Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO. 38 OF 2024
IN
PIL WRIT PETITION NO. 30 OF 2023

THE GOA FOUNDATION THR. ITS SECRETARY DR. CLAUDE ALVARES AND ANR. … Petitioners

Versus

TOWN AND COUNTRY PLANNING DEPARTMENT THR. THE CHIEF TOWN PLANNER AND 6 ORS. …Respondents

Ms Norma Alvares with Mr Om D'Costa, Advocates for the Petitioners.
Mr Shyam Mehta, Senior Advocate with Ms Prachi Dhanani, Ms Rohini Jaiswal, Mr J. Karn i/b Veritas Legal, for Respondent Nos. 1 to 3.
Mr H. D. Naik, Advocate for Respondent Nos. 4 and 5.
Ms N. Nadkarni, Advocate for Respondent No.6.
Ms S. Parulekar, Advocate for Respondent No.7.

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

Reserved on : **30th APRIL 2024**
Pronounced on : **2nd MAY 2024**

O R D E R (Per M. S. Sonak, J)

1. Heard Ms Norma Alvares with Mr Om D'Costa, learned counsel for the Petitioners, Mr Shyam Mehta, learned Senior Advocate with Ms Prachi Dhanani, Ms Rohini Jaiswal and Mr J. Karn instructed

by Veritas Legal for Respondent Nos. 1 to 3, Mr H. D. Naik, learned counsel for Respondent Nos. 4 and 5, Ms N. Nadkarni, learned counsel for Respondent No.6 and Ms S. Parulekar, learned counsel for Respondent No.7.

2. This is a Civil Application in PILWP No.30 of 2023. The rule was issued in PILWP No.30 of 2023, and interim relief was also granted by making a detailed order. After the interim relief was granted, the Goa Town and Country Planning (Amendment) Ordinance -2024 was promulgated on 29.02.2024 and published in the Official Gazette on 02.03.2024. This was deemed to have come into force on 16.12.2022.

3. The Petitioners, therefore, amended the petition and challenged the impugned Ordinance. Already in the main petition, the Petitioners had challenged the ODPs for Calangute-Candolim Planning Area – 2025 and Arpora-Nagoa-Parra Planning Area -2030 dated 13.12.2022 published in the Official Gazette dated 15.12.2022 (December ODPs).

4. By the Civil Application, the Petitioners seek a stay on the operation of the impugned Ordinance or, in any case, a stay on the December ODPs as interim relief.

5. Mr Rajesh Naik, the Chief Town Planner (Planning), filed an affidavit on 18.04.2024 opposing the grant of the above relief in this Civil Application or in the main petition. The Secretary of the

Petitioners also filed an affidavit in rejoinder on 29.04.2024 urging a grant of interim relief.

6. At the outset, Ms Norma Alvares, learned counsel for the Petitioners, submitted that by now, based upon the Circular dated 22.12.2022 issued by the Chief Town Planner (CTP) and the impugned Ordinance, about 141 technical clearances and 745 zoning certificates have been issued by Respondent Nos. 1, 2 and 3. She submitted that this Civil Application or even the main petition itself could be heard in June (after Vacation). But till then, the Respondents should be restrained from issuing further technical clearances or zoning certificates. She submitted that if, based on technical clearances or zoning certificates, any construction or development is permitted to come up, the same would not only change the status quo but might also introduce complications by creating some third-party rights. She, therefore, urged that the status quo be ordered up to June 2024, when the main petition itself could be taken up for final hearing or, in any case, the application for interim relief could be taken up for disposal.

7. Mr Mehta learned Senior Advocate for Respondent Nos. 1, 2 and 3; however, he submitted that he had no instructions to make any statement about the issue of further technical clearances and zoning certificates or regarding the change of status quo based upon technical clearances and zoning certificates already issued. He submitted that such matters cannot wait even up to June 2024 because, according to him,

no case whatsoever was made out by the Petitioners for granting any interim relief qua the impugned Ordinance or the December ODPs.

8. Accordingly, the learned counsel were heard on the issue of interim relief on 30.04.2024 and after arguments concluded almost at the end of the day, the matter was reserved for orders on the application for interim relief.

9. As noted earlier, the interim relief was already granted in this petition by a detailed order dated 14.02.2024. The impugned Circular dated 22.12.2022, by which the December ODPs were sought to be applied to Calangute-Candolim and Arpora-Nagoa-Parra villages, even though these five villages had been withdrawn from the jurisdiction of North Goa Planning and Development Authority (NGPDA) was stayed. As a result of this interim relief, the construction and development activities in these five villages had to be governed by Regional Plan – 2021 (RPG-2021). To nullify the effect of this interim order dated 14.02.2024, the impugned Ordinance was promulgated on 29.02.2024 by seeking to apply December ODPs once again to the five villages of Calangute-Candolim and Arpora-Nagoa-Parra. This civil application seeks a stay on the operation of the impugned Ordinance or, in the alternate on the December ODPs on various grounds referred to in the petition and the application seeking interim relief.

10. The record shows, and even otherwise, it was not disputed that the villages of Calangute-Candolim were declared planning areas in

2015, and the villages of Arpora, Nagoa, and Parra were declared planning areas in 2017 and brought under the jurisdiction of the North Goa Planning and Development Authority (NGPDA). On 27.04.2022, the ODPs for these five villages were suspended because large-scale illegalities were suspected in their preparation and finalisation. A review committee comprising very high-level officials was constituted to go into the issue of illegalities. All this is evident from the notification dated 27.04.2022 (Annexure –5 on pages 43 and 44 of the paper book of the main petition).

11. The review committee sought information and details from planning officials, and the same was furnished, *inter alia*, by R. K. Pandita, Member Secretary of NGPDA, vide his communication dated 13.06.2022 to the Chief Town Planner. This communication, on pages 65 to 107 of the paper book, makes a very depressing reading. It gives a glimpse into the preparation of ODPs for these five villages and the extent of illegalities involved in their preparation. Among other details, the above communication dated 13.06.2022 amounts to a severe indictment by the author of this communication on the role allegedly played by Mr Michael Lobo and Mr Francisco Silveira, Respondent Nos.6 and 7, in this petition. Mr Lobo was and continues to be the local MLA at the relevant time. He was also the Chairperson of the NGPDA when such an ODP was prepared.

12. The extract of the communication dated 13.06.2022 is transcribed below for the convenience of reference.

"*NORTH GOA PLANNING AND DEVELOPMENT AUTHORITY*
Archdiocese Bldg., 1st floor, Mala Link Road, PANAJI GOA.

Ref. No. NGPDA/CCARP/ODP/566/2022 Dated: - 13 JUN 2022

To,
The Chief Town Planner (Planning),
Town & Country Planning Department,
Dempo Towers, 2nd floor,
Patto Plaza, Panaji Goa.

