

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW-245-2020

1. BEACHFRONT RESORTS PVT. LTD.

Registered office at C-68,
Lal Kothi Scheme, Tonk Road,
Jaipur ad Rajasthan 3020138;
Rep. Through is Director
Mr. Sunil Batta

2. MR. SUNIL, KUMAR BATTA,
Major of age, Indian National,
Director of Petitioner No. 1, C-185,
Sector-108, Noida~201304,
District Gautam Budh Nagar,
Uttar Pradesh,

..... PETITIONERS.

VERSUS

1. STATE OF GOA
through the Chief Secretary,
having office at Secretariat,
Porvorim, Goa.

2. VILLAGE PANCHAYAT OF
VELSAO-PALE-ISSORCIM,
Through the Secretary,
Office at Cansaulim
Mormugao Goa 403712

3. GOA COASTAL ZONE
MANAGEMENT AUTHORITY,
Office at 1st Floor,
Deendayal Updhyay Bhavan,
Near Pundalik Devasthan,

Pundalik Nagar, Porvorim Goa RESPONDENTS.

Mr. Shivan Desai, Advocate for the Petitioner.

Ms. Ankita Kamat, Addl. Govt. Advocate for Respondents No.1 and 3.

Mr. V. Sawant, Advocate for Respondent No.2.

***Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.***

Date : 2nd December, 2020.

ORAL JUDGMENT: - (Per M.S. SONAK, J.)

Heard Mr. Shivan Desai for the Petitioners. Ms. Ankita Kamat appears for Respondents No. 1 and 3 and Mr. V. Sawant, appears for Respondent No.2.

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

3. The challenge in this Petition is to the communication/ order dated 21/8/2020, by which Respondent No.2-Panchayat has once again revoked the NOC which was earlier granted to the Petitioners for erection of temporary shack/huts in the property surveyed under No.54/1-C of Village Velsao, belonging to the Petitioners.

4. Mr. Sawant, the learned Counsel for the Panchayat points out that the Petitioners have an alternate and efficacious remedy available under the Goa Panchayat Raj Act, 1994 (Act) and, therefore, this Petition ought not to be entertained.

5. On considering such objection, we feel that in the peculiar facts and circumstances of the present case, the same cannot be upheld. Even earlier, the Panchayat on substantially similar grounds, had revoked the NOC granted to the Petitioners. On that occasion, the challenge of the Petitioners was not entertained and the Petitioners were directed to avail the alternate remedy under the Act. The Authorities under the Act interfered with the Panchayat's action, but directed the Panchayat to reconsider the matter. On reconsideration, the Panchayat once again on the very similar grounds, has chosen to issue the impugned revocation order. On the earlier occasions, the Panchayat did not even bother to comply with the principles of natural justice which, the situation clearly demanded.

6. The records indicate that the Petitioners have been agitating this issue of NOC before the several fora and, therefore, in such peculiar facts, it will not be appropriate to relegate the Petitioners to the alternate remedy available under the Act.

7. Taking into consideration the aforesaid circumstances, on 6/10/2020, we made the following order :

“ Heard Mr. Desai, learned counsel for the Petitioners. Mr. D. Pangam, learned Advocate General appears alongwith Ms. A. Kamat, learned Additional Government Advocate for Respondent Nos.1 and 3 and Mr. Nigel Da Costa Frias, learned counsel for Respondent No.2.

2. This petition questions the communication/order dated 21.08.2020 by which, the Panchayat has once again revoked the NOC which was earlier granted to the Petitioners for erection of temporary shack/huts in the property bearing survey No.54/1-C belonging to the Petitioners.

3. As against the impugned order, there is a remedy of appeal available to the Petitioners. However, Mr. Desai points out that in the earlier round, the Petitioners had availed of such remedy and it is in pursuance of the directions issued by the Appellate/Revisional Authority, the Panchayat had issued NOC dated 20.09.2019. Mr. Desai points out that thereafter without the minimum compliance of principle of natural justice, this NOC was revoked by the Panchayat.

4. Mr. Desai points out that thereafter the Petitioners had instituted writ petition in this Court, where the revocation was set aside with liberty to the Panchayat to decide the matter once again after complying with the principle of natural justice and being uninfluenced by the previous order. He points out that on this occasion also the adverse decision has been made by the Panchayat essentially for the same reasons.

