IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WP NO.14 OF 2016

Betqui Candola Samvardhan Samitee
A Society registered under Societies
Registration Act, 1860 under
Registration No.601/Goa/2013
with its office at
c/o Shri Umakant Shetye
H.No.295/1, Damodaralay Devlay,
Candola, Marcela, Goa 403 107
Through its Authorized Member
Shri Arun Madgavkar
Major, son of Mr. Vijay A. Madgavkar
Resident of House No.377,
Candola, Marcela Goa. .... Petitioners

Versus

1. M/s Gera Developments Pvt. Ltd.,
   Represented by Shri Dwarka Rao,
   General Manager Liaison, Major,
   R/o G-18, Gera's Imperium,
   Ground Floor, Plot No.17,
   Patto Plaza, Panaji Goa.

2. The Village Panchayat of Betqui-Candola,
   Through its Secretary
   Candola, Ponda Goa.

3. The State of Goa,
   Through its Chief Secretary,
   Secretariat, Porvorim Goa.

4. The Additional Collector-II,
   North Goa at Panaji,
   having office at Collectorate Building,
   Panaji Goa.

5. The Town Planner,
   Town & Country Planning Department,
   Ponda Goa.

6. The Chief Town Planner
   Town & Country Planning Department,
   Panaji Goa.

7. The Goa SEIAA
   c/o Goa State Pollution Control Board,
   3rd Floor, Dempo Tower,
   EDC Patto Plaza,
   Panaji Goa 403001. ..... Respondents

Mr. Nigel Da Costa Frias with Ms. Maria Correia, Advocates for the Petitioners.

Mr. S. D. Lotlikar, Senior Advocate with Mr. Anthony D'Silva, Advocate for Respondent No.1.

Mr. Sagar Dhargalkar, Additional Government Advocate for Respondent No.2.

Mr. P. Dangui, Government Advocate for Respondent Nos.3 to 6.

Mr. Deep Shirodkar, Additional Government Advocate for Respondent No.7.

Coram* : *N. M. Jamdar &
Prithviraj K. Chavan, JJ.

Reserved on : 11 July 2018

Pronounced on: 27 September 2018

Judgment (Per N. M. Jamdar, J)

Betqui Candola Samvardhan Samitee is a Society formed by the residents of Betqui-Candola village. It has brought this writ petition in public interest. The Petition challenges the permissions granted to a Developer, M/s Gera Developments Pvt. Ltd for a group housing project. .

2. Betqui-Candola is a small twin village in the Ponda Taluka in Goa. The project is proposed on the survey No.33/1 of Village Candola. Earlier one Mr. Antonio Edward Saldhana owned the property. That time the property was in Orchard zone in the Regional plan. Mr. Saldhana wanted to change the zone to settlement zone and subdivide the property. He obtained a No Objection Certificate from the Comunidade of Candola. The Comunidade gave no objection for the widening of the existing road. Along with this N.O.C., Mr. Saldhana submitted a contour plan to the Town and Country Planning Department of Goa. By order dated 29 October 2001, the Town and

Country Planning Department permitted conversion of 1,28,000 square metres of the property from orchard zone to settlement zone. On 28 December 2001, the Town and Country Planning Department granted a provisional N.O.C. for subdivision of the property, for the residential purpose.

3. M/s Gera Developments Pvt. Ltd-Respondent No.1, the Developer, purchased the property in September 2007. The Developer applied to the Collector of North Goa on 23 December 2008 for conversion Sanad. It also sought change of land use in respect of the property for an area admeasuring 1,27,120 square meters. The Developer annexed an N.O.C. from the Attorney of Comunidade of Candola dated 11 August 2007, in respect of the widening of the road. The proposal for conversion of land was forwarded to the Town and Country Planning Department-Respondent No.5.

4. The Developer submitted a contour plan to the Town Planner on 5 May 2009. The Town Planner directed the Developer to resubmit the contour plan, which was done on 6 July 2009. The Town Planner directed the Developer to submit the contour plan specifying certain details. The Town Planner by a letter dated 7 September 2009, recommended the conversion of an area admeasuring 1,09,120 square

meters. Area around 19000 square meters of land which fell on the steep slope was to be deducted.

5. The Respondent No.2-Village Panchayat of Betqui-Candola, forwarded the application of the Developer to the Town and Country Planning Department on 24 June 2010. A note was put up by the Town Planner on 21 July 2010. It pointed out the road requirements, subdivision, and the distance between the proposed structures, open space, and the contour plan. The Developer was directed to comply with the observations and resubmit the plans.

