



BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNAL WESTERN ZONE BENCH,
PUNE

ORIGINAL APPLICATION NO.87/2022WZ
BETWEEN:

Gopal Vitthal Bholnekar & Anr Applicants

V/S

Goa Coastal Zone Management Authority
And ors Respondents

REPLY OF THE RESPONDENT NO. 3, 4
AND 5

MAY IT PLEASE YOUR HONOUR

1. Without prejudice to rights and contentions the respondents' no. 3, 4 and 5 submit that the application is barred by law of limitation under Section 14 (4) of National Green Tribunal Act. As per law the application is required to be filed

Bholnekar Alkhite

within 6 months from the date of cause of action. As per statements in paragraph 7 and 8 of the application the allegation is that the structures were constructed in the year 2012 and the Canacona Municipal Council had rejected the complaint by order dated 20/8/2015. However the present application which is filed on the same issue almost after 10 years of alleged complaint filed in the year 2011-2012. As such the proceedings are filed beyond limitation period as prescribed under Section 14 (4) of National Green Tribunal Act. Hence the application has to be rejected on this ground alone.

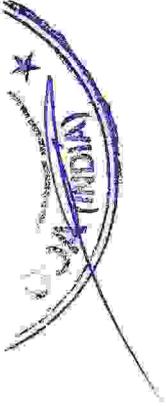


2. It is submitted that National Green Tribunal Act came into force in 2010 and the structures which are sought to be alleged to be illegal were existing prior 1991 before the date of enforcement of

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National Green Tribunal Act 2014. Hence present application is not maintainable.



3. The respondent no. 3, 4 and 5 submit that the present application is not maintainable as there is no damage caused to environment or ecology as required under Section 14 of the National Green Tribunal Act or under Environment Protection Act 1987 as the applicants are related to these respondents and are agitating for their private rights of ownership in the property wherein there are existing structures which they are trying to demolish by one way or the other by filing various proceedings before the various authorities and court of law. Hence present application is not maintainable.

4. The respondents submits that the applicants have also filed Regular Civil Suit no. 35/2022 before the Civil Judge Junior Division at

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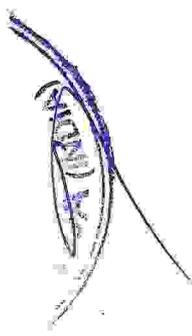
Canacona in which prayer has been made for permanent injunction. This suit is filed in May 2022 whereas present application is filed subsequently somewhere on 19th September, 2022. The applicants have not made any prayer for demolition of any structure in the said suit. Therefore under order 2 Rule 2 of CPC 1908 the applicants are not entitled to claim any further relief in relation to the suit property before this Hon'ble Tribunal when in the said suit such relief should have been included.



5. The applicants have suppressed material facts and are abusing due process of law. The applicants are filing false proceedings against the respondents to cause harassment and loss to the respondents. The applicants have filed proceedings before Canacona Municipal Council in the year 2011-2012 which were disposed by order dated 20/8/2015. Against the said order

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the applicants have filed Writ Petition no. 623/2016 before the Hon'ble High Court which is pending. The applicants had also filed Writ Petition no. 257/2022 (F) before the Hon'ble High Court to disconnect electricity and water connection to the respondent's house which has been disposed by order dated 1/2/2022. The applicants had also filed Writ Petition no. 415/2022 before the Hon'ble High Court challenging the permissions for construction of soak pit which has been dismissed by order dated 3/10/2022. The applicants have filed Civil Suit no. 35/2022 in May 2022 which is pending before the Hon'ble Civil Court at Canacona. From these proceedings it is clear that the applicants have now filed present proceedings in order to agitate their private rights to the property and not related to environment of ecology. Therefore the present proceedings are liable to be rejected.

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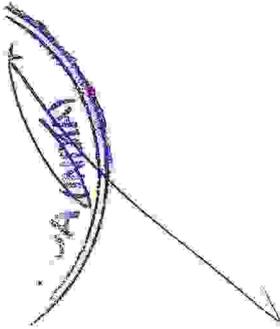
Alkhita

6. The respondents submits that the facts related to the respondent's existing structure and the applicants continuous filing of proceedings against the respondents are as under:
7. The respondents submit that the plot of land under survey no. 134/4 and 136/1 of Village Nagarcem belong to the respondent's family. The admeasuring about 6000 sq. mtrs out of which about 900 sq .mts was inherited/owned by respondent's late husband Mr. Ulhas Bholnekar and his brother i.e. Applicant no. 1 herein from their parents and other holders of the part of the land has separately holding their shares in the survey number. The name of father of Husband of respondents No.1 and Applicant no. 1 is in the survey records. The said area of 900 sq. mtrs is mutually divided and half part i.e.



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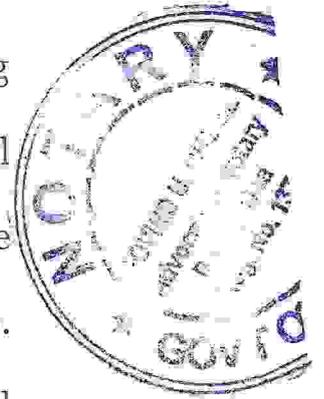
about 450 sq. mtrs is in respondent's occupation in which respondent's portion of house is existing and other portion of the house and area of 450 sq. mtrs is in occupation. 15. The existing house in the said plot is partly in respondent's occupation and other part of the house is in occupation of Applicants who had let out the said portion and was residing at H. no. 82, Katta, Balli, Cuncolim which is more than 20 Kms away from Canacona. The respondents no.1 and her husband had allowed Applicants to construct soak pit for their use in the portion of the plot in their occupation. There is no water well in the portion occupied by the Applicants but there is water well in the portion in occupation of the respondents.

8. The Applicants in the year 2011 had filed complaint before the Chief Officer Canacona Municipal Council alleging illegal construction.

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Upon complaint of Applicants, Canacona Municipal Council passed order dated 20/08/2015 rejecting the said complaint holding that the respondent's house is existing house prior to 1980 and complaint of illegal construction cannot be entertained. Against the said order Applicants has filed Writ Petition no. 623/2016 before this Hon'ble Court which is still pending before this Hon'ble Court after issuing Rule on 3/7/2017. Copy of order dated 20/08/2015 is already produced by the applicants which is annexed as Annexure 3.

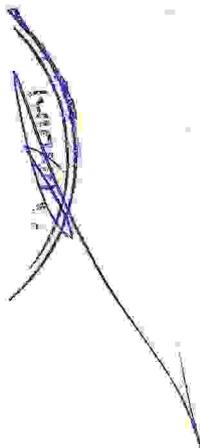


9. The husband of respondents no.3/father of respondents no. 4 and 5 who was retired Government Employee expired on 29/09/2020 due to heart attack during Covid-19 pandemic. After the death of husband of respondents no.3, the Applicants started harassing respondent's family as respondent no. 3 along with her two

Bhaskar ✓

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daughters who are respondents no. 4 and 5, who are student are residing in the said house.

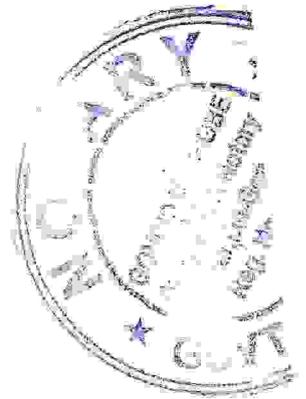


10. The respondents submit that the Applicant no. 1 is a retired teacher although he was staying along with his family at Balli, Cuncolim which is about 20 Kms away from Canacona from the respondent's house started coming to residence at the ancestral house at Palolem in October 2021 which is part of the respondent's ancestral house.

11. The Respondent submit that Respondent's house has toilet with septic tank as well as Kitchen, washroom/bathroom and the water was discharged in a pit which was like a soak pit there was no complaint earlier and the water well of the respondent is more than 20 mts. away from the said pit which is not at all affected.

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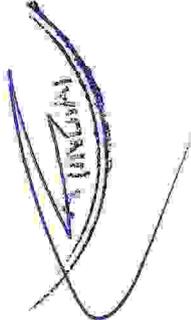
12. The Respondents submit that in January 2022 the Respondent received a notice dated 6/01/2022 from the Health Officer, Canacona Goa stating that Applicants have filed complaint before Health Officer, Canacona Goa alleging that the Respondent No. 3 is releasing sewage into well and contaminating the well and it is contrary to Section 30, 31 and 37 of the Goa Public Health Act 1985 and the same is nuisance. The Respondent filed reply dated 12/01/2022.



13. The Respondent submits that there is no water well of the Applicants and they are using Tap Water from PWD water supply Line. However for removal of the alleged nuisance, the Respondent s tried to construct a soak pit in the portion of land in their occupation. However the Applicants filed complaint before the Canacona Municipal Council and Police. The Canacona Municipal Council issued notice of stop work

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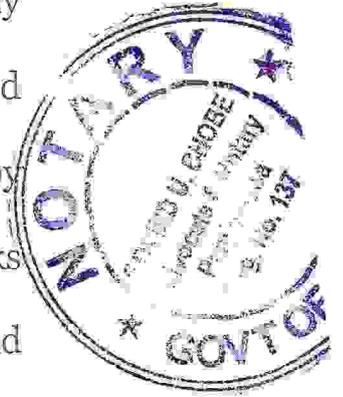


dated 28/02/2022 along with the inspection report of the Municipal Engineer and Municipal Inspector and directed to remove the nuisance allegedly created by the Respondent s no. 3. Hence the Respondent no. 3 was unable to take steps to remove the said alleged nuisance.

14. It is found that Applicant no. 1 also filed Writ Petition no (F) 257/2022 before the Hon'ble High Court for direction to take action by Health Officer on their complaint. The Health Officer thereafter issued two orders dated 5/02/2022 directing Electricity Department and Public Works Department to disconnect Electricity and Water supply to the respondent's house and placed the same before Hon'ble High court and the said petition was disposed on 08/02/2022. Copy of order dated 8/02/2022 is annexed as **Annexure 1.**

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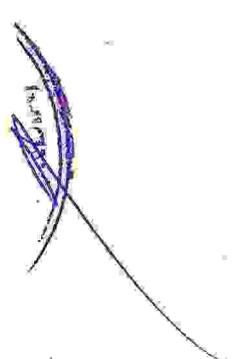
15. Based on the said order dated 5/02/2022, the Electricity Department and Public Works Department have disconnected electricity Installation No. 5000536961 and water supply to the respondent's house on 10/2/2022 and 21/02/2022. The same was communicated by Electricity Department and Public Works Department to the Respondent by notice dated 15/02/2022 and 24/02/2022.



16. The sudden disconnection of water and Electricity supply to the house has caused immense hardship to Respondent family. The Respondent submit that the Respondent no. 3 is a widow having two grown up daughters who are Respondent no. 4 and 5 and hence Kitchen and bathroom is required and waste water can be disposed in the soak pit. Considering the hardship caused and the issue was related to alleged nuisance, the Respondent no. 3

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prepared a plan/sketch showing the location and size of the soak pit in the area of plot in Respondent occupation and Respondent no.3 by application dated 09/03/2022 requested Canacona Municipal Council to grant NOC/permission to construct soak pit marked on the plan and submitted that once the NOC/permission is given to construct the soak pit at the location marked on plan/ sketch, the issue of any further nuisance will not arise.