Sub: 1) Information with respect to the change of zone from RPG 2021 to Draft ODP 2025 of Calangute-Candolim & from Draft ODP 2025 to Final ODP of Calangute Candolim area and
2) Information with regards to change of zone from RPG 2021 to draft ODP 2030 & from draft ODP 2030 to Final ODP of Arpora-Nagoa-Parra Planning Area.
3) Information of Change of zone from RPG 2021 to Final ODP of Calangute-Candolim Planning Area 2025 & Arpora-Nagoa-Parra ODP 2030 of Tenanted lands (as per 2008 record), Agricultural lands, No Development Slope & Mangroves.
4) Information of Change of zone done by Mr Michael Lobo to his own properties or with Joint Venture being the Chairman of Authority as well as Member of Authority.

Sir,

As per the directions of the Government, the above is enclosed at the respective serial numbers marked with the separator by giving the above subjective title name for reference.

Changes done in ODP of Calangute Candolim, Arpora-Nagoa-Parra in Sq. Mts.

Village	*CHANGES DONE FROM RPG 2021 TO DRAFT ODP AREA IN M2*	*CHANGES DONE FROM DRAFT ODP TO FINAL ODP AREA IN M2*	*TOTAL AREA IN M2*	*REMARKS*

Calangute-ODP 2025	*3,43,601.00*	*3,35,395.00*	*6,78,996.00*	*ODP prepared under the Chairmanship of Mr Michael Lobo*
Candolim ODP 2025	*2,85,292.00*	*2,77,189.00*	*5,62,481.00*	
Arpora ODP-2030	*93,170.00*	*1,63,639.00*	*2,56,809.00*	*ODP Prepared under the Chairmanship of Mr Francisco Silveira and Mr Michael Lobo as Member of the Authority and others.*
Nagoa ODP-2030	*21,086.00*	*60,817.00*	*81,903.00*	
Parra ODP-2030	*61,075*	*52,851.00*	*1,13,926.00*	
Total…	*8,04,224.00*	*8,89,891.00*	*16,94,115.00*	

It is to state here that Shri. Michael Lobo was Chairman of the Authority from the year 2012 to July 2019, The change of zone of Calangute - Candolim Planning Area of above subject at Sr.no. 1 are done by himself by dictating the consultant Mr. Ashok D'costa of Turbo Sketch that which survey numbers are to be changed to different zones.

The Calangute - Candolim draft & final ODP is prepared under his Chairmanship therefore he decided which areas to be changed & which area to be dropped from regional plan 2021. The officials who signed the plan besides Shri Michael Lobo as Chairman were done under his instructions, directions though oral objections were raised number of occasion saying that this is not the way of planning, like reduction of MDR road and other roads, tenanted lands, No Development Slopes, mangrove area with thick habitation, the Chairman was ensuring with the consultant to change the zone which he wanted, though not put in writing as per his oral instructions. The answer from Mr. Michael Lobo was that I am Chairman & the Local MLA, I know what is required in said area, I have every right to change the zone of any area which he wants and you (officials) have to sign the plan the way he wants.

As regards to subject at Sr.no. 2 above Shri Michael Lobo was the Chairman when the draft ODP of Arpora — Nagoa-Parra was prepared. The Plan made by himself dictating the consultant what area to be done and what area to be deleted as per his convenient time. The said plan was sent to Chief Town Planner in the month of February 2019. In the mean time new Chairman Mr Francisco Silveira was appointed and Mr. Michael Lobo became the Member of the Authority being MLA of Calangute Constituency.

Mr. Francisco Silveira, Chairman, called back the Draft ODP of Arpora - Nagoa - Parra Planning Area prepared by Mr. Michael Lobo. The said draft was revised by Mr. Francisco Silveira and his team, specifically by Mr.

Vishwas Gharse Member of the Authority and Chairman of Sub-committee.

Mr. Michael Lobo had keen interest in the said plan and did the change of zones as per his consideration. It is stated that official concern who has signed the plan raised the objection a number of times however not taken note of those objections with respect to change of zones and officials were told to sign the plan. The said directions continued in the preparation of the final ODP wherein Chairman Francis Silveira, Member of Authority Mr Michael Lobo and Member of the Authority and Chairman of Sub-committee Mr Vishwas Gharse have done the changes with their wish and officials were directed to sign the plan.

It is to state here that though Mr. Michael Lobo's signature is not there on the plan but his perpetual influence was there on the plan with Mr. Vishwas Gharse who was involved along with Mr. Michael Lobo, the details of survey numbers which are changed to different zones in Calangute - Candolim ODP 2025 and Arpora - Nagoa - Parra ODP 2030 is placed at C/1 to C/42.

As per above subject at Sr.No.3, the details with respect to tenanted land, Agricultural land, No Development Slope, Mangroves, changed from RPG 2021 to final ODP of Calangute-Candolim 2025 and Arpora-Nagoa-Parra ODP 2030 are as follows:-

Change of zone of tenanted land done in RPG 2021

Calangute	*67,720.00 m2*
Candolim	*26080.00 m2*
Total	*93,800.00 m2*

Change of zone done of tenanted land in the ODP

Calangute	*20,743.00 m2*
Candolim	*23,735.00 m2*
Arpora	*70,593.00 m2*
Nagoa	*35,655.00m2*
Parra	*8,751.00 m2*
Total	*1,59,477.00m2*

Change of zone done of No Development Slope in ODP

A.	*Calangute*	*17580.00m2*
	Candolim	*37420.00m2*
	Total	*55000.00m2*

B.	*Arpora*	*35710.00m2*
	Nagoa	*Nil*
	Parra	*4900.00m2*
	Total	*40610.00m2*

Total A+B= 95610.00m2

Change of zone done of mangroves area in ODP

Calangute	*290.00m2*
Candolim	*8000.00m2*
Total	*8290.00m2*

Change of Agricultural properties (excluding tenanted) to Settlement from RPG 2021 to ODP

Calangute	*15,790.00m2*
Candolim	*8,480.00m2*
Arpora	*26,740.00m2*
Nagoa	*19,900.00m2*
Parra	*25,672.00m2*
Total	*96,582.00m2*

The Survey Number wise details of the above is placed at C/43 to C/60.

As regards to subject at Sr.no. 4, the files on record of Mr. Michael Lobo wherein he has sought Development Permission from this Authority and change of zone is done by himself to his properties as being the owner along with his family as shown below as records available in the office and the sale deed in joint venture. Below is the cumulative figure of change of zone done to various zones i.e. S-3 , S-1, S-2, C-3 and C-2.

Candolim/Marra	*5000.00M2*
Calangute	*7352.62M2*
Parra	*13662.00M2*
Nagoa	*1800.00M2*
Total	*27814.62M2*

The officials who have signed the plans of Calangute - Candolim ODP 2025 are Mr. Bhalchandra Naik Planning Draughtsman Grade I, Mr. Prakash Kurtarkar Planning Assistant (retired), Mr. Vikram Tengse Assistant Engineer and Mr. R.K.Pandita Member Secretary.

The officials who have signed the plans of Arpora - Nagoa - Parra ODP 2030 are Mr. Bhalchandra Naik Planning Assistant, Mr. Vikram Tengse Assistant Engineer and Mr. R.K Pandita Member Secretary.

The Officials who are presently in the office have signed below.