6. The Developer resubmitted its application through the Village Panchayat on 1 October 2010. It was forwarded to the Town and Country Planning Department. The Town Planner put up a note on 5 January 2011. Specific questions were raised regarding the floor area as per the building regulations. The Town and Country Planning Board held the meetings in January, February and March 2011 on this issue. It was decided that all the applications received up to 23 November 2010, shall be processed as per the earlier policy that is FAR being 80 irrespective of the plot size. On 15 April 2011, the Developer was asked to resubmit the plans which were submitted on 19 May 2011. In the meanwhile, the Chief Town Planner had issued a direction on 4

June 2012 that all the projects and proposals which were based on the Regional Plan of Goa 2021, in which Candola village is classified as VP-2 were to be kept in abeyance till the Government takes appropriate decision. The Town Planner issued an N.O.C. for subdivision and technical clearance for the proposed construction on 18 November 2011. The Developer thereafter obtained a conversion Sanad on 23 April 2013, from the Collector for conversion of land admeasuring an area of 102387 square meters in survey No.33/1 of Village Candola.

7. The Town Planner wrote to the Additional Collector on 12 June 2012. It was stated that the portion of land admeasuring 14450 square meters falls under a dense tree canopy density more than 0.1% as per the report of the Deputy Conservator of Forests dated 7 August 2012. The Developer applied to the Village Panchayat for a construction license which was granted on 15 May 2012, for construction of a group housing project. The construction licence was granted pursuant to a resolution by the Panchayat in the meeting held on 10 April 2012.

8. A group of villagers from the Betqui-Candola village formed a Society, the Petitioner. They apprehended severe repercussions of the proposed project on the existence of the village. According to the

Petitioners, when the Developer advertised the project on its website sometime in February 2013, they came to know about the magnitude of the project. Thereafter they made inquiries. The Petitioners complained to the Director of Panchayat about the provisional N.O.C. granted by the Village Panchayat to the Developer for subdivision of the property. They complained that the N.O.C. was granted without there being any conversion Sanad. They pointed out that the construction licence was issued by the Sarpanch and not by the Secretary. The Petitioners were told that the Developer had obtained environmental clearance from the Goa State Environment Impact Assessment Authority. It was revealed that the Authority had resolved to grant prior conditional clearance to the project in a meeting held on 24 February 2011. The Petitioner complained that the Pollution Control Board had issued Consent to Establish on 31 January 2012 without proper verification of the documents. The Petitioners made various representations to the concerned departments. They expressed their concern on the impact of the availability of water, considering the size of the project. Concerns were also expressed about the biodegradable and non biodegradable waste that would be generated.

9. The Petitioners also made representations to various Authorities pointing out the adverse implications of the proposed

project. The representations were sent to: Minister of Forests and Environment, Director of Panchayats, concerned Panchayat, Forest Department, Goa State Environment Impact Assessment Authority, Director of Vigilance, Chief Secretary and the Chief Minister. The Petitioners sent a legal notice to the Chief Secretary and the concerned Departments on 24 December 2013. The notice called upon them to revoke the construction license dated 15 May 2012, technical clearance dated 18 November 2011 and conversion Sanad dated 23 April 2013 given to the Developer.

10. Since the representations had no effect, the Petitioners filed a Public Interest Litigation Writ Petition No.3 of 2014. The Petitioners prayed for the stoppage of the construction. They sought a direction to restore the property to its original condition. They prayed for setting aside the permissions. The Petitioners made a grievance that the Developer was illegally proceeding with the hill cutting work. The Senior Town Planner submitted a report. The Authorities informed the Court that they were in process of considering the the revised plans submitted by the Developer. It was stated that the construction cannot start as per the old sanctioned plans. Developer stated that construction has not yet commenced. Developer stated that no construction will be undertaken till the revised plans are sanctioned. The Division Bench

recorded that the construction activities were at a standstill. The Division bench directed the Authorities to hear the Petitioners before sanctioning the revised plans and disposed of the Petition.

11. A Miscellaneous Civil Application No.730 of 2014 was taken out by the Petitioners. The Division Bench directed the Chief Town Planner to give an opportunity to the Petitioners to file their say in writing and disposed of the application by order dated 29 September 2014. The Petitioners submitted its written representation before the Chief Town Planner. The Chief Town Planner passed an order dated 16 October 2014 granting the permission. The Town Planner issued a revised technical clearance to the Developer and approved the plans on 20 March 2015. The file was thereafter submitted to the Village Panchayat for grant of the construction license. The N.O.C. from the Health Department was issued on 15 June 2015, and the Village Panchayat issued the construction license on 27 November 2015.

12. Challenging the grant of these permissions, the Petitioners have approached this Court by this petition. The Petitioners have sought directions to the Respondent Authorities. They seek necessary action to have the property restored to its original condition. The Petitioners have challenged the grant of conversion Sanad dated 23 April

2013, the no objection certificate dated 20 March 2015, technical clearance order dated 20 March 2015, and the construction license dated 27 November 2015. The Petitioners have prayed for a direction to the Authorities to carry out a detailed study and analysis of the contours and gradient of the property.

13. Rule was issued in the Petition on 27 September 2017. The Court recorded that there is no work going on at site, and ordered that status quo will continue till further orders.

