

BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT
PUNE

(Under Section 18(1) read with Sections 14 and 20 of the National
Green Tribunal Act, 2010)

ORIGINAL APPLICATION NO 29 OF 2023

BETWEEN :

Mrs. Sylvia Cardozo and Ors) ...Applicants

Versus

State of Goa and Ors) ...Respondents

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This index is filed on the 11th day of September 2023 at Goa

Through



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Applicant



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**AFFIDAVIT IN REJOINDER ON BEHALF OF THE
APPLICANTS**



1. I, Mr Cedric Savio D'Souza, the Applicant No. 3 above named, age 45 years, r/o House No 329/1, Uzro, Raia, Salcete, Goa – 403 720, the Applicant herein, do hereby solemnly affirm and declare as under: -
2. I say that I have read the contents of the above captioned Original Application and the Affidavit filed therein and have understood its contents and am therefore competent to file the present Affidavit.

(Signature)

3. In terms of the directions of this Hon'ble Tribunal at para 7 of the order of 18.07.2023 in the present Application, I say I am filing the present Affidavit for the limited purpose of bringing on record an explanation of the various types of clearances/NOCs referenced in the present Application

TECHNICAL CLEARANCES

4. I say that the Applicants vide the present Application have brought on record the Technical Clearance dated 28.01.2020 issued by the Deputy Town Planner Margao (page 171-173) of the Application paper book.

5. I say that the said technical clearances are issued by the Deputy Town Planner in exercise of its powers under Section 49 of the Goa Town and Country Planning Act, 1976, which pertains to the necessary sanction for subdivision of plot or layout of private street and restriction on registration of purchase, sale or transfer of immovable property. An extract of Section 49 of the Goa Town and



Country Planning Act, 1976 has been annexed hereto and marked as **Annexure A - 1**

6. I say that a perusal of the said technical clearance shows that the clearance was granted subject to, inter alia, the following conditions
- a. The necessary licence is to be obtained from the panchayat (condition no 7)
 - b. A conversion sanad for use of land was obtained by the Applicants under the Goa, Daman and Diu Land Revenue Code (condition no 28)
7. I say that the Technical Clearance dated 28.01.2020 in fact places various other conditions for obtaining several other types of permissions and licenses in order for the Technical Clearance to become operational. I further say that it is **pertinent** to note that the technical clearance pertains to the issue of sub-division of a plot, which in turn makes it easier for the land to be used for non-forest purposes.



(Signature)

8. I therefore say it is evident that a technical clearance issued under Section 49 of the Goa Town and Country Planning Act, 1976 is one of several types of sanction required from Government Authorities prior to the subdivision of a plot and the change of its user coming into effect.



9. I say that the said technical clearance of 28.01.2020 came to be renewed vide the letter dated 05.12.2022 issued by the Deputy Town Planner (page 225 of the Application). The said renewal letter also reiterated the role of the village panchayat to verify and confirm issues regarding complaints of encroachment, violation of judicial orders and other legal issues.

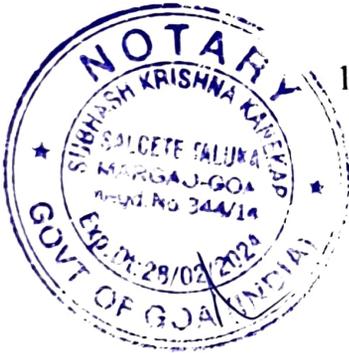
CONVERSION SANAD

10. I say that Applicants have brought on record a Conversion Sanad dated 03.03.2020 issued to the Respondent No. 8,9 and 10 at page 174-179 of the paperbook of the Application. I say that the said Conversion Sanad has been issued by the Collector, South Goa District under

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Section 32 of the Goa Land Revenue Code, 1968 permitting the land in question (7010 sq m of land on Survey No 175/1-I of Carmulim Village, Salcette Taluka) to be utilised for residential use. The relevant extract of Section 32 of the Goa Land Revenue Code, 1968 has been annexed hereto and marked as **Annexure A-2**.

11. I say that the said Conversion Sanad is also contingent on various other clearances and permissions, including NOCs from relevant authorities (condition no 17 and 22).



12. I further say it is pertinent to note that the said Conversion Sanad does not condone the violation of any provision of the Goa Town and Country Planning Act, 1976 and particularly notes, at condition no 7 that any violation of the provisions of the said Act would be at the cost and peril of the Respondent No 8,9 and 10.

