

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW NO. 321 OF 2020

1. Mr. Krishna Zore,
S/o. Chandrakant Zore,
Major of Age,
Indian National.
Resident of House No.254/1,
Palaskata, Molem,
Dharbandora, Goa.

 2. Mr. Kanta Shelke,
S/o. Janu Shelke
Major of Age,
Indian National.
Resident of House No.246,
Palaskata, Molem,
Dharbandora, Goa.

 3. Mr. Uttam Shelke,
s/o Bomo Shelke
Major of Age,
Indian National.
Resident of House No.244/1,
Palaskata, Molem,
Dharbandora, Goa.

 4. Mr. Antonio Mario Barreto
s/o Paulo Barreto,
Major of age,
Indian National,
Resident of House No.62,
Bazar Vaddo, Molem,
Dharbandora, Goa.
- Petitioners

V e r s u s

1. The Village Panchayat of Molem,
Through its Secretary
Molem, Tal
Dharbandora, Goa.
2. The Town Planner
Town & Country Planning Department
Quepem, Goa.
3. The State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa.
4. M/s. Goa Tamnar Transmission Project Ltd.
Through its Director
with its Registered office at F-1,
The Mira Corporate Suits,
Ishwar Nagar, Mathura Road,
New Delhi.
5. The Sarpanch
Village Panchayat of Molem,
Molem, Tal
Dharbandora, Goa.

..... Respondents

Mr. Gauresh Malik, Advocate holding for Mr. Nigel Da Costa Frias,
Advocate for the Petitioners.

Mr. D. Pangam, Advocate General with Mr. P. Arolkar, Additional
Government Advocate for the Respondent nos. 2 and 3.

Mr. A. D. Bhohe and Ms. Annelise Fernandes, Advocate for the Respondent

no.4.

Mr. R. G. Ramani, Senior Advocate with Mr. B. Thali, Advocate for the Respondent nos.1 and 5.

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

Date : 7th December, 2020

ORAL JUDGMENT (*Per M. S. Sonak, J.*)

1. Heard Mr. Gauresh Malik, learned Counsel for the petitioners, Mr. D. Pangam, learned Advocate General for the respondent nos.2 and 3, Mr. R. G. Ramani, learned Senior Advocate for the respondent nos. 1 and 5 and Mr. A. D. Bhohe, learned Counsel for the respondent no.4.

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

3. The petitioners by instituting the present petition, seek the following substantive reliefs :

“(i) For an appropriate writ, order or direction thereby quashing the Construction license issued to Respondent

no. 4 by the Sarpanch of Village Panchayat Molem dated 05/10/2020 at exhibit F to the petition.

(ii) For a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction thereby directing the Village Panchayat of Molem – Tal to place the application of respondent no.4 before the Gram Sabha for discussion and deliberation as per the resolution of the Panchayat body dated 11/09/2020.

4. Mr. Malik Gauresh, the learned Counsel for the petitioners, at the very outset, submits that the construction license issued to respondent no.4 on 05.10.2020 has been issued by the Sarpanch of the Village Panchayat of Mollem in his personal capacity without there being any resolution of the Panchayat to the same. He submits that there are several reasons which render this license illegal and invalid. He submits that the application of respondent no.4 for construction ought to have been placed before the Gram Sabha for discussions and deliberation in terms of Panchayat's resolution dated 11.09.2020. For all these reasons, he submits that the construction permission dated 05.10.2020 is liable to be set aside and

appropriate writ issued to place the application of respondent no.4 before the Gram Sabha for discussion and deliberation in terms of Panchayat's resolution dated 11.09.2020.

5. Mr. Ramani, the learned Senior Advocate very fairly pointed out that there is no resolution of the Panchayat relatable to the construction license dated 05.10.2020.

6. Mr. Bhobe, the learned Counsel for the respondent no.4, submits that there is no infirmity of the issuance of the construction license since the construction proposed is in accordance with law.

7. According to us, the Sarpanch, could not by himself, have issued the construction license dated 05.10.2020, without any backing of the resolution of the Panchayat. No provision has been brought to our notice under which the Sarpanch could have issued such construction license by making use of the letterhead of the Panchayat.

8. Section 47 of the Panchayat Raj Act, 1994, *inter alia*, provides that notwithstanding anything contained in the said application and rules framed thereunder, the Secretary is also empowered to exercise the powers on matters, *inter alia*, relating to issue of license for construction, etc. in pursuance of the resolution of the Panchayat. On this short ground and without going into any other further grounds raised by Mr. Malik, the construction license dated 05.10.2020 issued to the respondent no.4 is liable to be set aside and is hereby set aside.

9. Insofar as prayer clause (ii) is concerned, at this stage, by reserving the rights and contentions of all parties, we only direct that the application of respondent no.4 for construction license be disposed off by the competent authorities on their own merits and in accordance with law. We once again, make it clear that all rights and contentions of all the parties in this regard are expressly kept open.

10. Rule in this petition is disposed off in the aforesaid terms.

11. 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, J.

M. S. SONAK, J.

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