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IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.91 OF 2024
WITH
MISC. CIVIL APPLICATION NO.567 OF 2023
IN
WRIT PETITION NO.91 OF 2024**

WRIT PETITION NO.91 OF 2024

M/s Models Real Estate Developers,
A partnership firm duly
Registered Under No.61/90
Before the Registrar of Firms
With his office at Karim Mansion,
7th Floor, Behind Pharmacy College,
St. Inez, Panaji Goa, through Its
Partner Mrs.Natalina Vaz,
wife of Late Mr.Peter Vaz,
aged 51 years,
Married, residing at H.No.
13-241D, Bungalow No. D,
Caranzalem, Ilhas Goa.

... Petitioner

Versus

1. The State of Goa,
Through the Chief Secretary,
Having office at Secretariat,
Alto Porvorim,
Bardez, Goa.
2. Senior Town Planner,
Town and Country Planning Department,
4th floor, Osia Complex,
Margao, Goa.

3. Dy. Town Planner,
Town and Country Planning Department,
4th floor, Osia Complex,
Margao, Goa.

4. The Collector,
Mathany Saldanha Administrative Complex,
Margao, South Goa.

5. The Deputy Town Collector,
Mathany Saldanha Administrative Complex,
Margao, South Goa.

6. The Village Panchayat of Colva,
Through its Secretary/Sarpanch,
Village Panchayat of Colva,
Colva-Goa.

7. The Executive Engineer,
W.D. VI (R/S), Fatorda,
Margao, Goa.

8. Agnelo Alcosoas,
Major of age, Indian National,
c/o 7th Floor, Karim Mansion,
behind Goa College of Pharmacy,
Panaji-Goa.

9. Mr. Vishwanath Borkar,
s/o Narayan Borkar,
aged 67, Indian National,
r/o H.No. 56, Shirvodem,
Navelim, Margao-Goa.

10. Mr. Shamba Borkar,
aged 81, Indian National,
r/o H. No. 56, Shirvodem,
Navelim, Margao-Goa.

11. Keith Fernandes,
s/o Fernando Fernandes,
aged 41, Indian National,
r/o H. No.53/C, Copelvado,
Near Basanti Radio,
Sernabatim, Colva-Goa.

12. Mr. Brian Porto Dias Augustia Fernandes,
s/o Fernando Fernandes,
aged 42, Indian National,
r/o H. No. 495, Behind St. Sebastian Church,
Aquem Alto, Margao, Goa.

13. Mr. Fernando Fernandes,
aged 75, Indian National,
r/o Behind St. Sebastian Church,
Aquem Alto, Margao, Goa.

... Respondents

Mr Preetam Talaulikar, Advocate *for the Petitioner.*

Mr Prashil Arolkar, Additional Government Advocate *for Respondent Nos.1, 2, 3, 4, 5 and 7.*

Mr Ajay Menon, Advocate *for Respondent No.12.*

**WITH
MISC. CIVIL APPLICATION NO.567 OF 2023
IN
WRIT PETITION NO.91 OF 2024**

Mr. Brian Porto Dias Augustia Fernandes,
S/o Fernando Fernandes, Aged 44 years,
R/o H. No. 495, Behind St. Sebastian Church,
Aquem Alto, Margao, Goa.
Thr. POA Mrs Cijoni Dias,
Aged 40 years.

... Applicant

Versus

1. M/s Models Real Estate Developers,
A partnership firm duly
Registered Under No.61/90
Before the Registrar of Firms
With his office at Karim Mansion,
7th Floor, Behind Pharmacy College,
St. Inez, Panaji Goa, through its Partner
Mrs.Natalina Vaz, Aged 51 Years, Married,
R/o H.No. 13-241D, Bungalow No. D,
Caranzalem, Ilhas Goa.

2. The State of Goa,
Through the Chief Secretary,
Having office at Secretariat,
Alto Porvorim,
Bardez, Goa.

3. Senior Town Planner,
Town and Country Planning Department,
4th floor, Osia Complex,
Margao, Goa.

4. Dy. Town Planner,
Town and Country Planning Department,
4th floor, Osia Complex,
Margao, Goa.

5. The Collector,
Mathany Saldanha Administrative Complex,
Margao, South Goa.

6. The Deputy Town Collector,
Mathany Saldanha Administrative Complex,
Margao, South Goa.

7. The Village Panchayat of Colva,
Through its Secretary/Sarpanch,
Village Panchayat of Colva,
Colva-Goa.

8. The Executive Engineer,
W.D. VI (R/S), Fatorda,
Margao, Goa.

9. Agnelo Alcosoas,
Major of age, Indian National,
c/o 7th Floor, Karim Mansion,
behind Goa College of Pharmacy,
Panaji-Goa.

