

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 158 OF 2024

SHANTI PARAB, age 34 years of age, daughter of
Sudan Dessai, Married, Service, Indian National,
R/o H. No. 311, Deulwada, Paliem, Pernem - Goa ... Petitioner

V e r s u s

1. STATE OF GOA, Through the Chief Secretary, Office at Secretariat Porvorim - Goa.
2. DIRECTOR OF PANCHAYATS, Office at the Directorate of Panchayats Govt. of Goa Office at Myles High Building, Patto – Panaji, Goa
3. THE BLOCK DEVELOPMENT, OFFICER – II, Office of the Block Development Officer of Bardez, Mapusa – Goa
4. VILLAGE PANCHAYAT OF SALIGAO, Through the Sarpanch/Secretary Office at Village Panchayat of Saligao, Saligao, Bardez – Goa
5. DEPUTY TOWN PLANNER, Town and Country Planning Department, Govt. of Goa Office at Govt. Building Complex, Mapusa, Bardez – Goa
6. SHARVESH RAMNATH KARPE, S/o Late Ramnath Karpe, 38 years of age, married, business R/o Salmona Waddo, Saligao, Bardez – Goa
7. ANURADHA BABAN KONADKAR, Widow of Baban Konadkar, R/o H. No. 7/32 Salmona Waddo, Saligao, Bardez – Goa
8. RAJENDRA KONADKAR, Son of Late Baban

Konadkar R/o H. No. 7/32 Salmona Waddo,
Saligao, Bardez – Goa

9. DEEPA KONADKAR, Wife of Rajendra
Konadkar, R/o H. No. 7/32 Salmona Waddo,
Saligao, Bardez – Goa

10. VIDESH KONADKAR, Son of Baban
Konadkar, R/o H. No. 7/32 Salmona Waddo,
Saligao, Bardez – Goa

11. APARNA KONADKAR, Wife of Videsh
Konadkar, R/o H. No. 7/32 Salmona Waddo,
Saligao, Bardez – Goa

12. TANUJA DEWASKAR, Daughter of Baban
Konadkar, R/o H. No. 7/32 Salmona Waddo,
Saligao, Bardez – Goa

13. NITIN DEWASKAR, Husband of Tanjua
Dewaskar, R/o H. No. 7/32 Salmona Waddo,
Saligao, Bardez – Goa

14. UMESH VASANT MALIK, R/o H. No. 7/49
Salmona Waddo, Saligao, Bardez – Goa

15. SAKHARAM TUKARAM MANDREKAR
R/o H. No. 7/32 Salmona Waddo, Saligao, Bardez
– Goa

16. DEVIDAS TUKARAM MANDREKAR, R/o
H. No. 7/32 9A(2), Salmona Waddo, Saligao, ... Respondents
Bardez – Goa.

Mr. Shivan Desai, Advocate with Mr. Aniroodh Sardessai,
Advocate for the Petitioner.

Mr. Deep Shirodkar, Additional Government Advocate for the
Respondent No.1-State.

Mr. Vivek Rodrigues, Advocate with Mr. Kevin Braganza,
Advocate for the Respondent No.4.

Mr. A. D. Bhobe, Advocate with *Ms. Annelise Fernandes and Ms. Ramona Prazeres, Advocates for the Respondent nos. 6, 8 and 14.*

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

DATED: 5th MARCH, 2024

ORAL JUDGMENT

1. Heard Mr Desai, learned Counsel for the Petitioner, Mr Deep Shirodkar, learned Additional Government Advocate for the State, Mr Rodrigues learned Counsel for the fourth Respondent and Mr Bhobe, learned Counsel for the Respondent Nos. 6, 8 and 14.

2. Rule.

3. The Rule is made returnable immediately. Learned Counsel for the Respondents waives service.

4. The Petitioner seeks an appropriate writ to direct the Respondent-Panchayat to issue an Occupancy Certificate and to set aside the Block Development Officer's (BDO) Order dated 15.11.2023, by which the BDO dismissed the Petitioner's appeal by invoking the bar of limitation.

5. Although the Respondents raised objections about the Petitioner having alternate remedies under the Panchayat Raj Act, we have decided to entertain this Petition because we find that the Petitioner's construction was completed on 15.12.2020. The Town and Country

Planning Department has issued a Completion Certificate dated 15.12.2020 confirming the fact of completion of the construction. However, the Petitioner has not been issued an Occupancy Certificate by the Panchayat for the last three years.

