



Andreza/Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
PUBLIC INTEREST LITIGATION WRIT PETITION NO. 14 OF 2024

Mr. Nubert X. Fernandes, aged 43 years, son of Mr. John Joseph Fernandes, residing at House No. 492, Khairat Waddo, Bardez, Camurlim, North Goa – 403 507. Occupation : Farmer, Mobile No. 9130284502, Aadhar Card No. [REDACTED], Pan No. ABLPF0121B, E-mail : nubertfernandes@gmail.com, Annual Income : Rs. 1,50,000/- ... Petitioner

V e r s u s

1. State of Goa, through its Chief Secretary, having office at Secretariat, Porvorim, Goa.
2. Senior Town Planner, Town & Country Planning Department, North Goa District Office, Mapusa, Bardez, Goa.
3. Village Panchayat of Camurlim, through its Secretary, Camurlim, Bardez, Goa.
4. Block Development Officer-II, Bardez, Mapusa, Goa.
5. Isprava Luxury Realty Two LLP, a Limited Liability Partnership, through Mr. Govardhan Damaji, House No. 125/6, near Agarwada, Pernem, Goa. ... Respondents.

AND

Isprava Vesta Private Limited, a Company incorporated under the Companies Act 2013 and having its registered office at First Floor, Impression House, 42A, G. D. Ambedkar Marg, Wadala (West), Mumbai-400 031 through its Authorized Person, Mrs. Nidhi Trehan, daughter of Sunil Trehan, 42 years, resident of Athena 105, Raheja Acropolis, Deonar, T. F. Deonar, SOTF Deonar, Mumbai, Maharashtra and temporary resident of Reis Magos, Goa. ... Intervenor

Mr. Yogesh Nadkarni, Advocate with Mr. Nilay K. Naik, Ms. Simran Khadilkar and Mr. S. Kamat, Advocates for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. Prashil Arolkar, Additional Government Advocate for the State-Respondent.

Mr. Abhijit Gosavi, Advocate with Ms. Krupa Naik and Mr. S. Kalangutkar, Advocates for the Respondent No.3.

Mr. Fredun De Vitre, Senior Advocate with Mr. Shivan Desai, Mr. Jehangir Jejeebhoy and Ms. Tahira Menezes, Advocates for the Respondent No. 5.

Mr. S. S. Kantak, Senior Advocate with Mr. Preetam Talaulikar, Ms. Saicha Dessai, Mr. S. Kher and Ms. Neha Kholkar, Advocates for the Intervenor.

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

**Reserved on: 8th JULY 2024
Pronounced on: 18th JULY 2024**

JUDGMENT (Per M. S. Karnik, J.)

1. By this public interest litigation, the petitioner a public-spirited person is praying for quashing and setting aside the Technical Clearance Order (TCO) dated 14.02.2023 granted by respondent No.2-Senior Town Planner to respondent no.5-Isprava Luxury Realty Two LLP. Consequently, the petitioner seeks the relief of quashing and setting aside the construction licence dated 13.03.2023 granted by respondent no.3-Village Panchayat of Camurlim to Isprava Luxury Realty.

2. The issues raised are :

- (i) That the Technical clearance dated 14.02.2023 is in violation of the Goa Land Development and Building Construction Regulations, 2010, ('Regulations' for short), inasmuch as it did not fulfill the requirement prescribed by Regulation No. 6A.4, which required that the property to be constructed upon should be accessible by 6 metres wide road. According to the petitioner, the subject property does not have such an access of 6 metres;
- (ii) The second issue which arises is that the development undertaken in the property is governed by Regulation 12 (Sub-division regulations) and that in terms of Regulation 12.6(c), the access required for the plot is 8 metres considering that the net effective area of the plot is 24,470 square metres. According to the petitioner, the Regulation 12.6(c) will prevail over Regulation 6A.4 when it comes to the requirement of access.
3. The facts in a nutshell are thus:

