

L10 - J - 2/24/12

BEFORE THE ADDITIONAL DIRECTOR OF PANCHAYATS-II  
AT PANAJI-GOA.

PANCHAYAT APPEAL NO. 111/2012

Vishwas Warehousing and Trading Pvt. Ltd,  
A company incorporated under  
the Companies Act, 1956  
with its registered office at  
Survan Bandekar Bldg.,  
Swatantra Path,  
Vasco da-Gama, Goa 403 004. .... Appellant.

V/S



1. Dy. Director of Panchayat  
North Goa, with office at 3 rd Floor, Junta House  
Panaji-Goa.
2. V.P. of St. Cruz,  
Through its Secretary,  
With office at Panchayat Ghor,  
Near St. Cruz Market  
Santa Cruz
3. Block Development Officer,  
With office at 6<sup>th</sup> Floor,  
Junta House, Panaji-Goa.
4. Goa University  
Through its Chancellor  
With office at Goa University Complex,  
Dona Paula-Goa. .... Respondents.

J U D G E M E N T

This Judgement and order shall dispose of the present appeal filed by the Appellant herein under section 66(7) of the Goa Panchayats Raj Act, 1994 challenging the letter bearing No.ILL/DDPN/St.Cruz/Tis/12/5499 dated 30.11.2012 issued by the Dy. Director of Panchayats North holding that the Goa University being a Statutory Authority is exempted from obtaining construction licence from the Village Panchayat.

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The above referred letter dated 30.11.2012 issued by the Dy. Director of Panchayats North shall hereinafter be referred to as the "Impugned Order" for the sake of brevity.

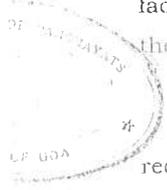
The case of the appellant in brief is that the appellants are the owners in possession of plot bearing No.59 admeasuring 1978 sq. mts. Situated in the property bearing survey No.211 of the village Panchayat of Calapur. The said plot forms part of the project developed by M/s Alcon Real Estate Pvt. Ltd. under the name of Samudra Darshan. The appellants state that the western boundary of the said larger property bearing survey No.211 is survey No.213 (now amended as 212) which property apparently belongs to the Goa University. The said property is severed and/or divided by a public road which passes from Dona Paula to Cacra village. The said road is a public road and is used by public in general and more particularly by the resident of Cacra village. On the eastern side of the said road is a western boundary of the property bearing survey No.211 wherein plot No.59 belonging to appellants is situated. The appellants submit that the said village road is in fact an access and is used as such by all the villagers, locals and the plot owners of Samudra Darshan Project and other properties which are located in the vicinity. Appellant submits that on 12.7.2012 when the representative of the appellants namely Rajaram Sawant went to visit the said plot he was surprised to see that the same is blocked at the entrance on its western side by constructing a compound wall which is constructed just adjacent to the public road. The said compound wall is constructed in such a manner, so as to block the ingress and egress of the appellants to the plot bearing No.59 and also to the other plots which are situated in the said project at Samudra Darshan. It is stated that the entire development undertaken by Alcon Real Estate Pvt. Ltd which had originally land under survey No.211/1 of Calapur



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village belong to Talaulikar & family which was jointly developed by them alongwith M/s Alcon by obtaining the following NOCs. 1) Conversion sanad issued by the Dy. Collector & S.D.O. Panaji dated 5.4.1990, 2) Approved plan of the Town and Country Planning dated 30.12.1991 3) Village Panchayat approval dated 9.1.1992. The Talaulikar family have been using access to the Land under survey No.211/1 from times immemorial using the public road leading to Carca through land under survey No.212 which land is exactly adjacent to land under survey No.211/1. It may be noted that the public road leading to Carca through land under survey No.212 touches the land under survey No.211/1 and depicted in the survey plan including sub division of plots, construction of internal roads; drainage and other infra-structure is as per the approved plans and approvals granted by Central Planning Development and the V.P. of St. Cruz in compliance with the statutory provisions of law. On enquiry conducted by the appellants it is revealed that there are no permissions granted by any authority for construction of the said compound wall. Such an act on the part of the respondents of constructing a compound wall thereby blocking the appellant's access amounts to interfering with appellants proprietary rights ; in fact since the time of purchase of plot the appellants are using the said road to go their plot.