13. I say that it is pertinent to note that the said Conversion Sanad acknowledged the history of the said plot of land falling in the list of prospective forests identified by the South Goa Forest Division Committee, and noted the final

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report of the Review Committee appointed by the Goa Government to complete the process of finalising the survey numbers within Goa to be declared to be private forests.

NOC OF GRAM PANCHAYAT

14. The provisional NoC of the Village Panchayat Respondent No. 6 dated 11.01.2023 at page 226-227 of the Application is issued by the Respondent No. 6 in furtherance of the technical orders of the Deputy Town Planner Margao . I say that this is evident from the first paragraph of the provisional NOC itself, which quotes the technical clearance of the Deputy Town Planner Margao dated 28.01.2020 and the renewal letter dated 05.12.2022.

15. I say that a perusal of Condition 9 of the said provisional NOC indicates that a further final NOC is also required to be obtained from the village panchayat.

16. A perusal of condition no 25 of the said provisional NOC notes that the Respondent No. 6 Panchayat has claimed




that it will not be responsible for the issue of complaints pertaining to encroachments, judicial orders/directives and other legal issues.

17. I say that such a consideration is a direct contradiction of the letter dated 05.12.2022 issued by the Deputy Town Planner (page 225 of the Application), which stipulated that it would be the responsibility village panchayat to verify and confirm issues regarding complaints of encroachment, violation of judicial orders and other legal issues.



18. I therefore say that it is evident that the provisional NOC dated 11.01.2023 has been wrongfully issued by the Respondent No. 6, as no statutory authority has applied its mind to the issue of the complaints raised by the Applicants and other aggrieved villagers regarding the encroachments and violation of court orders by the Respondent No. 8, 9 and 10.

19. I say that the present Affidavit only seeks to clarify the roles of the various clearances sanctions granted for the

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conversion of the 7010 sq m of land on Survey No 175/1-1 of Carmulim Village, Salcete Taluka. I say that I adopt the averments raised in the Application and my first Affidavit in rejoinder and say that the prayers sought by the Applicants deserve to be allowed and made absolute.



Solemnly affirmed at Margao, Goa)

on this 11^m day of September 2023)

[Handwritten signature]

[Handwritten signature]

Applicant No 3
(Cedric Savio D'Souza)

Identified by me

RONITA BHATTACHARYA
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Mobile No. 9920097464
Enrolment No. MAH/2973/2017

Solemnly affirmed before me by
Shri/Smt. Cedric Savio D'Souza
Who is identified to me by vide
Recd. No. 3975 4036 1863
Shri/Smt.
Who is personally known to me
this 11th day of Sept 2023
Reg. No. 1308/2023

[Handwritten signature]
11/09/2023

SUBHASH KRISHNA KANEKAR
NOTARY
SALCETE TALUKA
STATE OF GOA (INDIA)



(3) When a claim under sub-section (1) is received by the Planning and Development Authority, it shall, after giving an opportunity of being heard to the claimant, assess the amount of compensation payable and offer it to the claimant.

(4) If the claimant does not accept the compensation offered under sub-section (3) and gives notice, within such time as may be prescribed, of such refusal, the Planning and Development Authority shall refer the matter for the adjudication of the District Court and the decision of that court shall be final and binding on the owner and the Planning and Development Authority.

49. Sanction for sub-division of plot or layout of private street and restriction on registration of purchase, sale or transfer of immovable property.— (1) Any person intending to sub-divide his plot or make or layout a private street, on or after the date on which a public notice of the preparation of a Development Plan is published under sub-section (1) of section 35, shall submit the layout plan together with the prescribed particulars to the Planning and Development Authority for sanction.

(2) The Planning and Development Authority may within the prescribed period, sanction such plan either with or without modifications and conditions as it considers expedient or may refuse to give sanction if it is of the opinion that such sub-division, making or layout is not in conformity with the proposals contained in a Development Plan.

(3) When the sanction is granted subject to conditions or refused, the grounds for imposing such conditions or such refusal shall be recorded in writing in the order and such order shall be communicated to the applicant in the manner prescribed.

(4) If any person does any work in contravention of the provisions of sub-section (1) or in contravention of the modifications and conditions of the sanction granted under sub-section (2) or in spite of the refusal of sanction under sub-section (2), the Planning and Development Authority may direct such person by notice in writing to stop any work in progress and after making an inquiry in the prescribed manner, remove or pull down any work or restore the land to its original condition.

