

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.479 OF 2022
WITH
MISCELLANEOUS CIVIL APPLICATION NO.1770 OF 2023(FILING)
IN
WRIT PETITION NO.479 OF 2022
WITH
MISCELLANEOUS CIVIL APPLICATION NO.225 OF 2024
IN
WRIT PETITION NO.479 OF 2022
WITH
MISCELLANEOUS CIVIL APPLICATION NO.1232 OF 2024
IN
WRIT PETITION NO.479 OF 2022
WRIT PETITION NO.479 OF 2022

Tony Rodrigues

...Petitioner

Versus

State of Goa thr. The Chief Secretary And 4
Ors.

...Respondents

WITH
MISCELLANEOUS CIVIL APPLICATION NO.1770 OF
2023(FILING)
IN
WRIT PETITION NO.479 OF 2022

Estonio Francisco De Almeida

...Applicant

Versus

State of Goa thr. The Chief Secretary And 4
Ors.

...Respondents

WITH
MISCELLANEOUS CIVIL APPLICATION NO.225 OF 2024
IN
WRIT PETITION NO.479 OF 2022

The North Goa Planning Development Authority, thr. Its Member Secretary ...Applicant

Versus

Tony Rodrigues ...Respondent

WITH
MISCELLANEOUS CIVIL APPLICATION NO.1232 OF 2024
(FILING)
IN
WRIT PETITION NO.479 OF 2022

Estonio Francisco De Almeida ...Applicant

Versus

State of Goa thr. The Chief Secretary And 3 Ors. ...Respondents

Mr Rohit Bras De Sa, Advocate with Mr A. Pandarbale, Advocate for the Petitioner.

Mr Devidas J. Pangam, Advocate General with Mr Deep D. Shirodkar, Additional Government Advocate for Respondents No.1, 2, 4 and 6.

Mr Sahil Sardessai, Advocate for Respondent No.5.

Mr Devidas J. Pangam, Advocate General with Ms Maria Simone J. Correia, Additional Government Advocate for Applicant in Miscellaneous Civil Application No.225/2024.

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

DATE: 8th MAY 2024

P. C.

1. Heard Mr D. Pangam, the Advocate General, who appears with Ms Maria Simone Correia, learned Additional Government Advocate for the North Goa Planning Development Authority-Applicant in MCA/225/2024, and Mr Sahil Sardessai, learned Counsel for Mr Estonio Almeida, 5th Respondent. Mr Rohit Bras De Sa, learned Counsel, appears for the original Petitioner.

2. Similarly, we have also heard Mr Sardessai for the Applicant in MCA/1232/2024(Filing) who is the original Respondent No.5 in the main Petition.

3. From the various orders that we have made in this Petition and the Miscellaneous Civil Applications filed therein, it is apparent that Mr Almeida, original 5th Respondent, is out to mislead this Court and not comply with the most solemn Undertakings given to this Court from time to time. These Miscellaneous Applications fortify the impression even further.

4. By our order dated 06.03.2024, we issued clear and unambiguous directions to the 5th Respondent about compliance with the balance works in terms of the plan marked as 'X' for identification. We took care to see that there was no ambiguity whatsoever because, in the past, the 5th Respondent had breached the Undertakings given to this Court, inter alia, by deviating from the plan and trying to post-facto justify the deviations.

5. Even this time, the 5th Respondent has made the same attempt with impunity. Considering the past experience, we had directed the NGPDA to periodically inspect the site and submit the report on whether the works were

being undertaken by the 5th Respondent in accordance with the plan and the desired pace. The NGPDA has now filed MCA/225/2025(Filing) to place on record its site inspection reports, observations/findings during such periodic inspections. Copies have been furnished to Mr Sardesai.

6. The Applicant points out that after the 5th Respondent solemnly undertook to this Court to complete the works in accordance with the plan marked as 'X', the 5th Respondent, by his communication dated 11.03.2024 wrote to the NGPDA stating that the construction of the retaining wall in the middle of the approved swimming pool is not required as the existing wall has a structural certificate. Even writing such a letter after we made our order dated 06.03.2024 and recording the 5th Respondent's undertaking is, prima facie, contemptuous. Again, this is an attempt not to complete the restoration works in accordance with the plan and to save the swimming pool, which the 5th Respondent, perhaps managed to put up by resorting to patent and unauthorised hill cutting.