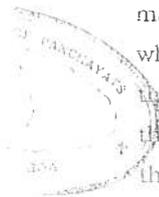
While developing the land under survey No.211/1 after receiving all the approvals, Talaulikars and Alcons have used the above mentioned public road leading to Carca for movement of Man, Machinery and material to develop the said property into plots having approval of various concerned authorities mentioned herein above. The plots are developed with internal roads and drains. The property was purchased by the appellant in 2003 and they have been using it uninterruptedly ever since then. This settle the easement right of the plot No.211/1 through land under survey No.212.



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Further the appellants states that by complaint dated 23.7.2012 the appellants brought to the notice of the village Panchayat of Calapur the said illegality committed by the Goa University and called upon the respondent to take immediate action and demolish the compound wall which has been illegally constructed without obtaining permission from any statutory authority. The respondent No.2 on 12.9.2012 inspected the site, at the said site inspection the attitude of the respondent No.2 was very casual and in fact at times the Sarpanch and Secretary of the respondents tried to tell the appellants that the Goa University which is a autonomous body does not need permission from any authority for any construction and called upon the appellants to settle the matter amicably. The appellant further states that there is no law by virtue of which Goa University or any other autonomous body is exempted from obtaining permission from the Competent authority under statutory provisions of law. The appellant state that though complaint was filed on 24.7.2012 for more than 30 days no action has been taken by the respondents No.2 though in terms of law and therefore the appellants were compelled to approach the Dy. Director of Panchayats under section 66(5) of the Goa Panchayats Raj Act, 1994. The Dy. Director whilst invoking powers of Panchayat by letter dated 30.11.2012 was pleased to hold that the Goa University is exempted from obtaining permissions under the Goa Panchayats Raj Act, 1994. The said Order also makes reference to the report of the Block Development Officer which clearly goes to establish that the said order is passed by the Dy. Director on the basis of the report dated 5.11.2012 of the Block Development Officer Tiswadi. The appellant submits that the impugned Order is in flagrant violation of the principles of law and is liable to be quashed and set aside. Being aggrieved by the same the appellants filed a present appeal on various grounds mentioned in Appeal Memo.



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Notices were issued to both the parties fixing the matter for hearing. The Appellant and the Respondents No. 4 are represented by their advocate on record. Secretary of respondent No.2 present in person for some hearing and further remained absent. The Respondent No.1 and 3 did not appear in the present proceedings.

Respondent No.4 filed written arguments submitting that the respondents are not aware of the Samudra Darshan Project developed by M/s Alcon Real Estate Pvt. Ltd. and also about the sale of the plot No.59 to the appellants. The respondents are not parties to the sale and there is no privity of contract between the appellants and the respondent No.4. The Government of Goa acquired land in the villages namely Taleigao, Calapur and Bambolim solely for the purpose of the University and handed over the possession of the same to the Goa University. The respondent No.4 accordingly began the work of protecting its properties by fencing/compounding the same. It is submitted that there is no access available to the appellants through the University property. The respondent No.4 stated that the property belonging to the Goa University is bearing survey No.212 and that road i.e Cakra village road passes through the property surveyed under No.212 belonging to the Goa University. If the appellants are claiming right of access through the property survey under No.213 (now amended as 212) then the name of the Goa University ought to be deleted from the appeal as the appellants are claiming rights of access through the property survey under No.213(now amended as 212) which is not belonging to respondent No.4. the provision of section of 66(5) of Goa Panchayat Raj Act are not applicable because Goa University is a statutory authority, other authority as set out in Article 12 of the Constitution of India and not a person, hence the provisions of section 66(1) with regard to obtaining of construction licence are not applicable to the respondent No.4.



