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District and Sessions Court
Panaji-Goa

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Civil Revision Appln. No. 24/2014



**IN THE COURT OF THE DISTRICT JUDGE-1, NORTH GOA,
PANAJI.**

(Before Shri. Pramod V. Kamat, District Judge - 1, Panaji)

Civil Revision Application No. 24/2014.

Goa University through its registrar
With office at Goa University complex
Dona Paula Goa

.....Petitioner

V/s

1. Vishwas Warehousing and trading Pvt. Ltd.,
A company incorporated understood
The companies Act, 1956
With its registered office at

P. Kamat



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Survan Bandekar Bldg,
Swatantra Path,
Vasco-d-Gama,
Goa 403001.

2. Dy. Director of Panchayat
North Goa, With Office at 3rd Floor,
Junta House, Panaji-Goa.
3. Village Panchayat of St. Cruz
Through its secretary
With office at Panchayat Ghor,
Near St. Cruz Market
Santa Cruz Goa.
4. Block Development Officer
With office at 6th Floor,
Junta House, Panaji-Goa. Respondents.

Petitioner represented by Ld. Advocate Ms. A. Agni

Respondent No.1 represented by Ld. Advocate Shri. A. Bhobe

Respondent No.3 represented by Ld. Advocate Shri. P. Haldankar

ORDER

(Delivered on this the 13th day of the month of April, of the year 2015)

This order shall dispose of revision application filed
by the applicant herein under section 201B of Goa Panchayat Raj

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Act of 1994 as amended in 2010 aggrieved by the judgment and order dated 26/5/2014 passed in Panchayat Appeal No.111/2012 by the Additional Director of Panchayat II at Panaji Goa.

2. Briefly stated the case of the applicant is that the applicant is the autonomous body and other authorities as defined under Article 12 of the Constitution of India. That the respondents herein claimed to be the owner of plot no. 59 admeasuring 1978 square meters situated in the property bearing survey no. 211 of village Calapur on the basis of Deed of Sale dated 22/8/2003 and that there is a project known as Samudra Darshan Project which is developed by M/s Alcon Real Estate Pvt. Ltd. in the property surveyed under no. 211 of village Calapur. The applicant is a statutory body and Government of Goa had acquired land in the villages of Taleigao, Calapur and Bambolim solely for the purpose of Goa University and the said area which is acquired by Government was handed over to Goa University in the year 1992 and in consequence of the same several buildings were constructed by the Government for the University and the Goa University had constructed a compound wall for protecting its property.

3. It is further the case of the applicant is that the respondent no. 1 herein filed a petition dated 26/9/2012 before the Deputy Director of Panchayat praying for the demolition of the compound wall constructed by the Goa University. The

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erection of which was commenced sometime in the year 2009 and completed around the year 2010. Upon hearing the respondent no.1 and without giving notice to the applicant herein and also after taking into consideration the report of the Block Development Officer, the Director of Panchayat came to the conclusion that the University being the statutory authority and since the work of construction of compound wall was done through the PWD and State funds there was no requirement to obtain the construction license from the Village Panchayat. The respondent no. 1 however challenged the said order by filing appeal before the Director of Panchayat/Appellate Court and the same was allotted to Additional Director of Panchayat/Appellate Court. Upon hearing the parties the Additional Director of Panchayat at Panaji Goa however allowed the Panchayat Appeal No. 111/12 thereby directing the applicant to demolish the compound wall on the access road of the respondent no.1 plot bearing no. 59 property under survey no. 212 of village Calapur within 45 days of the date of the order failing which the Secretary of the Panchayat to execute the order in accordance with the law.

4. Dissatisfied with the impugned order dated 26/5/2014 present revision came to be filed on various grounds without prejudice to each other.

5. The main grounds of revision are as under:

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1. Despite the Appellate Court coming to the conclusion that the Goa University being an autonomous body does not need permission from any authority for any construction, yet arrived at the findings that there was no documentary evidence to establish that the autonomous body does not need permission.
2. The Learned Trial Court did not consider that under Article 12 of the Constitution of India is autonomous body and the statutory body which was not a "person" as mentioned in Section 66(1) and as such there was no necessity for Goa University to obtain permission for construction of compound wall.
3. The Learned Trial Court did not consider that under Section 66(5) there was requirement for a person to obtain sanction from the Panchayat and there was no such requirement for the Goa University being statutory authority and other authority as set out in Article 12 of the Constitution of India and that
4. The Learned Trial Court did not consider that the Goa University Act has been amended in the year 2003 to incorporate that no statute/rules having financial implications may

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be framed without the approval of the Government of Goa.



6. In the Revision application I have heard Learned Senior Counsel Ms. A. Agni for the applicant, Learned Advocate Shri. A. Bhobe for the respondent no.1. Ld. Adv. Ms. P. Haldankar for the respondent no.3. I have duly considered the arguments advanced by all the counsels and entire material on record.

7. Based on the arguments advanced and the material on record the only point that arises for my determination is as to:

"Whether the applicant (Goa University) being a statutory authority has defined under the Article 12 of the Constitution of India which is not a "person" as set out in Section 66(1) of the Panchayat Raj Act and consequently it has no liability to obtain permission to carry out the construction as set out in Section 66(1) of the Panchayat Raj Act?"

8. My answer to above point is in negative on account of following reasons:

REASONS

9. The applicant herein squarely admitted that it has

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carried out the construction of the compound wall. In that context it is claim of the applicant is that the applicant is an autonomous body and other authority as defined under the Articles 12 of the Constitution of India and since the construction is being carried out by the applicant (Goa University) through Public Works Department utilizing the public funds and as university is not a "person" exempted from obtaining construction license from the Village Panchayat as provisions of Section 66 of the Panchayat Raj Act are not applicable to the fact of the present case. Section 66 speaks as under:

Regulation of the erection of buildings.-

(1) Subject to such rules as may be prescribed, no "person" shall erect any building or alter or add to any existing building or reconstruct any building without the written permission of the Panchayat. The permission may be granted on payment of such fees as may be prescribed.