An application was made by the predecessors of Respondent no.5 for sub-division of land bearing survey no.172/1-N (Part) of Village Camurlim. Sometime in August 2022, an inspection was carried out wherein it was reported that property is accessible by 6.00 metres wide existing road, which has been proposed as 10.00 metres wide right of way as per the Regional Plan of Goa 2021, and towards southern side there exists 3.00 metres wide traditional pathway. The Technical Clearance Order was granted for sub-division of the land on 05.08.2022. On 17.10.2022, an application for proposed construction of residential accommodations (18 villas), well, staff quarters, compound wall in the property bearing survey no. 172/1-N (Plot B) was made. Sometime in December 2022, another inspection was carried out. During the inspection, it was observed that the plot/property is accessible by existing road which varies in width up to 4.00 metres to 6.00 metres from the intersection of main road to the stretch of 60 metres. It was also observed that the said road is proposed 10.00 metres right of way as per the Regional Plan for Goa 2021 (for short RP-2021), the land is having gentle slope and there are constructions within the vicinity of the plot. The Technical Clearance Order for carrying out the proposed constructions of residential accommodations, staff quarters, well, swimming pool and compound walls as per the approved plans in the property zoned as ‘Settlement Zone’ in RP-2021 was granted on 14.02.2023.

4. Complaints were received from Revolutionary Goan Party and on the basis of the letter dated 07.08.2023 from the Village Panchayat, an inspection was carried out by the Deputy Town Planner. During the inspection it was observed that the plot is accessible by 6 metres existing road which varies in width up to 4 metres to 6 metres from the intersection of main road to the stretch of 60 metres. It was also observed that there is a mango tree at the junction of the existing road thereby reducing the width to 4 metres. However, the compound wall to compound wall width was 6 metres as per site condition. Further onwards the road was 6 metres with tar width of 5 metres approximately. It was also observed that the road is proposed 10 metres right of way as per RP-2021.

5. According to the respondents, the property where respondent No.5 is carrying out construction of 18 villas is accessible by a 6 metres wide road. It is at the portion of 60 metres in length from intersection of the main road, the width of the said approach road varies between 4 to 6 metres. It is submitted that the carriage width of the approach road is more than 3.50 metres which is the minimum carriage width required for 6 metres wide right of way in terms of Regulation 12.1 (a) of the Regulations. Having regard to the provisions of Regulation 6A.4.(16) of the 2010 Regulations, the permission can be given if the proposed development is affected by any

bottlenecks such as an existing compound wall and old structures which do not exceed 75 metres in length at any given point of time. According to the respondents, the width of the approach road varies between 4 to 6 metres at a portion of 60 metres in length from the intersection of main road. The proposal for technical clearance was considered under the Regulations and accordingly the Technical Clearance Order dated 14.02.2023 was issued for such proposed development.

6. After the filing of this PIL when the petition was first heard for Admission and interim reliefs, this Court *prima facie* was of the opinion that it does not appear that there is a road of width of 6 metres at the site. As the construction was not sufficiently advanced and in view of the stop work order, this Court restrained the fifth respondent and Intervenor (developer) from proceeding with any further construction at the site until further orders.

7. By an order dated 12.06.2024, this Court directed the Inspector of Survey and Land Records (ISLR), Mapusa to conduct the site inspection and submit report indicating the length and breadth of the carriage width, gutters and shoulders of the road, more specifically for the stretch of 60 metres as it was reported that the road width varies between 4 to 6 metres.

8. It is pertinent to note that the PIL writ petition as filed mainly focused of the width of the road which varies between 4 to 6 metres on the 60 metres stretch. During the course of the hearing and after the site inspection report of the ISLR was placed on record which is relied upon by all the parties, the learned counsel for the petitioner pointed out that at some stretches beyond 60 metres stretch as well, the road width is in fact less than 6 metres.

