

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW NO. 66 OF 2020

Mr. Lloyd Nunes  
Son of Mr. Cruz Nunes  
Major of age, Indian National,  
Resident of House No. 1071  
(Old No.566), Morgado Waddo,  
Goa Velha, Tiswadi, Goa. .... Petitioner

*V e r s u s*

1. The Chief Electrical Engineer  
Electricity Department  
Government of Goa,  
Vidyut Bhawan,  
Panaji-Goa.
2. State of Goa,  
Through Chief Secretary,  
Porvorim,Bardez, Goa.
3. Mrs. Maria Feliza Braganza,  
w/o. Mr. Menino Agostinho Barnabe Nunes,  
68 years of age, Housewife, Indian National  
House No.1014, Morgado Waddo,  
Goa Velha, Tiswadi, Goa. .... Respondents

Mr. J. P. Supekar, Ms. Yulette Coutinho and Mr. Sufiyan Sayed, Advocates  
for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. G. Shetye, Additional  
Government Advocate for the Respondent nos.1 and 2.

Mr. Melvin Viegas, Advocate for the Respondent no.3.

Coram :- M. S. SONAK &  
M. S. JAWALKAR, JJ.

Date : 14<sup>th</sup> July, 2020

### ORAL JUDGMENT

1. Heard Mr. J. Supekar, learned Advocate for the petitioner, Mr. D. Pangam, the learned Advocate General for the respondent nos.1 and 2 and Mr. M. Viegas, the learned Advocate for the respondent no.3.
2. Rule. With the consent of and at the request of the learned Counsel for the parties, Rule is made returnable forthwith. Learned Counsel for the respondents, waive service.
3. In pursuance of the order made by this Court in Writ Petition No.717 of 2019, the authorities under the Public Health Act, inspected the petitioner's premises and found that the petitioner was operating a dairy therein on commercial basis. This is reflected in the communication dated 23.03.2020 addressed by the Health Authorities to the Village Panchayat of

Goa Velha. Although the petitioner disputes the findings in the aforesaid communication, there is no formal challenge to the communication dated 23.03.2020. The petitioner was offered sufficient time by the concerned health authorities to abate the nuisance. However, it is the case of the health authorities that there was failure on the part of the petitioner to abate such nuisance. Therefore, notice dated 16.05.2020 was issued to the petitioner, once again requiring him to abate the nuisance within a period to three days and to send a compliance report in writing failing which, it was made clear that action deem fit under Section 40 of the Goa Public Health Act, 1985, (*said Act* for short), will be taken against the petitioner which may extend to disconnection of electricity to the petitioner's premises. Thereafter, the concerned health authorities, addressed a communication dated 21.05.2020 to the Assistant Engineer, Electricity Department directing disconnection of electricity to the petitioner's premises. This communication observes that the petitioner has not taken any steps to abate the nuisance.

**4.** Mr. J. Supekar, the learned Counsel for the petitioner, on the basis of instructions, makes a statement that the petitioner has taken steps to abate

the nuisance and this position can be verified by the concerned health authorities at any time. He points out that at the stage when the concerned health authorities inspected the petitioner's premises, the petitioner could not remain present as they had no notice of such inspection.

**5.** From the perusal of the material on record, we find that the petitioner had given an undertaking to this Court that he would not undertake any commercial dairy activities at the site. Here, we are not entirely satisfied with the conduct of the petitioner and we are not too sure whether the petitioner has complied with the undertaking solemnly given by him to this Court. We note that the petitioner in this case has even made some allegations against his own Lawyer and, this time, by changing the said Lawyer with a new Lawyer. This is hardly to be appreciated.

**6.** Be that as it may, we find that the orders made by the concerned health authorities mainly require the petitioner to abate the nuisance. Even the notice for disconnection is merely to require the petitioner to abate the nuisance. If it is the case of the petitioner that the nuisance already stands

abated, then, it is only appropriate that the concerned health authorities once again inspect the site in the presence of both the petitioner as well as respondent no.3 and verify whether the statement of the petitioner is correct. If the statement of the petitioner is found to be correct and the nuisance is indeed abated, in the sense that there is no dairy activity being undertaken by the petitioner, then, it is open to the concerned health authorities to pass such orders as may be appropriate including the taking of steps to reconnect the electricity to the petitioner's premises. However, we make it clear that the petitioner is required to be candid not only to this Court but also to the concerned health authorities. This means that the petitioner cannot insist upon carrying on the activity of dairy on commercial basis but by merely camouflaging the same or styling the same in some other nomenclature. The record, *prima facie*, indicates that the petitioner has already obtained certain financial benefits under the schemes formulated by the Government for purchase of cattle in order to undertake the dairy business. The record also indicates that the petitioner has been supplying the milk to the Milk Society and it is too much to accept that all these activities are being undertaken by the petitioner without any commercial

element being involved. Therefore, the concerned health authorities should satisfy themselves that the petitioner is genuinely not carrying on any dairy activity at the site and only thereafter make appropriate orders.

7. We note, that in these times, it is not possible for the concerned health authorities to consent to participation in the game of hide and seek, which, the petitioner is fond of playing. The petitioner cannot give solemn undertakings and thereafter breach them with impunity taking advantage of the fact that the concerned health authorities cannot permanently post some person at the site to ensure whether the nuisance is being abated or not. All these aspects will have to be considered by the concerned health authorities.

8. The learned Advocate General states that the concerned health authorities will hold an inspection on 17.07.2020 at 11.30 a.m.

9. Mr. J. Supekar and Mr. M. Viegas, the learned Advocates, state that they will not insist upon any separate notice and the parties whom they represent, will remain present at the site on the said date and time.

**10.** The concerned health authorities to make appropriate orders depending upon the outcome of the inspection. The concerned health authorities will also be at liberty to issue such other and further directions as may be necessary for ensuring that the petitioner does not once again give cause to nuisance. The orders which the concerned health authorities make, will be communicated to both the petitioner and the respondent no.3, no sooner the same are made. In case the parties have remedies under the said Act, they are at liberty to explore such remedies in accordance with law.

**11.** With the aforesaid directions, this petition is disposed off. There shall be no order as to costs.

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

**M. S. JAWALKAR**

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

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