

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-OCW NO. 106 OF 2020

IN

PIL WRIT PETITION NO. 15 OF 2020

Remedios D' Cunha & Ors.

..... Applicants

V e r s u s

State of Goa & Ors.

..... Respondents

Mr. Nigel Da Costa Frai, Advocate for the Applicants.

Mr. D. Pangam, Advocate General with Sagar Dhargalkar, Additional Government Advocate for the Respondent nos. 1 to 6.

Mr. V. Sardesai, Advocate for the Respondent no.7.

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

Date : 2nd September, 2020

P. C.

1. Heard Mr. Nigel Da Costa Frias, learned Counsel for the applicants, Mr. Sagar Dhargalkar, learned Additional Government Advocate for the respondent nos.1 to 6 and Mr. V. Sardesai, learned Counsel for the respondent no.7.

2. Mr. Costa Frias, the learned Counsel, states that respondent no.9, who is a contractor, has already been served but has not put any appearance today.

3. In this interim application, we are only concerned with the property bearing survey no. 45/15 of Chinchinim Village. At least, *prima facie*, the survey records indicate that this property is a water body. Besides, we find that the Deputy Collector had issued a show cause notice cum stop work order dated 05.11.2019, addressed to one Cirilo Gama Pereira, requiring him to stop any construction activity, *inter alia*, in property bearing survey no.45/15 and to show cause as to why action should not be taken against him.

4. The petitioner has also placed on record the communication dated 12.03.2020 addressed by the Deputy Collector to the Deputy Town Planner, which reads as follows :

No.10 /FS/illeg-cutt/Salcete/2020/ 186

Date:12 /03/2020

To,
Dy. Town Planne,
Town & Countrylanning Department,
Margao Goa.

Sub:-Request to stop illegal filling and road construction in
prime paddy fields, water bodies reg.....
Ref.: 52/Fly-Squad/Illeg-Cutt/Salcete/2019/90 dated 5/11/19.

Sir,

Find enclosed herewith the application of Remedios D'Cunha
R/o H. No. 1023, Alleamwaddo, Chinchinim, Salcete Goa dated
5/3/2020 on above cited subject, which is self explanatory.

This office has already issued Show cause Notice cum Stop work
order on 5/11/2019 and directed respondent to appear before the Town
Planner, Town and Country Planning Department, Margao Goa, as their
is violation of section 17-A of TCP Act, 1974. It is further informed that
the Survey Number has been wrongly mentioned as 42/11 of village
Chinchinim instead of 44/1 to 11, 13 & 14 & S. Nos 45 & 50 of village
Chinchinim in the said Show cause notice cum stop work order.

In view of above, you are requested to take further necessary action
in this matter at your end.

Yours faithfully,


(Triveni Velip)
Dy. Collector, (DRO)
Incharge of Flying Squad,
Margao Goa.

Encl. As above.

Copy to:-

Remedios D'Cunha R/o H. No. 1023, Alleamwaddo, Chinchinim, Salcete

5. Mr. Dhargalkar, learned Additional Government Advocate, further points out that no show cause notice or stop work orders have been issued by the Deputy Collector as against respondent no. 2 or for that matter to respondent no. 9. He pointed out that the proposed construction activity is undertaken by the respondent no.2 through the contractor, respondent no.9.

6. Mr. Sagar Dhargalkar, the learned Additional Government Advocate, also submits that there is a circular dated 25.08.2011 which exempts the State Government from compliance with the provisions of Section 17-A of the Town Country Planning Act, 1974.

7. According to us, atleast prima facie, the notice issued by the Deputy Collector relates to the property in which there is allegation of illegal filling. Accordingly, the Deputy Collector or concerned authority under the Town & Country Planning Act, 1974, will have to examine the position as to whether there is any violation of the provisions of Section 17-A of the Town and Country Planning Act. The issue as to whether the circular dated 25.08.2011 applies or not is kept open for the decision of the Deputy Collector. The Deputy Collector to now proceed not only against Cirilo but also against the respondent nos.2 and 9 on the basis that the said show cause notices had to be addressed to the respondent nos.2 and 9 as well. Until the show cause notices are disposed off, there shall be no construction or development undertaken in the property bearing survey no.45/15 which is indicated as water body in both the old as well as new Survey Records. It is

also a prima facie opinion expressed by the Deputy Collector himself in his capacity as in charge of Flying Squad at Margao, Goa. The show cause notices to be disposed off as early as possible and, in any case, within a period of six weeks from today, since, it is pointed out that a road is what is proposed to be constructed through the aforesaid property. The Deputy Collector or concerned authority under the Town & Country Planning Act, to afford opportunity of hearing to the petitioners as well, as long as the petitioners co-operate in such hearings and do not unnecessarily try to delay the matter any further.

8. Mr. Dhargalkar, learned Additional Government Advocate, submits that this Court may itself fix a date so that there is no delay in the matter.

9. Accordingly, we direct the parties to appear on 08.09.2020 at 10.30 a.m. before the Town Planner i.e. respondent no.5 herein, who, we are informed, will be appropriate authority to deal with this matter. The concerned authority under the Town & Country Planning Act, to decide the matter in accordance with law.

10. The observations made in this order are only prima facie and, therefore, the Town Planner or the concerned authority under the Town & Country Planning Act, whilst deciding the matter, need not be influenced by the same.

11. The respondent no.7, is the Goa Biodiversity Board. Mr. Sardesai, learned Counsel appearing for the respondent no,7, states that even the board officials will visit the site and ascertain the position as to whether the property bearing survey no.45/15 at Chinchinim Village and is indeed a water body as alleged by the petitioner and, thereafter, decide upon the course of action to be adopted. This statement is accepted.

12. The board to file its response to the main petition on this aspect in four weeks from today.

13. This Civil Application for interim relief is disposed off in the aforesaid terms.

14. All contentions of all the parties are specifically kept open for the decision by the Town Planner or concerned authority under the TCP Act.

M. S. JAWALKAR

M. S. SONAK, J.

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