17. The Canacona Municipal Council issued another notice of show cause notice dated 8/03/2022 alleging releasing of sullage and to take steps to rectify the same. The Respondent made representation on 10/02/2022 to Canacona Municipal Council requesting to allow construction of soak pit and filed reply dated 14/03/2022.

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18. The Health Officer by letter dated 14/03/2022 bearing No. Chcc/letter/2021-2022/3408 informed that the Respondent has to approach appropriate authority to address the application. Similarly the Canacona Municipal Council by letter dated 14/03/2022 bearing No. CMC/Tech.Sec/2021-22/ stated that approval from the Deputy Town Planner has to be obtained for further action in the matter.



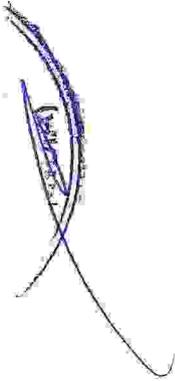
19. The Respondent no. 3 by application dated 30/03/2022 requested Deputy Town Planner to grant NOC/ permission to construct soak pit marked on the plan.

20. In the meanwhile the Canacona Municipal Council conducted hearing on 18/03/2022, 28/03/2022 and on 11/4/2022.

Prabhakar

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21. The authorities were avoiding exercising their power and without taking decision Canacona Municipal Council gave letter dated 14/03/2022 directing the Respondents to approach the Town and Planning Department. The Town and Planning Department in turn did not grant permission. Therefore the Respondents filed writ petition no. 902/2022 (Filing) before the Hon'ble High Court. The Hon'ble Court by order dated 20/4/2022 directed to file affidavit about the steps being taken by the Respondent. Copy of order dated 20/04/2022 is annexed as **Annexure 2.**

22. These respondents filed an application dated 27/4/2022 before the GCZMA and requested for approval of construction of Soak Pit under survey no.134/4 of village Nagarcem Palolem since the Deputy Town Planner Canacona letter dated 18/04/2022 informed that NOC from Goa

Palmehar 2 Alivita

Coastal Zone Management Authority is required. The Respondent filed affidavit after which the Hon'ble High Court passed order dated 4/5/2022 directing the Applicant to approach the authorities. Copy of order dated 4/05/2022 is annexed as **Annexure 3**.

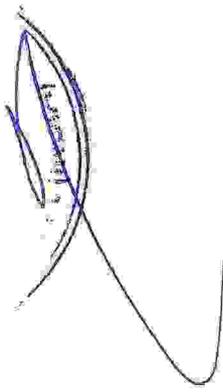


23. The Hon'ble High Court had directed the Goa Coastal Zone Management Authority and Deputy Town Planner, Canacona to decide application for approval within 10 days of the order. The Hon'ble High Court had directed that the respondents should make application for approval of soak pit as per the format and the authorities are directed to decide the same within 10 days.

24. It is submitted that in the said order High Court it is observed that in case technically the approval can be granted for construction of soak

Rajesh R. Choudhary

Rajesh



pit then the same should not be refused by the authorities merely on the basis of complaint and Gopal Vithal Bholnekar and his wife Sudha Gopal Bholnekar and they were directed to approach appropriate court of law to determine their civil rights. The Applicants have not filed any proceedings for succession and partitioned of the estate of late Vithal Bholnekar. Thereafter in May 2022 the Applicants have filed Regular Civil suit no. 35/2022 before Civil Judge Junior Division at Canacona to stop construction of soak pit by making false statement. Copy of the plaint is annexed as **Annexure 4**.

25. The Respondent have obtained the permission dated 5/8/2022 for construction of soak pit which is issued by Canacona Municipal Council after obtaining NOC from GCZMA, Health Officer and approval of plan by Deputy Town Planner. Copy of the NOC dated 23/05/2022 of

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GCZMA along with the plan and permission dated 05/08/2022 issued by Canacona Municipal Council is annexed as **Annexure 5** and **Annexure 6**.

26. The respondents submit that the applicants filed writ Petition no. 415/2022 before the Hon'ble High Court in which the permission granted by the authorities were challenged. The said petition was rejected by the Hon'ble High Court by order dated 3/10/2022. Copy of the said order is enclosed as **Annexure 7**. Similarly Writ Petition no. 902/2022 was disposed with direction that Civil Court will decide the issues. Copy of order dated 3/10/2022 is annexed as **Annexure 8**. Subsequently the Civil Court has passed order dated 20/12/2022 granting injunction. Copy of order dated 20/12/2022 is annexed as **Annexure 9**.



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27. From the above it is clear that there are existing structures against which the applicants are throughout making complaints from the year 2011 and applicants are all out to harass these respondents. As regard to the contentions in the application the respondents shall deal with the same as under:

28. With reference to paragraph 1 of the application, it is submitted that the applicants are not residing at the address given in the cause title and they are residing at Balli, Quepem Taluka.

29. With reference to paragraph 2 of the application, it is denied that there is any unabated and uncontrolled illegal construction and reconstruction carried out by these respondents under survey no. 134/4 and 136/1 of Nagarcem Palolem village. It is submitted that structures are existing in the plot prior to 1991 which can be

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seen from order dated 20/8/2015 passed by Canacona Municipal Council.

30. With reference to paragraph 3 of the application, it is submitted that the area under survey no. 134/4 are mutually divided and specific part is in possession of these respondent. In survey no. 136/1 these respondent have one existing structure.



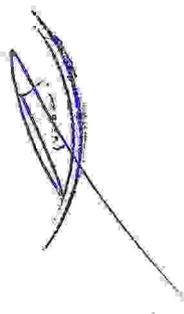
31. With reference to paragraph 4 of the application, it is denied that the house under survey no. 134/4 is only 200 sq. mts. It is submitted that besides the house there are other existing structures in possession of these respondents along with drinking water well.

32. With reference to paragraph 5 of the application, it is denied that the applicants reside in the portion of the house. The voters card, Adhar

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Card of the applicants is not at the address given in the cause title but the same is at Balli, Quepem Goa which is in quepem Taluka and the present property is in Canacona Taluka. It is denied that these respondents have completely reconstructed their portion into ground plus one structure by increasing the plinth and obliterating the existing sewage system and soak pit by erecting 3 new construction without any permission. This allegation is false and respondent shall rely upon order dated 20/8/2015 of the Canacona Municipal Council.

33. With reference to paragraph 6 of the application, it is denied that the respondents have erected new construction as alleged.

34. With reference to paragraph 7 of the application, it is submitted that alleged transgression report was incorrect and the show cause notice was

Polineleer 2 Rikuta

issued on the basis of false complaint. It is denied that the said report points out new illegal construction by the respondents.

35. With reference to paragraph 8 of the application, it is submitted that the Canacona Municipal Council has given finding under order dated 20/8/2015 and rejected the complaint and WP no. 623/2016 is filed by the applicants which is pending and in any case the same is not maintainable.



36. With reference to paragraph 9 of the application, the allegation there in are specifically denied. It is denied that respondents and extended and reconstructed the house and the same is not measured by any authority as alleged.

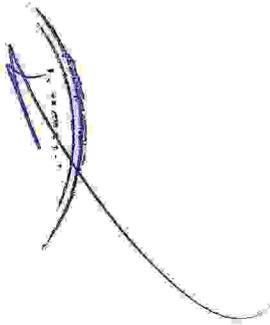
37. With reference to paragraph 10 of the application, it is denied that there is any

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violation/illegal tenements. It is denied that the respondents do not reside in these structures. It is denied that the respondents are conducting commercial business by renting portion of tenements to various people. It is submitted that the respondents have ration card, Aadhar Card, Voters Card on the same house number.



38. With reference to paragraph 11 of the application, it is submitted that the applicants have not given details of the some of the litigation and there is suppression of facts. The applicants got the electricity and water connection disconnected by filing complaints and by misrepresenting the authorities.

39. With reference to paragraph 12 of the application, it is denied that there are any violation which can be called as CRZ violation. It is denied that after filing affidavit dated

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25/4/2022 the applicants came to know about CRZ violation. It is denied that respondent no. 1 did not bother to conduct any inspection.

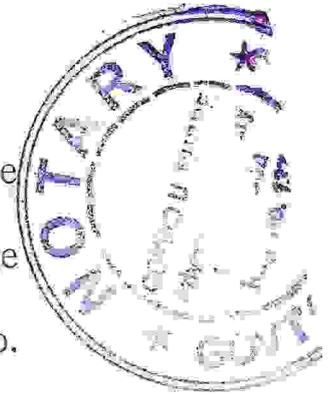
40. With reference to paragraph 13 of the application, it is denied for want of knowledge that any part of the property under survey no. 136/1 is within 200 to 500 mts of HTL. It is submitted that the said structures fall beyond the existing road which is within urban/municipal area and construction is permissible. It is submitted that in view of CRZ notification of 2019 the applicants are not entitled to take any such stand.

41. With reference to paragraph 14 of the application, it is denied that there is any unabated and uncontrolled illegal construction in violation of CRZ notification.

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42. With reference to paragraph 15 of the application, the grounds raised in the paragraph 15 are without any basis. It is denied that there is any violation of CRZ notification. It is denied that application involved substantial question relating to environment or enforcement of legal right under CRZ notification. It is denied that there is brazen audacity covered existing sewage facility by erecting illegal construction thereby causing health hazards to the people and the applicants. It is denied that there is any commercial activities and continuing damage. It is denied that there is any matter causing health hazards. It is denied that the violations have caused immense damage to any properties, to health and environment. It is denied that the applicants can raise additional grounds.

43. With reference to paragraph 16 of the application, it is submitted that the applicants

Dolmchar  Alivika

have not disclosed the details of other pending litigation and disposed litigation.

44. With reference to paragraph 17 of the application, it is denied that the applicants are letting out illegal tenements to several migrant laborers. The rest of the contents are not correct as the respondents have obtained permission for construction of soak pit.



45. With reference to paragraph 18 the same are matter of record.

46. With reference to paragraph 19 of the application, it is submitted that the existing well is beyond 15 mts of approved soak pit which has been verified by the authorities.

47. With reference to paragraph 20 of the application, it is submitted that the said suit is

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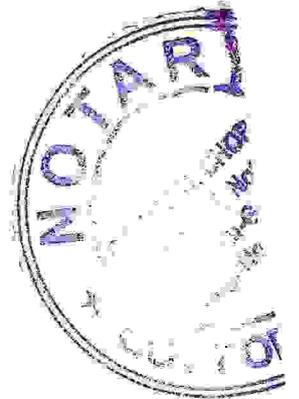
filed to harass the respondents. The said suit was filed somewhere in the month of May 2022 and no relief has been claimed for demolition of alleged construction and therefore no relief can be claimed now under order 2 Rule 2 of CPC 1908.

