# IN THE HIGH COURT OF BOMBAY AT GOA

# WRIT PETITION NO. 855 OF 2021 (Filing No.)

Goa University, a body Corporate having its Principle office at Taleigao Plateau Through its Registrar having registered office at the University Campus Taleigao Plateau Goa

... Petitioner

# Versus

1 Town and Country Planning Board with office at Patto Panaji Goa

2 Greater Panaji Planning and Development Authority with office at Archidiocese Building, 1<sup>st</sup> Floor, Mala Link Road, Mala Panaji Goa 403 001

3 Dr. Suresh B. Shetye, MZ-1 Sukerkar Mansion M.G. Road Panaji Goa.

4 State of Goa through Chief Secretary Secretariat at Porvorim Goa.

...Respondents

Ms. A. Agni, Senior Advocate with Ms. J. Sawaikar, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. Deep Shirodkar, Additional Government Advocate for Respondent Nos. 1 and 4.

Mr. D. Pangam, Advocate General with Ms. Maria Correia, Additional Government Advocate for Respondent No.2.

Mr. Shivan Desai, Advocate for Respondent No.3.

CORAM: DIPANKAR DATTA,CJ & M. S. SONAK, JJ

DATED: 19<sup>th</sup> August 2021

ORAL JUDGMENT (Per M. S. Sonak, J)

1. Heard Ms. A. Agni, learned Senior Advocate who appears along with Ms. J. Sawaikar for the Petitioner, Mr. D. Pangam, learned Advocate General with Mr. Deep Shirodkar and Ms. Maria Correia, learned Additional Government Advocates for Respondent Nos.1, 2, and 4 and Mr. Shivan Desai, learned counsel for Respondent No.3.

- **2.** Rule. The rule is made returnable forthwith at the request of and with the consent of the learned counsel for the parties.
- 3. The challenge in this petition is to the order dated 28.08.2020 made by the Town and Country Planning Board (TCP Board) Respondent No.1 herein by which the TCP Board directed the Member Secretary (PDA) to review its development permission given to the Petitioner for construction of the compound wall by considering the provisions of RPG-2021 and any such other statutory plans in force for the area under reference and further to consider the representations made by Dr. Suresh Shetye (Respondent No.3) concerning the blockage of his access etc. while reviewing the

development permission granted to the Petitioner for construction of the compound wall.

- 4. The Petitioner Goa University was in the process of constructing a compound wall in the property bearing Survey No.206/10 of Bambolim Goa. After compliance with the principles of natural justice, the North Goa Planning and Development Authority (PDA) issued a stop-work notice requiring the Petitioner to stop further work and to demolish the compound wall already constructed, within seven days.
- 5. The Petitioner, aggrieved by the aforesaid order dated 04.12.2014 appealed to the TCP Board in terms of Section 52 of the Goa Town and Country Planning Act, 1974 (the said Act).
- 6. The appeal was disposed of by the TCP Board vide order dated 27.10.2015 and the operative portion of this order reads as follows:-

ORDER

The Board after hearing both the parties and after deliberation took note of the fact that it is a building of the University built for academic purposes to house a faculty block. It is also noted that the building is at the completion stage. The Board decided to allow the appeal with the following directions:

- (a) The University shall remove all blockages put up by them in the form of compound/barbed wire fencing along their boundary, which are blocking access to neighbouring properties.
- (b) They shall submit compliance to North Goa PDA within 30 days from date of this order.
- (c) The North Goa PDA shall keep stop work notice dated 4/12/2014 in abeyance and see possibility of re-aligning proposed 30.00 mts. ODP road and reduction of right of way to 15.00 mts., at the time of reviewing/revision of the ODP, which is currently in progress.
- (d) The University shall take development permission/technical clearance, as the case may be, for any development in the University complex as per provisions of the Goa Land Development and Building Construction Regulations, 2010, including regularization of buildings already built.

Sd/-Dr. S. T. Puttaraju Chief Town Planner & Member Secretary, TCP Board."

7. On 9.11.2015 the Petitioner filed a compliance report to the Member Secretary (PDA) purporting to report compliance with the directions contained in TCP Board's order dated 27.10.2015. In this report, the Petitioner pointed out that the barbed wire fencing next to Model Status Building was removed and the Petitioner also decided to open access to the two plots on the southern side in compliance with the directions. This compliance report requested

revocation of show cause notice for demolition of part of the faculty building and prayed for accord of *post facto* regularization of the said construction.

- 8. The Petitioner by yet another representation dated 20.11.2015, addressed to Member Secretary, TCP Board submitted that the directions in the order dated 27.10.2015 for removal of all blockages put up by the Petitioner in the form of compound/barbed wire fencing along its boundary blocking the access to the neighboring properties was rather broad and general. The Petitioner, therefore, requested to "re-word" the said part of the order dated 27.10.2015 by reference to specific sites or survey numbers 212, 215, and 216 of Taleigao Village.
- 9. The Respondent No.3 claiming to be the owner of the properties surveyed under Nos.193, 197, and 198 of Village Calapur adjacent to the eastern boundary of the Petitioner's land made representations to the TCP Board complaining *inter alia*, that the Petitioner had failed to remove all blockages and clear the access roads though directed to do so by the TCP Board's order dated 27.10.2015.
- **10.** Both the aforesaid representations were disposed of by the TCP Board vide order dated 15.10.2018. The TCP Board declined to re-word clause (a) of its order dated 27.10.2015 as requested by

the Petitioner and directed the Petitioner to remove the blockages and clear the access roads to the neighboring properties so that they are not landlocked as requested by Respondent No.3 herein. This order dated 15.10.2018 was accepted by the State Government vide order dated 12.11.2018.

