be revised in the light of these suggestions submitted by the Board to the Chief Town Planner (Planning) before the Government accords its approval to the Regional plan.

17. In areas which are declared as planning areas, for which the Government constitutes under Section 20, a Planning and Development Authority(PDA) in terms of Chapter IV of the Act, the Government shall, after consulting the Board frame a scheme to determine the allocation of funds and the apportionment which the Government deems these funds to be applied. In addition to the consulted role played by the Board under Chapter IV, in terms of the provisions of Chapter V and VI of the Act, and more specifically in terms of Section 28, Section 31 and 33 thereof, the Planning Authority are required to seek the approval

of the Board to the Land Use Plan and the Development Plans within the planning area of the (PDA).

18. In terms of the scheme of Chapter VII of the Act, the Board, under the provision of Section 45 thereof as an Appellate Authority to decide the legality of orders passed under Section 44 of the Act by the PDA, in matters of grant or refusal for permissions of development; under Section 52 of the same Chapter, where any development or change of use of land has been carried out in a manner contrary to clauses (a) to (f) of Section 51, the PDA may direct restoration of the land to its original condition or demolition of any building thereon or discontinuance of any use of that land. In terms of Section 52, the Board acts as an Appellate Authority against all orders passed under Sub Section 1 of the Section 52 of the Act.

19. Looking at the scheme of the Act as observed above, the Board plays a pivotal role in the implementation of the provisions of the Act. In terms of the provisions of Chapter III, the Board, which is constituted by members drawn from various areas of

expertise, including heads of key Government departments dealing with planning, is required to consider the Regional Plan prepared by the Chief Town Planner and make changes to the same and give its views on such plan. The Board therefore plays a key role in all aspects of planning whilst the process of preparation of the Regional Plan is ongoing, it acts as the main Advisory Body to the Government in evolving a Regional Plan for a specified area or for the entire State of Goa as the Government may direct.

As far as areas declared as “Planning Areas” for which the Government constitutes a Planning Authority, under the provisions of Chapters IV, V and VI, the Board exercises functions similar to those under Section 12 which are in relation to the Regional Plan, in that it is required to consider development schemes and Outline Development Plans (ODP) for the planning areas. Thus, the Board guides the planning process within a planning area and makes its recommendations with regard to preparation of the ODP.

20. The Board also acts as an Appellate Authority to

consider orders that might be passed by the various Planning Authorities under Section 52 of the Act. In addition to the above referred specific powers vested in the Board, the general functions and powers of the Board are specified in Section 8 of the Act. Under this provision, the Board has the power to guide and assist Planning Authorities and to issue directions to them. The Board also has advisory powers, where it is empowered to advise the Government in matters relating to planning and development and use of land. Sub-Section 3 of Section 8 clarifies that for the purpose of carrying out any function that it is charged with under the Act, it may exercise all such powers as it feels are necessary or deems expedient for carrying out that function. The powers vested in a Board under Section 8 of the Act are therefore very wide, and in our opinion would encompass acts such as issuing directions to Planning Authorities to act in a particular manner or to even issue directions modifying orders or action taken by the Planning Authorities in a given case. We are therefore of the view that the Board is vested with sufficient powers in terms of Section 8 of the Act to issue directions of the nature contained in its order dated 20.12.2021 impugned by the

University in this petition. Having held that the Board is vested with such powers, the question that remains before us is whether such powers were exercised in a manner that requires interference of this Court in its writ jurisdiction, in the facts placed before us.

21. Under the scheme of the Act, the Government may notify areas which were covered by the Regional Plan as planning areas, and bring such areas within the jurisdiction and purview of a Planning and Development Authority; several planning areas may from time to time be culled out from the areas forming part of the Regional Plan and placed in the jurisdiction of newly created Planning and Development Authorities, which, as we have noted in this case, has in fact been done by the Government. From the record, we note that the Government has notified the Panjim Planning area on 27.09.2005 which includes the villages of Bambolim, Calapur and Taleigao to the existing Panjim Planning area. Subsequently, the villages of Bambolim and Calapur were withdrawn from this planning area by notification dated 03.01.2006 and only Taleigao village was retained within this planning area. The

ODP for Taleigao Planning area was approved by the Government on 01.02.2006 at which time a 30-metre-wide road was planned along the Northern periphery of the property of the University which traversed further through Survey Nos. 216, 215, 219, 220, 202, 203, 200 and 201 which belong to the University.