9. It is the submission of the learned counsel for the petitioner that when the application was made for the proposed development, there was a misrepresentation by respondent No.5 as regards existence of minimum width of road of 6 metres at site. Inviting our attention to the letter dated 01.02.2023 of respondent No.5 addressed to the Town and Country Planning Department, it is submitted that Para 2 thereof states that the property is approachable with existing more than 6 metres village Panchayat tar road. It is then submitted that in the application dated 17.10.2022 for technical clearance, clause 8 of the Questionnaire states that the width of the access is 6 metres. It is then submitted that the site plan submitted by respondent No.5 which is approved by the TCP with the impugned technical clearance dated 14.02.2023 indicates that there exists a 6 metres wide road. It is therefore submitted that there is non-application of mind by the TCP while granting technical clearance. According to

learned counsel, the file noting in respect of the application dated 17.10.2022 till grant of technical clearance dated 14.02.2023 would show that the TCP has proceeded completely on the premise that the width of the existing road/access is 6 metres and the proposed road as per RPG - 2021 is 10 metres. The submission is that the TCP has not at all considered before grant of the technical clearance whether respondent No.5 would be entitled to the relaxation/deviation as stipulated in Regulation 6A.4(16) of the Regulations and whether in fact, the requirements of the said Regulations are met with at site. It is submitted that the TCP has failed to comply with the mandatory directions of this Court in its order dated 11.01.2010 in Writ Petition No.372 of 2009. According to the learned counsel for the petitioner, Para 5 of the said order stipulates inter alia that the site inspection memorandum should be drawn and shall be part of the record of the TCP. It is the submission that despite the order of this Court, the TCP has not produced any site inspection memorandum before the grant of the impugned technical clearance but what is placed on record are only file notings and not the site inspection report.

10. Learned counsel for the petitioner submitted that the report submitted by the ISLR pursuant to the order dated 12.06.2024 has not been challenged by any party and as such the road widths mentioned in the said report have to be accepted as widths factually existing at site. Learned counsel

urged that as per the inspection report of ISLR, out of 278.10 metres of the road leading from main road to the entry point of the property of respondent No.5, the road width of 6 metres is available only for 38.90 metres and that for the balance length of 239.20 metres the road width is less than 6 metres. It is submitted that even assuming without admitting that the approval can be granted under clause 6A.4(16) if affected by any bottlenecks such as an existing compound walls and old structures which do not exceed 75 metres in length at any given point, the said relaxation would be applicable only to a length of 69.90 metres from point 1 to point 5 of the chart. It is submitted that there is no road width of 6 metres from the length of 67.55 metres from point 6 to 9 of the chart. According to learned counsel, there are also no bottlenecks on the said stretch. It is also submitted that there is no road width of 6 metres from point 11 to 13 and there are no bottlenecks also on this stretch. It is therefore the submission that relaxation procedure under Regulation 6A.4(16) would not be applicable in the facts of this case.

11. It is then the submission of the learned counsel for the petitioner that under Regulation 6A.4(16), the permission is only at the time of approval of development plan, however at the time of completion certificate or occupancy certificate, the minimum width of road should be factually existing on site. It is submitted that on the basis of a proposed road of 10 metres shown in RPG-2021, in terms of Regulation 6A.4(16), the

approval of development plans can be granted to multi family dwelling units, if at the time of approval of development plan minimum 6 metres wide right of way is available on site. It is the submission of the learned counsel for the petitioner that the Regulation 6A.4(16) is the only relaxation provision at the time of approval of development plan based on proposed road widths, however, it has to be necessarily read that at the time of completion or occupancy, an actual minimum width of road of 6 metres should be factually existing on site. It is submitted that at the time of approval of development plans on the basis of proposed roads, the deductions and/or bottlenecks in computing the width of right of way as provided for in Regulation 6A.4(16) could be taken into consideration, however, it has necessarily to be read into the said Regulation that at the time of completion of the project and obtaining occupancy certificate, an actual minimum width of road of 6 metres should be available at site with the clearance of all such reductions or bottlenecks.

