

**IN THE HIGH COURT OF BOMBAY AT GOA****LD-VC-CW-223-2020**

Mrs. Rubina Ashpak Muzawar,  
Wife of Mr. Ashpak Isak Muzawar,  
Aged 36 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. Ankita Kamat, Addl.  
Government Advocate for the Respondent Nos.1 to 4.

**LD-VC-CW-224-2020**

Shri Ibraheem Dharwad,  
Son of Allabax Sahib Dharwad,  
Aged 37 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 Mr. S. P. Munj, Addl.  
Government Advocate for the Respondent Nos.1 to 4.

### LD-VC-CW-231-2020

Shri Ishraq Aahfaq Pathan,  
alias Ishraque Ahmed Khan,  
Son of Ashfaq Pathan,  
Aged 33 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. Ankita Kamat, Addl.  
Government Advocate for the Respondent Nos.1 to 4.

**LD-VC-CW-232-2020**

Shri Maksud Mustafa Peerzade,  
Son of Mustafa Peerzade,  
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 Mr. P. Arolkar, Addl.  
Government Advocate for the Respondent Nos.1 to 4.

**LD-VC-CW-233-2020**

Shri Melisa William D'Silva,  
Son of William D'Silva,  
Aged 31 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 Mr. P. Arolkar, Addl.  
Government Advocate for the Respondent Nos.1 to 4.

**LD-VC-CW-235-2020**

Smt. Victoria William D'Silva,  
Daughter of William D'Silva,  
Aged 30 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 Mr. S.P. Munj, Addl.

Government Advocate for the Respondent Nos.1 to 4.

Shri Imran Khan,  
Son of Hamim Khan,  
Aged 37 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. Maria Correia, Addl.



Government Advocate for the Respondent Nos.1 to 4.

**LD-VC-CW-237-2020**

Shri Hassib Khan Pathan,  
Son of Abdul Haki Khan,  
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. Maria Correia, Addl.

Government Advocate for the Respondent Nos.1 to 4.

**Coram** : M. S. SONAK, &

SMT. M. S. JAWALKAR, JJ.

**Date** : : 2<sup>nd</sup> 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, Mr. S.P. Munj and Mr. P. Arolkar, learned Addl. Government Advocates for the respondents., learned Addl. Government Advocates for the respondents.

2. We issue Rule and make the Rule returnable forthwith at the request and with the consent of the learned Counsel for the parties.

3. In all these petitions, the challenge is to the order made by the competent authority under Section 5 of the Goa Regularisation of Unauthorised Construction Act, 2016 (said Act). By the impugned order, the competent authority has refused to regularize the petitioners' structures.

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 clear that regularisation can be done only in respect of unauthorised constructions carried out before 28.02.2014. If the unauthorised constructions are carried out after 28.02.2014, on that count, there is no question of regularisation of such structures under the Act.

6. The learned Advocate General has pointed out that in all these eight petitions, the petitioners themselves have stated that the constructions were carried out sometime in the year 2016, in any case, post the cut off date of 28.02.2014.

7. In view of such averments or rather admissions, it is obvious that the petitioners in these writ petitions are not entitled to regularisation of their structures, under the provisions of the said Act. On this short ground, and without anything else, there is no case made out for grant of any reliefs, in these petitions.

8. Though, each of these petitions are liable to be dismissed on the aforesaid ground, as a result of dismissal of these petitions, the petitioners' constructions will have to be demolished. On account of the current pandemic situation, a Bench of this Court in *Suo Moto Writ Petition No.93432/2020* dated 29.10.2020 has directed that no such demolition shall be carried out upto 31.12.2020.

9. Accordingly, atleast upto 31.12.2020, the concerned respondents, may not proceed with the demolitions, despite the dismissal of these petitions.

10. Further, if the protection of the order dated 29.10.2020 in the aforesaid *Suo Moto Writ Petition* is extended, the benefit of such extension, to be extended to the petitioners herein.

11. We make it clear that we have not gone into any of the other issues raised in these petitions, as, primarily we are satisfied

that the petitioners are not entitled to regularisation, under the provisions of the said Act.

12. These petitions are disposed of 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.

**SMT.M.S.JAWALKAR, J.**

**M. S. SONAK, J.**

MF/-