48. With reference to paragraph 21 of the application, it is submitted application is filed beyond 6 months of alleged violation and the contention of the applicants are not correct. The applicants cannot be allowed to take stand of ignorance of any provisions of law and create cause of action to file any application which is barred by limitation. It is denied that there is any environmental damage constituting continuing cause of action. It is submitted that the application barred by limitation under Section 14 (4) of National Green Tribunal Act.

Arjun Rishi

49. With reference to paragraph 22 of the application, it is submitted that the application is not maintainable.

50. With reference to paragraph 23 of the application, it is denied that there is no other equally efficacious remedy available to the applicants. It is submitted that the applicants have availed remedy of filing complaint before the Canacona Municipal Council which has been decided by order dated 20/8/2015 and applicants have filed Regular Civil Suit No. 35/2022 before the Civil Court which is pending.



51. With reference to paragraph 24 to 28 of the application, the same are legal points and the respondents put the applicants to strict proof.

Rohit ✓

Shruti

52. With reference to paragraph 29 and 30 of the application, the prayers in these paragraph are not maintainable.

53. Considering above the application is liable to be rejected.

Date: 14/1/2023

Place: Panaji – Goa

Respondents no.

3, 4 and 5

AFFIDAVIT

I, Meena Ulhas Bholnekar, age 49 years, widow, R/o H.no.174/A, Palolem, Canacona-Goa, the Defendant No.1 herein, do hereby solemnly affirm on oath and verify that the contents of Paragraph No. 5 to 41, 43, 44, 46, 47 are true to my knowledge and content of paragraph No. 1,







2, 3, 4, 42, 45, 48, to 53 of the reply are based on legal advice which I believe to be true.

Solemnly affirmed at Panaji

On this 14th day of January 2023


Deponent



SOLEMNLY AFFIRMED AND VERIFIED
BEFORE ME BY Meenakshi
Bholnagar
REG. NO. 1752 DATED 14/1/2023


Govind U. Bhoje
Advocate & Notary
Panaji, Goa
Reg. No. 137

**BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNAL WESTERN ZONE BENCH, PUNE**

ORIGINAL APPLICATION NO.87/2022WZ

BETWEEN:

Gopal Vitthal Bholnekar & AnrApplicants

V/S

Goa Coastal Zone Management Authority
And orsRespondents

LIST OF DOCUMENTS

Sr. No.	Documents	Page nos.
1.	Copy of order dated 8/02/2022 as Annexure 1	33-35
2.	Copy of order dated 20/04/2022 as Annexure 2	36-37
3.	Copy of order dated 4/05/2022 as Annexure 3	38-41
4.	Copy of the plaint as Annexure 4	42-64

5.	Copy of the NOC dated 23/05/2022 of GCZMA along with the plan as Annexure 5	65-67
6.	Copy of permission dated 05/08/2022 issued by Canacona Municipal Council as Annexure 6	68
7.	Copy of the order dated 3/10/2022 as Annexure 7	69-72
8.	Copy of order dated 3/10/2022 as Annexure 8	73-74
9.	Copy of order dated 20/12/2022 as Annexure 9	75-100
	Any other document	

Date: 14/1/2023

Place: Panaji


Adv. for respondent no.3, 4, 5

Annexure - 1

11-WP-257-2022 (F).DOC

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.257/2022 (F)

GOPAL VITHAL BHOLNEKAR AND
ANR.

...PETITIONERS

*Versus*STATE OF GOA THR. CHIEF
SECRETARY AND 3 ORS.

...RESPONDENTS

*Ms. Maria Fernandes, Advocate for the Petitioners.**Mr. D. Pangam, Advocate General with Mr. P. Arolkar,
Additional Government Advocate for the State.*CORAM: M. S. SONAK &
R. N. LADDHA, JJ.DATED: 8th February 2022

P.C.:

1. Heard Ms. Maria Fernandes who holds for Mr. Dharmanand Vernekar for the petitioners and Mr. D. Pangam, learned Advocate General who appears along with Mr. P. Arolkar, learned Additional Government Advocate for the respondents.

2. This petition seeks a Writ of Mandamus directing respondents no.2 and 3 to initiate proper inquiry into the complaints made by the petitioners on 28.12.2021 and

29.12.2021 concerning certain activities undertaken by respondent no.4.

3. Today, the learned Advocate General has placed on record two disconnection orders dated 05.02.2022 issued by the Health Officer, Community Health Centre, Canacona, Goa disconnecting the electricity supply and water supply. The Electricity Department and the Public Works Department have been directed to act based on the disconnection orders dated 05.02.2022.

4. From the aforesaid, it is clear that the main grievance of the petitioners stands redressed. If the petitioners wish to pursue the complaints with respondent no.3, the petitioners are at liberty to do so by addressing reminder to respondent no.3 and also placing on record the disconnection orders dated 05.02.2022 now issued by the Health Officer.

5. Accordingly, we dispose of this petition by making it clear that the disposal of this petition will not affect the right of respondent no.4 if any to challenge the disconnection orders dated 05.02.2022 in accordance with law. However, we clarify that in any such challenge, it will be advisable if the respondent no.4 impleads the present petitioners as respondents since, it is

based on the complaints of the petitioners that the disconnection orders have been issued.

6. This petition is disposed of in the aforesaid terms. There shall be no order for costs.

R. N. LADDHA, J.

M. S. SONAK, J.

Annexure - 2

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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.902 OF 2022 (F)

MEENA ULHAS BHOLNEKAR AND 2 ORS. ... Petitioners.

Versus

HEALTH OFFICER AND 6 ORS. ... Respondents.

Mr. Pranay Kamat, Advocate *for the Petitioners.*Mr. P. Arolkar, Additional Government Advocate *for the Respondent Nos.1 to 4.*Mr. Dharmanand Vernekar, Advocate *for Respondent Nos.6 and 7.*CORAM: M.S. SONAK &
R.N. LADDHA, JJ.DATED: 20th April 2022P.C:

1. The Petitioners to file a detailed affidavit as to what steps they will take to ensure that sewage i.e. discharge from their tenements, is properly treated and occasions no health hazard. Such affidavit to be filed by 25.04.2022, since the Petitioners have an urgency in this matter. Once proper measures are in place, there can obviously be no difficulty in reconnecting the electricity and water supply. However, if the approach of the Petitioners is to such re-connection without addressing the issues of treatment of sewage i.e. discharge by their tenements and which is, according to the Health Officer, a source of health hazard and nuisance, then, the matter will have to be viewed from a different perspective.

2. Mr. Kamat states that Respondent Nos.6 and 7, who are the relations of the Petitioners are bent upon not allowing the Petitioners to find a solution to the problems and at the same time, require them to suffer such disconnections. Mr. Vernekar states that this is not correct and if proper solutions are found for discharge of sewage, then, there is no question of Respondent Nos.6 and 7 coming in the way. Mr. Vernekar points out that earlier, there was a septic tank and sewage pit already in place. He submits that the Petitioners have, however, made construction on this, and now there is no place for any proper treatment of all this sewage.

3. The Petitioners to file affidavit by 25.04.2022.

4. Stand over to 27.04.2022.

R.N. LADDHA, J.

M.S. SONAK, J.

JOSE FRANCISCO
DSD/JZA

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.902 OF 2022 (Filing No.)

MEENA ULHAS BHOLNEKAR AND 2 ORS. ... Petitioners

Versus

HEALTH OFFICER AND 6 ORS. ... Respondents

Mr. S. S. Kantak, Senior Advocate with Mr. Pranay Kamat and Mr. P. Talaulikar, Advocates for the petitioners.

Mr. P. Arolkar, Additional Government Advocate for respondent Nos. 1 to 4.

Mr. Dharmanand Vernekar, Advocate for respondent Nos. 6 and 7.

**CORAM: M. S. SONAK &
R. N. LADDHA, JJ**

DATE : 4th May 2022

P.C.:

1. Heard the learned counsel for the parties.
2. In pursuance of our order dated 20.04.2022, the petitioners have filed the affidavits.
3. Mr. Kantak learned Senior Advocate for the petitioners submits that the petitioners are interested in a solution and therefore, prepared to comply with the provisions of law. He, however, points out that the petitioners have applied for permission from the Municipal Authorities, they were directed to obtain NOC from the Planning Authorities. The Planning Authorities in turn have directed the

petitioners to apply for permission from the GCZMA. He points out that one of the conditions imposed by the Planning Authorities is to secure a No Objection Certificate from respondent Nos. 6 and 7. Mr. Kantak points out that respondent Nos. 6 and 7 are the ones who lodge complaints on one hand and on the other hand they object to the petitioners complying with the legal provisions. He, therefore, submits that it is futile to expect any no objection from the respondent Nos. 6 and 7.

4. Mr. Vernekar, learned counsel for respondent Nos. 6 and 7 submits that no objections are required from all the co-owners. He also submits that there is already a soak pit at the site which can be used. He submits that the proposed soak pit is now close to a well and that is why the respondent Nos.6 and 7 have objections. He states that the building is in a dilapidated state and this is another objection amongst several others that Mr. Vernekar has on behalf of the respondent Nos.6 and 7.

5. According to us, if the petitioners are interested in complying with the legal provisions then they should get an opportunity to do so. The Planning Authorities or the GCZMA should not refuse to even consider the petitioners' application only on the ground that the respondent Nos.6 and 7 have objections based on their alleged co-ownership of the property. The other objections which pertain to planning or CRZ notification can always be considered by the Planning Authorities or the GCZMA. However, in the peculiar facts

of this case, if the respondent Nos. 6 and 7 have any objections based solely on their co-ownership then, it is for them to obtain appropriate orders from the Civil Court but not insist that the statutory authorities should not even consider the application of the petitioners simply because the same is not accompanied by any NOC from the respondent Nos.6 and 7 and for that matter the other co-owners. Therefore, in the peculiar facts of the present case, we direct the Deputy Town Planner and the GCZMA Authorities to dispose of the petitioners' application seeking permission in accord with law within 10 days from today. If the respondent Nos.6 and 7 want to object to the grant of such permissions on the grounds which are relevant to the Planning Authorities or the GCZMA, they are also granted liberty to do so by filing their written objections to these authorities at the earliest.

6. Mr. Arolkar points out that the petitioners have to file an application to the Deputy Town Planner in the prescribed format. Mr. Kantak states that this will be done immediately.

7. If the Planning Authorities and the GCZMA find that the technical permission applied for can be granted, they should communicate their decisions to the Canacona Municipal Council which shall then dispose of the petitioners' application for permission. Mr. Kantak points out that the only objection that the Canacona Municipal Council had in the matter that there was no clearance from the Planning Authorities and the GCZMA.

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909-WP 902-22 (F).DOC

8. If the Authorities indeed grant permissions and the petitioners remove the deficiency pointed out in the impugned order then, we think that there should be no difficulty for the authorities themselves to restore the electricity and water connections. In any case, if the matter reaches this stage, liberty is granted to the petitioners to even apply to the learned Vacation Judge.

