

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-CW-225-2020**

Smt. Farida Harun Ghandagadkar
Wife of Harun Ghandagadkar,
Aged 52 years,
Indian National,
Resident of Near K.G.N. Marble and
Granites,
Padal, Bethora, Ponda, Goa.

.... Petitioner.

Vs.

1. The State of Goa
Through the Chief Secretary,
Government of Goa,
Secretariat, Porvorim,
Bardez, Goa.
2. Deputy Collector,
Sub Division of Ponda,
Ponda- Goa.
3. The Joint Secretary,
Revenue Department,
Government of Goa,
Secretariat, Porvorim, Goa.
4. The Forest Department,
Ponda, Goa.

.... Respondents.

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Ms. Maria Correia, Addl.
Government Advocate for the Respondent Nos.1 to 4.

LD-VC-CW-230-2020

Smt. Farzanabi Umarali Khan,
Wife of Shri Umarali Kahn,
Aged 57 years,
Housewife,
Resident of Padal,
Bethora, Ponda, Goa.

.... Petitioner.

Vs.

1. The State of Goa
Through the Chief Secretary,
Government of Goa,
Secretariat, Porvorim,
Bardez, Goa.
2. Deputy Collector,
Sub Division of Ponda,
Ponda- Goa.
3. The Joint Secretary,
Revenue Department,
Government of Goa,
Secretariat, Porvorim, Goa.

4. The Forest Department,
Ponda, Goa.

.... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Ms. Ankita Kamat, Addl.
Government Advocate for the Respondent Nos.1 to 4.

LD-VC-CW-234-2020

Shri Shabbir Ahmed Dastagir Deshpai,
Son of Dastagir Hasansab Deshpai,
Aged 36 years,
Indian National,
Resident of Near K.G.N.,
Marble and Granites,
Padal, Bethora, Ponda, Goa.

.... Petitioner

Vs.

1. The State of Goa
Through the Chief Secretary,
Government of Goa,
Secretariat, Porvorim,
Bardez, Goa.

2. Deputy Collector,
Sub Division of Ponda,
Ponda- Goa.

3. The Joint Secretary,
Revenue Department,
Government of Goa,
Secretariat, Porvorim, Goa.

4. The Forest Department,
Ponda, Goa.

....Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. S. P. Munj, Addl.
Government Advocate for the Respondent Nos.1 to 4.

LD-VC-CW-238-2020

Shri Nissar Haveri,
Son of Allah Baksh Haveri,
Aged 43 years,
Indian National,
Resident of Padal,
Bethora, Ponda, Goa.

.... Petitioner.

Vs.

1. The State of Goa
Through the Chief Secretary,
Government of Goa,
Secretariat, Porvorim,
Bardez, Goa.
2. Deputy Collector,
Sub Division of Ponda,
Ponda- Goa.
3. The Joint Secretary,
Revenue Department,
Government of Goa,
Secretariat, Porvorim, Goa.
4. The Forest Department,
Ponda, Goa. Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Ms. Sapna Mordekar,
Addl. Government Advocate for the Respondent Nos.1 to 4.

LD-VC-CW-239-2020

Shri Noor Ahmad Babajan Angadi,
Son of late Babajan Angadi,
Aged 44 years,

Indian National,
Resident of Padal,
Bethora, Ponda, Goa.

.... Petitioner.

Vs.

1. The State of Goa
Through the Chief Secretary,
Government of Goa,
Secretariat, Porvorim,
Bardez, Goa.

2. Deputy Collector,
Sub Division of Ponda,
Ponda- Goa.

3. The Joint Secretary,
Revenue Department,
Government of Goa,
Secretariat, Porvorim, Goa.

4. The Forest Department,
Ponda, Goa.

.... Respondents.

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Ms. Sapna Mordekar, Addl.

Government Advocate for the Respondent Nos.1 to 4.