- 11. The Petitioner, aggrieved by the orders dated 15.10.2018 and 12.11.2018 instituted Writ Petition No.317 of 2019 in this Court *inter alia* on the ground that the TCP Board had not granted the Petitioner any opportunity of hearing.
- 12. The contention-based on a failure of natural justice was accepted by this Court and the orders dated 15.10.2018 and 12.11.2018, were set aside by this Court by judgment and order dated 30.07.2019. The TCP Board was then directed to afford an opportunity of hearing to both the Petitioner as well as Respondent No.3 herein and to dispose of their representations as expeditiously as possible. All contentions of all parties were left open for decision by the Board.
- 13. In pursuance of the remand as aforesaid, the TCP Board after hearing both the parties has made the impugned order dated 21.12.2020, the operative portion of which reads as follows:-

" Member Secretary, GPPDA is accordingly directed to review its Development Permission given to Goa University for construction of compound wall, by considering the provisions of RPG-2021 and any such other statutory plans in force for the area under reference.

GPPDA shall also consider the representations as made by Dr. Suresh Shetye pertaining to blockage of his access etc., while reviewing the Development Permission granted to Goa University for the construction of compound wall.

> Sd/-( Rajesh J. Naik ) Chief Town Planner ( Planning) & Member Secretary, TCP Board"

14. After the learned counsel for the parties were heard at length, the learned Advocate General made a statement that the Respondents whom he was representing would not be averse to withdraw the impugned order dated 21.12.2020 so that the TCP Board, could grant a fresh opportunity of hearing to both the Petitioner and the Respondent No.3 herein and dispose of their respective representations. The learned Advocate General explained that since there may be some merit in the contention of the Petitioner that no proper opportunity of hearing was granted to the Petitioner on the issue of review of development permission granted to it, it would be in the fairness of things that the impugned order dated 21.12.2020 is withdrawn and fresh opportunity of hearing is granted to the Petitioner and the Respondent No.3.

15. At this stage, Mr. Desai, learned counsel for Respondent No.3 objected to the withdrawal of the impugned order, by pointing out that there was no legal infirmity therein. He submitted that the impugned order had only recorded a finding of fact, based on the report of the sub-committee that the portion of the compound wall that had blocked the access to the property of the Respondent No.3 was on the road/proposed road as per the Regional Plan of Goa 2021. He submitted that the impugned order had quite correctly directed the PDA to review its development permission granted to the Petitioner for construction of compound wall since, now, it was established that the PDA, had failed to consider this crucial aspect. Mr. Desai, therefore, submitted that the PDA is the appropriate authority to now consider the representations of both the Petitioner and Respondent No.3 and no useful purpose will be served in remanding the matter to the TCP Board.

16. Ms. Agni submitted that the Petitioner's representation dated 20.11.2015 is required to be considered by the TCP Board since, the same was addressed by the Petitioner to the TCP Board and further, since, the representation seeks a clarification concerning the TCP Board's order dated 27.10.2015. However, she submits that the representation of the Respondent No.3 about alleged blockage of access cannot be considered by TCP Board but in terms of Regulation 4.11 of the Goa Land Development and Building Construction Regulations, 2010 ( the said Regulations ) will have to

be considered by the Panchayat which is the appropriate authority in such matters.

17. Ms. Agni invited our attention to sub-clause (d) of Regulation 4.11 to submit that where access is not voluntarily granted, then, the Authority/Council/Panchayat, at the request of the owner of the landlocked property shall acquire such area. She submits that expression "Authority" referred to in sub-clause (d) cannot mean either the TCP Board or Planning and Development Authority, which are different and distinct authorities defined and described She submits that from the context, it is quite under the said Act. clear that clause (d) of Regulation 4.11 refers to a local authority i.e. a Municipal Council or a Panchayat depending on whether the alleged landlocked property is within the jurisdiction of a Municipal Council or a Panchayat. Based on this, Ms. Agni submitted that the representation of Respondent No.3 cannot be considered by the TCP Board.

18. Ms. Agni also submitted that the Petitioner has already instituted Writ Petition No. 681 of 2017 questioning the constitutional validity of Regulation 4.11(d) and some limited interim relief has also been granted therein. She submits that since the claim of Respondent No.3 is essentially based on Regulation 4.11(d), not only the Board or PDA should not consider such a

representation, but further, even the concerned Panchayat should not consider such representation.