Yours Faithfully,

Sd/-	*Sd/-*	*Sd/-*
Bhalchandra Naik	*Vikram Tengse*	*R. K. Pandita*
(Planning Assistant)	*(Assistant Engineer)*	*(Member Secretary)"*

13. The review committee submitted its report on 25.07.2022 (Annexure 6 on pages 45 to 63 of the main petition's paper book). The report accepts that several illegalities were involved in preparing the ODP and recommends reversion to the Regional Plan 2021 (RPG-2021).

14. Some of the observations in the review committee report dated 25.07.2022 read as follows:

> *"During the said meeting, from the records presented by NGPDA, it was noticed that certain tenanted lands have been earmarked under settlement, commercial and recreational zones and it would be preferred to revert the said land back to its original status, as no development can be permitted in the tenanted land as per the provisions of Land Revenue Code of State of Goa."*
>
> *"On inquiry, Member Secretary, North Goa PDA informed that the status pertaining to tenancy aspects as mentioned by him was with reference to the records as per year 2008 and the NGPDA is not aware whether the same status of tenancy aspect have been changed*

subsequently. Nevertheless, the Committee observed that it would have been more appropriate not to convert the tenanted paddy fields and the same should have been retained to its original status."

"The Committee also observed that several properties marked as "Agriculture zone" under the Regional Plan for Goa — 2021 have been changed to Settlement zone, which sometimes found to be a part of contiguous paddy field. The Committee observed that such a change could be detrimental to overall environment and was of the opinion that the Authority could have judiciously carried this exercise as changing the zone of such agricultural land would invariably require filling of such land for any construction purpose."

"Considering various proposals reflected in ODP, the Committee took Serious note that several properties which were otherwise marked as "No Development Slope" under Regional Plan - 2021, pertaining to Calangute- Candolim and Arpora - Parra Planning Area, have been changed to "Settlement Zone" and as such are brought under developable zones. In some of the cases, it was observed that such No Developable Slope is part of the continuous No Development zone and any change into fraction of may drastically impact the environment."

"While discussing on the eco-sensitive zones, the Committee was of the opinion that in no way the property which otherwise were marked as "Mangroves" under RPG-2021, should have been changed to "Settlement zone" S2. This observations of the Committee was with specific reference to the property under Sy.No. 213/2 and 11/57 of Candolim admeasuring an area approximately 8000m2 and another property under Sy.No. 68/6 of Calangute

admeasuring an area approximately 290m2. The Committee was of the strong view that this property should have been retained to its original status as per RP-2021 as Mangroves."

15. Apart from the above observations, the review committee report refers to how the width of several roads from these five villages was drastically reduced from six metres to three metres, fifteen metres to ten metres and twenty-five metres to fifteen metres without any justification and only to protect illegal development that had already come up on either side of the roads. In the context of site inspection held at Calangute, Candolim, Arpora, Nagoa, and Parra, the review committee records how the low-lying paddy fields were converted into development zones, and commercial zones were assigned to the properties not having the adequate right of way as prescribed under the regulation, zones of slopes which were earlier in NDZ under the RPG-2021 were changed into settlement zones, and the width of the road was reduced leading to traffic congestion to protect the unauthorised development which had already come up on either side of such roads.

16. Based upon the review committee report, the Government, by Notification dated 12.08.2022 (Annexure -7 page 108 to 116 of the main petition), partly suspended the ODPs for the five villages Calangute-Candolim and Arpora-Nagoa-Parra. Ms Alvares submitted that out of 434 survey numbers forming the subject matter of ODP for these five villages, the illegalities or irregularities were detected in almost 401 survey numbers. She pointed out how notification dated

12.08.2022 refers to corrections carried out in respect of almost 401 survey numbers that had been illegally converted or had their zones changed without regard to planning regulations or planning requirements.

17. By notification dated 12.08.2022, the Government invited objections to the proposals set out in the schedule to the notification so that such objections could be taken into consideration for taking a final decision on the proposals. By a notification dated 13.12.2022, published in the Official Gazette on 15.12.2022, the Government approved the ODPs for the Calangute-Candolim planning area 2025 and Arpora-Nagoa-Parra planning area 2030 (December ODPs).

18. Quite curiously, by yet another notification dated 16.12.2022 published in the Official Gazette on 20.12.2022, the Government withdrew from the operation of Goa Town and Country Planning Act, 1974, the whole of Calangute-Candolim planning areas and the Arpora-Nagoa-Parra areas. This notification was issued under Section 19 of the TCP Act, 1974 and came into force from its publication in the Official Gazette, i.e. on 20.12.2022.

19. In terms of Section 19 of the TCP Act, before it was amended by the impugned Ordinance, upon the issue of Notification under Section 19(1), several matters, particularly December ODPs, ceased to apply to the areas withdrawn from planning areas. Thus, by virtue of Government notification dated 16.12.2022 read with unamended

Section 19(2) of the TCP Act, the December ODPs ceased to apply to the five villages, i.e. Calangute-Candolim and Arpora-Nagoa-Parra. As a corollary, all constructions and developments in these five villages had to necessarily abide by the RPG -2021, given the provisions in Section 16 and the TCP Act, before the impugned Ordinance amended it. However, within a week from the issue of Notification dated 16.12.2022, the Chief Town Planner issued an impugned Circular dated 22.12.2022 suspending RPG-2021 and directing that the December ODPs will apply to five villages of Calangute-Candolim and Arpora-Nagoa-Parra.

20. By our interim order dated 14.02.2024, we stayed the operation of the CTP's impugned Circular dated 22.12.2022 broadly on the following two grounds:

> (A) The impugned Circular, which was an executive instruction, was contrary to the provisions of Section 19 of the TCP Act (before its amendment), and consequently, the CTP lacked the power to issue the impugned Circular;
>
> (B) There were serious legal infirmities in the December ODPs, such as non-application of mind, arbitrariness, etc., and therefore, even if it were assumed that the CTP had the power to issue the impugned Circular, the December ODPs would not be allowed to operate for the construction and development activities in the five villages,

Calangute-Candolim and Arpora-Nagoa-Parra.

21. Though Mr Mehta argued that the interim order dated 14.02.2024 was made only on the ground that the Chief Town Planner lacked power or jurisdiction to issue impugned Circular, on holistic reading of the interim order, it is apparent that the same was made on the above two grounds i.e. lack of power in the Chief Town Planner and prima facie finding that the December ODPs suffers from serious legal infirmities and therefore, could not be allowed to govern construction and development activities in the five villages. In particular, reference can be made to Paragraphs Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 22, 23, 24, 26 and 27 of the interim order dated 14.02.2024 which comprises all, about 30 Paragraphs. The discussion in the said Paras of interim order dated 14.02.2024 relates mainly to the second base for the grant of interim relief. Therefore, the discussion in these paragraphs should be deemed to have been incorporated in this order to avoid repetition.

22. As discussed hereafter, the impugned ordinance, to some extent, addresses the first ground or base but makes no reference to the second ground or base. Simply stating that all illegalities stand validated does not amount to altering the fundamental bases of a judgment. That amounts to legislatively overturning or reversing a judgment. That is impermissible under the Constitutional scheme and Precedent.