12. The learned counsel was at pains to submit that if it is not so construed, the entire purpose of Regulations in stipulating minimum widths of road for multi family dwelling units will be frustrated and defeated. Learned counsel submitted that permissions given only on the basis of proposed road widths shown in RPG-2021, is not only contrary to the Regulations but also contrary to the order dated 08.08.2014 of the TCP published in the Official Gazette

dated 04.09.2014, wherein directions are issued under Section 132 of the said Act to all the authorities not to grant any permissions for any property development unless there exists a road connecting the plot proposed for development as is required in terms of Building Construction Regulations. According to the learned counsel, it further states that unless the requisite road infrastructure connecting the plots on which development is proposed is physically available at site, no permission can be granted.

13. Let us first examine the contention of the learned counsel for the petitioner about the existence of or otherwise of 6 metres wide road. Arguments are advanced by all the parties on the basis of the ISLR report which is submitted pursuant to the order of this Court dated 12.06.2024. Perusal of the ISLR report does indicate that the road leading from the main road to entry point of the property of respondent No.5, the width of the road to a length of 69.90 metres from point 1 to point 5 of the chart is less than 6 metres but more than 4 metres. Clause 2(113) of Regulations provides that road or right of way means the right of way of the road or street, inclusive of the carriageway, shoulder, drain, footpaths, and shall be measured at right angles to the course of direction of such road or street. Clause 12.1 provides for regulations regarding roads. Clause (a) thereunder provides that all roads, right of ways shall have the carriage widths and

other widths specified in the Table – X given therein. In terms of the Table – X, for 6 metres right of way (road width), the minimum carriage width required is 3.50 metres with 1.10 metre of shoulder/footpath width on each side and 0.30 metre width of road side drain on one side. Clause 2(30) of the Regulations defines “*carriageway*” to mean the tarred/carpet portion of the road. Clause 6A.4.(16) of the Regulations which is relevant to the case in hand reads thus:-

6A.4. Regulations applicable to various zones. -

....

“(16) Permission for construction shall be granted to all projects based on proposed road widths as per the prevalent ODPs/RP. Further, at the time of approval of development plans, minimum 6 meters wide right of way should be available on the site. This shall be applicable only for multi-family dwelling units and not for single family dwelling units. While computing the width of the right of way available at the site the following structures shall not be considered as reducing the available access: illegal structures, religious structures, illegal encroachments, culverts, trees, public utility installations and the like. In case the proposed development is affected by any bottlenecks such as an existing compound wall and old structures which do not exceed 75 meters in length at any given point, permission may be granted.

(emphasis supplied)

14. There is no dispute that the Regional Plan provides for 10 metres proposed road. The Regulations provide that at the time of approval of the development plans, minimum 6 metres wide right of way should be available at the site. It

does provide that while computing the width of the right of way available at the site, the following structures shall not be considered as reducing the available access viz: illegal structures, religious structures, illegal encroachments, culverts, trees, public utility installations and the like. It is further provided that in case the proposed development is affected by any bottlenecks such as an existing compound wall and old structures which do not exceed 75 metres in length at any given point of time, permission may be granted. Admittedly, the stretch of 69.90 metres from point 1 to point 5 is affected by bottlenecks such as an existing compound wall and old structures. This stretch from the entry point of the access road is leading to the property of respondent No.5. In this view of the matter, as the proposed development is affected by bottlenecks such as an existing compound wall and old structures which do not exceed 75 metres in length at the given point, this stretch being less than 6 metres in width cannot be an impediment in grant of permission according to us.