9. We make it clear that the above order is made without prejudice to the rights and contentions of the parties.

10. We post this matter for further consideration on 21.06.2022.

R. N. LADDHA, J

M. S. SONAK, J

TARI AMRUT NAGESH 

IN THE COURT OF THE CIVIL JUDGE, JUNIOR
DIVISION AT CANACONA

Reg. Civil Suit No. 35/2022/A

1. Mr. Gopal Vithal Bholnekar,
Son of Mr. Vithal Bholnekar,
aged 74 years, Indian National,
and his wife;

(43)

2. Mrs. Sudha Gopal Bholnekar,
Wife of Mr. Gopal Vithal Bholnekar,
Both residents of H.No.174,
Palolem, Canacona,
Goa.

...PLAINTIFFS

V/s

1. Smt. Meena Ulhas Bholnekar,
age 49 years,
Wife of late Ulhas Vithal Bholnekar,
2. Miss Nikita ulhas Bholnekar
daughter of late Ulhas Vithal Bholnekar,
aged 19 years, student
residents of Hs. No.174/A,
3. Miss Namita Ulhas Bholnekar
daughter of late Ulhas Vithal Bholnekar,
aged 18 years, student
residents of Hs. No.174/A,
Palolem, Canacona,
Goa.

Presently residing at H.No.P-23,

Near Samarth Gad, Housing board,

Davorlim, Salcete Goa.DEFENDANTS

SUIT FOR INJUNCTION

MAY IT PLEASE YOUR HONOUR:-

The Plaintiffs hereby states and submits as under:-

1. That the Plaintiff No.1 and 2 are husband and wife. Plaintiff No.1 is the brother in law of the Defendant No.1 and paternal uncle of the defendants No.2 and 3.
2. That there exists an immovable property denominated as 'Katravaril Thikan" surveyed under No.134/4, admeasuring 6000 sq. mts., situated within the limits of Village Panchayat of Nagorcem-Palolem in Canacona Taluka, State of Goa and bounded as under:

On the East : By property surveyed under
Survey No.135/1,2,3

On the West : By survey No.134/3

On the North : By Road, and survey No.136/1

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On the South : By Survey No.134/11 and 134/12.

This property is herein after referred to as the '**SAID PROPERTY**'.

3. The plaintiff states that 1000 sq.mts of the said property was inherited by the father of the plaintiff no.1 late Vithal Bholnekar which property was owned and possessed by him. The said 1000 sq. mts of the said property is shown along with the property surveyed under survey no. 136/1 in the plan prepared by the Engineer Prakash B Samant alongwith some illegal structures which are marked by Alphabet A, B & C. That in this plot of the land admeasuring 1000 sq.mts of the property from survey no 134/4 there is existing the structure of the Plaintiff and the illegal structures of the defendants.

This plot of land admeasuring 1000 sq.mt in survey no.134/4 is herein after referred to as the '**SUIT PROPERTY**'.

4. The plaintiff states in the suit property bearing surray no. 134/4 there exist an ancestral house constructed in and about the year 1976 which

originally belonged to Shri Vithal G Bholnekar, the late father of the plaintiff and father of defendant no.1. The said house was originally bearing house no. 174 and was assessed for house tax in the name of father of the plaintiff late Shri. Vithal G Bholnekar and upon his death the same was assessed in the name of his wife Smt. Rukmini V Bholnekar, and upon the death of Smt. Rukmini Bholnekar the said house was divided by common wall thereby dividing the house equally and putting the plaintiffs and defendants in occupation of 100 sq.mts each. The portion of the house having an area of 100 sq.mts is in occupation of the plaintiff and was registered for the purpose of house tax under house no. 10/174 ward no. X and the portion of the house having an area of 100 sq. mts in occupation of the husband of the defendant was registered for the purpose of house tax and given house no. 10/174/A in the record of Canacona Municipal Council.

5. The plaintiffs state that the property bearing survey No.134/4 and 136/1 are common properties wherein there are other co-owners, the said properties are not divided by metes and bounds

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between all the co-owners. The plaintiffs state that only the house structure existing in property bearing No.134/4 was a common house constructed by the late Vithal Bolnekar with a identical and mirror image by consent of all the other co-owners in the "SUIT PROPERTY".

6. The plaintiffs state that the original house was partitioned by a common wall in between and both the portion of the house were identical and having the similar space and structures. The plaintiffs state that house no. 174 pertains to the house occupied by the plaintiffs and house no. 174/A was allotted to the defendants and the same is recorded in municipal records. The plaintiffs state that both the houses were having their septic tank and soak pit respectively.
7. The plaintiffs state that the plaintiff on account of his employment was residing in Bali and having residential structure in Bali and he therefore was not residing permanently but was often available on weekends or whenever there was religious functions at his Canacona residence bearing house 174, however the plaintiffs herein have

permanently sifted to canacona from last many years .

8. The plaintiffs states that considering the busy schedules of the plaintiffs and their absence , the husband of defendant no.1 demolished the portion of the defendants house bearing no. 174/A and has erected completely new structures comprising of ground plus floor which were carried out beyond the original plinth area and another structure being the platform supported by RCC columns and the structure being another ground plus one floor structure. Since these structures were constructed by the husband of the defendant in violation of the Town and Country Planning Act and the Goa Municipality Act without obtaining proper licenses, the plaintiffs filed a complaint regarding these illegal structures in the suit property and also some illegal structures constructed in survey No.136/1.
9. The plaintiffs state that with respect to the said complaint there is a chequered history and the facts are pleaded in detail in the pleadings of Writ Petition No. 623/2016 which is annexed herewith, however in brief, it is submitted here that the

complaint was dismissed by the Chief Officer by relying on an inspection report of a private engineer that the structures are existing since more than 20 years back and the complaint is hit by limitation. The plaintiffs state that against the said order the plaintiff filed Writ Petition No. 623/2016 which is admitted and pending for final adjudication.

10. The plaintiff states that late Ulhas Bholnekar who is the husband of the defendant No.1 and father of the defendants No.2 and 3 has raised various illegal constructions in the suit property. The plaintiffs specifically state that the house in the suit property was divided but the entire suit property was not divided between the plaintiff and defendants and the same continues to be a common and co-ownership property.
11. The plaintiff states that by demolishing his portion of the house the husband of the defendant No.1 constructed various illegal structures without proper foundation and stability and without permission of the Town and Country Planning Authority and rented out the same to various tenements. That in survey no.136/1 too there are

illegal structures constructed by the husband of the defendant No.1 without permissions from the planning authority and the said rooms were occupied by the tenements without clearance from the health department.

12. The plaintiffs state that the husband of the defendant No.1 alongwith the defendant 1 had placed various migrant labourers in the illegal structures in survey No.134/4 who were residing therein in an inhabitable and unhygienic conditions. The plaintiffs state that there is no proper infrastructure for the purpose of sanitation and disposal of their garbage and as such the entire waste which is generated on account of their stay in the said premises is being let into the wells situated in the said property thereby contaminating the ground water which is dangerous to the health of the public who are relying on the said ground water. The plaintiff states that in fact the tenants of the defendants have also started dumping their garbage and other materials into the Wells in a completely illegal and high handed manner whereby they are committing nuisance to ground water course. The said well is

(51)

clearly demarcated by the Engineer on the plan annexed hereto by the alphabet S and is referred to as contaminated well.

13. The plaintiffs state that on account of such nuisance and contamination of water there was every possibility of development of infectious diseases detrimental to the health of the persons staying in that locality and the same is very much harmful to the plaintiffs who are senior citizens residing in other part of the house. The plaintiffs state that there was also a great possibility of mosquitos breeding in the Well on account of contamination of water and deposition of sanitary waste and other garbage materials into the well as the water is in stagnant condition.
14. The plaintiffs state that the tenements were overcrowded by migrant laborers and the migrant workers were living in the tenements in very unhygienic conditions and on account of the same there was a lot of garbage and sanitation nuisance caused, so also the water course of the well had become so foul that it had become detrimental to the health of the public.

15. The plaintiffs state that at present the defendants are not residing in the said locality and are residing at Davorlim, Rumdamol bearing House No.P. 23, Near Samarth gad, housing board davorlim, salcette, Goa with her family and as such they were not interested in improving the conditions at site and renting out the house in the suit property to tenants without considering the health condition of the public and the plaintiffs, which was prejudicial to the health of the plaintiffs.
16. The Plaintiffs state that therefore the plaintiffs filed complaint dated 28/12/2021 to the Public Health Centre, Canacona and complaint dated 29/12/2022 to the Canacona Municipality alongwith photographs to show the condition at site and calling upon the said Authorities to take immediate necessary action in the matter.
17. The plaintiffs state that since no action was taken by the authorities the plaintiff were forced to file Writ Petition No.257/2022(F) before the Hon'ble High Court of Bombay at Goa. The said Writ Petition was disposed by order dated 08/02/2022

and since the nuisance and the contaminated well was not rejuvenated by the defendants, the Public Health Centre Canacona issued 2 disconnection orders dated 05/02/2022 disconnecting the electricity and water supply to the structures of the defendants and they were directed to comply with the provisions of the Health Act to clear the nuisance created by them.

18. The plaintiffs state that in April 2022, the defendants herein filed a Writ Petition No.902/2022 before the Hon'ble High Court to declare the order of disconnection of electricity and water dated 05/2/2022 as illegal and for a Writ of Mandamus to grant approval for the construction of soak pit to the defendant and to withdraw the disconnection notice.
19. The plaintiffs state that by order dated 20/04/2022, the High Court directed the defendant No.1 file affidavit as to what steps they have taken to ensure that sewage discharge from their tenements are properly treated and occasion no health hazard, wherein this plaintiff has pointed out that there is already a septic tank and soak pit in place and that the defendants have

constructed their illegal constructions on the same.

20. The plaintiffs state that by order dated 04/05/2022 the Hon'ble High Court directed the Planning authorities to consider the application of the defendants for the purpose of construction of the soak pit and also liberty was granted to this plaintiff to raise all its objections before the Town and Country Planning authorities and if there was any objection on the co-ownership then appropriate orders could be obtained from the civil court.
21. The plaintiffs state that The plaintiffs state that the defendants have deliberately concealed the fact from this Hon'ble court that there was always a septic tank and soak pit available for the house no. 174/A which is now overflowing and therefore has left the waste from the tenements in to the well. The plaintiffs state that this was done deliberately and false averment were made that there was never a soak pit for the house no.174/A.
22. The plaintiffs state that since the tenements were more in number, the same was beyond the capacity of the soak pit. That the number of

(55)

person/tenants which was allowed to reside in the premises were beyond the permissible limits under the Public Health Act. The plaintiffs state that as per the Public Health Rules 1987, a tenement will be considered habitable if minimum one living room, kitchen, bathroom, sanitary type of latrine and safe drinking water is provided in with sufficient number of windows and is maintained in hygienic condition to the satisfaction of the sanitary authority. Further that the volume of the tenement should be in proportion of 20 cubic mts per head and the height of the roof should not be less than 3 mts and when the number of inhabitants are more in relation to available space, the tenement shall be considered as overcrowded. The plaintiffs state that in violation of these rules the defendants had placed 11 tenements (11 families) in the house without any proper sanitation and garbage disposal facilities. The plaintiffs state that the said structures are totally in a dilapidated condition and as such no person could be allowed to reside there and if any order was passed by this Hon'ble High Court allowing the reconnection of electricity

and water the same would result in occupying the premises by the tenants again in violation of Public Health Act which could also lead to collapse of the structure.