22. The Panjim Planning area was by notification dated 06.02.2006 placed under the jurisdiction of the NGPDA. Subsequently, the Regional Plan 2021 for the whole State of Goa was brought into force w.e.f. 29.10.2011, effect of which was that development in areas contiguous to the planning area under NGPDA were governed by the provisions of the Regional Plan, while planning within the area under jurisdiction of the NGPDA was governed by the ODP. Obviously therefore, on the principle that planning in contiguous areas ought to be a process in continuum, there was need to harmonize planning in such contiguous areas which fell under jurisdiction of different authorities. Keeping this in mind, we are of the view that the Board would be well within its powers to ensure that planning within PDAs and contiguous non PDA areas falling under Regional Plan is properly done. A road

passing through these different areas would obviously be required to be planned by a body such as the Board that acts in the interest of the public and overall planning across these areas.

23. On 31.08.2017, the University applied for regularization of various structures constructed by it in its land situated in the village of Taleigao, village of Calapur and village of Bambolim. This application was filed before the NGPDA on the premise that the land on which the unauthorized structures were constructed fell in the three villages within the jurisdiction of the NGPDA. These also included structures in Survey Nos. 194, 195, 196, 226, 229, 230 which fall specifically in Calapur village. After perusing the submission plan produced by the NGPDA/Board, we have tabulated the various structures/blocks sought to be regularized under the application dated 31.08.2017 of the University.

Survey No.	Block/Structure
194	No block/structure was sought to be regularized nor is any structure marked in the survey
195	No block/structure was sought to be

	regularized nor is any structure marked in the survey
196	No block/structure was sought to be regularized nor is any structure marked in the survey
226	Part of Men's Hostel-I as depicted in Sheet No. 28 of 33 submission plan.
229	Part of the department of Computer Science and Technology shown in Sheet 10 of the 33 submission plan.
230	No block/structure was sought to be regularized nor is any structure marked in the survey

Of the above survey numbers, only Survey Nos. 194, 195, 196 and 226 are contiguous to and share a boundary with the properties under Survey No. 193, 197 and 198 owned by the Petitioner Suresh Shetye. From the application dated 31.08.2017 itself, which is produced without the plan submitted by the University in WP No. 414 of 2023, there is no record/markings on the plan showing any proposed along the periphery of Survey Nos. 229, 230, 194, 195, 196, 225, 226, 202, 201, 200, 142, or along Survey Nos. 126, belonging to the University. In fact, the plan seeks regularization of the proposed

compound wall before the survey nos. 201 towards the Northwest and a proposed compound wall around the Shyama Prasad Mukharjee Stadium toward the East in Survey No. 130 which admittedly belongs to the Government of Goa.

24. Keeping the principle referred in para 19 and 20 above in mind, we further note that by notification dated 21.12.2017, the Panjim Planning area notified on 27.09.2005 was further demarcated and broken up by the Government in three planning areas; the Panjim Planning Area, the Taleigao Planning Area and the Bambolim Planning Area (which included Calapur Village). Even further, by notification dated 15.02.2018, two further Planning Authorities were constituted by the Government namely Greater Panaji Planning and Development Authority (GPPDA) having jurisdiction over Taleigao, Bambolim and the Kadamba Planning Area, and the North Goa Planning and Development Authority (NGPDA) which covered the jurisdictions of Panaji, Mapusa, Calangute-Candolim and Arpora-Nagoa Planning areas.

25. On 24.07.2018, ex post facto permission in the form of an order of regularization was granted to the

University by the NGPDA, which authority by then was constituted for the areas within which the regularization applicant fell in, and this application was now taken up by the newly constituted authority (NGPDA). The regularization was granted while the representation dated 29.07.2016 of Dr. Suresh Shetye was pending before the Chief Town Planner and his representations dated 14.06.2018 and 02.07.2018 with regard to access before the same authority. On 15.10.2018, after obtaining regularization for its structures, the Board passed its order directing the University to remove all blockages and clear the access road to all its neighbouring properties, which order was ultimately challenged on 11.03.2019. What is surprising is that after the order of the Board was passed and communicated to the University on 28.12.2018, the University addressed two communications to the Chief Town Planner dated 11.02.2019 and 14.02.2019, in relation to the letters of Dr. Shetye in which it chose not to take his stand that the compound wall unauthorisedly constructed in the year 2010 along Shetye's property has been regularized by the order dated 24.07.2018. Even in WP No.317/2019, filed on 11.03.2019, the University