5. *Mr. Nigel Da Costa Frias, learned counsel for the Panchayat points out that the Petitioners have an alternate remedy available and therefore, this petition may not be entertained. He points out that the Petitioners in the plan submitted by them had indicated that there are no sand dunes in the area where the temporary shack/huts are proposed to be erected. However, on inspection, the Panchayat has found that there were sand dunes. He points out that the Petitioners had also indicated that they have access to this property and in fact at the site 3 there is no such access. He points out that these are two reasons for revocation of the NOC dated 20.09.2019 as the Panchayat was satisfied that this NOC was obtained by the Petitioners on the basis of the misrepresentation of factual position at site.*

6. *Taking into consideration the past history of this matter, the issue of availability of alternate remedy can be considered a little later. The Panchayat has made the impugned order only on the ground that there are sand dunes in the property and further there is no access.*

7. *The existence of sand dunes can be verified if the GCZMA is directed to depute its officials to visit the site to report whether in property where the Petitioners proposes to erect temporary shack/huts is indeed affected by the sand dunes. Mr. Desai has pointed out that the GCZMA had in fact granted its NOC and it is only thereafter the Petitioners had applied to the Panchayat for grant of NOC.*

8. *Accordingly, we direct the GCZMA to depute its officials to inspect the site and file a report in this Court within two weeks from today. The representatives of the Petitioners and the Panchayat can remain present at such inspection.*

9. *The GCZMA to indicate the date to both the Petitioners as well as the Panchayat. We make it clear that neither the Petitioners nor 4 the Panchayat should raise any issue as regards the date and should, attend the inspection on the date fixed by the GCZMA.*

10. *On the issue of access, Mr. Desai points out that this access is shown on the regional plan. He points out that the Panchayat in its earlier inspection report had accepted that there is access.*

11. *Mr. Nigel Da Costa Frias, learned counsel for the Panchayat states that opportunity may be given to the Panchayat to file reply on the aspect of access.*

12. *The affidavit in reply on the issue of access to be filed within a period of 10 days from today by service of a copy of the same by email to the learned counsel for the Petitioners.*

13. *Depending upon the inspection report as also the stance which the Panchayat adopts in its reply on the aspect of access, we will consider whether the objection relating to alternate remedy is to be sustained or not.*

14. *Now this matter to be taken up for further consideration on 21st October, 2020.”*

8. At the stage of making the order dated 6/10/2020, we were undecided on the issue of alternate remedy. We were desirous of having on record the inspection report from the Goa Coastal Zone Management Authority (GCZMA), which had already granted its approval for issuance of the NOC to the Petitioners. This was more

so because, the Panchayat was raising the issue of existence of sand dunes at the site.

9. As noted in paragraph 5 of our order dated 6/10/2020, the only two grounds on which the Panchayat has issued the impugned communication/order, are as follows :

(a) That there are sand dunes in the area where temporary shack/huts are proposed to be erected; and

(b) That the Petitioners have no access to the site at which they propose to erect the shack/huts.

10. In so far as first ground is concerned, Mr. Sawant, the learned Counsel for the Panchayat submits that the Panchayat also accepts the inspection report placed on record by the GCZMA. He submits that this inspection report supports the case of the Panchayat that there are sand dunes at the site. He submits that in such circumstances, the Panchayat was justified in revoking the NOC earlier granted because, the Petitioners attempted to create an impression that there were no sand dunes at the site.

11. Mr. Shivan Desai points out that when the GCZMA granted its earlier approval, inspection was held and the sand dunes at the site was noticed, demarcated and delineated. He points out that

it is only after the Petitioners were clearly informed that they were not to, in any manner, interfere with it, that the necessary approval was granted for erection of temporary shack/huts in the area, not covered by the sand dunes. Mr. Shivan Desai points out that even the site inspection, now placed on record by the GCZMA, confirms this position.

