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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.718 OF 2023

Arvind Sinai Nagarsenkar,
son of late Shripad Sinai Nagarsenkar,
age 79 years, retired Doctor
resident of Shantai, Plot No. 35,
GOMECO Housing Society,
Bambolim, Tiswadi-Goa.

... Petitioner

Versus

1. Canacona Municipal Council,
Through its Chief Officer,
Having office at Chaudi,
Canacona, Goa.

2. Deputy Collector Canacona,
Having office at
Administrative Building,
Chaudi, Canacona Goa.

3. Mamlatdar of Canacona,
Having office at
Administrative Building,
Chaudi, Canacona Goa.

4. Health officer,
Having office at
Primary Health Center,
Chaudi, Canacona-Goa.

5. Assistant Engineer,
Electricity Department,
Having office at
Canacona, Goa.

6. Goa Coastal Zone Management Authority,
Having office at 4th Floor,
Dempo Towers, EDC
Patto, Panjim – Goa.

7. Goa State Pollution Control Board,
Through its Member Secretary,
Having its office at
Near Pilerne Fire Station
Opp. Saligao Seminary
Saligao, Bardez, Goa.

8. Shantanand Vishram Sinai Kantak,
Son of Vishram Krishna Sinai Kantak,
age 67 years,
r/o H. No.558, Baagwada,
Curchorem, Goa – 403 706

9. Gaurish Haridas Kantak
Age 53 years,
son of late Haridas Kantak,
r/o H. No. 825, Mapa, Panchwadi,
Ponda Taluka, Goa

10. Salman Aslam Shaikh,
age 35 years,
r/o H. No. 35/2,
Haveli Kurti, Ponda – Goa.

11. First Vision Hospitality,
through its Managing Partner
K.K. Radhakrishnan, “Haaud”,
Melmuringodi, Parayoor, Kannav,
Kerala 670 673

[amended vide
order dt.28.11.23]

... Respondents

Mr Pranay Kamat, Advocate *for the Petitioner.*

Ms Rosette Pereira, Advocate *for Respondent No.1.*

Mr Suhas Parab, Additional Government Advocate *for Respondent Nos. 2, 3, 4, 5 and 6.*

Mr Pavithran A.V., Advocate *for Respondent No.7.*

Mr A.D. Bhobe, Advocate *for Respondent No.8.*

Mr P. Kakodkar, Advocate *for Respondent No.9.*

Mr Vibhav Amonkar, Advocate *for Respondent No.10.*

Mr S.D. Lotlikar, Senior Advocate with Ms S. Kenny, Advocate *for Respondent No.11.*

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

DATED: 16th January 2024

ORAL JUDGMENT (*Per M.S. Sonak, JJ:*)

1. Heard Mr Pranay Kamat for the Petitioner, Ms Rosette Pereira for Respondent No.1, Mr Suhas Parab for Respondent Nos. 2, 3, 4, 5 and 6, Mr Pavithran A.V. for Respondent No.7, Mr A.D. Bhobe for Respondent No.8, Mr P. Kakodkar for Respondent No.9, Mr Vibhav Amonkar for Respondent No.10 and Mr S.D. Lotlikar, Senior Advocate, along with Ms S. Kenny for Respondent No.11.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.
3. The Petitioner seeks the following reliefs by instituting this petition:-

“a) This Hon’ble Court be pleased to issue writ of mandamus or any other writ or order directing respondent no. 1 to 7 to take immediate action on the complaint dated 15/09/2023 & 12/10/2023 of the petitioner about illegal construction and activities in survey no. 36/15

and 16 of Nagorcem Palolem Village of Canacona taluka as expeditiously as possible and demolish the illegally constructed structures.

b) This Hon'ble Court be pleased to issue writ of mandamus or any other writ or order directing the respondent no. 1 to 7 not to allow any trade or any other activity in the illegal construction done by respondent no. 8 to 10 or any other person acting through them and seal the structures and order enquiry for allowing such construction in violation of others of this honorable court.

c) Pending the hearing and final disposal of this petition this Hon'ble Court may be pleased to direct the respondent no. 1 to 7 not to allow any trade or any other activity in the illegal construction done by respondent no. 8 to 10 or any other person acting through them and seal the structures.”

4. On 07.11.2023, this Court made the following order:-

“1. Heard Mr. Pranay Kamat, learned Counsel for the Petitioner, Ms. Rosette Pereira, learned Counsel for Respondent No.1, Mr. Devidas Pangam, learned Advocate General who appears with Mr. Suhas Parab, learned Additional Government Advocate for Respondent Nos.2,3,4,5 and 6 and Mr. A.V. Pavithran, learned Counsel for Respondent No.7.

2. Mr. Pranay Kamat states that notices were served by Reg AD to all the respondents including 8th, 9th and 10th respondents. However, we find that 8th, 9th and 10th respondents are not present in the Court. Mr. Kamat states that he will file an Affidavit along with the acknowledgment of service in the Court by tomorrow.

3. The petitioner complains that in Survey No.36/15, 36/16 of Nagarcem Palolem Village of Canacona Taluka (said property) the 8th, 9th and 10th respondents have put up structures which they are using/proposed to use as a tourist resort. Mr. Kamat points out that in September, 2023 itself when the construction was going on complaints were filed with the statutory authorities but no action was taken by the authorities to prevent such a structure from coming up. Even though none of the authorities have issued any permission to put

up any such structure. He points out that the structures are coming up right on the beach within no development Zone and therefore, there was no question of such structures and that too without any permissions from any authorities. He refers to the photographs at pages 49 to 51 of the paper book of this petition.