10. Mr. Vishwanath Borkar,
s/o Narayan Borkar,
aged 67, Indian National,
r/o H.No. 56, Shirvodem,
Navelim, Margao-Goa.

11. Mr. Shamba Borkar,
aged 81, Indian National,
r/o H. No. 56, Shirvodem,
Navelim, Margao-Goa.

12. Keith Fernandes,
s/o Fernando Fernandes,
aged 41, Indian National,
r/o H. No.53/C, Copelvado,
Near Basanti Radio,
Sernabatim, Colva-Goa.

13. Mr. Fernando Fernandes,
aged 75, Indian National,
r/o Behind St.Sebastian Church,
Aquem Alto, Margao, Goa.

... Respondents

Mr Ajay Menon, Advocate *for the Applicant*.

Mr Preetam Talaulikar, Advocate *for Respondent No.1/original Petitioner*.

Mr Prashil Arolkar, Additional Government Advocate *for Respondent Nos.2, 3, 4, 5, 6 and 8*.

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

DATED: 22nd April 2024

ORAL JUDGMENT (*Per M.S. Sonak, J.*)

1. Heard Mr Talaulikar for the Petitioner, Mr Arolkar, Additional Government Advocate, for Respondent Nos.1 to 5 and 7 and Mr Menon h/f Mr Rao for the 12th Respondent.
2. Rule. Rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.
3. The 12th Respondent had filed a complaint that the Petitioner herein had constructed a compound wall encroaching on a portion of the public road. Since no action was taken by the authorities, the 12th Respondent instituted Writ Petition No.1281/2023(F). The above Writ Petition No.1281/2023(F) was disposed of by an order dated 31.01.2022. This Court directed the authorities to inspect the site and if any merit was found in the complaint, to initiate action in accordance with law.
4. The Executive Engineer, Works Division VI, by his notice dated 12.05.2022 which is impugned in the present petition, found merit in the complaint of Respondent No.12 and accordingly directed the Petitioner herein to demolish the compound wall to the extent the same was encroaching on the public road. The encroachment in this case was to the extent of 60 square metres.

5. The Petitioner instituted this writ petition to challenge the impugned notice dated 12.05.2022 by arguing that the Petitioner had, without prejudice, submitted a proposal to acquire the land on the other side of the road and widen the road to its original width of 4 metres and compensate for the encroachment of 60 metres.

6. During the pendency of this petition, the Petitioner did acquire additional land on the other side of the road and even constructed road thereon so as to restore the road width to its original width of 4 metres. Mr Talaulikar pointed out that all this is stated in the Petitioner's affidavit dated 15.04.2024. Mr Talaulikar, on instructions, states that all further formalities for transfer of the road, etc. will be completed within the next three months by the Petitioner. This statement made on behalf of the Petitioner is accepted and the Petitioner will have to abide by the same.

7. Mr Arolkar places on record a Report of the Executive Engineer-VI dated 22.04.2024 which confirms Mr Talaulikar's submission.

8. The Report dated 22.04.2024 reads as follows:-

“REPORT

Sub:-Proposal of M/S Models real estate developers for restoration of Govt road and exchange of 60sqm of govt land from Survey No 58/5 with equivalent land from Survey No 58/9 village Colva Taluka Salcete w.r.t. writ petition No 1281/2021 in Hon'ble High Court of Goa.

The Proposal of M/S Models real estate for restoration of govt road with equivalent land from Survey No 58/9 Village Colva Taluka Salcete in lieu of govt encroached land Survey No 58/5 for 60sqm

was accepted by the council of Minister during the XXII rd Cabinet meeting held on 06/04/2023.

Subsequently The Hon'ble High Court had also accepted the plans of M/S Models real estate developers for restoration of govt road, As per the affidavit filed by M/S Models real estate developers, the site was inspected and it is found that M/S Models real estate developers has restored the 4.00 mts wide road and has completed the work at Site (Photograph enclosed). ”

9. Along with the above report, even photographs are annexed showing the asphalted road of 4 metres width.

10. Mr Menon, learned Counsel for the 12th Respondent, also does not dispute that now there is a road having width of 4 metres available at the site. The report placed on record also refers to the decision of the Council of Ministers dated 06.04.2023 accepting the Petitioner's proposal.

11. Therefore, considering all the above aspects, including the fact that a 4 metre road is restored to the site and the Cabinet has accepted the Petitioner's proposal, we quash and set aside the impugned notice dated 12.05.2024. The Rule is made absolute to the above extent. There shall be no order for costs.

12. Miscellaneous Civil Application No.567/2023 does not survive the disposal of this petition and is accordingly disposed of.

VALMIKI MENEZES, J.

M.S. SONAK, J.