15. The petition as filed was restricted to this stretch. However let us deal with the arguments of learned counsel for the petitioner that beyond this stretch of 69.90 metres till the property of Respondent No.5, the road width is less than 6 metres. Clause 6A.4. of the Regulations provides that the minimum width of access, the permissible coverage, F.A.R., and the maximum height shall be regulated by the standards

given in the Table –VIII. The Regulation for residential (ODP/Zoning Plan) for S-3/R-3 which is applicable to the present development, the minimum width of road provided is 6 metres. Beyond stretch of 69.90 metres, we find that the width of the carriageway varies between 7.40 metres to 4.40 metres.

16. The contention of learned counsel for the petitioner that clause 12 which deals with sub-division regulations will be applicable to the present development is disputed by the learned counsel for the respondents. The aspect of sub-division and its effect on the development is dealt with by us in the latter part of this judgment. Nonetheless, even if we proceed on the footing that clause 12 of the Regulations providing for sub-division is applicable, still then clause 12.1(a) of the Regulations in respect of roads provide that all roads right of ways shall have the carriage widths and other widths specified in the Table –X. The carriage width indicated in the Table –X is 3.50 metres with shoulder/footpath width in metres of 1.10 on each side and width of road side drain is 0.30 metre on one side.

17. We thus find that carriage width as per ISLR report throughout is 3.5 metres or more and at some point the same is more than 6 metres. Beyond the 69.90 metres stretch from point 1 to point 5 of the chart to which the relaxation in terms

of 6A.4.(16) is applicable, there is open space on either side of the road. The carriageway width appears to be more than 4.40 metres which goes up to 7.1 metres at some places. It is not in dispute that RPG-2021 has proposed 10 metres wide road. Beyond the stretch of 69.90 metres, where road width is between 4 to 6 metres, there is open space on either side. The carriageway width is consistently more than 4.40 metres. Drain is shown on either side.

18. According to us, the purpose of the Act and Regulations is not to discourage the development activity but regulate the land development and building construction activity. Regulations do provide for a minimum road width of 6 metres. Relaxation is permissible in terms of the Regulations. Hence it is not as if, because the road width is below 6 metres, the permission has to be denied. In the facts of each case the spirit of the Regulations has to be kept in mind while permitting development. Admittedly, there exists sufficient open space on either side of road beyond the stretch where relaxation is permissible in terms of the Regulations. It is necessary to bear in mind that no development activity is permissible on 10 metres wide RPG road. So far as Respondent No.5 is concerned, the development proposal was considered on the basis of 10 metres wide RPG road for which no development activity is permissible and in any case, respondent No.5 will have to maintain the setback areas. It is in such view of the matter that we are of the opinion, in the

facts of the present case, that merely because at one or two places out of the stretch of 239.20 metres the road width is less than 6 metres, will be no ground to declare the technical clearance order illegal. It is pertinent to note that even relaxation provided by 6A.4.(16) contemplates that in case the proposed development is affected by any bottlenecks such as an existing compound wall and old structures which do not exceed 75 metres in length at any given point, the permission may be granted.

19. Much emphasis has been placed by the learned counsel for the petitioner on the decision of this Court dated 04.08.2010 in Writ Petition No.228 of 2010. We agree with the proposition that the requirement of Regulation 6A.4 is that a clear access having the width of 6 metres must be shown to be in existence at the site for the purpose of development permission. It is however pertinent to note that in the present fact situation, having regard to the purport of Regulation 6A.4.(16), the ISLR report indicating that there are gutters on either side, the fact that there are open spaces on either side of the road coupled with 10 metres wide proposed RPG road persuades us to hold in favour of the Respondent No.5. We find that the technical clearance order accords with the spirit of the Regulations. It is not as if the development per se is impermissible if the road width is below 6 metres. This is more so when the Regulations have provided for relaxation in certain contingencies. Thus, we find

that the substantial portion of the road width is 6 metres and the carriageway width is consistently more than 3.5 metres.