23. The impugned Ordinance reads as follows:

"The Goa Town and Country Planning (Amendment) Ordinance, 2024 (Ordinance No. 2 of 2024)

Promulgated by the Governor of Goa in the Seventy-fifth Year of the Republic of India.

I, P. S. Sreedharan Pillai, Governor of Goa, in the Seventy-fifth Year of the Republic of India, promulgate "The Goa Town and Country Planning (Amendment) Ordinance, 2024 (Ordinance No. 2 of 2024)".

An Ordinance further to amend the Goa Town and Country Planning Act, 1974 (Act 21 of 1975) and to validate the approvals granted and conversion reports/zoning certificates issued on the basis of the then existing Outline Development Plans of Calangute-Candolim and Arpora-Parra-Nagoa prior to the withdrawal of the Calangute-Candolim planning areas and Arpora-Parra-Nagoa planning area.

Whereas, the Legislative Assembly of Goa is not in session and I am satisfied that circumstances exist which render it necessary for me to take immediate action.

Now, therefore, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, I am pleased to promulgate the following Ordinance, namely:—

1. Short title and commencement.— (1) This Ordinance may be called the Goa Town and Country Planning (Amendment and Validation) Ordinance, 2024.

(2) It shall be deemed to have come into force on the 16th day of December, 2022.

2. Amendment of section 19.— In the Goa Town and Country Planning Act, 1974 (Act 21 of 1975), in section 19, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Notwithstanding anything contained in this Act,—

(i) where the whole or part of any planning area is withdrawn from the operation of this Act, the Outline Development Plan which was in force in such planning area on the date of its withdrawal shall remain in force till such date the said area continues to be non-planning area;

(ii) where any area is declared to be a planning area under section 18, till such date the Outline Development Plan is prepared and published under section 37 in respect of such area, all development works in such area shall conform to the regional plan.".

3. Validation.— Notwithstanding anything contained in any judgment, decree or order of any court or other authority to the contrary, on the basis of the Outline Development Plan for Calangute-Candolim Planning Area – 2025 and Outline Development Plan for Arpora- -Nagoa-Parra Planning Area – 2030 after coming into force of the Notification No. 36/1/ /TCP/443/2022/3406 dated 16-12-2022, published in the Official Gazette, Extraordinary No. 4, dated 20-12-2022 shall, for all purposes, be deemed to be and to have always been validly granted/issued in accordance with the provisions of section 19 of the principal Act as amended by this Act, and accordingly,—

(i) no suit or other proceeding shall lie or be maintained or continued in any court challenging such approvals/certificates/ /reports; and

(ii) anything done or any action taken or purported to have been done or taken, under or for the purposes of the principal Act on the basis of the said outline development plan or regional plan, as the case may be, shall be deemed to have been validly done or

taken in accordance with law as if the provisions of section 19 of the principal Act, as amended by this Act, had been in force at all material times.

Raj Bhavan,
Dona Paula, Goa *P. S. SREEDHARAN PILLAI*
Date: 29-02-2024. *Governor of Goa"*

24. The impugned Ordinance is made effective from 16.12.2022. It introduces sub-section (3) in Section 19 to provide that where the whole or part of any planning area is withdrawn from the operation of this Act, the Outline Development Plan, which was in force in such planning area on the date of its withdrawal shall remain in force till such date the said area continues to be non-planning area. Clause 3 of the Ordinance, which has several omissions, purports to validate any action taken based on the impugned Circular dated 22.12.2022, i.e. based on December ODPs. This validation clause is far from clear, but Mr Mehta submitted that this clause validates permission granted based on December ODPs.

25. Now, if the only base for this Court's interim order dated 14.02.2024 was the provisions in Section 19 of the TCP Act before its amendment by the impugned Ordinance, then it could perhaps be argued that this base stands altered by the impugned Ordinance and therefore, no case is made out for grant of any interim relief. However, as noted earlier, this Court's interim order dated 14.02.2024 rested on two bases. The first base was that the CTP lacked the power or

jurisdiction to resuscitate the December ODPs once five villages were withdrawn from the planning area, given the provisions of Section 19 of the TCP Act before its amendment by the impugned Ordinance. The second base was that, in any case, the December ODPs were legally infirm for various reasons, and therefore, even if the CTP could source its power from some statutory provisions, construction and development activities in these five villages could not proceed based upon legal infirm December ODPs.

26. This second base has not been touched, much less altered by the impugned Ordinance. Without altering this second and significant base, the impugned Ordinance cannot be interpreted so as to have nullified the interim order dated 14.02.2024. Even the Legislature cannot, without addressing defects pointed out in the Court judgments, overrule or nullify the Court judgments, which is what has been attempted by the impugned Ordinance in the present case. Such an attempt defies the Constitutional scheme and is contrary to the Hon'ble Supreme Court's long line of decisions on the subject.

27. In ***Prithvi Cotton Mills Ltd., and Another Vs Broach Borough Municipality and others***[1], the Constitution Bench in the context of validating statute has held that when a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or invalid law, the cause for ineffectiveness or invalidity must

[1] (1969) 2 SCC 283

be removed before validation can be said to take place effectively. For this, the Legislature must have legislative competence. *Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind, for that is tantamount to reversing the decision in the exercise of judicial power which the Legislature does not possess or exercise. A Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.* The validity of a Validating law, therefore, depends upon whether the Legislature possesses the competence that it claims over the subject matter *and whether, in making the validation, it removes the defect that the courts had found in the existing law and makes adequate provisions in Validating law for a valid imposition of the tax.*

28. In ***Indian Aluminium Company Co. Vs State of Kerala,***[2] the Hon'ble Supreme Court has discussed the principles regarding the abrogation of a judgment of a Court of law by subsequent legislation. The Hon'ble Supreme Court has held that in such a case, *there is need to carefully scan the law to find out whether the vice pointed out by the Court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements and further, whether such validation is consistent with the rights guaranteed in Part III of the Constitution.* The Court has held that in exercising legislative power, the Legislature, by mere declaration, without anything more, cannot

[2] (1996) 7 SCC 637

directly overrule, revise or override a judicial decision. It can render judicial decisions ineffective by enacting valid law on the topic within its legislative field, fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the Court would not have rendered the previous decision if those conditions had existed when declaring the law invalid. *The consistent thread that runs through all the decisions of the Hon'ble Supreme Court is that the Legislature cannot directly overrule the decision or make a direction as not binding on it but has the power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the Legislature must have competence to do the same.*

29. In ***Baharul Islam and others Vs Indian Medical Association and others***[3]**,** the Hon'ble Supreme Court reiterated that the Legislature cannot directly overrule a judicial decision. But when a competent Legislature retrospectively removes the substratum or foundation of a judgment to make the decision ineffective, the said exercise is a valid legislative exercise provided it does not transgress on any other constitutional limitation. It would be permissible for the legislature to remove a defect in earlier legislation pointed out by a constitutional court in exercising its powers through judicial review. This defect can be removed retrospectively and prospectively by a legislative process, and the previous actions can also be validated. *But where there is a mere*

[3] 2023 SCC OnLine SC 79

validation without the defect being legislatively removed, the legislative action will amount to overruling the judgment by a legislative fiat, which is invalid.