23. The plaintiffs state that the house portion in survey no. 134/4 which was allotted to the defendants was demolished by the defendant's husband and illegally constructed structures beyond the plinth area and in fact constructed structures on the Soak pit and septic tank. The plaintiffs state that the construction of rooms in the property bearing survey No.134/4 is illegal and without any permission from the Planning Authority and the said rooms have been occupied without any clearance from the Health Department.
24. The plaintiffs state that the said construction were carried out by the husband of defendant No.1 for the purpose of renting out to migrants and in fact before the passing of the order by the Health Department of disconnecting the electricity and water there were tenants who were occupying the premises. The plaintiffs herein had obtained information dated 19/04/2022 under Right to

Information Act about the tenant verification form from the Sub Divisional Police Officer, Canacona Goa pertaining to House No.174/A of Mrs. Meena Bholnekar.

25. The plaintiffs state that survey no. 136/1 is also an ancestral common property which is owned by the plaintiffs and the defendants. The plaintiffs state that in the property bearing survey No.136/1 there originally was a cowshed admeasuring about 20 sq.mts as per municipal records, which cowshed was completely demolished by late Ulhas V Bholnekar and illegal construction has been carried out thereon by converting the same into various rooms for the purpose of letting out to tenants. The plaintiffs state that the late husband of the defendant No.1 also transferred the house tax of the said cowshed on his name by illegal means and the same is also the subject matter of the petition before this Hon'ble Court in Writ Petition No. 623/2016 which house number is registered as house no. 168 in municipal records which were also earlier occupied by tenant/migrants workers. However at present there are no tenants and the defendant can very much

occupy the said premises where in there is separate electricity and water connection. The plaintiffs herein have obtained information dated 19/04/2022 under Right to Information Act about the tenant verification form from the Sub Divisional Police Officer, Canacona Goa pertaining to House No.168 of Mrs. Meena Bholnekar.

26. The plaintiffs state that apart from the above fact the husband of the defendant No.1 is having another house bearing house no. 168 in survey no.136/1 which is also an illegal structure and there is separate water and electricity for the said house No.168 in the survey no 136/1 which house structure was constructed by him by demolishing the cowshed. There is a separate electricity and water connection allotted to that particular house in view of the NOC issued Canacona Municipal Council.

27. The plaintiffs state that the husband of the defendant No.1 has illegally constructed a major portion of the property, which is subject matter of writ petition bearing No. 623/2016. Only the house structure was divided between the plaintiff

and the defendant The plaintiffs state that the house portion which was allotted to defendant No.1 husband was demolished and the defendants constructed illegal structure beyond the plinth area of house no. 174/A and in fact constructed the structures on the Soak pit and septic tank of the house bearing No. 174/A.

28. The plaintiffs state that the plaintiffs are the co-owners of the suit property and are having equal right over the well which is contaminated by the acts of the defendants. The plaintiffs state that the defendants are not trying to remove the alleged nuisance but are trying to construct soak pit in the middle of common property without permission of authorities and therefore complaint was filed. The plaintiffs state that despite of having earlier soak pit the defendant is attempting to construct a new soak pit without rejuvenating the well and hence rightly the complaint was processed by the authorities.
29. The plaintiffs states that the illegal structures constructed by the husband of the defendant No.1 is by occupying a major portion of the suit property without the consent of the other co-

owners. The structures constructed are also unfit for human habitation and such defendants should not be allowed to do further constructions in the suit property without obtaining permissions from the other co-owners and if the defendants are not restrained by any orders then it will violate the co-ownership rights of the plaintiff herein.

30. The plaintiffs state that since in the month of February 2022 the defendant No.1 attempted to do illegal constructions in the suit property by digging of soak pit in the suit property in close proximity to the well therefore complaints were filed in the Canacona Municipal Council and the Council issued a show cause notice to her and the construction was stopped.
31. The plaintiffs state that in a high handed illegal manner the defendants herein have dumped rubble stones and construction material in the suit property today in the morning session and they there is an apprehension that they might carry out the work of digging the suit property in the night therefore the suit is filed in urgency. Hereto annexed are the photographs alongwith newspaper dated 07/05/2022.

32. The plaintiff is a senior citizen and not keeping well who is aged 75 years and has to run from pillar to post against the defendant on their illegal high handed act in doing illegal construction in violation the plaintiff rights and therefore urgent orders need to be passed to restrain the defendants:
33. The plaintiffs state that cause of action arose in the month of February 2022 when the defendant started doing further construction by violating the co-ownership rights of the plaintiff and without obtaining the permission of the plaintiff and other co-owners. The cause of action is recurring in nature and therefore the present suit is filed when it was made clear to the plaintiff that the statutory authority will not look into the co-ownership right of the plaintiff and that the plaintiff will have to obtain orders from the civil court in order to protect the proprietary rights of the plaintiff. Therefore the present suit is filed in urgency and with utmost reasonable dispatch.
34. The plaintiffs state that the plaintiff is entitled for an injunction from this court restraining the defendant from violating the co-ownership right of

the plaintiff by raising construction without the consent of the other co-owners. The plaintiffs state that defendant is having their residential house in Davorlim and therefore no prejudice will be caused to the defendants if they are restrained from doing any construction in the suit property.

35. The plaintiffs state that the suit is filed on urgent basis and there may be errors at the time of filing suit and the plaintiffs crave leave to rectify any such error.
36. That the suit property is situated at Nagorcem-Palolem village in Canacona Taluka, State of Goa. This court therefore has the jurisdiction to entertain, try and decree the suit.
37. That for the purpose of pecuniary jurisdiction the suit is valued at Rs.10,00,00/- and prayer for injunction is valued at Rs. 1,000/- and accordingly court fees have been paid.
38. That there is no other suit pending between the parties hereto on the same subject matter as the one involved in the present suit.
39. The Plaintiff therefore prays that this Hon'ble Court be pleased to:-

40. The plaintiff therefore prays :

- a. For a permanent injunction restraining the Defendants and/or their agents, and/or their servants, and/or assignees and/or any other persons claiming through and/or on behalf of the Defendants from doing any kind of construction in the suit property without permission of the other co-owners.

- b. For a temporary injunction restraining the Defendants and/or their agents, and/or their servants, and/or assignees and/or any other persons claiming through and/or on behalf of the Defendants from doing any kind of construction in the suit property without permission of the other co-owners.

- c. Pass any other fit and proper order necessary in the facts and circumstances of the case for effectively restraining the defendants from violating the co-ownership rights.

Canacona,

05/2022

PLAINTIFF NO.1

PLAINTIFF NO.2

Adv. for plaintiff

VERIFICATION

I, Mr. Gopal Vithal Bholnekar, Son of Mr. Vithal Bholnekar, aged 74 years, Indian National, resident of H.No.174, Palolem, Canacona Goa, the Plaintiff No.1 herein, do hereby state and verify that the contents of the above paras are stated from my personal knowledge and the same are true and correct.

Solemnly verified at Canacona on this day of May,
2022.

DEPONENT

Identified by me:-

(65)

Annexure - 5

GOA COASTAL ZONE MANAGEMENT AUTHORITY

C/o Department Environment (Govt. of Goa)
4th floor, Dempo Tower, Patta Plaza,
Panaji Goa-403 001
Website: www.czma.goa.gov.in

Ref. No. GCZMA/ S/ 22-23/09/432

Date: 23/05/2022

To,
Mrs. Meena Ulhas Bhoinekar,
H.No.174/A,
Palolem, Canacona-Goa.

Sub: NOC for construction of soak pit under Sy.No.134/4 in Village Nagarcem Palolem, Canacona Goa.

Ref.:-Your application No. dated 06/05/2022.

Madam,

With reference to your application on the above mentioned subject, the Goa Coastal Zone Management Authority (GCZMA) has examined your aforementioned proposal in its 305th GCZMA Meeting held on 20/05/2022 in accordance with the provisions of para 8 of the CRZ Notification 2011, (as amended). As such the Authority decided to approve the construction of soak pit under Sy.No.134/4 in Village Nagarcem Palolem, Canacona Goa & further subject to the confirmation with local building bye laws:

This permission is further subject to compliance of the following conditions:

1. All the provisions of the CRZ Notification, 2011 as amended should be strictly complied with. In the event of a change in project profile or change in the implementation agency, a fresh reference shall be made to the GCZMA.
2. This NOC/ Approval is issued without prejudice to any other permission as required under the law including that of ownership of house, court case etc. As such, prior to the commencement of the aforementioned 'Construction, it will be incumbent upon the applicant to obtain permission from any other authority as required under the law including the local authority, Town and Country Planning Department, Revenue Authority etc.
3. Traditional access/easement shall not be blocked.
4. The applicant/occupier should ensure that no waste is discharged into the nearest water body from the proposed construction activities.

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-2-

5. This permission/NOC shall be valid for the period of 5 years from the date of issue.
6. This permission is liable to be revoked, if it is found, at any stage, that the application contained false information/wrong plans/ calculations/ documents/ misleading or false information, etc. or accounts for violations of aforementioned conditions.

Yours faithfully,

(Dasharath M. Redkar)
Member Secretary (GCZMA)

Encl: As above

Copy to:

1. P.A to Secretary (Environment) / Chairman (GCZMA), Secretariat, Porvorim.....for kind information.
2. The Chief Town Planner, Town & Country Planning Department, Patto, Panaji-Goa.....for information and necessary action.
3. The Deputy Collector & S.D.O. (Canacona), Canacona -Goa.....for information and necessary action.
4. The Chief Officer, Canacona Municipal Council, Canacona-Goa.....for information and necessary action.