19. Having considered the rival contentions and perused the record, we are satisfied that the impugned order dated 21.12.2020 is required to be set aside again for the failure of natural justice. As was correctly pointed out by the learned Advocate General, no proper hearing was granted at least to the Petitioner on the issue of review of development permission already granted to the Petitioner. Besides, on perusal of the impugned order dated 21.12.2020, an impression is created that there was no independent application of mind by the TCP Board, and the TCP Board has merely gone by the report of its sub-committee.

No doubt, the report of the sub-committee could have been 20. one of the factors to be taken into consideration. However, that could not have been the sole consideration. Ms. Agni pointed out that the Petitioner's contention about RPG-2021 being kept in abeyance was not even considered by the TCP Board whilst making the impugned order dated 21.12.2020. For all these reasons, we are satisfied that the learned Advocate General was justified in offering to withdraw the impugned order dated 21.12.2020 so that both the Petitioner and Respondent No.3 could be granted a fresh opportunity of hearing by the TCP Board and their respective representations disposed of thereafter.

- 21. In any case, we now quash and set aside the impugned order dated 21.12.2020 and remand the matter to the TCP Board for fresh consideration of the representations made by the Petitioner and Respondent No.3. The TCP Board will no doubt, have to grant an opportunity of hearing to both the Petitioner and Respondent No.3 so that there is no complaint about the failure of natural justice once again.
- 22. Though we are remanding the matter to the TCP Board by leaving open the contentions of the rival parties on merits, we wish to make it clear that the TCP Board is, in the facts of the present case, the appropriate authority for considering and disposing of the representations of the Petitioner and the Respondent No.3. This is the reason why we heard the learned counsel for the parties on the issue of appropriate authority to consider and dispose of representations made by the Petitioner and Respondent No.3.
- 23. Ms. Agni has already conceded that the TCP Board is the appropriate authority when it comes to consideration of Petitioner's representation, seeking *inter alia* for clarification or modification of TCP Board's order dated 27.10.2015. The learned Advocate General has also submitted that since the Petitioner's representation seeks a clarification/modification of the TCP Board's order dated 27.10.2015, it is only appropriate that the TCP Board is held to be appropriate authority to decide the Petitioner's representation. The

learned Advocate General also pointed out that this Court, whilst disposing of Writ Petition No.317 of 2019, had directed the TCP Board to dispose of both the representations and this Court's order dated 30.07.2019 in Writ Petition No.317 of 2019 had attained finality for want of challenge by any parties.

- 24. According to us, the contentions of Ms. Agni and the learned Advocate General deserve acceptance. The Petitioner's representation, without doubt, is required to be considered and decided by the TCP Board itself. Accordingly, the contrary contention raised by Mr. Desai cannot be accepted.
- 25. Now when it comes to representation of Respondent No.3, again, we agree with the learned Advocate General that even this representation is required to be decided by the TCP Board itself. Respondent No.3, in his representation, has *inter alia* alleged that the Petitioner has not complied with clause (a) of the TCP Board's order dated 27.10.2015 and therefore, the Petitioner, be directed to comply with the same, failing which, appropriate directions may be issued to the PDA to proceed to demolish the Petitioner's compound wall in terms of the stop-work notice/demolition order dated 04.12.2014.
- **26.** From the material on record, we are satisfied that at least for the present, Respondent No.3 has not sought any relief in terms of

Regulation 4.11(d). Merely because there may have been some reference to this Regulation in the correspondence or the representation, we cannot conclude that the representation of the Respondent No.3 is a request made under Regulation 4.11(d). At this stage, therefore, there is no necessity of interpreting Regulation 4.11(d) or determining the authority that might be appropriate to consider a request under the said regulation. Such an issue does not arise in this matter. The representation of Respondent No.3 primarily seeks enforcement of the TCP Board's order dated 27.10.2015 and complains about non-compliance by the Petitioner in the matter of removal of blockages in the form of the compound wall/barbed wire fencing thereby blocking the access to the neighboring properties. Therefore, it is only appropriate that even the representation of the Respondent No.3 is to be considered and disposed of by the TCP Board.

27. The TCP Board's order dated 27.10.2015 makes it clear that the PDA's stop-work notice/demolition order dated 04.12.2014 was not set aside by the TCP Board but only kept in abeyance. Therefore, it is only appropriate that the TCP Board decides the representation of both the Petitioner as well as Respondent No.3 since both these representations are directly concerned with the TCP Board's order dated 27.10.2015. The Petitioner's representation seeks clarification/modification of the TCP Board's order dated 27.10.2015 and Respondent No.3's representation complains about

non-compliance and seeks enforcement of TCP Board's order dated 27.10.2015. All these are additional reasons to hold that, in the facts of the present case, it is the TCP Board that is the appropriate authority to consider and dispose of the Petitioners and Respondent No. 3's representations on merits.

- 28. For all the aforesaid reasons, we set aside the impugned order dated 28.08.2020 and remand the matter to the TCP Board for fresh consideration and disposal of the representations made by the Petitioner and Respondent No.3. The TCP Board shall grant an opportunity of hearing to both the Petitioner as well as Respondent No.3 and thereafter dispose of their representations on merits as expeditiously as possible.
- **29.** The rule in this petition is disposed of in the aforesaid terms.
- **30.** There shall be no order as to costs.

M. S. SONAK, J

**CHIEF JUSTICE**