30. Recently, in ***Madras Bar Association Vs Union of India***[4]**,** the Hon'ble Supreme Court considered several decisions on the issue of permissible legislative overruling. The Court reiterated that the permissibility of legislative override in this country should be in accordance with the principles laid down by the Supreme Court, which were then culled out as follows:

> a) The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment. Such a law can be retrospective. The retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution.
>
> b) The test for determining the validity of validating legislation is that the judgment pointing out the defect would not have been passed if the altered position sought to be brought in by the validating statute existed before the Court when rendering its judgment. In other words, the defect pointed out

[4] (2021) SCC OnLine SC 463

should have been cured so that the basis of the judgment pointing out the defect is removed.

c) Nullification of mandamus by an enactment would be an impermissible legislative exercise [See: *S.R. Bhagwat* (supra) (1995) 6 SCC 16]. Even interim directions cannot be reversed by a legislative veto [See: *Cauvery Water Disputes Tribunal* (supra) [(1993) Supp (1) SCC 96, and *Medical Council of India vs. State of Kerala & Ors.* (2019) 13 SCC 185].

d) The Legislature's Transgression of constitutional limitations and intrusion into the judicial power violate the principle of separation of powers, the rule of law, and Article 14 of the Constitution of India.

31. Mr Mehta relied on the ***Goa Foundation and Another Vs State of Goa and Another***[5] to submit that the Legislature can always enact validating Legislation by fundamentally altering the base of a judicial pronouncement. There can be no dispute regarding such a proposition, and such a proposition, in fact, aligns with the various precedents discussed above. However, in the present case, the impugned Ordinance is to be regarded as a Legislative measure that does nothing to alter this

[5] (2016) 6 SCC 602

Court's finding about the utter invalidity of the December ODPs. Such invalidity was second base, which prompted this Court to restrain the Respondents from undertaking construction or development based on December ODPs. Since this significant base was not even altered, much less altered fundamentally, the impugned Ordinance cannot be interpreted as some judicial override. Based upon the impugned Ordinance, therefore, specific directions issued by this Court in its order dated 14.02.2024 that construction and development in the five villages, i.e. Calangute-Candolim and Arpora-Nagoa-Parra should abide by RPG-2021 and not by December ODPs could not be held to have been overruled or nullified as was sought to be contended by Mr Mehta.

32. That the impugned ODPs were prima facie vitiated by manifest arbitrariness was one of the two bases for our interim order dated 14.02.2024, which the impugned ordinance has not erased. Despite the impugned ordinance, relying upon the expert review committee report, we would have restrained the State from attempting any development or large-scale arbitrary zone changes in the teeth of several legislations that have not yet been amended. One of the tests for determining the validity of validating legislation is that the judgment pointing out the defect would not have been passed if the altered position sought to be brought in by the validating statute existed before the Court when rendering its judgment. In other words, the defect pointed out should

have been cured so that the basis of the judgment pointing out the defect is removed.

33. If the amended Section 19 were before us when we made the interim order dated 14.02.2024, perhaps we might not have stayed the impugned circular on the ground that the CTP lacked power, or we might have even held that the circular was redundant, given the amended provision. But having the power is one thing and a valid exercise, quite another. All power is to be held in trust and must be exercised for the legitimate purposes for which the people vest it in the executive.

34. In the ***State of Punjab and Another Vs Gurdial Singh and others***[6]**,** the Hon'ble Supreme Court, speaking through **V. R. Krishna Iyer, J** explained what constitutes mala fides in the jurisprudence of power. The Court held that legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions -is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object, the actuation or catalysation by malice is not legicidal. The action is bad, where the true object is to reach an end different from

[6] (1980) 2 SCC 471

the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in Law when he stated: "I repeat...that all power is a trust- that we are accountable for its exercise- that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. If the purpose is corrupt, the resultant act is bad. If considerations foreign to the scope of the power or extraneous to the statute enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.

35. In ***Andhra Pradesh, Southern Power Distribution Power Company Limited and Another Vs Hinduja National Power Corporation Limited and Another***[7], the Hon'ble Supreme Court, speaking through **B. R. Gavai, J** observed that every action of the State is required to be guided by the touchstone of non-arbitrariness, reasonableness and rationality. Every action of the State is equally required to be guided by public interest. Every holder of a public office is a trustee whose highest duty is to the people of the country. The

[7] (2022) 5 SCC 484

public authority is, therefore, required to exercise its powers only for the public good.

36. In ***Aneesh D. Lawande and others Vs State of Goa and others***[8], the Hon'ble Supreme Court, speaking through **Dipak Misra, J** lamented that chaos had crept into the lives of some students and it was further sad as the State of Goa and its functionaries had allowed ingress of systemic anarchy throwing propriety to the winds possibly harbouring the attitude of utter indifference and nurturing an incurable propensity to pave the path of deviancy. The context was admission to the post-graduation courses at the Goa Medical College. The Court held that the authorities in the Government are required to understand that basic governance consists of the act of making considered, well-vigilant, appropriate and legal decisions. It is the sacrosanct duty of the Government to follow the law and the pronouncements of the Court and not to take recourse to subterfuges. The Court held that the Government should have reminded itself of the saying of Benjamin Disraeli: "*I repeat – that all power is a trust – that we are accountable for its exercise – that, from the people and for the people, all springs, and all must exist.*"

37. Therefore, any attempt to foist a prima facie manifestly arbitrary ODP would surely not have passed muster even if the amended provisions were on the statute book when we made the interim order

[8] (2014) 1 SCC 554

on 14.02.2024. The impugned ordinance, though retrospective, would have made no difference to the ultimate interim relief granted by order dated 14.02.2024. The ground about lack of power or the breach of section 19 of the TCP Act may not have been available to the petitioners. But interim relief could have been granted and was granted on the ground that the December ODPs were more drastic than the ODPs condemned by the expert review committee, i.e. they were arbitrary. Thus, a strong prima facie case of the standard referred to in *Health for Millions (supra)* or *Bhavesh Parish (supra)* is made out for all the above reasons.

38. Mr Mehta, without prejudice to his contention that this Court's order dated 14.02.2024 had no nexus with the alleged invalidity of the December ODPs, fairly conceded that this issue of validity or otherwise of the December ODPs could even been gone into by this Court in this Civil Application. However, relying upon ***MIG Cricket Club Vs Abhinav Sahakar Education Society and others***[9], Mr Mehta submitted that even the Outline Development Plan is legislative or at the highest quasi-legislative in character. Therefore, relying on ***Health For Millions Vs Union of India and others***[10]***, Bhavesh D. Parish Vs Union of India***[11] and ***State of Himachal Pradesh and others Vs Yogendera Mohan Sengupta and Another***[12]**,** he submitted that no

[9] (2011) 9 SCC 97
[10] (2014) 14 SCC 496
[11] (2000) 5 SCC 471
[12] 2024 SCC OnLine SC 36

interim relief could have granted staying the operation of an ODP unless a case of manifest arbitrariness was made out and factors like the balance of convenience, irreparable injury and public interest were in favour of passing an interim order.

