

Sonam

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 441/2023**

1. Managing Committee of Agaji Complex

Through its president

Mr. Rupesh Bhalchandra Shirodkar,

Age: 35 years, Service,

R/o FF-9, Agaji Complex,

Bandarwada, Bicholim-Goa. 403504.

2. Adv. Pushparaj Ramakant Navelkar,

Age: 41 years,

R/o FF-7, Agaji Complex,

Bandarwada, Bicholim-Goa. 4035043.

3. Rajashri Ramchandra Naik,

Age: 50 years, Business,

R/o S-2, Agaji 'Complex,

Bandarwada, Bicholim-Goa. 403504

4. Baladeo Punaji Neswankar,

Age: 51 years,

R/o G-2, Agaji Complex,

Bandarwada,

Bicholim-Goa.403504

... Petitioners

Versus

1. State of Goa

Through It's chief Secretary,

Porvorim-Goa.

2. The Goa State Pollution Control Board
Saligao-Bardez-Goa.
3. The Deputy Town Planner
Town and Country Planning Department
Bicholim-Goa.
4. The Deputy Collector Cum SDM,
Bicholim Taluka,
Bicholim-Goa.
5. The Public Health Officer,
Bicholim Hospital
Bicholim-Goa.
6. The Chief Officer,
Bicholim Municipal Council,
Bicholim, Goa.
7. The Police Inspector,
Bicholim-Police Station,
Bicholim-Goa.
8. Mr. Yusuf Aga,
Resident of H.No.
Flat No. S-8, Agaji Building
Bandar wada,
Bicholim-Goa.
9. Mr. Shah Saheb Shah,
Resident of H.No., Bandar wada,
Bicholim-Goa.
10. Mrs. Sabina Shah,
Resident of H.No., Bandar wada,
Bicholim-Goa.
11. Dr. Bishwajeet Kamdhar Biswas,

Purchaser of GARAGE NO. 1.
C/o: Kamdar Biswas, 5/3284,
Near Rotary Club,
Matru Chaya Bhavan,
Sarvona, North Goa.403529.

12. Mahadev Gawas,
Purchaser of GARAGE NO. 2
Flat no. 51,
Ishwarappa Smruti Building,
Bhaili Peth, Bicholim-Goa.

13. Mr. Sagar Bharat Sawant,
GARAGE NO. 3 (Taken on Rent)
Son of Bharat Sawant,
R/o H.No. 406 B, Kelwada,
Near Pandurang Temple,
Pirna Bardez Goa.

14. Mr. Abbas Ali,
GARAGE NO. 5 (Taken on Rent)
R/o H.No. 18, Imliwada, U.P.,
Presently Residing at,
Agaji Building, Bandarwada,
Bicholim-Goa.

15. Mrs. Rajani Ramakant Sawant,
Purchaser of GARAGE NO. 6
Since deceased through her legal heirs
a) Rohan Ramakant Sawant (Son)
R/o H. No. 30/4, Madhlawada,
Sarvan, Bicholim Goa.

b) Mrs. Shruti Prashant Korgaonkar, (daughter)
Wife of Prashant Korgaonkar AND

c) Mr. Prashant Vasant Korgaonkare, (Son-in-Law)
S/o Vasant Korgaonkar,
Both are residents of:

F-A3 Edan Garan Ansabhat,
Bardez, Mapuca,
North Goa 403507.

d) Mrs. Tanvisha Tushar Malik, (Daughter)
Wife of Tushar Malik AND

e) Mr. Tushar Jairam Malik, (Son-in-Law)
S/o Jairam Malik,
Both are residents of:
H.No. 24,
Chowpatiwada, Ladfem,
Assonora,
Bicholim Goa- 403503.
Cont: 9421307279. ... Respondents

Mr Sagar Gurudas Dhargalkar, Advocate for the Petitioners.

Mr Manish Salkar, Government Advocate for Respondent No. 2.