(5) Any expenses incurred by the Planning and Development Authority under sub-section (4) shall be a sum due to the Planning and Development Authority under this Act from the person in default.

^{5*}(6) Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of sub-section (1) of section 29 of the Registration Act, 1908, purports to transfer, assign, limit or extinguish the right, title or interest of any person, in respect of plots which are not as per Survey Plan issued by Survey Department or plots which have no development permissions for

Central Act
16 of 1908.

* Substituted by the Amendment Act 18 of 2009



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such sub-division from Planning and Development Authority ⁵⁹[within a planning area or from the Town and Country Planning Department within a area other than planning area,] no registering officer appointed under the Act, shall register any document, unless the owner of such plot produces a certificate of sanction or a certificate of "no objection" from the Planning and Development Authority exercising jurisdiction ⁶⁰[in respect of the planning area or from Chief Town Planner (Planning) or such officer as may be authorized]:

Provided that no such certificate of sanction or "no objection" shall be required to be produced if the sub-division of land or the making or layout of any property results from the right of inheritance within a family:

Provided further that no such certificate of sanction or no objection shall be required to be produced for the purpose of mortgaging immovable property in favour of any financial institution notified by the Government by a notification in the Official Gazette, for the purpose of this Act.]

50. Power to revoke or modify permission to develop.— (1) If it appears to the Planning and Development Authority that, having regard to the Development Plan prepared or under preparation or to be prepared and any other material consideration, it is necessary and expedient that any permission to develop land granted under this Act or any other law, ought to be revoked or modified, it may, by order, revoke or modify such permission to such extent as appears to it to be necessary:

Provided that—

(a) where the permission relates to the carrying out of building or other operations, no such order,

(i) shall affect such of the operations as have been previously carried out; or

(ii) shall be passed after such operations have been completed;

(b) where permission relates to a change of use of land no such order shall be passed at any time after such change has taken place.

(2) When permission is revoked or modified by an order made under sub-section (1), the owner may, within such time and in such manner as may be prescribed, claim compensation for the expenditure incurred in carrying out any work in accordance with such permission and which has been rendered abortive by the revocation or modification of permission.

(3) Where a claim under sub-section (2) is received by the Planning and Development Authority it shall, after giving an opportunity of being heard to the claimant assess the amount of compensation payable and offer it to the claimant.

⁵⁹ substituted in place of words "within a planning area" by Amendment Act 3 of 2018

⁶⁰ substituted in place of words "in respect of the planning area" by Amendment Act 3 of 2018

Dy. Secy



(4) If the claimant does not accept the compensation offered under sub-section (3), and gives notice, within such time as may be prescribed, of such refusal, the Planning and Development Authority shall refer the matter for the adjudication of the District Court and the decision of that court shall be final and binding on the claimant and the Planning and Development Authority.

51. Penalty for unauthorised Development, etc.— (1) Any person who, either by himself or at the instance of any other person, commences, undertakes or carries out development of, or changes the use of any land —

- (a) in contravention of any Development Plan; or
- (b) without obtaining a certificate regarding development charge under section 43; or
- (c) without the permission as required under this Act; or
- (d) in contravention of any condition subject to which such permission has been granted; or
- (e) after the permission for development has been revoked under section 50; or
- (f) in contravention of the permission which has been modified under section 50,

shall be punishable with fine which may extend to ⁶¹[One lakh rupees] and in the case of a continuing contravention with a further fine which may extend to ⁶²[ten thousand rupees for every day] during which such contravention is continued after conviction for the first such contravention.

(2) Any person who continues to use or allows the use of any land or building in contravention of the provisions of a Development Plan without having been allowed under section 42, or where the continuance of such use has been allowed under that section, continues such use after the period for which the use has been allowed or without complying with the terms and conditions under which the continuance of such use is allowed, shall be punishable with fine which may extend to ⁶³[ten thousand rupees], and in the case of a continuing contravention with a further fine which may extend to ⁶⁴[five hundred rupees] for every day during which such contravention is continued after conviction for the first such contravention.

⁶⁵[(3) An offence under this section shall be cognizable.]

52. Power to require removal of unauthorised development.— (1) Where any development or change of use of land has been carried out in any manner specified in clauses (a) to (f) of sub-section (1) of section 51, the Planning and Development Authority may, within four years of such development or change, serve on the owner a notice requiring him, within such period, being not less than one month from the date of service

⁶¹ Substituted by the Amendment Act 5 of 1998.