20. Prima facie, we did find substance in the contention of the learned counsel for the petitioner that while obtaining the technical clearance order, there was misrepresentation on the part of Respondent No.5 in projecting that the road of 6 metres wide is available on site. Pursuant to the report of the ISLR which forms the basis of arguments of the learned counsel for the petitioner as well as Respondents read with Regulation 6A.4.(16), we are not able to persuade ourselves to interdict only because the application records the availability of 6 metres wide road at site. The TCP itself records that the permission granted shall be revoked, if any information, plans, calculations, documents and any other accompaniments of the application are found incorrect or wrong at any stage after the grant of the permission.

21. Having heard the learned counsel extensively and upon perusal of the ISLR report in the context of the Regulations, we do not find any reason to interfere with the permission granted. It is pertinent to note that difference between ISLR plan and Respondents' site plan as to the road width is mostly marginal.

22. At this stage we are not inclined to consider the contention of petitioner that the occupancy should not be granted unless there is actual existing 6 metres wide road at the site. The development is not at an advanced stage. Moreover, we find that the challenge in this petition mainly is to the development permission on the ground that there does not exist 6 metres wide road at site. There are hardly any grounds raised in the PIL writ petition in support of the proposition that the competition certificate or occupancy certificate should not be granted in the absence of there being 6 metres road actually at the site. These are matters which obviously will be considered by the TCP authorities when the stage arises for grant of completion certificate/occupancy certificate. This contention is kept open.

23. Next contention urged by the learned counsel for the petitioner is that in view of clause 12.6 of the Regulations stipulating the accessibility to the plot to be sub-divided provide that minimum width of road/right of way for an effective area of the plot of 7501.00 square metres to 20,000 square metres should be 8 metres. Regulation 12.5 stipulates general requirements regarding development of plots, open spaces and roads. Clause 12.6 stipulates the Regulation regarding minimum size of plot, frontage, means of access and right of way of roads. As seen from the approved plan and the impugned technical clearance order dated 14.02.2023, the

plot area is 15,455 square metres and the net effective plot area is 11,709 square metres.

24. It is the submission of the learned counsel for the petitioner that Clauses 6A.4.(16) and 12.6 of the Regulations have to be harmoniously read. According to him, the settled principles of interpretation of the Statute is that if two rules can be read harmoniously and the object sought to be achieved can be achieved without violation of any rule then it should be so read. It is the submission of the learned counsel that the principle of harmonious construction needs to be applied in the matter before hand while interpreting Regulations 6A.4 and 12.6 of the Regulations. Thus, in view of the Regulations the minimum width of road for approval of sub-division of an effective plot area of 11,709 square metres in Settlement S3 zone would be 8 metres, while the minimum width of road for approval of development/construction activities in the same effective plot area of 11,709 square metres in Settlement S3 zone would be 6 metres. It is submitted that it would lead to an absurd interpretation of the Regulations if interpreted to mean that if a person applies for large scale development/construction activities in an effective plot area of 11,709 square metres in Settlement S3 zone then the requirement of minimum width of road is 6 metres, however, if the same person applies for sub-division of the same plot then the requirement of minimum width of road is 8 metres. The contention of the learned counsel for the

petitioner is that by reading the two Regulations harmoniously for grant of development permission/technical clearance for an effective plot area between 7,500 to 20,000 square metres in Settlement S3 zone, the minimum width of road of 8 metres as provided for in Regulation 12.6 has to be applicable. It is therefore submitted that grant of impugned technical clearance dated 14.02.2023 on the basis of requirement of minimum width of road of 6 metres is contrary to the Regulations. It is therefore his contention that the minimum width of road ought to be 8 metres. Reliance is placed on the observations of the Supreme Court in Paras 156 to 169 in the case of ***Supertech Limited Vs Emerald Court Owner Resident Welfare Association***¹ in support of his submissions.