Mr Shubham Priolkar, Additional Government Advocate for the
Respondent Nos. 1, 3, 4, 5 and 7.

Mr S. D. Padiyar with Mr Prayash Shirodkar and Ms Akshata Rane
Advocates for Respondent No. 6.

Mr Deepak Gaonkar, Advocate for Respondent No. 8.

Mr Suresh Govinda Palkar with Ms Bindiya D. Vernekar, Advocates
for Respondent No. 12.

Mr Vivek Rodrigues, Advocate for Respondent Nos. 11, 15(a) to
15(e).

CORAM: M. S. SONAK &
VALMIKI SA MENEZES, JJ.
DATED: 30th JANUARY, 2024

ORAL JUDGMENT: (Per M. S. SONAK, J.)

1. Heard learned counsel for the parties.
2. Rule. The rule is made returnable immediately at the request of the learned counsel for the parties.
3. The Petitioners are residents of the building named Agaji Complex, situated at Bandarwada, Bicholim, Goa.
4. The Petitioners complained of several illegalities carried out at the Agaji Complex by Respondent No. 8-Builder to various authorities. The Petitioners instituted this petition because, according to them, the authorities were not taking any action based upon such complaints.
5. From time to time, we made several orders in this petition, including orders to request the authorities to inspect the site and report whether there were such illegalities as alleged by the Petitioners. The Municipal Engineer of the Bicholim Municipal Council(BMC) was directed to inspect the site and report whether any garages/stilt parking have been converted into shops and whether any construction has been put up in the open spaces, as alleged. This was by our order dated 26/09/2023.

6. The Municipal Engineer submitted an affidavit along with the photographs and plans after undertaking the inspection. Mr Gaonkar learned counsel, who appears on behalf of the 8th Respondent, on instructions, made a statement that the prayer room put up in the open space would be demolished and the open space would be restored within 15 days. Mr Gaonkar also made a statement that there are a total no. of 6 garages, out of which 3 were sold, and purchasers had converted into their shops. Mr. Gaonkar stated that 3 garages were with the 8th Respondent, out of which one was rented to a doctor from where he was running an eye clinic. Mr Gaonkar also stated that the 6th Respondent had informed that the doctor would vacate the premises and that the 8th Respondent would ensure that these premises were vacated.

7. On 27/09/2023, we made the following order:

"P.C. :

1. Heard Mr Dhargalkar for the Petitioners, Mr Padiyar for Respondent No.6-Municipal Council and Mr Gaonkar for Respondent No.8. The learned Advocate General appears, along with Mr Shubham Priorlkar, Addl. Govt. Advocate for Respondents No.1,3,4,5 and 7.

2. As directed, the Petitioners have filed an affidavit along with photographs. Similarly, the Engineers of Respondent No. 6-Municipal Council have submitted their report, along with photographs and the plan.

3. Mr Gaonkar appearing for Respondent No.8 submits that there are total six garages, out of which three are sold, wherein shops are now established. The remaining three are with the builder. He submits that out of the

remaining three, one is rented out to a Doctor wherein he is running a clinic. Mr Gaonkar submits that the builder has already informed the Doctor that he will have to vacate the said premises.

4. The photograph at page 212 shows that an eye clinic is being operated by one ophthalmologist.

5. Mr Gaonkar undertakes to furnish names and details of the four occupants to the Petitioners.

6. We grant leave to the Petitioners to implead all the four occupants of the said garages to the present Petition, as the Respondents. The amendment to be carried out within a week from today.

7. Mr Gaonkar submits that the shed erected in the open space and used as a prayer room, will be demolished within 15 days from today. We accept the said statement and direct Respondent No.8 to act accordingly and submit a report.