⁶² Substituted by the Amendment Act 5 of 1998.

⁶³ Substituted by the Amendment Act 5 of 1998.

⁶⁴ Substituted by the Amendment Act 5 of 1998.

⁶⁵ Inserted by the Amendment Act 5 of 1998.



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agricultural purpose shall be used for any other non-agricultural purpose or for the same non-agricultural purpose but in relaxation of any of the conditions imposed at the time of the grant or permission for non-agricultural purpose, except with the permission of the Collector under section 32.

31. Restriction on use.— Subject to the rules made by the Government in this behalf the Collector or a Survey Officer may regulate or prohibit the use of land liable to the payment of land revenue for purposes such as cultivation of unarable land in a survey number assigned for public purpose, manufacture of salt from agricultural land, removal of earth, stone, kankar, murum or any other material from the land assessed for the purpose of agriculture only, so as not to destroy or materially injure the land for cultivation, removal of earth, stone (other than loose surface stone), kankar, murum or any other material from the land assessed as a building site, excavation of land situated within a gaothan; and such other purposes as may be prescribed; and may summarily evict any person who uses or attempts to use the land for any such prohibited purpose or to impose one or more of the penalties specified in section 33, or both, as he deems fit.

32. Procedure for conversion of use of land from one purpose to another.—
(1) If an occupant of land or a tenant of such land—

(a) which is assessed or held for the purpose of agriculture wishes to use it for a non-agricultural purpose, or

(b) where land is assessed or held for a particular non-agricultural purpose, wishes to use it for another non-agricultural purpose, or

(c) desires to use it for the same non-agricultural purpose for which it is assessed but in relaxation of any of the conditions imposed at the time of grant of land or permission for such non-agricultural purpose, such occupant or tenant shall, with consent of the tenant or, as the case may be, of the occupant, apply to the Collector for permission in accordance with the form prescribed.

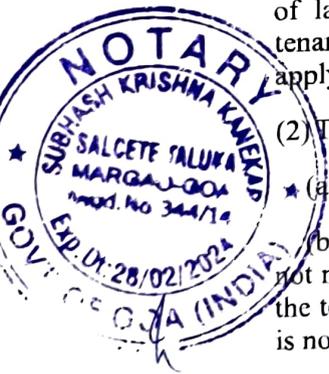
(2) The Collector, on receipt of an application,—

(a) shall acknowledge the application within seven days;

(b) may, unless the Collector directs otherwise, return the application if it is not made by the occupant or, as the case may be, the tenant or if the consent of the tenant, or as the case may be, of the occupant has not been obtained, or if it is not in accordance with the form prescribed;

(c) may, after due enquiry, either grant the permission on such terms and conditions as he may specify subject to any rules made in this behalf by the Government; or refuse the permission applied for, if it is necessary so to do to secure the public health, safety and convenience or if such use is contrary to any scheme for the planned development of a village, town or city in force under any law for the time being in force and in the case of land which is to be used as building sites in order to secure in addition that the dimensions, arrangement and accessibility of the sites are adequate for the health and convenience of the occupiers or are suitable to the locality; where an application is rejected, the Collector shall state the reasons in writing of such rejection.

²⁷[(3) The Collector shall take a decision on the application within a period of sixty days from the date of receipt of the application and in case of his failure to do so, the person shall have the right to make an appeal to the Secretary



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(Revenue) to the Government who shall dispose of the appeal within a period of thirty days from the date of filing of appeal.]

(4) The person to whom permission is granted. ²⁸[] under this section shall inform the Mamlatdar in writing through the village accountant of the date on which the change of user of land commenced, within thirty days from such date.

(5) ²⁹[If the person fails to inform the Mamlatdar, within the period specified in sub-section (4), he shall be liable to pay, in addition to the non-agricultural assessment, such fine as the Government may, by notification in the Official Gazette, specify, from time to time.]

³⁰[(6) (i) For the purpose of conversion, the land in the State of Goa shall be categorized as below:—

“A” Category: Coastal Panchayat areas and areas of five major towns, such as, Panaji, Mapusa, Ponda, Vasco and Margao;

“B” Category: Census Towns areas and areas of village panchayats adjoining said five major towns and other Municipal areas;

“C” Category: Other Village Panchayat areas.

(ii) When the land is permitted to be used from one purpose to another, a sanad shall be granted to the holder thereof in the prescribed form, on payment of the fees hereinbelow:—

(a) “A” Category areas: Double the rate specified in Table below.