LD-VC-CW-240-2020

Shri Channavirappa Hadpad
son of Virbhadrapa Hadpad,
Aged 34, Indian National,
Resident of Near K.G.N. Marble & Granites,
Padal, Bethora, Ponda, Goa.

.... Petitioner.

Vs.

1. The State of Goa
Through the Chief Secretary,
Government of Goa,
Secretariat, Porvorim,
Bardez, Goa.
2. Deputy Collector,
Sub Division of Ponda,
Ponda- Goa.
3. The Joint Secretary,
Revenue Department,
Government of Goa,
Secretariat, Porvorim, Goa.
4. The Forest Department,
Ponda, Goa.

.... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Ms. Geetesh Shetye, Addl.
Government Advocate for the Respondent Nos.1 to 4.

LD-VC-CW-241-2020

Shri Shamsuddin Shaikh,
son of Sohabat Shekh,
Aged 69 years,
Indian National,
Resident of Padal,
Bethora, Ponda, Goa.

.... Petitioner.

Vs.

1. The State of Goa
Through the Chief Secretary,
Government of Goa,
Secretariat, Porvorim,
Bardez, Goa.
2. Deputy Collector,
Sub Division of Ponda,
Ponda- Goa.
3. The Joint Secretary,
Revenue Department,

Government of Goa,
Secretariat, Porvorim, Goa.

4. The Forest Department,
Ponda, Goa.

.... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Geetesh Shetye, Addl.
Government Advocate for the Respondent Nos.1 to 4.

**Coram : M. S. SONAK, &
SMT. M. S. JAWALKAR, JJ.**

Date : : 2nd November, 2020

ORAL JUDGMENT: Per M.S.Sonak, J.

Heard Mr. Nigel da Costa Frias, learned Advocate for the petitioner. Mr. D. Pangam, learned Advocate General, who appears alongwith Ms. Maria Correia, Ms. Ankita Kamat, Ms. Sapna Mordekar, Mr. S.P. Munj and Mr. Geetesh Shetye, learned Addl. Government Advocates for the respondents.

2. Rule. Rule is made returnable forthwith at the request and with the consent of the learned Counsel for the parties.

3. The petitioners in all these petitions challenge the order made by the competent authority under the provisions of Section 5 of the Goa Regularisation of Unauthorised Construction Act, 2016 (said Act). As against the impugned order, the petitioners have a remedy by way of an appeal which is provided under Section 7 of the said Act. However, in the peculiar circumstances of the present case, we are not relegating the petitioners to avail the alternate remedy.

4. Section 3 of the said Act reads as follows:-

“3. Regularisation of unauthorized construction. - (1)
Any person who has carried out unauthorized construction in the property specified herein below before the 28th day of February, 2014, may make an application in Form I hereto together with application fee in the form of Court fee stamp of rupees five, documents specified in Schedule I hereto, sketch of the structure proposed to be regularised alongwith dimensions to the officer as may be authorised by the Government by Notification in the Official Gazette, not below the rank of Junior Scale Officer of Goa Civil Service, for regularisation of such unauthorized construction, within a period of [210 days] from the date of coming into force of this Act:

(a) any residential, commercial or residential cum commercial unauthorised construction in applicants own property or by the applicant who is co-owner, with written consent of all other co-owners thereto, in a property jointly held by the applicant with such co-owners.

(b) any unauthorized construction of a dwelling house by the applicant who is declared/registered as mundkar under the provisions of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Act No. 1 of 1976) or a farm house constructed by the applicant who is tenant or owner of an agricultural land.

(c) any unauthorized construction by the applicant in undivided property jointly held by a unit of family or families, with written consent of all other members of the family/families.

(d) any unauthorized construction carried out by an institution or a person other than an individual in its property.

(f) any unauthorized construction carried out by the applicant, in a property wholly owned by another person with the consent of such person.

[Provided that the person who could not make application within above period may make such application within a period of thirty days from the date of coming into force of the Goa Regularisation of Unauthorized Construction (Amendment) Act, 2018 (Act 16 of 2018).]