8. Mr Padiyar would submit that apart from the above illegalities, the builder has also constructed an additional flat on the second floor, without approved plans and is being occupied without occupancy certificate. Mr Dhargalkar submits that the said flat is being occupied by the daughter of Respondent No.8. Mr Gaonkar submits that the said flat was occupied by the daughter of Respondent No.8. However, at present the same is locked. He undertakes that the said flat will be kept locked and will not be occupied till further orders of this Court.

9. Respondent No.6-Municipal Council shall take necessary steps with regard to the illegalities pointed out in the report, within two weeks by issuing show cause notice.

10. Compliance reports by Respondent No.8 and Respondent No.6 shall be placed on or before the next date.

11. The Petitioners shall serve the added Respondents on or before the next date.

12. We post this matter for further consideration on 7th November 2023”

8. On 07/11/2023, we made a further order in the context of the compliance report filed by the 8th Respondent. Certain statements made by Mr Gaonkar, based on instructions from the 8th Respondent, were also noted. Time was granted to the Respondents / Occupants to file their reply in the context of the allegations made in the petition.

9. On 29/01/2024, detailed arguments were heard, and the matter was posted for directions today. This Court also tried to see if the 8th Respondent could settle occupants of the garages because this Court was clear that the stilt parking space/garages could not be converted for commercial purposes like shops or medical clinics.

10. Mr Padiyar, learned counsel appearing on behalf of the BMC, also clarified that the Council had given no permission for the conversion of garages or stilt parking areas into shops or other commercial premises.

11. Mr Padiyar also pointed out that the BMC has already issued show-cause notices to the 8th Respondent and others concerning the illegalities that were noticed in the building complex. Mr Padiyar

referred to a detailed affidavit filed on behalf of the BMC on 29/01/2024.

12. Mr Dhargalkar, learned counsel for Petitioners, accepts that the 8th Respondent has removed the structures put up by him in the open space, and the open space has been duly restored.

13. Mr Gaonkar has again, on instructions from the 8th Respondent, stated that garages Nos. 3, 4 and 5 are owned and possessed by the 8th Respondent along with his wife. Mr Gaonkar has, on instructions, stated that presently, these garages are closed, and the 8th Respondent will undertake that these garages will be used as garages only and not for any other commercial or other purposes. This statement made on behalf of the 8th Respondent, his wife is accepted as an undertaking to this Court, and the 8th Respondent, who is present in the Court, will have to abide by the same. This undertaking is to be filed by the 8th Respondent, and his wife will also have to abide by this undertaking.

14. In so far as garage No. 1 is concerned, presently, the same is occupied by the 11th Respondent, who claims to have purchased from the 8th Respondent vide Sale Deed dated 31/12/2010. The 11th Respondent can retain the garage, but the same shall not be used for any purposes other than the garage. Mr Rodrigues states that Respondent No. 11 was operating a clinic from the said garage.

15. Mr Padiyar for the BMC states that using a garage as a clinic is impermissible and in fact, the same is illegal. Mr Rodrigues, appearing on behalf of Respondent No. 11, states that Respondent No. 11 will stop using the said garage as a clinic by 30/04/2024. He submits that time may be granted up to 30/04/2024 to enable the 11th Respondent to make some alternate arrangements. The 11th Respondent is present in the Court and gives an undertaking that the clinic will be closed by 30/04/2024, and after that, the garage will be used only as a garage and not for any other purpose.

16. Mr Rodrigues states that apart from his oral undertaking, the 11th Respondent will file a written undertaking in this Court within 7 days from today after furnishing a copy to Mr Dhargalkar, learned counsel for the Petitioners. If no such undertaking is filed within 7 days, the BMC will seal the garage No. 1 until Respondent No. 11 complies with his undertakings and agrees to use the said garage only as a garage.

17. Mr Rodrigues states that this garage was sold to Respondent No. 11 as a shop in terms of the Sale Deed dated 31/12/2010. Mr Gaonkar disputes this position and points out that the Sale Deed dated 31/12/2010 specifically refers to the sale of the garage. On perusal of the Sale Deed dated 31/12/2010, it does refer to a garage and not a shop. In any case, this is not a forum to go into *inter se* disputes between Respondent Nos. 8 and 11. If these respondents have any claims against each other it is open to them to institute appropriate proceedings against each other and secure appropriate reliefs.

