
(2014) 02 BOM CK 0304

In the Bombay High Court

Case No : Public Interest Litigation W.P. No. 8 of 2013

Corlim Citizen Civic and Consumer Forum

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Goa (Regulation of Land Development and Building Construction) Act, 2008 — Section 2(113)

Citation : (2014) 6 BomCR 666

Hon'ble Judges : R.S. Dalvi, J; F.M. Reis, J

Bench : Division Bench

Advocate : Joseph Vaz, Advocate for the Appellant; E. Afonso, Advocate for the Respondent

Judgement

R.S. Dalvi, J.—Rule. Made returnable forthwith. The petitioner has taken exception to the construction put up by respondent Nos. 10 and 11 on various grounds. The petitioner has cited various illegalities/irregularities. The construction has been completed. The petitioner has filed the petition after the construction came up.

2. With regard to the construction of respondent No. 11, the grievance of the petitioner is that the approval of the Town and Country Planning Authority itself is incorrectly granted. That approval is shown in the plan annexed at Exhibit R10/I to the petition (page 160). The plan has been approved under No. TIS/6934/COR/TCP/11/838 dated 17.5.2011. It accompanies the technical clearance order passed by the Town and Country Planning Authority dated 17.5.2011. It shows the total area of the plot to be 1600 square metres which is as per the sale deed executed by the developer. The part of the land has been acquired by the Government to the extent of 110 square metres which is deducted therefrom. The road widening area of 80.22 square metres is further deducted. The net effective area of the plot thereafter arrived at is shown to be 1409.78 square metres.

3. The main grievance of the petitioner is that the building construction of respondent No. 10 is on the road though a minimum width of the road is to be left as the setback area. Upon that contention, this Court had ordered the Town and Country Planning Authority to make a report upon taking the site inspection as to what area has been left for the road as also the area of the acquired land of respondent No. 7. The plan at page 160 shows the width of the road as also the center-line of the road. It thereafter shows the area under acquisition within the plot and after the area under the acquisition is the space of 3 metres on one side and 5.86 metres on the other side left before the building line of respondent No. 10 starts. This is within the proposed compound wall. The car parking spaces are also shown within that space and within the building line of the structures on the plot which is shown to be proposed residential complex of respondent No. 10.

4. It is contended that the report of the Town and Country Planning Authority is an eye wash and shows wrong area of the setback of the road required to be kept between the building line and the extent of the plot of respondent No. 10 and it is erroneously measured from the middle of the road.

5. The affidavit of the Chief Town Planner, Town and Country Planning Department, Government of Goa, shows the area acquired for the road widening and the net effective area. This has been explained by him in his report upon taking a site inspection. It has been shown in the site inspection plan annexed to his report. The site plan shows the road after which is the acquired land and after which is the setback portion. The setback portion is 3.20 metres on one side and 4.00 metres on the other side.

6. It would have to be seen whether this setback portion is adequate. Pot that purpose Counsel on behalf of respondent No. 10 has drawn our attention to the relevant laws and rules.

7. The Goa (Regulation of Land Development and Building Construction) Act, 2008 and the Rules thereunder show the definition of "right of way" in section 2(113) as the "road or the right of way" to mean the right of way of the road or street inclusive of the carriageway, shoulder, drain, footpaths etc. The petitioner has shown another plan annexed to the site inspection report at Annexure "C". This shows the road and the construction in the entire locality. It shows the site of respondent No. 10 outside which is a tar road of 4.80 metres. This would include the shoulder, footpath etc. It is not only the carriageway. This plan shows the properties to the right as well as to the left of the structure of respondent No. 10 having a tar road of 3.20 and 3.50 metres which is lesser in width than what is seen in the construction of respondent No. 10.

8. Counsel on behalf of respondent No. 10 drew our attention to the Regulation with regard to the road width in S1 settlement area under the Regulation 6A.4(16). The permission for construction to be granted would require minimum 6 metres wide right of way available on the site. This was not applicable to the multi-family dwelling units; the construction of respondent No. 10 is for 21 flats.