12. The GCZMA has placed its site inspection report on record under cover of an affidavit filed by its Member Secretary. The affidavit substantially supports what is pointed out by Mr. Shivan Desai in the course of his submissions. This is evident from paragraphs 13 and 14 of the affidavit filed by the Member Secretary, which read as follows :

“13. I say that vide an application dated 17/10/2017, the Petitioner had applied to this Respondent for NOC for erection of 22 temporary huts and one shack in the said property. I say that vide an order dated 15.10.2018, this Respondent had granted permission to the Petitioner for construction of temporary structure in the said property. I say that prior to the grant of the said permission, an inspection was conducted by the officials of this Respondent on 17/02/2018. I say that inspection report observes that 'that there is an elongated sand dune in the north South direction, whereas the rest of the area is a plain, vacant and a flat land. As such, the permission dated 15/10/2018 was issued by this Respondent to the Petitioner taking into consideration the existence of the sand dune, and after ensuring that the same is not impacted.

Hereto annexed and marked as ANNEXURE C is the

copy of the inspection report dated 17.02.2018 and the permission dated 15.10.2018.

14. I say that the clause 6 of the permission dated 15.10.2018 as issued by this Respondent to the Petitioner, and as annexed hereinabove at Annexure C, states that the GCZMA may stipulate any additional conditions subsequently if deemed necessary for environmental protection which shall be complied with. I say that the inspection report dated 30/11/2020 as annexed herein above at ANNEXURE A interalia states that 'The extent of sand dune area identified by the NCSCM and the previous expert members in the plot area must be delineated so as to protect, conserve and rejuvenate by planting local sand dune vegetation. No filling, plinth by using cement concrete and piling works in the entire area of the plot is allowed.' I say that the said condition has to be duly complied with by the Petitioner."

13. Mr. Sawant referred to paragraph 3 of the site inspection report under caption of '*Observations and recommendations*'. This paragraph 3 reads as follows :

"The National Centre for Sustainable Coastal Management (NCSCM), Chennai has demarcated sand dunes along the coastal stretch of Goa. The report has earmarked a small portion of the property lying in South West direction of the plot as Sand dunes. The previous expert members of GCZMA Dr. Prabhakar Shirodkar has also marked an elongated dune on the eastern portion of the plot. While granting the permission for huts, the previous expert member has taken this into consideration and the layout of the same has been done accordingly."

14. From the aforesaid, it is evident that the GCZMA was quite conscious of existence of the sand dunes and, therefore, before granting its approval, imposed stringent conditions upon the Petitioners to ensure protection of such sand dunes. The permission to put up the temporary structures obviously relates to the portion not covered by the sand dunes indicated in the inspection report.

15. Since, the GCZMA is the proper authority to comment upon the issue of sand dunes, we feel that the Panchayat was not at all justified in revoking its earlier NOC on the ground that a portion of the property is affected by the sand dunes. The first ground for revocation is, therefore, unsustainable.

16. In so far as the second ground is concerned, the Petitioners have placed on record that the access is in fact indicated in the Regional Plan itself. Mr. Shivan Desai pointed out that even this second ground is totally unsustainable.

17. Mr. Sawant for the Panchayat submitted that there is a mud road at the site, which is a traditional access used by the local fishers for fishery related activities. He pointed out that these fishermen have an objection to the Petitioners or their customers making use of this access.

18. Since the access is shown in the Regional Plan, at least prima facie, it cannot be said that such an access is some private access belonging to the local fishers. No doubt, the fishers have every right to make use of this access which, the report indicates, is being traditionally used by them. However, there is nothing on record to suggest that this access is some sort of a private access or an exclusive access meant only for the fishers. In any case, the reasoning that there is no access at all, is totally unsustainable. On the basis of the objections, if any, of the local fishers, the NOC already granted by the Panchayat could not have been revoked in this manner. Accordingly, we are satisfied that even the second ground for revocation is quite unsustainable.

19. As indicated earlier, this is a matter where the Panchayat has been repeatedly revoking the NOC which it itself had granted to the Petitioners for erection of temporary structure/huts in their own property. It is in these peculiar facts that we have entertained the present Petition. Since the revocation was only on two grounds and we find that such grounds were quite unsustainable, the impugned revocation order dated 21/8/2020 is required to be set aside and is, hereby set aside. As a consequence, the earlier permission/NOC dated 20/09/2019, stands restored and the Panchayat is now directed to issue NOC for obtaining water and electricity connections to the Petitioners, as expeditiously as possible and, in any case, within a

period of one week from today.

20. The Rule in this Petition is made absolute in the aforesaid terms. Although, this is a case where some costs ought to have been imposed upon the Panchayat, on this occasion, we refrain from doing so.

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

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.