

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 307 OF 1999

Shri Audhut Gajanan Kamat,
resident of House No.86-A/9,
Anantamriti, Liverament Vaddi,
Near Vidyut Bhavan, Ansabhat,
Mapusa-Goa.

... Petitioner.

versus

1. The Chief Officer,
Mapusa Municipal Council,
having office at Mapusa
Municipal Council Building,
Mapusa, Goa.
2. Municipal Appellate
Tribunal, Panaji-Goa.
3. Shri Vithal Jairam Naik,
resident of House No.86-1/9,
Near Vidyut Bhavan,
Ansabhat, Mapusa-Goa.
- 3(1) Smt. Sunita Vithal Naik
(widow);
- (2) Shri Ajit Vithal Naik
(son)
- (3) Shri Jairam Vithal Naik
(son);
- (4) Shri Sanjay Vithal Naik
(son)
- (5) Miss Milan Vithal Naik
(daughter)
All residents of House
No.86-1/9, Near Vidyut
Bhavan, Ansabhat, Mapusa,
Bardez, Goa.
- (6) Mrs. Vidya Gajanan Falkar
(daughter);

- (7) Shri Gajanan Falkar
(son-in-law);
Both residents of Tote,
Pilgaon, Bicholum-Goa.
- (8) Smt. Alka Chandrakant
Nagvekar(daughter);
- (9) Shri Chandrakant Nagvekar
(son-in-law);
Both residents of Ward
No.10, Khorlim, Mapusa,
Bardez, Goa. ... Respondents.

Mr. M. S. Sonak and Mr. D. Pangam, Advocates for the
Petitioner.

Mr. S. G. Dessai, Senior Advocate with Mr. S. D.
Padiyar, Advocate for Respondent No.1.

Mr. J. P. Mulgaonkar, Advocate for Respondent No.3 to 9,
absent.

CORAM: F. I. REBELLO &
P. V. HARDAS, JJ.

DATED: 30TH JUNE, 2003.

ORAL JUDGMENT(PER F.I.REBELLO, J.)

Petitioner had filed the present Petition on
the ground that Respondent No.1 had failed to take any
action against Original Respondent No.3 since deceased
and now represented by Legal Representatives in respect
of the construction done on the municipal drain.

2. The record would show that based on the
complaints made by the Petitioner herein and after
issuance of Show Cause Notice to Respondent No.3, an

Order was passed on 27th August, 1993, against Original Respondent No.3 that he had extended the house by 5.20 x 4.00 metres with laterite masonry and covered with Mangalore tiles roofing near Ansabhat, Mapusa. The Original Respondent No.3 challenged that Order in Appeal which was allowed by Order dated 25th January, 1995. Respondent No.1 did not challenge the said Order.

3. The Petitioner thereafter has filed the present Petition to challenge what the Petitioner contends is illegal construction on the municipal drain. In support of his contention that the municipal drain exists, Petitioner relies on the sketch which is a copy of the Old Cadastral survey where the municipal survey is No.87 and that of Original Respondent No.3 is shown under No.33. He also relies on the plan for construction which is approved by Respondent No.1 and which was submitted by the Petitioner and which shows an existing municipal drain. Admittedly, Original Respondent No.3 was not a party to that agreement. That application was approved by Respondent No.1.

In the course of the hearing on behalf of the Petitioner, learned Counsel has produced before the Court a Show Cause Notice dated 21st June, 2002, issued by the Chief Officer, Mapusa Municipal Council holding

that there is some encroachment by Original Respondent No.3. A translation of that record shows that Original Respondent No.3 has piled laterite stones on the drain passing between their house and the Complainant i.e. the Petitioner herein, thereby encroaching on the municipal drain as depicted in the sketch. The inspection was done on 11th June, 2002, in terms of communication sent to the Chief Officer, Mapusa Municipal Council i.e. Respondent No.1.

It is, therefore, submitted on behalf of the Petitioner that the documents of Respondent No.1 themselves would disclose that there is a municipal drain and consequently the failure by Respondent No.1 to discharge the statutory functioning would invoke this Court's extra-ordinary jurisdiction.

On the other hand, on behalf of Respondent No.1, it is contended that earlier Show Cause Notice was issued. An Order was passed. That was challenged in Appeal, which Appeal was allowed. Respondent No.1, eventhough, not represented by the second Respondent is bound by the said Order. It is further contended that what the Petitioner is relying upon is on the old cadastral survey and his own house plan. In the new survey plan of the property. The property of the Petitioner is shown under Survey No.11A and that of

Original Respondent No.3 is shown as 69. That survey does not show the existence of any public drain.

4. In the instant case, the issue whether it is a public drain will have to be first established considering the documents on record. It is not possible to so hold that there exists a municipal drain considering the various documents. The issue involves disputed questions of fact and cannot be gone into in the exercise of the extra-ordinary jurisdiction of this Court.

Learned Counsel points out that the Judgment of the Administrative Tribunal will stand against them. If there really exists a municipal drain, a statutory duty will be cast on Respondent No.1 to remove all constructions on the municipal drain, provided the Petitioner gets a declaration from a competent forum.

In our opinion, therefore, if the Petitioner is able to establish in law in an appropriate proceeding then he may be advised to take, and if so advised that there exists a municipal drain Respondent No.1 would be duty bound to discharge its statutory duties after giving an opportunity to Respondent No.3.

5. In the light of that, nothing survives in this Petition. Rule discharged. There shall be no order as to costs.

F. I. REBELLO, J.

P. V. HARDAS, J.

RD.