7. Mr Sardesai, on instructions of Mr Almeida, who is present in the Court, tenders unconditional apology for writing the letter dated 11.03.2024 to the NGPDA. He states that though such a letter was written, Mr Almeida, by his further communication dated 22.03.2024, has agreed to construct the retaining wall in question. Mr Sardesai further stated that MCA/1232/2024 was filed to seek an additional 14 days' time to construct this retaining wall in the swimming pool without raising any further excuses or complications. Mr Sardesai, now on clear instructions from Mr Almeida, who is present in the Court, states that within 14 days from today, this retaining wall would be constructed strictly in accord with the specifications and the plan marked as 'X' for the purpose of

identification. This statement is accepted as yet another undertaking to this Court.

8. As if this was insufficient, the 5th Respondent has again attempted to play with the Court orders and undertakings given to this Court. The NGPDA has pointed out that in terms of the plan marked as 'X', the retaining wall no.2 had to start at a depth of approximately 2.50mts below the ground level and the width of this wall is required to be approximately 2.40meters at its base and the same gradually tapers towards the top end. This is very clear from the plan marked as 'X'.

9. The NGPDA application states that on inspection of the site, it was noticed that the 5th Respondent, for the purpose of constructing retaining wall no.2, i.e. with respect to the portion which falls in Survey No.276/6 and the retaining wall numbers situated in the Survey No.275/1, has already carried out the shuttering i.e. erection of the metal sheets around the trench wherein the concrete is required to be poured. The NGPDA application states that these trenches are only of depth of 20 cm to 30 cm below the ground level. Accordingly, the NGPDA points out that the construction of the retaining wall in this manner would be a hazard as it would be washed away during the monsoons.

10. Mr Sardesai attempted to show us some photographs that contradict the NGPDA's statement. The photographs make no dent whatsoever in the NGPDA's statement based on its inspection reports, which have been produced on record. The 5th Respondent has been consistently making misstatements

before this Court. This was an attempt to hoodwink the Court and the Authorities again.

11. Learned Advocate General points out that the 5th Respondent in his MCA/1232/2024(Filing) has made the following statement at paragraph 5:

'5. The applicant states that the trenches which were dug were by using manual labour force and without use of machines as or else the Petitioner herein would have filed once again a false complaint stating that hill cutting has taken place by the applicant and we have dug the trench to the depth of both the walls which nearly 100 cms and till it hits hard rock and the width of these walls is 2 metres thick sufficient to hold retain the mountain from falling.'

12. Learned Advocate General submits that, therefore, even according to the 5th Respondent, the depth from the ground level is only 100cms, when in fact, the same should have been 2.50 metres. Similarly, even according to the 5th Respondent, the width of the wall is only 2 metres, when, in fact, the same should have been 2.40 meters at its base and gradually taper towards the top end.

13. Therefore, even if the statements in paragraph 5 of the 5th Respondent's application are accepted to be correct (we do not accept them to be correct), the 5th Respondent has again attempted to play with the Court orders and the Undertakings given by him that he would undertake the works strictly in accordance with the plan marked as 'X'. The 5th Respondent has tried to deviate from the plan to save money.

14. Mr Sardesai submits that the 5th Respondent felt that going any deeper would amount to hill cutting, and therefore, he did not start at the depth of 2.50 meters below the ground level. This kind of excuse cannot be accepted, particularly from the 5th Respondent, who undertook large-scale hill-cutting without permission and then tried to argue that the hill had collapsed due to some storm. This defence was found to be a moonshine, and accordingly, the 5th Respondent undertook to carry out restoration works. This is nothing but yet another attempt to mislead the Court, which can no longer be tolerated. The 5th respondent has made repeated false statements before this Court. This Court has spent more than enough time, and more than sufficient indulgence has been granted to the 5th Respondent in this matter.

