

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.727 OF 2023

ANA GRACIAS

... Petitioner

Versus

THE STATE OF GOA THR
CHIEF SECRETARY AND 6 ORS.

... Respondents

None for the Petitioner.

Mr D. Pangam, Advocate General with Ms Akshata Bhat, Additional Government Advocate *for the Respondent-State*.

Mr A.D. Bhobe with Ms Annelise Fernandes, Advocate *for Respondent No.2*.

Mr Joaquim Godinho, Advocate *for Respondent Nos.3, 4 and 5*.

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

DATED: 31st January 2024

P.C.:

1. None for the Petitioner. Learned Advocate General and Ms Akshata Bhat, Additional Government Advocate for Respondent Nos.1 and 8. Mr Bhobe appears with Ms A. Fernandes for Respondent No.2 – Panchayat, and Mr J. Godinho appears for Respondent Nos.3, 4 and 5.

2. Mr Godinho, on instructions, states that Respondent Nos.6 and 7 have nothing to do with the construction, which is the subject matter of this

petition, and they are probably improperly impleaded as Respondents in this petition.

3. The Petitioner complains that the structure put up by Respondent Nos.3, 4 and 5 in property bearing Survey No.58/1 of Merces, Goa, is an illegal and unauthorised structure. The Petitioner complains of inaction on the part of the Respondents, who are duty-bound to act against illegal constructions, including in particular, the Panchayat of Merces and the Town and Country Planning Department, Government of Goa.

4. During the pendency of this petition, the Panchayat has issued a demolition order dated 06.12.2023 requiring Respondent Nos.3, 4 and 5 to demolish the construction comprising of the ground floor, first floor and the shed put up on the first floor.

5. Again, during the pendency of this petition, Respondent Nos.3, 4 and 5 removed the shed above the first floor and also produced photographs evidencing such removal. Today, Mr Godinho, representing Respondent Nos.3, 4 and 5, who are present in the Court, filed an undertaking that these Respondents would demolish/remove the first-floor structure within four months from today and file a compliance report together with photographs of the demolished structure.

6. The undertaking on behalf of Respondent Nos.3, 4 and 5 duly sworn is taken on record and marked as 'X' for identification. The same reads as follows: -

**“UNDERTAKING ON BEHALF OF THE
RESPONDENT NO. 3, 4 & 5**

MAY IT PLEASE YOUR LORDSHIPS:

- 1. We, Mr. Filipe Fernandes, s/o. late Joao Fernandes @ Antonio Joao Fernandes, 64 years of age, the Respondent No.3, Mrs. Maria Bebiana Lourenco, w/o. Mr. Filipe Fernandes, 58 years of age, the Respondent No.4, both residents of H. No. 384, Baman Bhatt, Merces, Tiswadi, Goa and Mrs. Lucia Maria Serrao, w/o. late Francisco Fernandes, 64 years of age, resident of H. No. 384/3, Baman Bhatt, Merces, Tiswadi, Goa, the Respondent No. 5, do hereby undertake to the Hon’ble High Court that, the first-floor structure shall be demolished within a period of four months from the date of the order of this Hon’ble Court and the compliance report together with photographs of the demolished structure will be filed before this Hon’ble Court, within the said period of four months i.e., by 31.05.2024.*
- 2. We say that, what is stated above is true and correct to our own knowledge.*

**SOLEMNLY DECLARED, AT PANAJI]
ON THIS 30TH DAY OF JANUARY, 2024]**

*Sd/-
Identified by: Adv. Manoj Jalmi*

*Sd/-
RESPONDENT NO. 3
(MR. FILIPE FERNANDES)*

*Sd/-
RESPONDENT NO. 4
(MRS. MARIA BEBIANA LOURENCO)*

*Sd/-
RESPONDENT NO.5
(MRS. LUCIA MARIA SERRAO)”*

7. We accept the above undertaking and direct the Respondent Nos.3, 4 and 5 to comply with the same. Copies of the compliance report along with the photographs must be furnished to the Panchayat and the learned Counsel for the Petitioner. The Panchayat, within two weeks from the receipt of the compliance report, must verify the position and file its report regarding the status of compliances in this Court.

8. Mr Godinho states that Respondent Nos.3, 4 and 5 have instituted an appeal before the Director of Panchayat challenging the demolition notices/orders dated 06.12.2023 made by the Panchayat. On instructions, he states that this appeal will now be restricted only to the ground floor structure and no issue would be raised regarding the first floor which is now undertaken to be demolished, and the shed above the first floor, which is already demolished. This statement is accepted. The Director of Panchayats must take note of this and after that, dispose of the appeal against the order dated 06.12.2023 in accord with law and on its own merits.

9. Mr Godinho, based on instructions from Respondent Nos.3, 4 and 5, had already given an undertaking that the first floor, which is now to be demolished, would not be occupied or used for any purpose. Mr Godinho points out that an undertaking to this effect was also given in para 13 of the affidavit dated 19.12.2023 filed in this petition. This undertaking shall continue until the first-floor structure is demolished within four months from today.

10. The compliance report should be filed by 14.06.2024 with an advance copy to the Panchayat and the learned Counsel for the Petitioner.

The Panchayat must verify compliance within two weeks from the receipt of this report and file its own compliance report/status report by 24.06.2024.

11. The petition is disposed of, but the compliance report should be placed before the Court for directions.

12. The petition is disposed of in the above terms without any order for costs. All concerned to act on an authenticated copy of this order.

VALMIKI SA MENEZES, J.

M.S. SONAK, J.