4. Mr. Pranay Kamat places on record a reply dated 01/11/2023 from the Chief Officer of the Canacona Municipal Council stating in clear terms that the Council have not issued any permission for any kind of construction in the said property in the year 2023-24 till date. Mr Pranay Kamat points out that the structures are put up inspite of this Court's order dated 31/03/2023 in Civil Application No.86 of 2022 in Second Appeal No.76 of 2022 restraining the erection of any temporary shacks/ huts/ structures in the suit property surveyed under No.36/16 of Village Nagarcem-Palolem of Canacona Taluka.

5. Ms. Pereira for the Canacona Municipal Council states that no permissions have been issued by the Council and an inspection is to be held tomorrow. She agrees that the structures are wholly unauthorised.

6. The learned Advocate General states that the structures put up are wholly unauthorised and no authorities including the GCZMA has granted any permissions. He submits that immediate orders should be passed to seal these structures so that they are not commercially exploited the the detriment of No Development Zone.

7. Mr. Pavithran learned Counsel for GSPCB also states that no consent to operate has been granted for these structures or for any resort comprising these structures in the said property.

8. Considering the material on record and the submissions made by the learned Counsel for the parties, we direct the Canacona Municipal Council through its Chief Officer and the Mamatdar of Canacona to immediately proceed to the site and seal all the structures so that such structures are not used for any purposes whatsoever, including in particular for any commercial purposes. Further 8th, 9th and 10th respondents or any persons claiming through or under them are restrained from using the said structure for any purpose.

9. The Chief Officer and the Mamatdar must also prepare the

Panchanama at the site because there are allegations that the 8th, 9th and 10th respondents had illegally tapped electricity and had made some provisions for water supply to commence the resort. On the next date, the Chief Officer and the Mamlatdar to file a report of compliance including a copy of the Panchanama as directed above. The concerned police should also give full cooperation to the Chief Officer and the Mamlatdar to complete the sealing process. This order is made by way of interim relief because it was pointed out to us that the structures are wholly unauthorised and right on the beach i.e. in No Development Zone. We also find that such instances are on the rise in Goa particularly in the coastal stretches. The entire objective is to start commercial activities and continue with them based on the premise that the authorities will not take any action at all or if any action is initiated, the project proponents will delay the action until the conclusion of the tourist season.

10. Despite service, the 8th, 9th and 10th respondents had not bothered to appear in this Court and therefore, we are constrained to make the above order. If the 8th, 9th and 10th respondents really have any permission from the authority, they are at liberty to file an application and apply for vacation of this order. If such an application is filed, we would consider the same in accord with law.

11. Accordingly we issue fresh notices to 8th, 9th and 10th respondents, returnable on 28/11/2023 i.e. on the very first day of reopening after vacations. Mr. Kamat states that today itself process fees and copies will be supplied to serve 8th, 9th and 10th respondents.

12. In addition to the usual mode of service private service /Humdast is allowed.

13. All the other respondents to take cognizance of this order and act immediately in the matter. If our orders are not complied with and the petitioner finds that any activity is going on in the said property, liberty to apply the learned vacation judge for further orders.

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

5. On 28.11.2023, leave was granted to implead Respondent No.11 which Mr Lotlikar and Ms Kenny now represent.

6. Ms Rosette Pereira learned Counsel for the Canacona Municipal Council, confirms that the structures put up by the 10th and 11th Respondent have been sealed because they were put up without obtaining any permissions from the Municipal Council, the GCZMA and the GSPCB. This position about sealing is acknowledged by the learned Counsel appearing for Respondent Nos.10 and 11.

7. Mr Lotlikar learned Counsel for Respondent No.11, submitted that the 11th Respondent had already applied for permission to the GCZMA. He says that suitable directions be issued to the GCZMA to dispose of this application expeditiously.

8. Mr Pranay Kamat, learned Counsel for the Petitioner, submits that the 11th Respondent has no right or authority to seek such permission. He submits that there is already an injunction order made in a Second Appeal instituted by the 8th Respondent, to which the Petitioner is also a party. Mr Pranay Kamat states that if at all any directions are to be issued to the GCZMA to expeditiously dispose of any applications made by the 11th Respondent, the GCZMA may also be directed to hear the Petitioner and the 8th Respondent.

9. Accordingly, we direct the GCZMA to expeditiously dispose of the 11th Respondent's application seeking permission/NOC. However, the GCZMA must grant an opportunity of hearing to the Petitioner, the 8th Respondent and the 11th Respondent before any decision is taken on such application.

10. The GCZMA, GSPCB and the Canacona Municipal Council are directed to take action in accordance with a law against the structures put

up by the 10th and 11th Respondents. The authorities must comply with the principles of natural justice, and such action must be taken within three months from today. The sealing of the structures must continue unless, in the meantime, the 10th and 11th Respondents obtain permission from all concerned authorities. However, it is clarified that the authorities must neither keep the application made by the 10th and 11th Respondents pending unreasonably nor should the authorities simply postpone action on the grounds of pendency of such applications. Preferably, both these matters must be simultaneously decided and disposed of not later than three months from today. This means that if and after the authorities conclude that no permissions are liable to be granted, action must be taken to remove the structures which were put up without permissions or NOCs from the authorities.

11. Since this petition was complaining of inaction and now that the action has been initiated, there is no point in keeping this petition pending any further. With the above directions and liberties, we dispose of this petition. There shall be no order for costs.

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

VALMIKI SA MENEZES, J.

M.S. SONAK, J.