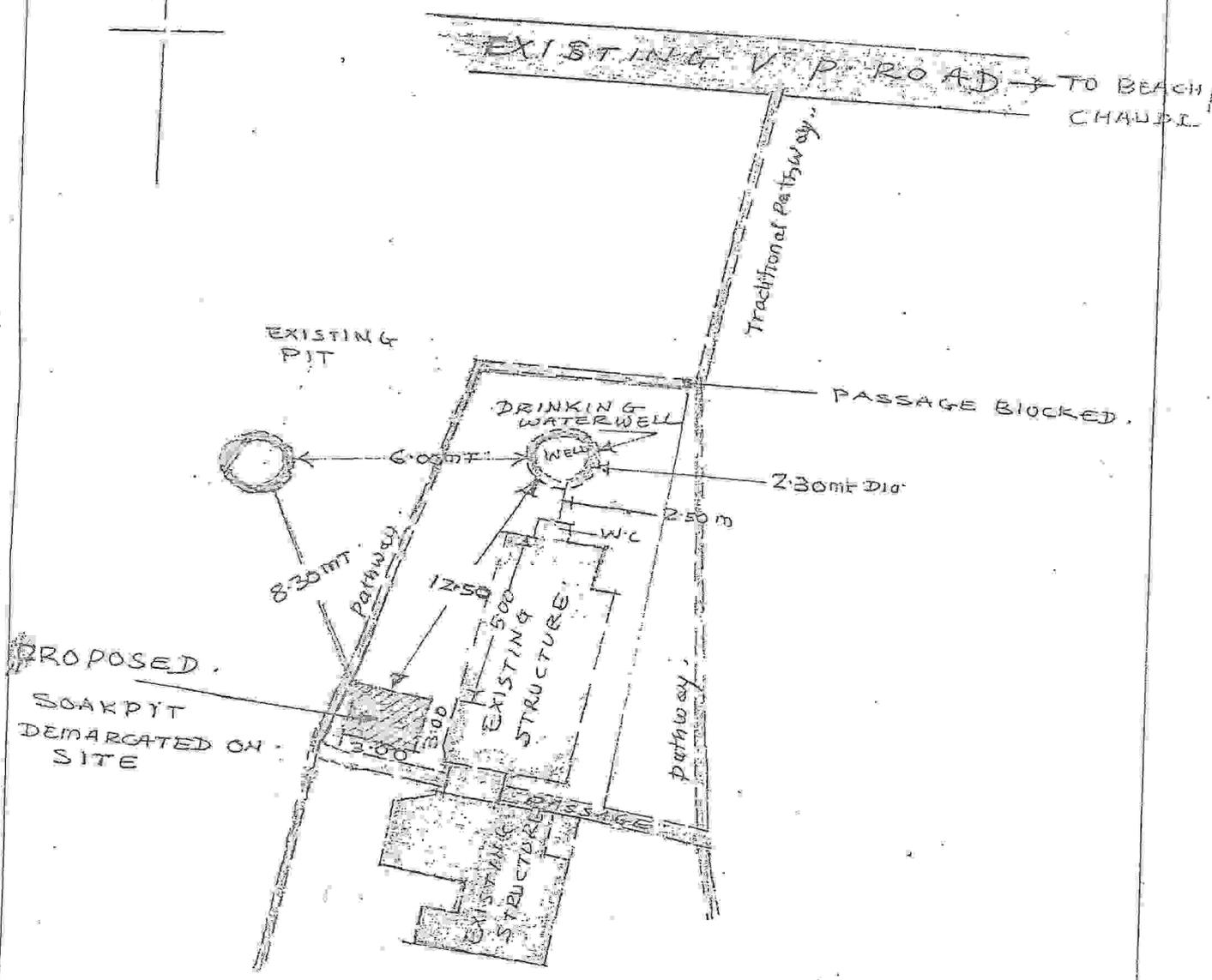
67

Inspected on 12/08/2022
In property SNO 134/4 of
NAGORCEM. PALOLEM VILLAGE
CANACONA TALUKA.



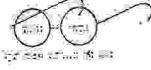
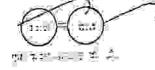
SKETCH PLAN

NOT TO SCALE



NOTE: This sketch plan shows on distance between proposed soak pit and existing drinking water well and distance between existing pit which is not usable & allowed to enter.

Drawn by [Signature]

CANACONA MUNICIPAL COUNCIL**Canacona-Goa**

Pin code:403702

Telephone No.(0832)2643358

"Sukshma Bharat Nital Canacona"

email:-co-canaconamc.goa@nic.in

<http://www.cmccanacona.com>

NO.CMC/Tech.Sec/2022-23/1477

Date: 05/08/2022

Read: Application dtd: 08/06/2022 Inwarded under No.1207 dtd: 08/06/2022**PERMISSION FOR CONSTRUCTION OF SOAK PIT**

Canacona Municipal Council, Canacona has No Objection for Construction of Soak Pit in the property under survey no.134/4 of village Nag.Palolem at Palolem, Canacona in ward no. XI. subject to following conditions:-

1. The permission bearer shall construct the soak pit as per the plan approved by TCP Department.
2. All the conditions laid down by TCP dept. shall be strictly followed.
3. The permission is issued based on the permission issued by TCP Dept., NOC of GCZMA & Community Health Centre, Canacona-Goa
4. Existing drain and natural flow of water should not be blocked.
5. Traditional pathway & availability of access should not be blocked.
6. The Roads and pathway should not be occupied for storing materials.
7. The permission bearer has to inform to this council after Completion of Work.
8. No other work apart from mentioned above shall be carried out.
9. This permission has been issued at the request of the concerned party for above purpose.
10. The permission issued is valid for six months from date of issue.
11. No debris shall be dumped on the road side.
12. The structural stability shall be solely and entire responsibility of the Owner and the Engineer appointed by the owner.
13. The permission is issued subject to condition that the dispute, if any, arises between the co-owners, this council cannot be held liable in such dispute.
14. The permission will be revoked if any of the above condition is violated and if it is noticed that any false information is furnished by the applicant.
15. This council shall not be hold responsible for structural liability, stability, and safety of Workers. The applicant and Engineer appointed by the applicant shall be fully responsible for structural stability, safety and workmanship. This council shall not be hold responsible if any untoward incident occurs.
16. This permission will not be construed as deciding rights as to ownership of the property or deciding right of the parties in the subject property.



(Madhu G. Narvekar)
Chief Officer,
Canacona Municipal Council,
Canacona-Goa.

To,

Smt.Meena Ulhas Bholnekar,
R/o Palolem,Canacona-Goa

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Annexure-7

WP 415 of 2022

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.415 OF 2022**

GOPAL VITHAL BHOLNEKAR AND ANR ... PETITIONERS

Versus

THE DEPUTY TOWN PLANNER AND 6 ORS ... RESPONDENTS

Mr. A. F. Diniz, Senior Advocate with Mr. Dharmanand Vernekar and Ms. Fawia Mesquita, Advocates for the Petitioners.

Mr. Prashil Arolkar, Additional Government Advocate for Respondents No.1 to 3.

Ms. Maria Rosette Pereira, Advocate for Respondent No.4.

Mr. Pranay A. Kamat with Ms. Mafida Shaikh, Advocates for Respondent No.5.

**CORAM:- M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED :- 3rd October, 2022

P.C.

Heard Mr. A. F. Diniz, learned Senior Advocate with Mr. Dharmanand Vernekar and Ms. Fawia Mesquita, learned counsel for the petitioners, Mr. Prashil Arolkar, Additional Government Advocate for respondents No.1 to 3, Ms. Maria Rosette Pereira, learned counsel for respondent No.4 and Mr.

Pranay A. Kamat with Ms. Mafida Shaikh, learned counsel for respondent No.5.

2. The petitioners, who are closely related to respondents no.5, 6 and 7, by filing this petition, have challenged the NOC issued by the Deputy Town Planner on 07.06.2022 (Annexure-A). In terms of this NOC, respondent no.5, 6 and 7 have been permitted to construct a soak-pit at the site in question.

2. Mr. Diniz, learned Senior Counsel, on instructions, made it clear that the petitioners were not challenging the NOC dated 23.05.2022 issued by the Goa Coastal Zone Management Authority (GCZMA) but that they were relying on this NOC to contend that its conditions were being breached by respondents no.5, 6 and 7. This position is clarified because, in terms of prayer clause (c) of the petition, there appears to be challenge to the order of GCZMA dated 23.05.2022.

3. Admittedly, the petitioners, have instituted a civil suit against the respondents no.5, 6 and 7 which is pending adjudication. In the said civil suit, the petitioners have also applied for interim reliefs, *inter alia*, on the construction of the soak-pit for which NOC has been issued by the Deputy Town Planner.

4. Mr. Diniz submits that the objections filed by the petitioners were not considered by the Deputy Town Planner before the grant of impugned NOC. The respondents purported to pass off a well as some pit and upon such misrepresentation, have obtained the NOC. Mr. Diniz submits that there are documents which show the nuisance being caused or would be caused if a soak-pit is permitted at the site.
5. On considering the rival contentions and the material on record, we find that the issues raised will involve adjudication into seriously disputed questions of fact. Besides, the petitioners have already instituted a civil suit in which they have applied for interim relief. Therefore, it would not be appropriate for us to entertain such private disputes involving disputed questions of fact in exercise of our extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.
6. If it is the petitioners' case that the terms and conditions subject to NOC being issued are being violated, then, it is open to the petitioners to point out this issue to the appropriate forum. These are basically private disputes between relatives/neighbours. The writ jurisdiction of this Court cannot be invoked for settling such private disputes involving disputed questions of fact.

7. For the above reasons, we dismiss this petition with liberty to the parties to pursue their proceedings before the civil Court.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

MAHARASHTRA JUDICIAL SERVICES BOARD

WP(F) 902 of 2022

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.902 OF 2022 (F)

MEENA ULHAS BHOLNEKAR AND 2 ORS ... PETITIONERS

Versus

HEALTH OFFICER AND 6 ORS ... RESPONDENTS

Mr. Pranay A. Kamat with Ms. Mafida Shaikh, Advocates for the Petitioners.

Mr. Prashil Arolkar, Additional Government Advocate for the Respondents No.1 to 4.

Ms. Maria Rosette Pereira, Advocate for Respondent No.5.

Mr. Dharmanand R. Vernekar, Advocate for Respondent No.6 and 7.

**CORAM:- M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED :- 3rd October, 2022

P.C.

Mr. Pranay Kamat, learned counsel for the petitioners agrees that the main reliefs in this petition have been rendered infructuous considering that relief in terms of prayer clause (c) is already granted to the petitioners.

2. Besides, Mr. Vernekar, learned counsel for respondents no.6 and 7 refers to our order dated 26.07.2022 and points out that

civil suits are pending and this Court has already clarified that it is for the parties to pursue the same.

3. For both the above reasons, this petition is disposed of. Incidentally, we may note that the connected Writ Petition No.415 of 2022 instituted by respondent no.6 and 7 is also disposed of by separate order made today relegating the parties to pursue their disputes before the civil Court in pending proceedings.

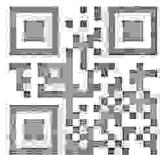
4. Accordingly, even this petition is disposed of.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

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Annexure - 9

GASG030001662022



ORDER BELOW EXHIBIT D-5

(Delivered on the 20th day of the month of December, of the year 2022)

This order shall dispose of the application for Temporary Injunction filed by the plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 of Civil Procedure Code (in short C.P.C.),

2. This is a case filed by the plaintiffs against the defendants for injunction under section 38 of Specific Reliefs Act.

3. It is the case of the plaintiffs that the plaintiff nos. 1 and 2 are husband and wife and the plaintiff no.1 is the brother-in-law of the defendant no.1 and paternal uncle of the defendant nos. 2 and 3.

4. That there exists an immovable property known as "Katravaril Thikan", surveyed under survey no.134/4, admeasuring 6000 sq.mts. and is situated within the limits of Village Panchayat of Nagarcem Palolem, and is hereinafter referred to as the said property.

