

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.925 OF 2023

SANYOG GANESH
NARVEKAR

... PETITIONER

Versus

STATE OF GOA, THR. ITS
CHIEF SECRETARY AND 5
ORS.

... RESPONDENTS

Mr Sudesh Usgaonkar with Ms Marie Rosette Pereira, Advocates
for the Petitioner.

Ms A. Bhat, Additional Government Advocate for Respondent
Nos.1 to 4.

Mr V. Fernandes, Advocate for Respondent No.5.

Mr D. Lawande with Mr Chirag Angle, Advocates for Respondent
No.6.

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

DATE: 27th FEBRUARY 2024

P.C. :

1. Heard Mr Sudesh Usgaonkar, who appears with Ms R. Pereira for the petitioner, Ms A. Bhat, learned Additional Government Advocate for respondent nos.1 to 4, Mr V. Fernandes for respondent no.5 and Mr D. Lawande who appears with Mr C. Angle for respondent no.6.

2. The petitioner has instituted this petition seeking action against a construction/building put up by the 6th respondent in the property surveyed under no.21/11 of Canca, Bardez, Goa.
3. After notice was issued in this petition, the 6th respondent has appeared through Mr Lawande and filed an affidavit dated 27.02.2024. The contents of the affidavit dated 27.02.2024 are transcribed below for the convenience of reference :

**“AFFIDAVIT ON BEHALF OF THE
RESPONDENT NO.6**

I, Mr. Silvester Vinoco Pinto E Braganza, 74 years of age, son of Minguel Arcanjo Tome Pinto E Braganza, Resident of House No.321, Pinto Waddo, Canca, Bardez, Goa the Respondent No.6 hereinabove, do hereby on solemn oath and affirmation state and submit as under: -

- 1. I am filing the present affidavit in terms of the leave granted by this Hon'ble Court vide the Order dated 21/02/2024 passed in the present matter.*
- 2. I say that the present petition has been filed by the Petitioner seeking directions to the Respondent Nos.2, 3 and 5 to take the action of demolition of the alleged illegal building/structure constructed by the Respondent No.6. I say that the primary allegation of the Petitioner in the present petition is that I have constructed the alleged illegal structure in violation of the approved plan of the building. I say that the portion which has been said to be illegally constructed by me is 103.6 which is said to be over and above the sanctioned area (Proposed Cover area) as shown in approved plan by the Department of Town and Country Planning admeasuring an area of 27.27 square meters.*

3. I say that by the instant affidavit, I hereby voluntarily undertake to demolish the portion of the structure which is constructed over and above the sanctioned area (Proposed Cover area) of 27.27 square meters as has been shown in the approved plan issued by the Department of Town and Country Planning, Government of Goa. I say that by the instant affidavit, I hereby undertake to demolish the structure to the extent the same is in excess of the sanctioned area (Proposed Cover area) of 27.27 square meters permitted in the approved plan and to further make the same compliant with the plan approved by the Town and Country Planning, Government of Goa vide the Approval bearing No. TPB / 3232/Canca/ 2017 /3197.

Annexed hereto and marked as **Annexure 'A'** is the copy of the Approved Plan of the structure of the Respondent No.6.

4. I hereby undertake to get the said alleged illegal structure in conformity with the Approved Plan issued by the Town and Country Planning, Goa by demolishing the excess portion or in the alternative I undertake to demolish the entire structure as may be advised by the structural engineer at the said point in time. I say that such demolition as afore stated would be carried out by me within a period of 6 weeks of the filing of the present affidavit and necessary compliance report would be filed before this Hon'ble Court indicating of compliance with the terms of the present affidavit.

5. I say that if I intend to carry out any fresh construction in the property bearing Survey No.21 sub-division 11 of village Canca, Bardez, Goa, I hereby undertake to do so only after taking all permissions as required from the statutory authorities under any law for the time being in force.

6. I say that the second allegation of the Petitioner in the present petition is that the nullah which is located along the Northern boundary of the plot i.e. property bearing Survey

No.21 sub-division 11 of Village Canca, Bardez, Goa has been filled up with construction material, mud and debris by me while undertaking the construction of the alleged illegal structure. I say that the construction material / debris referred to in the present petition has already been cleared from the said nullah and I have already started with the work of clearing the mud which has filled up in the said nullah. I say that the said nullah would be cleared by me of any sorts of filling within a period of 15 days of the filing of the present affidavit and necessary compliance report would be filed before this Hon'ble Court indicating of compliance with the terms of the present affidavit. I hereby undertake to keep the said nullah clear of any sorts of filling at all points of time.

7. I state that the contents of paras 1 to 6 of the present affidavit are true and correct to my knowledge and belief.

Solemnly affirmed at Porvorim,
On this 27th day of February 2024

Deponent"

4. Thus, it is apparent that respondent no.6 has undertaken to demolish the offending portion beyond the sanctioned area of 27.27 sq. mtrs. or in the alternate if this is not possible to demolish the entire structure within six weeks from today. The 6th respondent has stated that he has already started the work of clearing the nullah and the same would be fully cleared within 15 days from today. Even the compliance report would be filed.

5. Mr Lawande, on instructions from the 6th respondent, reiterated that the 6th respondent would comply with the undertakings in the affidavit dated 27.02.2024.

6. The statements made by the 6th respondent in the affidavit dated 27.02.2024 are accepted as undertakings to this Court. The 6th respondent must comply with such undertakings and file a compliance report by 19.04.2024 with a copy to the learned Counsel for the petitioner.

7. The petition is disposed of in the above terms without any order for costs.

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

VALMIKI SA MENEZES, J.

M. S. SONAK, J.

NITI K
HALDANKAR

Digitally signed by
NITI K HALDANKAR
Date: 2024.02.28
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