10. It is not in dispute that the applicant has constructed the compound wall without obtaining a license from any authority. In the present revision entire controversy is revolving as to whether applicant herein was not a "person" as set out in Section 66(1) of the Panchayat Raj Act and as such no requirements to apply for permission to carry out the construction. In support of the same Advocate for the applicant

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pointed out to the definition of "person" as mentioned in sub Section 3(42). The expression "person" is defined as including any company, or association or body of individuals, whether incorporated or not. The definition of "person" is however not exhaustive, but is inclusive one, therefore, concept of personality can be interpreted in a light of legal system. According to General Clauses Act the word "person" refers not only to "natural person" but even to "legal person", if so done a writ under Article 226 of the Constitution would be available not only against private person but also against the authority or Government. Therefore authorities cited by Advocate for the applicant in the case of **Km. Vandana Tiwari, Petitioner v. The Allahabad University, Allahabad and others, Respondents AIR 1991 Allahabad 250** and of our Hon'ble High Court in the case of **ICICI Ltd. V/s M.F.V. 'SHILPA', an Indian Vessel and others, AIR 2002 Bombay 371** has no applicability to the case at hand. In my opinion word "person" reflected in the Section 66 (1) of the Panchayat Raj Act 1994 includes not only a "natural person but also a "juristic person" and there is nothing in the above Act exempting the applicant or for that matter the autonomous body or other authority under the Article 12 of the Constitution of India. There is nothing in the subject or context to rule out the same. The provisions of the Goa Panchayat Gaj Act, the Town and Country Planning Act and other provisions, rules and regulations in force do not exempt the applicant or other autonomous body from obtaining permission prior to



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construction/erection. Merely because the said construction carried out by the Government authorities does not ipso facto preclude the applicant from being obtaining permission for erection as envisaged under Section 66(1) of the Panchayat Raj Act. In the case at hand respondents has approached the authorities under the Goa Panchayat Raj Act to enforce their rights and vindicate their grievances under the statute. Merely because the applicant is an autonomous body and/or the statute of Goa University it cannot over ride the mandatory requirements to obtain the permission under the law and the building rules and regulations in force. In fact authority of the Apex Court in the case of **Karnataka Bank Ltd., Appellant v/s State of Andra Pradesh and Ors., Respondents (2008) 2 SCC 254** is quite apt in this regard wherein defining scope of "person" in Section 3(42) of the General Clauses Act it is held that definition contained in Section 3(42) is undoubtedly illustrative and not exhaustive and further held that the well-known rule of interpretation regarding such inclusive definitions has always been to treat the other entities, which would not otherwise come strictly within the definition to be part thereof, because of illustrative enactment of such definitions. The applicant (Goa University) is a creature of statute and therefore is a "person" as defined under Section 3(42) of the General Clauses Act, 1897. Exempting the applicant from obtaining permission/license from the concerned authorities in fact otherwise would lead to chaos and disorder and would defeat the



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very purpose for which permission of the various authorities is required to be obtained under the law which amongst others takes care of property planning and Government authority in construction matter. In that regard the letter issued by the office of the Town and Country Planning dated 23/1/2013 to the Registrar of the applicant itself goes to show that the Department has brought to the notice of the Goa University that the compound wall has been constructed by the applicant (Goa University) is blocking the 6 meters access road to the plot no. 59 and open space of the approved sub-division layout and the same has been carried out without obtaining permission from the Town and Country Planning Department. Hence it cannot be the purport of Goa Panchayat Raj Act 1994 to exempt other entities from the definition of a "person". However the ground raised by the respondent no. 1 that they are entitled for easementary right under Section 15 of the Easement Act over the suit property cannot be agitated and adjudicated in the present proceedings under any one of the provisions of the Goa Panchayat Raj Act. The same can be dealt only by the Civil Court under Section 9 of CPC. In view of Article 367 of the Constitution of India making the provisions of General Clauses Act, 1897 applicable for interpretation of the Constitution and the definition of the word "person" in Section 3(42) makes it clear that the company or other body corporate is to be ordinarily treated as a person provided that there is nothing in the subject or context to rule out the same. Though the



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Appellate Court while passing the impugned order made a self defeating observation inter-alia that the Goa University being an autonomous body does not need permission from any authority for the construction and thereafter proceeded to observe that in absence of documentary evidence on record it cannot be established that an autonomous body does not need permission that findings by itself will not render the impugned judgment sterile or illegal as the issue involved in the present appeal is rather a question of law than on facts. That being the position and the applicant having not obtain license/permission/approval from the panchayat as envisaged under Section 66(1) of the said Act and further failure on their part to show that they have been exempted from obtaining license/permission being an autonomous body no fault can be attributed in the impugned judgment of the appellate Court to quash and set aside the order dated 30/11/2012 passed by the Deputy Director of Panchayat directing the applicant herein to demolish the illegal compound wall on the access road plot bearing no. 59 in the property under survey no. 212 of village Calapur. The order passed by the Appellate Court is quite in consonance with the regulation of erection of building as contained in Section 66 of the Goa Panchayat Raj Act, 1994 which covers within its sweep the University too within the purview of definition "person". Hence calls for no interference in the impugned order.

11. In the Result, I pass the following:

Ramesh



ORDER

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Civil Revision stands dismissed.

The order dated 26th May, 2014 is hereby maintained and confirmed.

The proceeding stands closed.

Date: 13.4.2015

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Pramod V. Kamat
(Pramod V. Kamat)
District Judge-1 Panaji

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