5. That 1000 sq.mts. of the said property were inherited by the father of the plaintiff no.1 late Vithal Bholnekar which was owned and possessed by him. That in the said plot there is an existing structure of the plaintiff and illegal structures of the defendants and the suit plot is hereinafter referred to as the suit property.

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6. That in the suit property there exists an ancestral house belonging to the father of the plaintiff and the defendant no.1. The said house was divided equally by a common wall putting the plaintiff and the defendants in occupation of 100 sq.mts. each. That the property bearing survey no.134/4 and 136/1 are common properties wherein there are co-owners and the said properties are not divided by metes and bounds between all the co-owners. That the original house was partitioned having identical and similar space and that both the houses were having their septic tank and soak pit respectively.
7. That the plaintiffs were residing in Balli and they used to attend their house on weekends and on religious functions and they shifted to Canacona for last many years. That in the absence of the plaintiffs, the defendant no.1 demolished portion of their house and erected new structures without permission of the Town and Country Planning Department and rented out the same to various tenements. That the said rooms were occupied without clearance from the health department.
8. That various migrant labourers were placed in the said illegal structures and they were residing in inhabitable and

unhygienic conditions. That there is no proper infrastructure for sanitation and disposal of the garbage and the entire waste was let out into the wells situated in the property thereby contaminating the ground water.

9. That therefore the plaintiffs filed a complaint dated 28/12/2021 to the Public Health Center, Canacona and complaint dated 29/12/2022 to the Canacona Municipality. Since no action was taken the plaintiffs also filed a Writ Petition No. 257/2022(F) before the Hon'ble High Court of Bombay at Goa. The said Writ Petition was disposed of by order dated 08/02/2022 and since the nuisance continued the Public Health Center, Canacona issued two disconnection orders dated 05/02/2022 disconnecting the water and electricity supply to the structures of the defendants.

10. In April 2022 the defendants filed a Writ Petition No. 902/2022 before the Hon'ble High Court of Bombay at Goa to declare the order of disconnection of electricity and water as illegal and for a Writ of Mandamus to grant approval for the construction of soak pit and to withdraw the disconnection notice.

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11. That by order dated 20/04/2022 the Hon'ble High Court directed the defendant No. 1 to file an affidavit as to what steps they had taken to ensure that the sewage discharge from their tenements is properly treated and occasions no health hazard, wherein the plaintiff has pointed out that there is already a septic tank and a soak pit in place and that the defendants have constructed their illegal constructions on the same. That by order dated 04.05.2022, the Hon'ble High Court directed the planning authorities to consider the application of the defendants for the purpose of construction of the soak pit and liberty was granted to the plaintiffs to raise all the objections before the Town and Country Planning Authorities, and if there was any objection on the co-ownership then appropriate orders could be obtained from the civil court. According to the plaintiffs, the defendants have deliberately concealed the fact from the court that there was a septic tank and a soak pit available for the house of the defendants which is now overflowing and therefore they have left waste from the tenements into the well. It is further submitted that the plaintiffs are the co-owners of the suit property and are having equal right over the well which is contaminated by the acts of the defendants. According to them the defendants are not



trying to remove the alleged nuisance but are trying to construct a soak pit in the middle of the common property without the permission of the authorities and therefore the complaint was filed according to the plaintiffs. That the husband of the defendant No.1 has constructed illegal structures occupying major portion of the suit property without the consent of the other co-owners and since in the month of February, 2022, the defendant no.1 attempted to do illegal construction in the suit property by digging a soakpit in the suit property in the close proximity of the well the complaint was filed in the Canacona Municipal Council. According to the plaintiffs the defendants cannot infringe the rights of the plaintiffs by carrying out construction work in the suit property which will affect the right of the plaintiffs and the plaintiffs will not be able to enjoy their rights. According to the plaintiffs they are the co-owners of the suit property and are in possession of the same along with other co-owners who enjoy every inch of the same in common and till date there is no partition done and therefore the defendants cannot be allowed to raise any construction in the suit property without the permission of the other co-owners. It is their contention that the defendants have placed the construction material in the suit property without the permission of the

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plaintiffs and the same is illegal and the plaintiffs apprehend that the defendants may carry out the construction in the suit property thereby violating the co-ownership rights of the plaintiffs.

12. It is further submitted that the balance of convenience lies in favour of the plaintiffs and the plaintiffs have made out a prima facie case. It is further submitted that grave and irreparable injury will be caused to the plaintiffs if the application for temporary injunction is not allowed.

13. The plaintiffs have prayed as under:

a. For an order of temporary injunction restraining the defendants and/or their agents, and/or their servants, and/or their assignees, and/or any other persons claiming through and/or on behalf of the defendants from doing any kind of construction in the suit property without permission of the other co-owners till the disposal of the suit in any manner whatsoever.

b. For an order directing the defendants to remove the materials placed in the suit property.

14. Reply is filed by the defendant no.1 and it is submitted that the application is not maintainable. According to this defendant the allegation made by the plaintiffs are false and they have

denied that they are trying to do any construction as alleged in the application.

15. According to this defendant she is entitled to construct the soakpit. She has denied the statement of the plaintiffs that she has brought rubble stones and construction materials in the suit property in the morning session of the day of filing of the suit. According to her the defendants are in settled possession of the suit property and in the year 2011 the plaintiffs had filed a complaint which was rejected in 2015. According to this defendant the plaintiff no.1 and the late husband of this defendant inherited 900 sq.mts., out of 6000 sq.mts. of survey no.134/4 of Village Nagarcem from their parents and that the name of the father of the husband of defendant no.1 and plaintiff no.1 is in the survey records. That the 900 sq.mts. is mutually divided and 450 sq.mts. is in possession of the defendant in which there is a house existing and the remaining 450 sq.mts. is in the occupation of the plaintiffs. That the existing house in the said plot is partly in occupation of the plaintiffs and partly in occupation of the defendants. That the defendant no.1 and her husband had allowed the plaintiffs to construct a soakpit for their use in

portion of the plot in their occupation and that there is no water well in the portion occupied by the plaintiffs.

16. According to the defendant no.1 their house has a toilet with a septic tank as well as kitchen, washroom/bathroom and the water was discharged in a pit which was like a soakpit and there was no complaint earlier. That the water well of the defendants is more than 20 metres away from the said pit which is not at all affected.

17. She has further submitted that in January,2022 she received a notice from the Health Officer, Canacona-Goa, stating that the plaintiffs have filed a complaint alleging that she is releasing sewage into the well and she filed the reply dated 12.01.2022. According to her there is no water well of the plaintiffs and they are using tap water from PWD water supply. That to remove the alleged nuisance they tried to construct a soakpit in the portion of land in their occupation. However, the plaintiffs filed a police complaint and a complaint with Canacona Municipal Council and the Canacona Municipal Council issued a stop work order dated 28.02.2022 along with inspection report and directed her to remove the nuisance and therefore, she was

unable to take steps to remove the nuisance. That the plaintiff no.1 also filed a Writ Petition before the Hon'ble High for a direction to take action by the Health Officer and the Health Officer issued two orders directing the electricity department and PWD to disconnect the electricity and water connection of the defendants house and accordingly the electricity and water connection of their house has been disconnected. This is causing immense hardship to them. That the Canacona Municipal Council issued another showcause notice dated 08.03.2022 alleging the release of sullage and to take the steps to rectify the same and the defendants made a representation to allow them to construct a soakpit. The Health Officer informed the defendants to approach the concerned authority to address the application and the defendant no.1 made application to the Dy. Town Planner to grant permission to construct soakpit marked on the plan and she was informed that such permission cannot be granted.

18. It is further submitted that the Authorities were refusing permission for construction of the saokpit and therefor they filed a writ petition bearing no.902/2022 wherein they were directed to file an affidavit of the steps taken by them and they filed the affidavit. That the Hon'ble High Court directed the Authorities to

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decide the approval within 10 days. That the Hon'ble High Court observed that in case technically the approval can be granted for construction of the soakpit then the same should not be refused by the Authorities on the basis of the complaint and the plaintiffs were directed to approach the appropriate Court of law to determine their Civil rights.

19. According to her under the universal declaration of human rights it is the responsibility of the state to see that citizens live their life with dignity. That the plaintiffs are objecting to construction of soakpit out of enmity and cannot object for the construction of the same and have to seek proper succession and partition of the estate of Vithal Bolnekar.

20. It is submitted that the construction of the soakpit which is 2.6x2.6 metres will not affect the plaintiffs in any manner and there won't be any nuisance if the soakpit is constructed. It is submitted that the plaintiffs have alleged that there is a soakpit and the defendants have constructed a room on the soakpit. That the said area is not a soakpit but it is a septic tank of the existing toilet and the said septic tank cannot be used as a soakpit. That the waste water from the kitchen and bathroom was discharged in



a pit in her plot for last more than 15 years. And that the pit is covered with 2 metres with an iron net as per the instruction of the Canacona Municipal Council. That the pit in which waste water was discharged is not a well and the actual well is existing in the property.

21. She has denied that the septic tank and the soakpit available is overflowing and therefore, the waste is discharged in the well. According to her the said pit is not a well and they are not throwing plastic bottles in it. According to her she is willing to construct the soakpit as per the location shown on the plan produced along with the petition and the existing pit which is alleged to be water well by the plaintiffs can also be made as a soakpit by filling the same properly. According to her the plaintiff is not entitled to raise objections to the construction of soakpit. It is submitted that no loss or prejudice will be caused to the plaintiff, if the application for temporary injunction is rejected and it is prayed that the application be rejected.

22. Heard the arguments advanced. Learned Advocate Shri D. Vernekar argued on behalf of the plaintiffs and Learned

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Advocate Shri. P. Painginkar argued on behalf of the defendants Nos. 1 to 3.

23. The following points arise for my determination and my findings thereon are as follows:-

Points	Findings
1. Whether the plaintiffs have made out a prima facie case in their favour?	In the Affirmative
2. Whether the balance of Convenience tilts in favour of the plaintiffs?	In the Affirmative
3. Whether irreparable loss would be caused to the plaintiffs if temporary injunction is not granted?	In the Affirmative

REASONS

As to point no.1:-

24. In order to obtain the relief of Temporary Injunction, it is sine quo non for the plaintiffs to make out a prima facie case.

25. In the present suit, it is the case of the plaintiffs that they are the co-owners of the suit property. According to them the defendants are trying to construct a soakpit in the suit property which is a common property belonging to all the co-owners and



that the same is being constructed without the consent of the other co-owners.

26. Ld. Advocate Shri D. Vernekar has argued that the defendants have been constructing various illegal constructions in the suit property and are now trying to construct a soakpit without the consent of the other co-owners. It is his argument that the defendants had left their sewage in a well which defendants are now claiming it to be a pit. He has argued that in the suit property there were two wells. One well has drinking water and the other well is converted into a pit wherein all the waste is discharged by the defendants. It is his arguments that by constructing various illegal structures, the defendants let out the said structures to various people and the waste of all the tenements was discharged in the said well. He has also argued that the defendants also have a septic tank on which they have done construction of rooms. It is his contention that the septic tank and the soakpit are now full and the defendants desire to construct a new soakpit and therefore have dumped materials in the suit property. His next argument is that the plaintiffs filed a complaint with the Health Officer of Canacona and also filed a writ petition before the Hon'ble High Court of Bombay at Goa.