(2) The authorised officer shall issue acknowledgement to the applicant of having received the application under sub-section (1).

(3) The authorised officer shall scrutinize the application received under sub-section (1) and after holding an enquiry, as he deems fit and conducting site inspection thereof and subject to payment by the applicant of charges, taxes, fees and penalty as determined by the authorised officer as per schedule II hereto, pass an order of regularisation of such unauthorized construction.

(4) The built up area of the unauthorized construction which is proposed to be regularised shall not exceed,-

(i) 200 square meters in case such construction is meant for personal residence of the applicant;

(ii) 100 square meters in case such construction is meant for commercial purpose of the applicant;

(iii) 250 square meters in case such construction is meant for residential cum commercial purpose of the applicant;

(iv) 400 square meters in case such construction is meant for institutional purpose.

(5) The authorised officer shall not entertain any application under sub-section (1), if the unauthorized construction falls within the limits of the protected forest, area declared as a wild life sanctuary, area covered under the Coastal regulation zone, No Development Zone, open spaces, public land, areas covered under Eco Sensitive Zone, Khazan land, any construction prohibited under the Goa Land (Prohibition on Construction) Act, 1995, (Goa Act No. 20 of 1995), road set back or right of way or any construction which causes obstruction to any natural water channel or any structure which is constructed by

filling water bodies or any construction in or for scrap yard.

(6) The authorised officer shall not entertain an application or proceed with regularisation process of unauthorized construction where any Court, Tribunal or any Statutory Authority has passed any injunction or granted status quo or any prohibitory order, or such unauthorized construction is a subject matter of a dispute before such Court, Tribunal or any Statutory Authority.

(7) Where any unauthorized construction is a subject matter of dispute before any Court, Tribunal or any Statutory Authority, and if authorised officer passes any order of regularization under this Act, such order shall be subject to the decision of such Court or Tribunal or Statutory Authority.

(8) Notwithstanding anything contained in the relevant Act, upon passing of the order of regularisation of any unauthorized construction under this Act, such unauthorized construction shall be deemed to have been regularised under the relevant Act.

5. From the aforesaid, it is quite clear that only the constructions which have come up after 28.02.2014 can be considered for regularisation under the provisions of the said Act. Unlike in the connected eight writ petitions, there is no clear statement to the present petitions that the constructions were put up after the cut off

date. In fact Mr. Nigel da Costa Frias, learned Advocate submits that the constructions were put up prior to the cut off date.

6. Mr. D. Pangam, learned Advocate General points out that the documents placed on record by the petitioners indicate that the constructions were put up post the cut off date.

7. In the impugned orders made by the competent authority, there is no finding as to whether these constructions were made prior to the cut off date or not. According to us, the competent authority, should have first examined this aspect and recorded a clear finding on this issue. If the constructions are beyond the cut off date, then the applications for regularization could have been dismissed on that ground alone. If only there is material to hold that the constructions are prior to the cut off date, would the issue arise for consideration of regularization.

8. On the aforesaid short ground, we set aside the impugned orders in each of the writ petitions and remand the matters to the competent authority for fresh decision.

9. Firstly, the competent authority should determine whether the constructions in question were put up prior to the cut off date i.e. 28.02.2014. If only, the competent authority is satisfied that the

constructions were put up prior to the cut off date, the issue of further consideration of the applications for regularization would arise.

10. If such occasion indeed arises, the competent authority will dispose of the petitioners' applications for regularization in accordance with law and on their own merits, uninfluenced by any of the observations made in the impugned orders. The competent authority to endeavour to dispose of these matters, as expeditiously as possible, and in any case, within outer limit of three months from today.

11. Since, we are interfering with the impugned orders, on the aforesaid basis, we are not going into further issues, raised in these petitions, for the present.

12. The Rule is made absolute in the aforesaid terms.

13. There shall be no order as to costs.

14. All concerned to act on the basis of the authenticated copy of this order.

MF/-
SMT.M.S.JAWALKAR, J.

M. S. SONAK, J.