claimed that it had applied for regularization of this compound wall in its application of 31.08.2017, but had received post facto permission for all structures except the compound wall; in para 36 of Writ Petition No.317/2019, it was claimed, that with regard to the compound wall, the application for regularization was still pending before the Town and Country Planning Department for the last four years. Based upon these facts, it becomes clear that the compound wall along Survey Nos. 194, 195, 196 and 226 belonging to the University (contiguous to Survey No. 193, 197 and 198 belonging to Dr. Shetye) was never regularized nor was its regularization actually sought for.

26. This issue could also be looked up from a different angle. Regulation 3.2 of the Goa Land Development and Building Construction Regulations, 2010 requires an applicant seeking technical approval for construction or development, to submit, along with its application a set of drawings which would include a site plan containing boundaries and dimensions of the plot, the all proposed as well as existing buildings or structures in or beyond the plot amongst various other requirements. The plans shall

consist of floor plans, elevations, sections, roof plans, plans indicating septic and soak pit and contour plan.

Regulation 3.4 specifies the standard colour notations to be made in such plans submitted by an applicant and specifies Plot Boundaries in the Site and Building Plans to be shown in Black colour while the outline of the Proposed Work is required to be shown in Red colour. Perusal of the plans produced by the NGPDA/Board before us would show that in none of the plans produced before us is the area or line showing the compound wall claimed to be regularized along the periphery/boundary of Survey Nos. 194, 195, 196 and 226 demarcated in the required colour code Red for the proposed works or works proposed to be regularized i.e. the boundary wall. This would be another pointer to the fact that the record does not support the contention of the University that it had either sought regularization of the compound wall or the contention that the same was still pending before the NGPDA (in Writ Petition No.317/2019) or that it was granted.

27. As further noted by us, the submission plan of the University uses the nomenclatures “existing

compound wall” and “proposed compound wall” at different locations. Neither of these nomenclatures are used by the University in its submission plan for regularization in any area along the periphery of Survey Nos.200, 201, 202, 225, 226, 196, 195, 194, 230 and 229 which fall in Calapur village. The words “proposed compound wall” are used in land under Survey No. 130 which is in possession of the Government of Goa and it is used in Survey Nos.216 and 238 which fall in village Taleigao. Thus, there was no proposal, at least shown in the plan under nomenclature “proposed compound wall” along the periphery of Survey Nos. 194, 195, 196 and 226 belonging to the University and contiguous to lands under Survey Nos.193, 197 and 198 belonging to Dr. Suresh Shetye. This conclusively demonstrates that the compound wall constructed on the Northern periphery of Survey Nos. 194, 195, 196 and 226 belonging to the University was neither sought to be regularized nor was it in fact granted a regularization permission/approval under regularization order dated 24.07.2018 of the NGPDA.

28. By the impugned order dated 04.03.2022, the

Board, in exercise of the jurisdiction and powers conferred upon it under Section 8 of the Act, has rightly proceeded on the assumption that the order dated 27.10.2015 had not been challenged further by the University and had attained finality and had therefore to be complied with. The regularization order dated 24.07.2018, having not actually granted regularization/ex post facto permission to the compound wall constructed along the periphery of Survey Nos. 194, 195, 196 and 226 belonging to the University and contiguous to lands under Survey Nos.193, 197 and 198 belonging to Dr. Suresh Shetye, said order does not therefore come in the way of the order dated 27.10.2015 being enforced. The direction of the Board contained in Clause (a) of order dated 27.10.2015 therefore does not call for interference by this Court, more so since no infirmity can be found with it on the basis of the findings arrived at by us above, and further the directions contained in the impugned order of the Board dated 04.03.2022 to the University, requiring it to remove blockages as per order dated 27.10.2015 is perfectly in order. The consequent direction issued by the Board that the PDA shall relook into its permission granted for

compound wall, in our opinion, does not suffer from being in excess of powers vested in the Board; in fact, considering that the areas in question now fall in three different villages and overlap with areas contiguous thereto falling under jurisdiction of the Town Planning Department under RP 2021, it would be logical that the PDA relooks at its permission granted for the compound wall proposed under the regularization plan, however restricted to the periphery of the property of the University in the villages of Taleigao and Bambolim and in relation to the regularization plan where the University proposed regularization only of the areas depicted as “proposed compound wall”.