However, there is no question of using these garages as shops because such use is impermissible.

18. In so far as garage No. 2 is concerned, Respondent No. 12 presently occupies the same based upon the Sale Deed dated 26/07/2007. Respondent No. 12 purchased this garage from one Mr. Dinesh Damle and his wife by virtue of a Sale deed dated 25/07/2012. Mr Gaonkar submitted that Respondent No. 8 had sold garage No. 2 to Mr Dinesh Damle vide Sale Deed dated 26/07/2007.

19. In the above Sale Deed, the garage was described as a garage itself and not as a shop. Mr Palkar, learned counsel appearing on behalf of Respondent No. 12, submitted that Mr Dinesh Damle and his wife described this garage as a shop in the Sale Deed dated 25/07/2012. Mr Palkar states that this description was corrected and the garage was shown as a garage in the Deed of Rectification dated 09/10/2011.

20. As indicated above, in this petition we are not concerned with the *inter se* disputes between Respondent Nos. 8, 12 and Mr Dinesh Damle. Respondent No. 12 runs an eye clinic through garage No. 2. Mr Palkar, on instructions from Respondent No. 12 and his son, Dr Gaurish Gawas, makes a statement that the use of garage no. 2 as a clinic would be stopped by 30/04/2024. Respondent No. 12 is present in the Court and gives such an undertaking, which is accepted as an undertaking to this Court. The undertaking will bind Respondent No. 12's son, Dr. Gaurish Gawas.

21. The Respondent No. 12 and his son will have to give a written undertaking to this Court within 7 days by giving an advance copy to the learned counsel for the Petitioners. If no undertaking is given within 7 days, the BMC to proceed forthwith and seal the premises until, of course, Respondent No. 12 and his son give an undertaking to use garage No. 2 only as a garage and for no other purposes.

22. Mr Palkar points out that representation has been made to BMC, permitting the usage of the garage as an eye clinic. Mr Padiyar for the BMC states that such permission cannot be granted. We agree with Mr Padiyar that the spaces approved as garages in the construction plans cannot be converted into shops. Accordingly, there is no question of now directing the BMC to grant Respondent No. 12 permission for conversion or to dispose of the application seeking such conversion.

23. As clarified earlier in this petition, we are not concerned with the civil disputes between Respondent Nos. 8 and 12 and Mr Damle. Therefore, Respondent No. 8 and 12 are at liberty to institute appropriate proceedings for the redressal of their grievances/claims for damages against these parties. All contentions are expressly kept open.

24. In so far as garage No. 6 is concerned, the same is sold by Respondent No. 8 to one Mrs Rajani Ramakant Sawant vide Sale Deed dated 08/02/2011. She has expired and is survived by Respondent Nos. 15(a) to 15(e). So far as garage No. 6 is concerned,

there is no allegation about the same being used as a shop. The same will have to be used as a garage only and not for any other purposes.

25. Mr Rodrigues, learned counsel for the Respondent Nos. 15(a) to 15(e) submits that in the plan annexed to the Sale Deed dated 08/02/2011, garage No. 6 was shown as a shop. Mr Gaonkar, on behalf of the 8th Respondent, points out that in the Sale Deed, this garage was shown as the garage itself. Again, in this petition, we are not concerned with the *inter se* dispute between Respondent No. 8 and Respondent 15(a) to 15(e). If the parties have any claims, etc., against each other, they are at liberty to institute appropriate proceedings for redressal of their grievance.