15. Mr Sardesai, based on instructions from Mr Almeida who is present in the Court now states that the 5th Respondent will deposit in this Court a further amount of Rs.20 lakhs within seven days to show his renewed commitment to complete the retaining wall in the middle of the swimming pool and to complete the retaining wall No.2 strictly in accordance with the plan marked as 'X'. This means that the 5th Respondent will construct retaining wall No.2 by starting at a depth of 2.50 metres below the ground level, and the width of the retaining wall would be approximately 2.40 meters at its base and gradually taper towards the top end.

16. In short, Mr Sardesai, on instructions, states that the balance works as pointed out by the NGPDA in paragraphs 8, 9 and 10 relating to the retaining wall No.2, 3 and 4 as reflected in the site inspection reports and by curing all the defects pointed out in the site inspection reports now produced by the learned Advocate General (copies of which have been supplied to Mr Sardesai), will be

carried out in strict accordance with the plan marked as 'X' without giving any further excuses. He submits that such works will now be completed by 30.06.2024.

17. Initially, we were inclined to allow the NGPDA to withdraw the Rs. 60 lakhs deposited by the 5th Respondent in this Court and undertake the balance works through a contractor to be appointed by the PWD. This is because, despite several opportunities, the 5th Respondent has breached the undertakings given to this Court and even attempted to play with the orders made by this Court from time to time. As noted earlier, this was yet another attempt by the 5th Respondent to do the same.

18. However, now that the 5th Respondent has offered to deposit the additional amount of Rs.20 lakhs and has given a renewed Undertaking to complete the balance works strictly in accordance with the plan marked as 'X' latest by 30.06.2024, quite reluctantly, we give the 5th Respondent additional opportunity. However, this time we make it clear that if the 5th Respondent once again tries to deviate from the plan marked as 'X' or fails to complete the works by 30.06.2024, then, the amount of Rs.80 lakhs deposited by him will have to be forfeited and paid to the NGPDA or the PWD, as the case may be, for completing the balance works. This shall be without prejudice to any action under the Contempt of Courts Act for repeated breaches of the Undertakings given to this Court. Such breaches were with impunity and to clearly hoodwink the Court and the Authorities.

19. Further, we make it clear that if the 5th Respondent fails to deposit Rs.20 lakhs in this Court within seven days, then the amount of Rs.60 lakhs already

deposited by the 5th Respondent will have to be forfeited. Therefore, the 5th Respondent should inform the original petitioner and the NGPDA about the deposit of Rs.20 lakhs within seven days from today to this Court. The registry must accept the additional amount of Rs.20 lakhs during vacation. If no such intimation is received, then the NGPDA and the PWD should proceed with the balance works by utilising the amount of Rs.60 lakhs. Further, on an application by the NGPDA/PWD, the Registry should transfer the amount of Rs.60 lakhs to NGPDA/PWD so that the NGPDA/PWD can commence with the balance works.

20. The 5th Respondent should not obstruct the NGPDA/PWD from completing the balance works in case Rs.20 lakhs is not deposited within 7 days from today without giving any excuses whatsoever.

21. The directions for periodic inspection, etc., will continue to apply. The NGPDA officials, as they have done in the past, continue to inspect the site and see whether the work is going on in terms of the plan marked as 'X' and at the correct pace. The NGPDA is granted liberty to apply to this Court pointing out any deviation or attempted deviations.

22. The time is provisionally extended to 30.06.2024. This is subject to the 5th Respondent depositing Rs.20 lakhs within seven days from today.

23. Learned Advocate General points out that because of the 5th Respondent, the NGPDA and the PWD officials have to hold such inspections and much time and energy is spent on this purpose. This aspect will be considered if and after the compliances are filed. The 5th Respondent will have to pay some suitable amount through costs. At this stage, we must record that on account of

the 5th Respondent, even this Court had to spend disproportionately valuable judicial time. Every time, the 5th Respondent would give Undertakings and then try to find out ways and means to wriggle out of the same. This respondent would have no qualms whatsoever to make false statements before the Court.

24. The applications are now placed for further consideration/filing compliance reports on 03.07.2024. The NGPDA is granted the liberty to file any application if necessary. MCA No. 225/2024 filed by NGPDA is disposed of.

VALMIKI MENEZES, J.

M. S. SONAK, J.