39. Mr Mehta submitted that all legal procedures had been followed before the December ODPs were prepared and brought into force. He submitted that from the material placed on record by the Petitioners, there were some issues regarding only 20 survey numbers out of 434 survey numbers in ODP-2025 and ODP-2030 for the five villages. He submitted that the Petitioners had placed no material to suggest that defects pointed out by the expert committee in its report dated 25.07.2022 were not rectified while preparing the December ODPs. He submitted that even the defects pointed out in the two instances or in relation to the 20 survey numbers could hardly be styled as instances of manifest arbitrariness. Accordingly, he submitted that the scope of judicial review in such matters is extremely limited, and the Constitutional Court cannot exercise any appellate jurisdiction in such matters.

40. As noted earlier, much of what was discussed in this Court's order dated 14.02.2024 relates to the invalidity of December ODPs. Therefore, the contention about December ODPs not being one of the bases for the grant of interim relief cannot be accepted. Since this base was never altered, much less fundamentally altered by the impugned Ordinance, this Court's direction that no development or construction

activities in the five villages, i.e. Calangute-Candolim and Arpora-Nagoa-Parra could be carried out in terms of December ODPs or that same could be undertaken only in terms of RPG-2021 stands and cannot be said to have been nullified by the impugned Ordinance.

41. The Petitioners made a very strong prima facie case on this ground. An attempt to overrule the judicial decision without altering the fundamental or even otherwise its base is an attempt that violates the doctrine of Separation of Powers. Such an attempt of legislatively overruling a binding decision is contrary to several decisions of the Hon'ble Supreme Court including the decisions relied upon by Mr Mehta. The Legislature's Transgression of constitutional limitations and intrusion into the judicial power violate the principle of separation of powers, the rule of law, and Article 14 of the Constitution of India.

42. The petitioners have also, otherwise, made a very strong prima facie case that the December ODPs are vitiated by non-application of mind, unreasonableness, and manifest arbitrariness. The ODP-2025 and ODP-2030 apply to five villages before 27.04.2022. The Government suspended these ODPs by a notification dated 27.04.2022 because "*large-scale illegalities were suspected in their preparation and finalisation.*" A review committee comprising very high-level officials was constituted to investigate the issue of illegalities. As noted earlier, this is evident from the Notification dated 27.04.2022 at Annexure-5 on pages 43 and 44 of the paper book of the main petition.

43. The review committee comprising experts, upon investigating the matter, wrote to the Chief Town Planner on 13.06.2022, and this communication gives a glimpse into the preparation of ODP for these five villages and the role played by Mr Michael Lobo (R-6) and Mr Francisco Silveira (R-7) in the matter. Mr Michael Lobo was the Chairperson of the NGPDA from the year 2012 to July 2019 apart from being MLA of Calangute-Candolim Constituency.

44. The communication dated 13.06.2022 records that Mr Michael Lobo virtually dictated to officials, and based upon such dictation, the ODPs for the five villages came to be prepared. The communication records that Mr Michael Lobo, despite objection from the officials, insisted upon to reduction of the width of the MDR roads and change of zoning of tenanted lands, which are, in terms of the Goa Land Use (Regulation) Act, 1991 not allowed to be used for any purpose other than agricultural, change of zoning of no development slopes, mangroves areas with thick habitation etc. The communication also refers to the role played by Mr Francisco Silveira, Chairperson, in the exercise.

45. The communication dated 13.06.2022 addressed by the expert to the Chief Town Planner, amongst several gross illegalities and instances of manifest arbitrariness, flags the following:

(a) The change of zones of **agriculture-tenanted lands to the extent of 1,59,477 square metres** from the

position reflected in the RPG – 2021, primarily at the dictation of Mr Michael Lobo. Under the Goa Land Use Regulation Act, no land vested in an agricultural tenant can be converted or used for non-agricultural purposes. This prohibition does not apply only to government-acquired lands. Still, at the dictates of Mr Lobo, the conversion of 1,59,477 square metres of agriculture-tenanted lands was sought to be facilitated. Considering the size and area of these five villages and the mandate of the Goa Land Use Regulation Act, this was plainly arbitrary and unconstitutional.

(b) Similarly, zoning of **no-development slopes covering an area of almost 95,610 square metres** was carried out again at Mr Michael Lobo's dictation. Under the existing TCP legislation, such green slopes beyond the prescribed gradient are undevelopable. But Mr Lobo sought to facilitate this impermissible exercise. Again, this spells arbitrariness.

(c) The **change of zoning of mangrove areas to the extent of 8290 square metres** was carried out again at the dictation of Mr Michael Lobo. Under the CRZ notification, which is a Central Notification, mangrove areas are protected. This was a clear attempt to deny protection by arguing that the areas in the zones now

stand changed, so the protection no longer survives. This, too, spells arbitrariness.

(d) How the **width of several roads from these five villages was drastically reduced from six metres to three metres, fifteen metres to ten metres and twenty-five metres to fifteen metres without any justification and only to protect illegal development that had already come up on either side of the roads.** This, too, spells arbitrariness because the corresponding Planning laws or regulations have not been amended.

(e) How **the low-lying paddy fields were converted into development zones, and commercial zones were assigned to the properties not having the adequate right of way as prescribed under the regulation, zones of slopes which were earlier in NDZ under the RPG-2021 were changed into settlement zones, and the width of the road was reduced leading to traffic congestion to protect the unauthorised development which had already come up on either side of such roads.** This also spells arbitrariness because filling low-level paddy fields without permission is a criminal offence in Goa.

(f) The communication details the change of agricultural properties' zoning, excluding tenanted properties from RPG – 2021, without preparing ODP. The communication flags a large extent of areas that were converted into S-3, S-1, S-2, C-3 and C-2 zones again at the dictation of Mr Michael Lobo, local MLA and Chairperson of the Planning and Development Authority. This procedure is grossly arbitrary.

(g) Under the Chairpersonship of Mr Lobo and Mr Silveira, changes were made in respect of 8,89,891 square metres of land from the RPG-2012 when formulating the draft ODPs for the five villages. This excessive figure was further disproportionately enhanced to 16,94,115 square metres in the final ODPs for the five villages. At least prima facie, most of these changes convert agricultural lands into non-agriculture, settlement lands into commercial, non-developable lands into developable lands, etc.

(h) The above changes brought about at the dictation of Mr Lobo and Mr Silveira are not related simply to some planning changes based on policy. These are prima facie changes contrary to law, destructive of environmental safeguards, and without any regard to the fact that the

five villages are the coastal villages affected by various environmental legislations.

46. The Government accepted the review committee report dated 25.07.2022 by acknowledging several illegalities in the preparation of ODPs. This report specifically recommended the reversion of RPG-2021. Our interim order, which is now sought to be nullified by the impugned ordinance, also permits developments in terms of RPG-2021. But the insistence now is to revert to the December ODP, which the interim order had pointed out was more drastic than the earlier ODPs severely castigated by the expert review committee. This insistence is to perpetuate the same openly without rectifying the flagged issues. The return filed is absolutely silent on the issues of large-scale conversions of agriculture-tenanted lands, non-developable slopes, mangrove areas, etc. The return is absolutely silent about facilitating large-scale construction of hotels and other commercial establishments on the one hand and, at the same time, shrinking road widths to protect illegal constructions.