26. However, we record Mr Rodrigues's statement made on instructions from Respondent Nos. 15(a) to 15(e) that garage No. 6 would be used as a garage only and not for any commercial or other purposes. In case there is any breach of this undertaking, the Petitioners are at liberty to point this out to the BMC. If the BMC, on inspection, finds a breach, they would be at liberty to seal garage No. 6, of course, until Respondent No. 15(a) to 15(e) agree to restore its use as a garage.

27. The Petitioners have alleged that the 8th Respondent has constructed on the second floor of Agaji Complex an illegal and unauthorised apartment. Mr Gaonkar, on instructions from Respondent No. 8, has made a statement that this apartment is already locked and shall not be used for any other purpose. This statement is

accepted as an undertaking on behalf of Respondent No. 8 and his family members, and they will abide by the same. Respondent No. 8 must file a written undertaking to this effect within 7 days after giving its advance copy to the learned counsel for the Petitioners.

28. Mr Padiyar for the BMC states that a show cause notice dated 11/10/2023 has been issued to Respondent No. 8 regarding this flat/apartment, which, according to the BMC, is put up without any permission/approval. This show cause notice is directed to be disposed of within 3 months from today after due compliance with the principles of natural justice and fair play.

29. In the peculiar facts of this case, the BMC must not only hear Respondent No. 8 but also the Petitioners if they choose to be heard in the matter. If the BMC concludes that the flat / apartment is indeed illegal and warrants demolition, the undertaking about non-user should continue even during the appeal period. Suppose the authorities decide that this apartment / flat is illegal and unauthorised. In that case, the authorities must take prompt steps to ensure its removal without requiring the Petitioners to once again approach this Court.

30. The Petitioners have also complained about the stilt parking being converted and used for commercial purposes. Mr Gaonkar, on instructions from the 8th Respondent, states that this stilt parking was being used by the 3 licensees of Respondent No. 8. On instructions, he states that 3 licensees have been told that they will have to stop

using the same within a maximum of 3 months from today, i.e. with effect from 30/04/2024. Mr Gaonkar states that 3 licensees have agreed to stop such users. Mr Gaonkar, again, on instructions from Respondent No. 8, who is present in the Court, states that the partition put up in this stilt parking space will be removed by 30/05/2024, and a compliance report will be filed along with photographs. A copy of the compliance report must be furnished to Mr Dhargalkar.

31. Again, this statement made by Mr Gaonkar based on instructions from Respondent No. 8 is accepted as an undertaking to this Court. Respondent No. 8 should file a written undertaking within 7 days from today by giving an advance copy to Mr Dhargalkar. Again, we clarify that it is the responsibility of respondent No. 8 to ensure that the stilt parking is restored to its original condition and used for its original purposes. Respondent No. 8 will not be permitted to give an excuse like licensees obstructing him from complying with this undertaking.

32. Mr Gaonkar states that the three licensees are Eqbal Muzawar, Premanand Bhalchandra Naik, and Jayendra Narsiha Govekar, and they will be furnished copies of the undertakings, as well as copies of this order within this week itself. If, for any reason, these undertakings are not complied with, the Petitioners are at liberty to inform this position to the BMC. The BMC should then seal these premises and ensure that the stilt parking areas are not used for any commercial purposes or other activities. The BMC should ensure that Respondent No. 8 restores these premises as stilt parking.

33. Mr Padiyar, learned counsel appearing on behalf of the BMC, states that the BMC has issued 2 show cause notices concerning the staircase and shed, both dated 11/10/2023. Mr Padiyar states that even these show cause notices will be disposed of within 3 months after complying with the principle of natural justice and fair play. In the peculiar facts of this case, the BMC must hear not only Respondent No. 8 but also the Petitioners if they choose to be heard before disposing of the show cause notices.

34. With the above order, we dispose of this petition now that Respondent No. 8 has given undertakings about compliance/rectification of various illegalities pointed out by the Petitioners.

35. The rule is made absolute in the above terms. There shall be no order for costs.

36. All concerned to act on an authenticated copy of this order.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.