(b) “B” Category areas: 1.5 times of the rate specified in Table below.

(c) “C” Category areas: As specified in Table below.

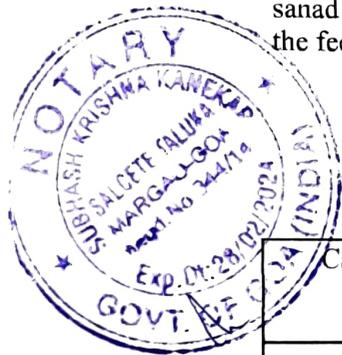
TABLE

Category	500 square metres and less	Above 500 square metres but upto 2000 square metres	Above 2000 square metres
(1)	(2)	(3)	(4)
(i) Residential	³¹ [S1 -Rs.70 /- S2 - Rs.55/- S3 - Rs.45/- S4 - Rs.35/-.	1.5 times extra as mentioned in column (2)	Double the amount as mentioned in column (2)
(ii) Commercial	C1 - Rs.400/ C2 - Rs.350/- C3 - Rs.300/- C4 - Rs.250/-	1.5 times extra as mentioned in column (2)	Double the amount as mentioned in column (2).
(iii) Industry	Rs.100/-]	1.5 times extra as mentioned in column (2)	Double the amount as mentioned in column (2):

Provided that no such fees shall be leviable in cases where sanad is granted for the purpose of churches, temples, mosque, gurudwaras:

Provided further that when the land to be used for the purpose of sports, health, education, ³²{Charitable or cultural institutions, housing by a co-operative housing society formed by the Government employees or the accredited journalists registered with the Directorate of Information and Publicity, Government of Goa}, the Government may, by notification in the Official Gazette, exempt from payment of said fees.]

[Signature]



³³[(6A) The Government may, by notification in the Official Gazette, amend any entry in the Table specified in clause (ii) of sub-section (6) and thereafter such Table shall be deemed to have been amended accordingly.]

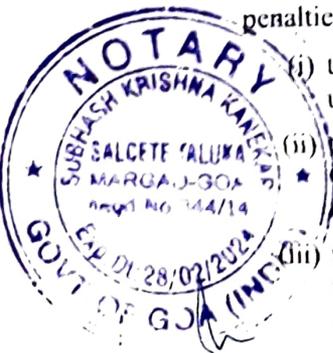
(6B) Every notification issued under sub-section (6A) shall be laid as soon as may be after it is made on the table of the Legislative Assembly while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees in making any modification in the notification or the Legislative Assembly agrees that the notification should not be made and notify such decision in the Official Gazette, the notification shall from the date of publication of such decision have effect only in such modified form or to be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that notification.]

(7) It shall be lawful for the Collector, either on his own motion or on the application of a person affected by the error to direct at any time the correction of any clerical or arithmetical error in the sanad arising from any accidental slip or omission.

³⁴[**32A. Grant of sanad in Settlement Zone.**— Notwithstanding anything contained in section 32 of this Code, any land demarcated as settlement zone in the Outline Development Plan and/or the Regional Plan as duly notified under the Goa, Daman and Diu Town and Country Planning Act, 1974 (Act No. 21 of 1975), the Collector shall grant permission to use the land for such purpose permissible under the Goa, Daman and Diu Town and Country Planning Act, 1974 (Act No. 21 of 1975) or the Regulation framed thereunder in respect of Settlement Zone and issue sanad to the applicant subject to payment of fees as specified under sub-section (6) of section 32 of the Code]

33. Penalty for so using land without permission.— (1) If any land held or assessed for one purpose is used for another purpose without obtaining permission of the Collector under section 32 ³⁵[or 32-A] or before the expiry of the period after which the change of user is deemed to have been granted under that section, or in contravention of any of the terms and conditions subject to which such permission is granted, the holder thereof or other person claiming through or under him, as the case may be, shall be liable to the one or more of the following penalties, that is to say,—

- (i) to pay non-agricultural assessment on the land with reference to the altered use;
- (ii) to pay such fine not exceeding the market value of the land as the Collector may, subject to rules made by the Government in this behalf, direct;
- (iii) to restore the land to its original use or to observe the conditions on which the permission is granted within such reasonable period as the Collector may by notice in writing direct; and such notice may require such person to remove any structure, to fill up any excavation or to take such other steps as may be required in order that the land may be used for its original purpose or that the conditions may be satisfied.



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