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That the said Writ was disposed of and still the nuisance continued and therefore, the Public Health Centre of Canacona issued disconnection orders thereby disconnecting the water and electricity supply to the structures of the defendants and directed them to clear the nuisance. That the defendants also filed a writ petition before the Hon'ble High Court against the said disconnection and sought for a writ of mandamus to grant approval for the construction of the soakpit and the Hon'ble High Court directed the Planning Authority to consider the application of the defendants for construction of soakpit and liberty was granted to the plaintiffs to raise all the objections before the Town and Country Planning Authority and if there was any objection on the co-ownership then appropriate order could be obtained from the Civil Court.

27. Ld. Adv. Shri D. Vernekar has also argued that the co-ownership of the property is admitted and that the property is not yet partitioned. It is his contention that even if the authorities grant permission to the defendants to construct the soakpit, the same cannot be constructed by violating the co-ownership right of the plaintiffs.

28. Per Contra, It is argument of Ld. Advocate Shri Painginkar that the defendants intend to construct the soakpit and have obtained the necessary permissions from the authorities and therefore, the construction is not illegal and hence, the defendants cannot be restrained from constructing the soakpit. It is his argument that the defendants do not have a soakpit. His next argument is that after considering the objection of the plaintiffs NOC is granted by the Authorities to the defendants to construct the soakpit.

29. His next argument is that the allegations made by the plaintiffs that the pit was a well is false. It is his contention that there is no evidence produced by the plaintiffs to show that the existing soakpit was full. According to him the defendants were letting out the waste in the pit as they do not have the soakpit and since the Health Authorities have disconnected their electricity and water supply as they were letting the waste in the pit, the defendants desire to construct a new soakpit. According to him the area of the saokpit to be constructed is very small and that the defendants are doing it in their portion and therefore, no loss or prejudice will be caused to the plaintiffs.

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30. I have gone through the material on record and the documents relied by both the parties. It is the main contention of the defendants that since they don't have a soakpit they want to construct the same in their portion of land. The defendants have admitted that they along with the plaintiffs are co-owners of the suit property. In their entire reply they have stated that they intend to construct a soakpit and therefore, it is established position that they are trying to construct a soakpit in the suit property as alleged by the plaintiffs.

31. The question that arises is whether they can be allowed to construct a soakpit at this stage. Now it is an admitted position that the plaintiffs and the defendants are co-owners of the suit property. Ld. Adv. Shri Painginkar has argued that the plaintiffs should have sought for partition if they are objecting to the construction of the soakpit. In para 32 of their reply the defendants have submitted that the plaintiffs cannot object to the defendants right to construct the soakpit and they have to seek proper succession and partition of the estate of Vithal Bolnekar. This statement of the defendants establishes the facts that the suit property is not partitioned by metes and bounds among all the co-owners.

32. The next question that arises is whether the defendants are having an existing soakpit and a septic tank. The defendants have placed on record various documents in support of their application. They have produced a plan prepared by Architect Yogesh Prabhu Gaonkar. The plan reveals existing soakpit to be removed fully, existing well, existing structures, proposed soakpit and existing septic tank below. On perusal of the said plan and the photographs placed on record, it can be gathered that the existing septic tank is below the structures of the defendants. Though the defendants have contended all along that they do not have existing soakpit, their own plan reveals an existing soakpit. According to the defendants it is only the pit in which they were disposing their waste. I have perused the photographs relied upon by the plaintiffs and the alleged pit prima facie appears to be a well as contended by the plaintiffs and it is seen open. The notice issued to the defendant no.1 by the Health Officer, Community Health Centre, Canacona Goa dated 05.01.2022 reveals that upon inspection it was noted that the complaint of Gopal Vithal Bolnekar and Sudha Gopal Bolnekar is true as there is waste water pipe from defendants house letting waste into the well and all waste water including plastic bag and other material gets accumulated in the well water. Since the nuisance was not

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removed, a disconnection order was passed by the Health Officer Community Centre, Canacona wherein it was held that the defendant no.1 is releasing sullage into well and contamination of well, garbage disposal in well is contrary to section 30, 31 and 37 of the Goa Health Act, 1985 and Rules 1987 and is also classified as nuisance as per section 2 (22) of the Goa Public Health Act, 1985 and Rules 19687 and by way of said order the water supply of the defendant no.1 was disconnected.

33. Similarly, another disconnection order was passed on 05.01.2022 whereby the power supply of the defendants was disconnected. Therefore, it is prima facie established that the defendants were releasing sewage in a well which they allege to be a pit and now they want to fill the said well and construct a new soakpit. Prima facie it is seen that all these years there has been nuisance created in the suit property by the discharge of the sewage in the said pit/well. The defendants have contended that their human rights are violated as they are not been allowed to construct a soakpit. But the alleged nuisance prima facie reveals that the right of the plaintiffs for a hygienic living has also been violated. The defendants are silent as to why they want to construct a new soakpit and what precluded them from clearing

the existing soakpit and using the same. Moreover, there is also a septic tank which is now under the house of the defendants. This fact has not been denied by the defendants and having a septic tank under the house is against the rules and this fact itself prima facie establishes that the defendants have been carrying out illegal constructions in the suit property.

34. It is an admitted position that the plaintiffs and defendants are co-owners of the suit property. If a party wants to change the nature of the property, then it is necessary for that party to go for partition. The documents produced on record reveal that RCS No.1/1989 was filed in the court of CJJD & JMFC, Canacona which was a suit for partition and the same was dismissed by Judgment and Order dated 26.09.1995 since no Inventory Proceedings were filed upon the death of the ancestor. The said suit was filed by Ulhas Vithal Bolnekar who is husband of the defendant no.1. This fact has not been placed before the court by the defendants and it has been brought to life by the plaintiffs. Therefore, it is an established position that the suit property is not divided.

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35. It is the case of the plaintiffs that the suit properties are not divided by metes and bounds. Article 1270 (4) of the Portuguese Civil Code, 1867 provides that "None of the shareholders may without the consent of the others make alterations in the immovable assets of the society even if such alterations may appear useful to him, nor may he bind or alienate the movable or immovable assets of the society".

36. It is settled position of law that one co-owner cannot change the user of the land or do any alterations to a joint common property and one such decision is the case of **Shri Pascoal Josinho Vaz Son of Francisco Vaz. & Ors. vs. Smt. Eugenia Helena Vaz & Ors.**, reported in 998(1) ALL MR 751, wherein the Hon'ble High Court of Bombay at Goa held that *"the normal rule is that a co-owner in possession of joint property has no right to change the user of that property without the consent of other co-owners."*

37. Therefore, the defendants are required to obtain consent before doing any alteration in the suit property. The plaintiffs have clearly stated that they have not consented to the construction of the soakpit which goes to show that the

defendants are intending to construct the soakpit without the consent of the other co-owners. The Hon'ble High Court of Bombay at Goa, vide order dated 03.10.2022 in writ petition no.902/2022 (S) has held that "for both the above reasons this petition is disposed of. Incidentally, we may note that the connected writ petition no.415/2022 instituted by respondent nos. 6 and 7 is also disposed of by separate order made today relegating the parties to pursue their dispute before the Civil Court in pending proceedings." Therefore, the Hon'ble High Court has left it open for the parties to pursue their rights before the Civil Court and it is for the Civil Court to decide the rights of the parties based on the established law.

38. In the case of **Shri Yeshwant Keshav Vaigankar and his wife Mrs.Yoshovita Yeshwant Vaigankar Vs. Shri Ramesh Keshav Vaigankar and Ors.** decided on 23.07.2008 in Second Appeal no. 96/2005, it was held by the Hon'ble High Court of Bombay at Goa, "once, it is held that the suit property belongs to the parents of the plaintiff and defendants, and thus a common property belonging to both the parties to the suit, one party cannot be allowed to erect a compound wall or boundary wall on a specious plea that it was part of an administration of a common

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property, without the consent of others". It was further held that "construction of a compound wall is certainly an alteration of the immovable property which could not be done by one co-owner without the consent of the other co-owners. Viewed thus, the defendants could not have been allowed to proceed with the construction of the compound wall as the property belonged to both the parties."

39. In the present case it is an admitted position that the suit property is inherited by the plaintiffs and the defendant no.1 through Vithal Bolnekar who is the father of the plaintiff no.1 and the husband of the defendant no.1. Therefore, the said decision of Yeshwant Vaigankar (Supra) is squarely applicable to the present case.

40. Coming back to the question of whether the defendants can be allowed to construct a soakpit as they have been granted various permissions from the authorities. The answer is they cannot be allowed to construct the same as the other co-owners have not consented for the same and allowing the defendants to carry out the said construction without the consent of the other

co-owners would amount to violation of the co-ownership right of the other co-owners.

41. In order to obtain the relief of Temporary Injunction, the plaintiffs have to make out a prima facie case and have to show that the balance of the convenience tilts in their favour and they shall suffer irreparable loss and injury if the Injunction is not granted. These are the mandatory requirements of law. There is a prima facie case made out for due indulgence of the court.

42. Therefore, based on the above decisions, I am of the opinion that the plaintiffs have made out a prima facie case for the grant of interim relief of Injunction. Hence, point No.1 is decided in the Affirmative.

As to Point nos.2 and 3:-

43. The Court has to see in whose favour the balance of convenience would tilt. The balance of convenience in the present case tilts in the favour of the plaintiffs because the plaintiffs have prima facie established that if injunction is not granted then irreparable loss would be caused to plaintiffs which cannot be compensated in terms of money. They have prima

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facie established that the defendants are trying to construct a soakpit in the suit property without their consent and if injunction is not granted injury would be caused to the plaintiffs which would be greater compared to the injury and hardship that would be caused to the defendants if the injunction is granted. On weighing the likelihood of injury, I come to a conclusion that Temporary Injunction is required to be granted in favour of the plaintiffs. Hence, point Nos.2 and 3 are decided in the Affirmative.

44. However, it is to be noted that the observations made while deciding the present application are based on the prima facie finding of this court and the plaintiffs will have to establish their case on merits and the observations made herein are not binding on the final decision which will be passed on merits.

45. Since the plaintiffs have made out a prima facie case in their favour and have shown that the balance of convenience tilts in their favour and have also shown that irreparable loss and injury would be caused to them which cannot be compensated in terms of money, I pass the following:

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ORDER

The application at exhibit D-5 is partly allowed and the defendants, their agents, their servants, their assigns and any other persons claiming through or on behalf of the defendants are restrained from doing any kind of construction in the suit property without the permission of the other co-owners till the suit is decided on merits.

Pronounced in the Open Court.

Canacona

Dated: 20.12.2022

ANURADHA ANDRADE
Digitally signed by
ANURADHA ANDRADE
Date: 20.12.22
16:50:40 -0800

(Anuradha Andrade)
Civil Judge, Junior Division,
Canacona.

Af/-