47. Mr Mehta did offer to file an additional affidavit as the arguments proceeded. But, no doubt, given his instructions, Mr. Mehta was not prepared to make any statement that constructions, developments, or zone changes would not cease until such an affidavit was filed. The impression we got was that the constructions, conversions, and zone changes had to go on come what may and grave irreparable loss would result to Goa's environment if some areas

remained green for some more time. The State was unprepared to wait four to six weeks, though the court vacations were intervening.

48. As noted earlier, we are dealing with five villages in the coastal or semi-coastal areas in North Goa. Much of these areas are affected by environmental legislations like CRZ Notification, etc. Therefore, the precautionary principle would apply when dealing with such areas. This principle is now accepted as a part of the fundamental right to a clean environment under Article 21 of the Constitution. This tearing hurry, to say the least, was, therefore, most surprising.

49. After the severe indictment on the role of Mr Michael Lobo in the preparation of ODPs - 2025 and 2030 by the expert committee report and its acceptance by the Government, the least that was expected that the December ODPs rectify the illegalities, including several illegalities of which Mr Michael Lobo was found to be beneficiary. However, the December ODPs are not significantly different from the ODPs that the expert committee had severely castigated, criticised and condemned. Despite this Court's direction in the order dated 14.02.2024, no affidavits were filed. However, after specific directions when the affidavit was reluctantly filed, such an affidavit reveals that prima facie, Mr Michael Lobo, is once again one of the prime beneficiaries of conversion and zone changes. This is evident from the Annexures to the affidavit dated 08.04.2024, filed by Rajesh Naik, Chief Town Planner.

50. Annexure A to the Chief Town Planner's affidavit dated 08.04.2024 concerns cases for which technical clearance is granted as per ODP for Calangute-Candolim -2025 and ODP for Arpora-Nagoa-Parra -2030. The following entries prima facie concern Mr Michael Lobo (R-6), his wife Delilah Lobo (also an MLA), and their son Daniel Lobo.

Sr. No.	Name of the Applicant	Sy.No/Sub Div. No.	Village/Bardez Taluka	Nature of Construction/Uses permitted
4	Delilah Lobo, Bhattiwado, Parra Goa.	178/49 & 51 (p)	Arpora	Residential building
94	Michael Lobo & Delilah Lobo, Parra Goa	10/9 plt B	Parra	Residential Building & Compound wall
95	Daniel Lobo, Parra Goa	207/3, 4, 5, 6 & 7	Parra	Residential Bungalow, Outhouse & Swimming Pool

51. Annexure – C to the Chief Town Planner's affidavit dated 08.04.2024 concerns a list of zoning information issued as per the ODP for Calangute-Candolim -2025 and ODP for Arpora-Nagoa-Parra –

2030. The following entries prima facie concern Mr Michael Lobo, his wife, Delilah Lobo (also MLA) and their son, Daniel Lobo.

Sr. No.	Name of the applicant	Sy.No./Sub Div No.	Village/Bardez Taluka
24	Delilah Lobo	178/48	Arpora
25	Delilah Lobo	178/49	Arpora
167	Michael Lobo	257/16	Calangute
624	Michael Lobo	207/2	Parra
625	Michael Lobo	206/4	Parra
633	Michael Lobo	10/9	Parra
660	Michael Lobo	81/3	Parra
698	Michael Lobo	41/1	Parra
699	Michael Lobo	41/2-A	Parra
700	Michael Lobo	41/1-B	Parra
708	Michael Lobo	118/7	Parra
731	Daniel Lobo	207/7	Parra

52. Besides, Annexures to the CTP's affidavit dated 08.04.2024 refers to several companies and several persons with the surname

"Lobo". Accordingly, Mr Michael Lobo (R-6) is directed to file an affidavit in the main petition indicating whether or not he or his family members have any interest or shares in the companies, LLP, firms, etc., referred to in Annexures –A, B and C of the CTP affidavit dated 08.04.2024. Mr Michael Lobo must also file an affidavit indicating whether the various "Lobos" referred to in Annexures A, B and C to the CTP affidavit are his family members or otherwise related to him. But even the information reluctantly and belatedly disclosed by the CTP is prima facie sufficient to conclude that Mr Lobo is one of the prime beneficiaries of the December ODPs. When this was pointed out to the learned Counsel for Mr Lobo, the only response was that an affidavit would be filed at some later point in time and that Mr Lobo was not involved in preparing the December ODPs.

53. However, even going by details provided in Annexures- A, B and C to the CTP affidavit dated 08.04.2024, it appears that Mr Michael Lobo, whose conduct in the preparation and finalisation of the previous ODP was severely castigated, criticised and condemned by the expert committee has again emerged as one of the beneficiaries of the December ODPs. Surprisingly, the CTP's affidavit does not refer to an area or other details with respect to which permissions have been issued or changes of zones permitted. However, the material placed on record is sufficient to prima facie indicate that there is no substantial difference between previous ODPs and December ODPs, which the impugned

Ordinance now seeks to revive, without removing illegalities or defects pointed out by this Court in its order dated 14.02.2024.

54. In the returns filed on behalf of the Respondents, there is no response to the status of the change of zone of tenanted lands to the extent of 1,59,477 square metres. Similarly, the affidavit does not deal with the status of no development slopes to the extent of almost 95,610 square metres. The affidavit also does not deal with the change of zoning of mangrove areas or agricultural properties of several thousands of square metres in these five villages. Despite the hurdles placed before them, the Petitioners have managed to place some material on record to show that the December ODPs were more drastic than the previous ODPs that were sought to be replaced. Therefore, the State's contention that it would deal with only the twenty specific instances concerning one of the villages and then rely on the presumption that all Government acts are validly done cannot be appreciated or prima facie accepted.

55. In fact, the State should have made a clean breast and disclosed on affidavit the difference, if any, between previous ODPs, which were suspended for gross illegalities, and the December ODPs under which the State now insists that the development must proceed. The Petitioners have made out a strong prima facie case to show that the December ODPs suffer from manifest arbitrariness and the December ODPs are not significantly different from the previous ODPs, which

the expert committee had castigated, criticised and condemned by using substantially harsh language.

56. The December ODPs are sought to be applied to non-planning areas by the impugned ordinance. But the ordinance makes no provision for any appeals against the December ODPs. If the five villages had continued as planning areas, an appeal would lie against the ODPs to the TCP Board. Thus, effectively, the December ODPs that are prima facie manifestly arbitrary are sought to be foisted after taking away, through the side wind, so to say, the right of affected parties to appeal the ODPs. This was one of the issues flagged in the interim order dated 14.02.2024, and the impugned ordinance does not address this issue. But we do not propose to stress this issue because the state would then perhaps contend that a right to appeal is not some fundamental right, and the legislature can always deprive or deny such right to its citizens.