25. It is pertinent to note that the aforesaid contention about the requirement of 8 metres roads is not raised in the petition. That the requirement should be 8 metres wide road in view of the sub-division is the submission canvassed in the additional affidavit dated 28.06.2024. The petitioner submitted that though he is not challenging the technical clearance order dated 05.08.2022 for development of the said property, but has alleged that while granting the said technical clearance order dated 05.08.2022 the width of road as contemplated under Regulation 12 for sub-division will

¹ (2021) 10 SCC 1

have to be made available and consequently the technical clearance order dated 05.08.2022 is illegal. This is strongly objected to by the learned counsel for the respondents. It is submitted that firstly the technical clearance order dated 05.08.2022 has attained finality and the petitioner cannot collaterally raise the ground about legality of the technical clearance order dated 05.08.2022. It is further submitted that technical clearance order having attained finality cannot be questioned in the present proceedings. It is submitted that unless and until the order is challenged and/or is set aside by the competent authority, the same is valid and cannot be considered as bad in law, void or illegal.

26. We find that this technical clearance order dated 05.08.2022 is for carrying out the provisional cum final subdivision of land of plot Nos. A-1, A-2, A-3, B, B (Part) & C as per the enclosed plans in Survey No.172/1-N (Part) at Camurlim Village, Bardez Goa. We find substance in the contention of the learned counsel for the respondents that unless and until the order dated 05.08.2022 is challenged and/or is set aside by the competent forum, the same will have to be regarded as valid. We find force in the submission of the learned Advocate General as he also draws support from the decision of the Supreme Court in ***State of Punjab and others Vs Gurdev Singh*** reported in (1991) 4 SCC 1 (Paras 8, 9 and 10); ***M. Meenakshi and others Vs Metadin Agarwal (Dead) and others*** reported in

(2006) 7 SCC 470 (Paras 17 and 18) and ***Inderjit Singh Grewal Vs State of Punjab and another*** reported in (2011) 12 SCC 588 (Paras 18, 19, 20 and 21).

27. We nonetheless proceed to examine this contention of the learned counsel for the petitioner. From the record, we find that the TCP department had issued a final NOC dated 07.02.2008 for sub-division of land bearing Survey No.172/1 of Village Camurlim to Respondent No.5's predecessor in title. It is in terms of the said approved plan of the sub-division, the approach road to the sub-divided plots is shown as 6 metres wide access road. In this context, it is pertinent to note Regulation 6A.4.(17) which provides that for any development, including sub-division of plot/plots approved prior to coming into force of these Regulations, shall not be subject to access specified in these Regulations.

The Goa Land Development and Building Construction Regulations, 2010 came into force on 04.11.2010. It is thus the submission of the learned counsel for the respondents that the final NOC dated 07.02.2008 for sub-division of land will govern the subdivision and the access as mentioned in 2010 Building Regulations will not be applicable as far as sub-division of land bearing Survey No.172/1-N(Part) is concerned. We find that RPG-2021 in respect of Camurlim Village of Bardez Taluka was approved on 30.09.2011. The

Regional Plan for Goa 2021 provides that “*All past commitments/developments like sub-division approvals by competent authorities, conversion sanad under LRC, building approvals/NOC’s granted shall be honoured for specific uses, if not reflected in this plan*”. It is thus a matter of record that the original plot of land bearing Survey No.172/1 of Village Camurlim was already sub-divided into various plots by the predecessor in title of Respondent No.5 on 07.02.2008 by showing the approach road as 6 metres wide road. In the light of the relevant provisions, we have no hesitation in coming to the conclusion that as the original plot of land bearing Survey No.172/1 of Village Camurlim was already sub-divided into various plots by its predecessor in title on 07.02.2008 by showing the approach road as 6 metres wide road, the same is required to be treated as a past commitment.

28. According to us, there is nothing wrong in the subsequent application made in the year 2022 for sub-division of the same plots (earlier sub-divided) by the present owner and if the same is processed and considered on the basis of the same 6 metres wide access as approved earlier as a past commitment. Furthermore, in terms of the technical clearance order dated 05.08.2022, respondent No.5 has already left 10 metres wide access in its portion of the property. It is the stand of the respondents that the development including the sub-division is permitted based on

the proposed road in Regional Plan/ODP because as the development takes place for the proposed road in Regional Plans and ODPs are fructified, upon development of such areas, the actual physical roads as required under the RP/ODP comes into existence. There is substance in the submission of the learned Advocate General that planning and development is a continuous process and it happens simultaneously and that development takes place because of the planning and the planning is implemented by virtue of permitting such developments based on the proposals in Regional Plan and ODP.