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No approval has been taken by the University from any of the authorities while building the said permanent compound wall claiming that is being an autonomous body and it does not require permission. To claim this exemption the respondent No.4 has not been able to show any specific provision of law exempting them from various approvals being an autonomous body. Therefore it was necessary for them to take approvals from the Town and Country Planning Department as well as the Panchayat and other authorities and also give a prior notice to the neighbours before building the permanent laterite compound wall. Letter of Town and Country Planning dated 23.1.2013 in this connection is very clear. It is submitted that in the year 2003, the University statues have been amended to incorporate the mandate that no rules can be framed without the specific concurrence of the Governor who is the Chancellor of the University. The work of construction of the compound wall around the University property is done by utilizing public funds. It is submitted therefore that no permission/licence also need be obtained by the respondent No.4 before commencement of any work of construction.

Further the respondent NO.4 submitted that, the respondent No.4 is not aware of the Samudra Darshan Project developed by M/s Alcon Real Estate Pvt. Ltd. if the appellant has purchased a plot of land from M/s Alcon Real Estate Pvt. Ltd. under the project Samudra Darshan it is for them to sue their developers and the developers who have sold the plot representing the same to be developed plot to the appellants are enjoined to provide an independent access through their own property to the appellants and cannot foist a right of access on the neighbouring land. It is further submitted that the right of easement can be crystalized only after user of an access for a period of 20 years in terms of Article 15 of the Easements Act. The respondent submits that this authority would not have the jurisdiction to enter into the arena of such

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disputed facts and the appellants have already filed the appropriate proceedings before the Civil Court for declaration of alleged rights of easement in their favor after the filing of the appeal. It is stated that the Goa University has constructed a compound wall around its property in terms of the demarcation made by the DSLR and the said compound wall was existing for the last three years and no locals or no other persons except the appellant has filed the proceedings in any Civil Court or any other Court against the Goa University for having constructed the compound wall demarcating their land. The construction of the compound has been commenced in the year 2009 and the construction is on the boundary of survey No.212 has already been completed.

The respondent No.4 claims to have built the said permanent compound wall in 2009. The 3 google pian maps clearly shows the position of the compound wall when it did not exist when it was first built partially in 4.4.2011 leaving an opening of 6 meters width for internal road as per plan approved Town and Country Planning Department dated 30.12.1991 and when the 6 mtrs access road was blocked in 16.5.2012 to plot No.211/1 and the said position cannot be challenged and it is a scientific and universal data.



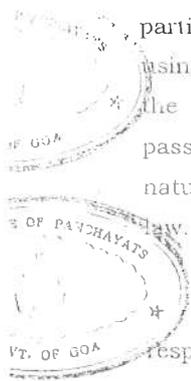
Further the respondent No.4 denied the case of the appellant in Appeal Memo and further submitted that there was no road on loco but there was an existing traditional pathway and no objection was given for construction of road in lieu of the same by the respondent No.4. The appellants are trying to make use of the office of the Director of Panchayat for vindicating their private grievances and trying to establish a right of easement through the property of the University. The appellants are not entitled to any reliefs hence it is prayed that the appeal be dismissed with costs.

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Adv. for appellant filed written arguments reiterating the contents of the appeal memo and further submitted that the report dated 5.11.2012 of the Block Development Officer neither makes any reference to the provisions of law which exempts a statutory authority and/or a public authority from obtaining the necessary permission/licence from the Competent authority. The Dy. Director of Panchayat failed to appreciate two Acts the Goa(Regulation of Land Development and Building Construction)Act, 2008 and the Goa (Land Development and Building Construction Regulation) Act, 2010 do not differentiate the authorities/statutory authorities or any other applicant from obtaining the necessary permissions from the Competent authority as required under the statues. It is therefore submitted that there is neither any distinction nor any differentiation of any statutory authority/public authority from obtaining the required permissions for carrying out construction activities. The claim of the respondent No.4 that the respondent No.4 does not require any licence/permission/approval from the competent authority then it was for the respondent No.4 to produce and indicate the provisions of law under which such an exemption can be claimed by the respondent No.4. while building the said permanent compound wall the respondent No.4 has not left any set back from the public road leading to Cakra village. On account of the closure of the access road not only private parties are affected but even the Panchayat is deprived from using the open space reserved for public utility on closure of the said assess. Without prejudice the impugned letter is passed by the Dy. Director in breach of the principles of natural justice and therefore is illegal and unsustainable in

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I have gone through the pleadings of appellants and respondent No.4, documents on record and also considered written arguments filed by the Appellant and the Respondent

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No.4 in the matter. I have also gone through the Impugned Order passed by the Dy. Director which is under challenge in the present appeal.