6. Mr. Rodrigues, the learned Counsel for the Panchayat, pointed out that on 18.03.2021, the Panchayat revoked the construction licence on the grounds that the construction had encroached on the public pathway and the septic tank was built above the ground level, leading to leakages. He pointed out that the Petitioner obtained an ex parte stay from the Additional Director of Panchayats against the Panchayat's Order dated 18.03.2021 on 25.03.2021. He submitted that the matter is still pending before the Director of Panchayats.

7. Mr. Rodrigues also pointed out that the Petitioner, based on the ex parte stay and despite the pendency of the Appeal before the Additional Director of Panchayats, moved the BDO complaining against alleged inaction on the Panchayat's part for issuing Occupancy Certificate. These proceedings were dismissed by the BDO by Order dated 15.11.2023, which is one of the Orders challenged in this Petition. The dismissal was on the ground that the Petitioner's appeal was barred by limitation.

8. Mr. Rodrigues and Mr. Bhobe pointed out that even the Health Officer issued a notice for disconnection of electricity and water supply

on 22.07.2023 because of the nuisance caused by the Petitioner by releasing sewerage on the pathway. Mr. Rodrigues and Mr. Bhobe pointed out that the Petitioner's Writ Petition No. 512 of 2023 was disposed of without interfering with the disconnection. However, directions were issued to the BDO to dispose of the Petitioner's appeal.

9. In this case, we find that the Town & Country Planning Department, a competent authority, issued a Completion Certificate way back on 15.12.2020. Based on the Completion Certificate, the Panchayat should have ordinarily issued the Occupancy Certificate. If there are issues like encroachment on any alleged public pathway or of the septic tank, the Panchayat and the Health Authorities can always initiate appropriate action. But, some decision should have been taken on the issue of the Occupancy Certificate, and the same could not have been kept pending for all this time.

10. In any case, we do not wish to foreclose the Panchayat's proposed action of revocation of licence. The issue of the validity or otherwise of the Panchayat's notice dated 18.03.2021 is pending before the Additional Director in Panchayat Appeal No. ADP-I/Saligao/P.A.136/2021. Accordingly, though we propose to direct the Panchayat to issue an Occupancy Certificate forthwith, we clarify that such issuance will be without prejudice to the Panchayat's contention that the construction licence itself deserves to be revoked and;

consequently, there is no case made out for issuance of the Occupancy Certificate.

11. Insofar as the disconnection notice issued by the Health Officer is concerned, Mr. Desai states that the Petitioner represented against the same. Further, Mr. Desai states that the issue of releasing sewer/sewerage has already been sorted out. Mr. Rodrigues and Mr. Bhobe dispute this position. However, Mr. Desai now states that the electricity and water connection has since been restored.

12. Again, we clarify that the Health Authorities must visit the site even now and see whether the septic tank issue has been sorted out. If they find that there is still any problem or nuisance, they should take necessary action under the provisions of the Public Health Act.

13. The Panchayat must issue an Occupancy Certificate to the Petitioner without prejudice to her rights and contentions. Such an issue will be subject to the outcome of the Panchayat Appeal No. ADP-I/Saligao/P.A.136/2021, pending before the Additional Director of Panchayats at Panaji.

14. If the Additional Director of Panchayats dismisses the Petitioner's appeal, then subject to the Petitioner securing an interim relief within four weeks, the Occupancy Certificate so issued will stand revoked. The Petitioner should then cease occupying the

house/premises. The Panchayat will also be entitled to seal the premises in such an eventuality.

15. The Panchayat Secretary Mr. Ashok Naik, hands over the Occupancy Certificate to Mr. Sardesai, the learned Counsel for the Petitioner. Mr. Sardesai states that the Occupancy Certificate fees of Rs. 5,570/- would be paid latest by tomorrow i.e. 06.03.2024 without fail.

16. The issue of the above Occupancy Certificate shall be subject to the observations made by us in paragraph 13 above.

17. The Additional Director of Panchayats is directed to dispose of Panchayat Appeal No. ADP-I/Saligao/P.A.136/2021 within three months from today.

18. The Health Authorities must inspect the site and investigate the complaint about the septic tank and sewerage discharge. This exercise must be completed within a month from today.

19. The rule is disposed of in the above terms without any Order for costs.

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

VALMIKI SA MENEZES, J.

M. S. SONAK, J.