29. Our conclusions are also based on reading of the relevant provisions of the Regulations. Clause 2(48) defines "*Development*" to mean carrying out of building, engineering, mining or other operations in, on, over or under the land or making any change in any building or land or in the use of any building or land and includes sub-division of land. Clause 2(133) defines "*sub-division of land*" to mean a '*development*' by which a plot is fragmented into smaller parts. The "*Plot*" as defined by clause 2(100) means a continuous portion of land held in one ownership. The definition reads thus:-

"*Note:- Provided that for the purpose of Development Control following shall be considered as plot:-*

(i) One Survey No. and one Sub-division, or

- (ii) One or more Chalta Nos. under one ownership, or
- (iii) One parcel of an approved sub-division plan, or
- (iv) One parcel as per the partition ordered by a court, or
- (v) One parcel resulting due to sub-division by rights of inheritance, or
- (vi) One parcel resulting due to operation of Law by any Govt. scheme or
- (vii) One parcel resulting due to the application of the Mundkar Act, or
- (viii) One parcel resulting by amalgamation of more than one plots described above.

Note: Structures or portions thereof having separate Chalta Nos. but falling within one plot with common ownership may not require amalgamation.....”

30. Regulation 6 provides for development by construction whereas Regulation 12 deals with development by sub-division. Thus, the sub-division of land means the development by which the plot is fragmented into smaller plots. As indicated earlier, the TCP had issued a final NOC dated 07.02.2008 for sub-division of land surveyed under No.172/1 of village Camurlim to the predecessor in title of

respondent No.5 prior to coming into force of the Regulations of 2010. At this stage, it is pertinent to mention that initially the property was surveyed under No.172/1 admeasuring 1,23,385 square metres. An area of 65,000 square metres was purchased from out of the said property by sale deed dated 11.10.2007 by one Muskan Property Pvt. Ltd. This purchased property was surveyed under No.172/1-N. Muskan then sub-divided this property which sub-division was approved by the Town and Country Planning Department on 07.02.2008. From this sub-division plan, the larger property of 65,000 square metres is sub-divided into 14 plots. The largest plot is the plot No.14 admeasuring 5180 square metres. The property which is the subject matter of this petition is 15455 square metres. The property of 15455 square metres was purchased by a sale deed dated 09.08.2022. The plan of the purchased property shows that what was purchased is amalgamated portion of the earlier sub-division. As indicated earlier, the sub-division was already approved on 07.02.2008. We have taken into consideration Note 17 to Regulation 6A.4 which provides that any development including sub-division of plot/plots approved prior to coming into force of these Regulations, shall not be subject to access specified in these Regulations. We hasten to add that as long as there is no change of zoning or additional coverage and FAR permitted to the sub-divided plots within the original sub-division lay out, we would hold that Regulation 6A.4 holding that plots approved prior to coming in force of these Regulations would

be saved from the application of the new Regulations. However, in the event that sub-divided 14 plots or original sub-divided plots under approval dated 07.02.2008 received approval for a higher FAR or coverage being permitted for use, in that event Note 17 to Regulation 6A.4 with regard to providing a minimum road width of 8 metres would apply. Taking an overall view of the matter, we do not have any hesitation in rejecting the contention of the learned counsel for the petitioner that without meeting the requirement of access of 8 metres wide road, no permission can be granted.

31. Consequently, we do not find any merit in the PIL writ petition. The petition is dismissed. No order as to costs.

VALMIKI MENEZES, J.

M. S. KARNIK, J.