29. In *Tata Cellular vs. Union of India* reported in **(1994) 6 SCC 651**, which is referred to in *Municipal Council, Neemuch* (supra) relied upon by the University, whilst considering the scope of the powers of the High Court of judicial review under Article 226 of the Constitution of India, the Supreme Court has held that the High Court is required to confine itself to the questions of legality, and is concerned with:

- i.** Whether a decision-making authority exceeds its power.
- ii.** Has committed an error of law.
- iii.** Has committed a breach of the rules of natural justice.
- iv.** Has reached a decision which no reasonable Tribunal would have reached or
- v.** Abused its powers.

On examining the impugned order dated 20.12.2021 which is quoted in communication dated 04.03.2022, the Board, whilst considering the representation of Dr. Suresh Shetye and the representation of the Goa University seeking modification of the Board's order dated 27.10.2015, has considered in detail the observations of the Sub-Committee in its proceedings; whilst considering the representation of the University seeking modification of its order dated 27.10.2015, the Board has taken into consideration the objection raised by the learned Advocate for the University that it had no powers to decide the representation of Dr. Suresh Shetye, and making reference to the observations in para 27 and 28 of this Court's order dated 19.08.2021 and has

rejected the same. The rejection of the contention of the University that the Board lacked powers to decide the representation of Dr. Suresh Shetye has to be sustained on a reading of the observations made in paragraphs 20, 23, 24 and 25 of our judgment dated 19.08.2021 where it has been specifically recorded that the learned Advocate for the University had conceded that the TCP Board was the appropriate authority to consider the representation of the University for modification of order dated 27.10.2015 along with the representation of Dr. Suresh Shetye (Respondent No.3 in that petition).

30. The Board has rightly considered all the above observations in the impugned order and though it has not recorded separate reasons to pass directions contained therein, its considerations of the observation of the Sub-Committee as well as the content of its earlier order dated 27.10.2015 are recorded in detail in the impugned order. This is not an order where there are no reasons at all recorded therein but this is a case where all the necessary facts have been examined by the Board i.e. the earlier order dated 27.10.2015, the Sub-Committee's

observations and report and the material placed by Dr. Suresh Shetye with his representations, all of which find reference in the impugned order. The judgment cited by the learned Senior Advocate for the University in *Kranti Associates Pvt. Ltd.* (supra) and *Sebastiana Cardozo* (supra) would not apply to the facts of this case since those were judgments rendered in a case where there were no reasons at all found in the impugned order. In the present case, on confining ourselves to the observations made by the Supreme Court in *Tata Cellular* (supra) as referred by us above, no case for interference has been made out by the University in its petition.

31. Since we have concluded that the compound wall constructed by the University along the periphery of Survey Nos. 194, 195, 196 and 226 belonging to the University and contiguous to lands under Survey Nos. 193, 197 and 198 belonging to Dr. Suresh Shetye was not accorded any regularization by the NGPDA under its order dated 24.07.2018, it is obvious that a direction would be issued to the NGPDA to act upon the complaint dated 08.09.2022 of Dr. Suresh Shetye and to take appropriate action in terms of the

provisions of the Town and Country Planning Act as it deems fit. Needless to state, that in the event of the University now seeking regularization of the aforementioned compound wall, it would be open to the NGPDA to consider the same in terms of the provisions of the Act and impose such conditions of regularization as it deems fit considering the contentions raised by Dr. Suresh Shetye or for that matter considering the site conditions and the proposed ODP.

32. Consequently, we pass the following order:

- i. Writ Petition No. 414/2023 is dismissed.
- ii. In Writ Petition No.54/2023, Rule is made absolute in terms of prayer clause (a).
- iii. In the event of the University now seeking regularization of the compound wall referred to in paragraph 31 above, it would be open to the NGPDA to consider the same in terms of the provisions of the Act and impose such conditions of regularization as it deems fit considering the contentions raised by Dr. Suresh Shetye or for that matter considering

the site conditions and the proposed ODP; the regularisation application if made shall be disposed of within a period of six weeks from the date of this order.

- iv.** No costs.
- v.** Pending Misc. Civil Applications, if any, stand disposed of.

VALMIKI MENEZES, J.

M. S. SONAK, J.