In the present matter, on perusal of the Impugned Order passed by Dy. Director of Panchayat North, it is noticed that the Id. Dy. Director has observed in his findings that since the University was a statutory authority and since the work of construction of compound wall was done through PWD and from State funds, there was no requirement to obtain a construction licence from the respondent Panchayat. At this juncture it is pertinent to note that without specifying the appropriate provisions of law the Dy. Director cannot arrived in its finding that since the University is a statutory authority there was no requirement to obtain a construction licence from the respondent Panchayat and hence the Dy. Director ought to have mentioned under which section of the Goa Panchayats Raj Act 1994 have no requirement of any licence/permission to any statutory authority for carrying out any construction. If there is any exemption then it has to be established by producing documentary evidence on record to prove that there is not requiring any licene/permission from the village Panchayat to Statutory authority.

Moreover, it is pertinent to note that section 66(1) of the Goa Panchayats Raj Act provides that no person should erect any building or alter or reconstruct any building without the written permission of the Panchayat. As such the Act and the Rules made thereunder provides for obtaining construction licence, and a person intending to carry out any construction is required to follow the procedure laid under the Act and there are no exceptions to the aforesaid provisions of section 66(1) of the Act. As such, no doubt that the Goa University which is a autonomous body does not need permission from any authority for any construction, however without any

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documentary evidence on record it cannot be establish that the autonomous body does not need permission and there is no provision under the Act providing that, autonomous body does not need permission from any authority for any construction, which is constructed without obtaining construction licence as per the provisions of the Act. This being the legal position, in the absence of any construction licence, it cannot be said that a particular structure is a legal structure solely based on the oral submission.

Secondly as allege by the respondent No.4 that the appellants are claiming rights of access through the property survey under No.213(now amended as 212) which is not belonging to respondent No.4, in this regard the appellant filed an amendment application seeking leave to amend the appeal to extent that survey No. of the property of the respondent No.4 be read as 212 instead of 213 and this Authority passed an order on same application allowing the amendment application on 20.11.2013.

Further the contentions of the respondent No.4 is that this authority would not have the jurisdiction to enter into such disputed facts and the appellants have already filed the appropriate proceedings before the Civil Court for declaration of alleged rights of easement in their favor after the filing of the appeal. Here it is pertinent to note that the issue before this Authority is of illegality the illegal construction of compound wall constructed by respondent No.4 and the issue of legality/illegality pertains under the provisions of Goa Panchayats Raj Act, 1994 and in my opinion the appellant has come before correct jurisdiction to get appropriate justice.

In view of my above discussion and observations, it is concluded that the Impugned letter passed by the Ld. Dy. Director is bad in law, in as much as the same is contrary to

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the records and proceedings of the case before the Dy. Director and the Ld. Dy. Director has also failed to appreciate the provisions of the Goa Panchayats Raj Act, 1994. Hence the impugned letter needs to be quashed and set aside. The present appeal therefore deserves to be allowed. Hence the following order is passed.

ORDER

1. The present appeal under No.111/2012 filed by the Appellant u/s 66(7) of the Goa Panchayat Raj Act 1994 is hereby allowed. Consequently, the Impugned letter dated 30.11.2012 passed by the Dy. Director of Panchayats North in case No.ILL/DDPN/St.Cruz/Tis/12/5499 is hereby quashed and set aside.

2. The Respondent No.4 is hereby directed to demolish the illegal compound wall on the access road of the appellant plot bearing No.59 property under survey No. 212 of village Calapur within 45 days from the date of this order, failing which the Secretary of the Respondent Panchayat to execute this Order in accordance with law.

3. Accordingly, the present appeal stands disposed of.

Pronounced in the open Court.

Given under my hand and the seal of this court on 26<sup>th</sup> day of May 2014.

(L.S. Roncon Pereira)  
Addl. Director of Panchayats-II  
Panaji-Goa



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