57. Although the decisions relied upon by Mr Mehta would indeed suggest that the ODPs have a quasi-legislative character, that by itself does not mean that such ODPs are completely immune from judicial review, particularly on the grounds of manifest arbitrariness. We are alive to the limits of judicial review or the fact that we can claim no expertise in such matters. But, here we have a case where an expert review committee appointed by the Government has pointed out grave illegalities in preparing ODPs and the contents of such ODPs. The expert reports have demonstrated how the ODPs, contrary to public interest, were formulated without any serious application of mind. The

ODPs were prepared on Mr Michael Lobo's (R-6) and Mr Silveira's (R-7) dictation. The report speaks eloquently of how the planning experts were bulldozed and allowed themselves to be bulldozed by the MLAs.

58. All this, at least prima facie, makes out a case of manifest arbitrariness. The impugned ordinance cannot revive or resuscitate something that is manifestly arbitrary because then such legislation would be ultra vires Part III of the Constitution. Therefore, to interpret the impugned ordinance as reviving, resuscitating or validating prima facie manifestly arbitrary December ODPs would not be a correct interpretation.

59. Therefore, it was for the State to demonstrate by making a clean breast the difference between ODPs, which were scrapped based on the expert review committee report and the December ODPs, which now sought to be resuscitated so desperately. At least prima facie there does not appear to be much difference. At least prima facie, Mr Michael Lobo continues to be one of the major beneficiaries of the December ODPs even though the previous ODPs were scrapped because of Mr Michael Lobo's involvement in ensuring that such previous ODPs will benefit him and his family members most. The issues of conflict between interest and duty will also have to be gone into, at the final hearing stage.

60. Nothing was placed on record by the State to show the gross illegalities and the instances of manifest arbitrariness in converting

agriculture-tenanted lands of 1.60 lakh square metres, about 95,610 square metres of non-developable slopes, and thousands of square metres of mangrove areas, low-lying paddy fields, etc. Just because of some changed equations, expert review committee reports cannot now be attempted to be pushed under the carpet or downplayed to introduce the same ODPs, if not more drastic ones, in a tearing hurry. This tearing hurry we refer to is not in the context of issuing the impugned ordinance. That we are conscious, is a matter which is ordinarily not justiciable. The tearing hurry is about the State not being prepared to hold its hands for four to six weeks until proper affidavits are filed and that matter is finally heard.

61. In ***Shayara Bano Vs Union of India and others***[13] and other decisions discussed therein, the Hon'ble Supreme Court has explained that manifest arbitrariness must be something that is done by the legislature *capriciously, irrationally and/or without adequate determining principle*. Also, when something is *done which is excessive and disproportionate*, such legislation would be manifestly arbitrary. The expression "arbitrarily" means: *in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.*

[13] (2017) 9 SCC 1

62. The balance of convenience is in favour of the grant of interim relief because otherwise, the Respondents are poised to undertake large-scale construction and development activities based on December ODPs, which were found to be manifestly arbitrary not just by this Court but by an expert committee appointed by the Government to look into large scale illegalities involved in the preparation of the ODP-2025 and ODP-2030. As discussed in the interim order dated 14.02.2024 and hereafter, not only is there no significant difference between the ODP-2025 and ODP-2030 on one hand and the December ODPs, but this Court, in its order dated 14.02.2024 based upon limited instances pointed out by the Petitioners found that the December ODPs which was meant to correct gross illegalities in the previous ODP was more drastic and in that sense had not only perpetrated but enhanced illegalities in the earlier ODPs in all these five villages.

63. If interim relief is declined and large-scale constructions, development, conversions, and zone changes are allowed, the same is bound to adversely affect the villagers of five Calangute-Candolim and Arpora-Nagoa-Parra coastal villages. If no interim relief is granted, then Respondent No.6, who is the major beneficiary and because of whose involvement the previous ODPs had been scrapped, would once again change the zones and convert his properties to promote haphazard development and construction activities. The large tracts of these coastal

villages fall within the highly eco-sensitive areas under the Environment Protection Legislation.

64. For instance, under the Goa Land Use (Regulation) Act of 1991, there is a statutory bar to the conversion of tenanted lands for non-agricultural purposes. There is public interest involved in not permitting the construction or development activities on non-developable slopes, on agriculture-tenanted lands, by filling up low-lying agricultural fields, by shrinking road widths to protect illegal constructions, etc. All these factors justify the grant of interim relief because any such construction, development, or zone changes in the meantime will have serious deleterious effects on the environment in these coastal villages.

65. The December ODPs have gone to the extent of reducing the road widths. The expert committee had reported that such a reduction of road widths was to protect the illegal construction. Thus, on the one hand, large-scale construction and development activities sought to be permitted, and on the other hand, infrastructural facilities like roads are being shrunk. All this prima facie appears unreasonable, not just to us because we accept that we are not planning experts, but to the expert review committee appointed by the government itself. All this calls for interim relief. The Petitioners have made out a strong prima facie case, and the balance of convenience favours the grant of interim relief. Irreparable prejudice will visit the eco-sensitive areas in the five coastal or semi-coastal villages if throwing the precautionary principle to the

winds if large-scale constructions, development, conversions, and zone changes are allowed based on the December ODPs.

66. For all the above reasons, we direct pending hearing and final disposal of the petition, operation of December ODPs shall remain stayed. No permissions, clearances, or change of zones shall be granted based on the December ODPs. If any permissions are already granted or deemed to be granted under the impugned Ordinance, Respondent Nos.1, 2 and 3 will ensure that no construction or development activities proceed based upon such permissions/clearances. No conversions or changes of zones or users should be permitted based on the December ODPs. Construction, development, conversions and zone changes in the five villages should strictly abide by RPG-2021, as directed in the interim order dated 14.02.2024. The NGPDA, Collectors, and TCP department officials would be responsible for ensuring this.

67. If they so choose, the Respondents may file their affidavit or further affidavits in the main petition by giving an advance copy to the learned counsel for the Petitioners by 21.06.2024 at the latest. The 6th Respondent must file his affidavit in terms of paragraph 52 of this order. If the Petitioners wish to file a rejoinder, they may do so by 28.06.2024 at the latest.

68. The main petition should be placed for final hearing on 08.07.2024, high on board subject to overnight part-heard matters. The

Civil Application is disposed of. All concerned must act on an authenticated copy of this order.

VALMIKI SA MENEZES, J **M. S. SONAK, J**

69. At this stage, Mr Mehta learned Senior Advocate for the State of Goa, prays for a stay on the order we have just pronounced. In our judgment, granting a stay would be counter-productive because, based on this stay, the State and its officials would continue to effect large-scale zone changes, conversions, constructions and developments. As indicated by us, not only that the Petitioners have made out a strong prima facie case, but the balance of convenience is eminently in favour of not allowing this until the matter is finally disposed of. For these reasons, we have posted the matter for final hearing on 08.07.2024, high on board subject to overnight part-heard matters.

70. Accordingly, we do not accede to the prayer for a stay of the interim order that we have just pronounced.

VALMIKI SA MENEZES, J **M. S. SONAK, J**