Further, several structures specified in sub-clause 16 would not be included in computing the width. This is in respect of the compound wall as also the old structure being a chapel, two of which have been found near the site. Consequently, 6 metres right of way which is required to be kept had not be strictly kept at the site of respondent No. 10.

9. Counsel for respondent No. 10 showed us the Clause 4 being the general requirements for development. Clause 4.4.1 is in respect of the front setback. The minimum front setback in S1 Residential Zone is shown to be 3 metres. The 3 metres setback is shown in the plan approved by the Town and Country Planning Authority at page 160 and 3.20 metres of width is shown in the site inspection plan carried out as per this Court's directions.

10. Our attention is further drawn to the Table DC-A in the aforesaid Act. Clause 12.1 of the table is in respect of the regulations regarding the roads which show the minimum width of road for a right of way or road width which is 6 metres. The carriage width is to be 3.50 metres and the shoulder/footpath would be 1.10 metre on each side. It is contended on behalf of respondent No. 10 that 3.5 meters wide road is therefore required which is left after the construction of respondent No. 10 starts.

11. It is contended on behalf of the petitioner that the Village Panchayat licence has not been obtained for commencing the actual construction. It is contended that there has been certain irregularities in working of the panchayat and an inquiry was ordered against the Secretary of the Village Panchayat who issued the licence to respondent No. 10. It is contended that a resolution which was to be passed for 10 projects was initially passed for four projects which were not of respondent No. 10 and then thereafter the updation was made. It would have to be seen whether that constitutes such illegality as to require the Court to demolish the entire construction despite the Town and Country Planning approval. The construction licence of Village Panchayat dated 10.10.2011 has been issued by the Secretary of the Village Panchayat. The Secretary has been suspended and an inquiry is pending. The construction area is in the village limits. Hence, the approval of the Town and Country Planning Department is only the technical clearance order and the construction would have to be in accordance with the licence of the Village Panchayat passed pursuant to a valid resolution. That aspect would have to be seen in the inquiry. Consequently, the occupancy certificate to be issued to the respondent No. 10 cannot be availed of by respondent No. 10 till the result of the inquiry. The Town and Country Planning Authority shall therefore issue occupancy certificate only upon seeing the licence of the Village Panchayat granted under the valid authority of law.

12. It has been contended that except 6 car parking spaces, remaining car parking spaces for 21 flats in the construction of respondent No. 10 are not permissible because they fall within the setback area. The plan at page 160 shows the certain car parking spaces within the setback area on north, south and also on west of the property.

13. Our attention has been drawn to the rule relating to the restrictions on development within setback in the aforesaid Act under Regulation 4.5. The restriction which requires the setback area to be kept permanently open to sky specifies that it should not be used for stacking materials or loose articles for the purpose of trade or otherwise or used for putting up fixed or movable platforms, advertisement hoarding boards, neon sign boards or for such similar uses. It does not prohibit car parking if it is uncovered parking left open to the sky. The car parking would not be a similar use if it is an open car parking space. Consequently, in view of the plan approved for technical clearance granted which shows the car parking spaces, we cannot pass any further directions.

14. With regard to respondent No. 11, the contention of the petitioner is that no right of access is granted to the three structures constructed in the project of respondent No. 11. The adjoining owner of respondent No. 11 is the Goa Industrial Development Corporation (GIDC). There is a dispute pending in the Civil Court between respondent No. 11 and GIDC which would decide whether a right of access has to be granted to respondent No. 11 from the property of GIDC. Respondent No. 11 shall have to show the required access through its properties before any occupancy certificate would be granted by the Village Panchayat after obtaining the approval of the Town and Country Planning Department.

15. The grant of occupancy certificate by the Village Panchayat shall be subject to the access granted from the property of the GIDC. No further directions with regard to respondent No. 11 are required. Rule is granted to the above extent. The writ petition is disposed of accordingly.