14. We have heard Mr. Nigel Da Costa Frias with Ms. Maria Correia, learned counsel for the Petitioners, Mr. S. D. Lotlikar, Senior Advocate with Mr. Anthony D'Silva, learned counsel for the Developer, Mr. Sagar Dhargalkar, learned Additional Government Advocate for the Village Panchayat, Mr. Deep Shirodkar, learned Additional Government Advocate for the Goa State Pollution Control Board and Mr. P. Dangui, learned Government Advocate for the State and the Planning Authorities.

15. The bonafides of the Petitioners were questioned on the ground that the society was formed only just before the filing of the public interest litigations. The contention is stated to be rejected. The

Petitioners had earlier filed a public interest litigation, which was entertained. The Town Planner was directed to consider their representations. The name of the Society itself shows that it is formed to conserve and protect the area. If it was set up as a response to the project, which according to them threatens their area, there is nothing malafide.

16. A brief reference to the statutory framework governing the planned development in the State would be fruitful. The Goa Legislature has enacted Goa (Regulation of Land Development and Building Construction) Act, 2008. The Goa Land Development and Building Construction Regulations, 2010 have been framed. The Act of 2008 provides for regulation and control of building, construction and land development for the State of Goa. As per Section 8 any land development and construction in the State should be as per the Regulations and the provisions.

17. The Regulations of 2010 were brought into force on 3 November 2010. Regulation 2 contains the definitions. Access has been defined in Regulation 2(11) as entry to any building or land. Building is defined in Regulation 2(20). Coverage is defined as the percentage obtained by dividing the covered area by the effective plot area.

Development is defined under Regulation 2(48). The Floor Area is defined in Regulation 2(63). Group of buildings under the Regulation 2(69), means more than one building consisting of residences, shops, offices and the like on a single plot. The procedure for applying permission and grant of the same is contained under Regulation 3. Every applicant seeking development permission must submit the application in the prescribed format. The applications have to be made to the various Authorities for development permission. To the Town and Country Planning Department for technical clearance. To the Village Panchayat for building license.

18. Regulation 3.2C1 of the Goa Land Development and Building Construction Regulations, 2010 required the applicant to submit a contour plan at 1 meter intervals prepared by a Chartered Surveyor in case of sloping sites. The provisions are also made in case of township and subdivision of land. Regulation 3.2D requires the certain documents shall be submitted along with the application. These documents are: sufficient proof of title, original survey plan, copy of index of land, copy of sale, gift, mortgage deed etc. The affidavit from the owner, conversion Sanad, structural liability certificates etc are required. The documents so submitted have to be signed and authenticated by the applicant. Procedure for obtaining permission is

specified in Regulation 3.6 which reads thus :

> *"3.6. Procedure to obtain the permission.—*
>
> *1. Application for permission.— For the purpose of obtaining permission for development/building construction/sub-division of land, under these Regulations, the owner (including Government Department/Semi-Government or Local Authority), shall apply in the manner prescribed below:—*
> *Category I — Areas under jurisdiction of PDA and Municipal Council/Village Panchayat/Corporation:*
>
> *Step-1. To apply first to PDA for Development Permission as per Appendix-A1-PDA and for obtaining recommendation for conversion of land use under Land Revenue Code (if such recommendation has not been obtained previously) as per Appendix-A4, enclosing therein a minimum of five sets appropriate drawings and one set of documents as specified in Regulations 3.2 to 3.5 above.*
>
> *Step-2. To apply thereafter to [Municipal Council/Village Panchayat/Corporation] for Licence/Permit, as per Appendix-A2 or Appendix-A3, as applicable, enclosing therein the Development Permission Order from PDA as per Appendix-C1 and 3 sets of drawings obtained at Step 1 duly stamped and signed by PDA, and one set of documents specified at Regulation 3.2D.*
>
> *Category II —Areas under jurisdiction of Town Planning Department and [Municipal Council/Village Panchayat/Corporation].*
>
> *Step-1. To apply first to Town Planning Department for Technical Clearance as per Appendix-A1-TCP and for recommendation for conversion as per Appendix-A4,*

> *enclosing therein a minimum of five sets appropriate drawings and one set of documents as specified in Regulations 3.2 to 3.5 above.*
>
> *Step-2. To apply thereafter to [Municipal Council/Village Panchayat/Corporation for licence/permit, as per Appendix-A2 or Appendix-A3, as applicable, enclosing therein the Technical Clearance Order as per Appendix-C2 and 3 sets of drawings obtained at Step-1 duly stamped and signed by the Town Planning Officer and one set of documents specified at Regulation 3.2D."*

Regulation 3.7 deals with grant or refusal of permission. The grant and refusal is governed by the relevant Act and Regulations in force.

19. The Goa Town and Country Planning Act was brought into force in the year 1975. The Act provides for planning the development and use of rural and urban land in Goa. Chapter II deals with the appointment of Chief Town Planner and constitution of the authorities. Chapter III deals with regional plan. Section 17A which was inserted by amending the Act of 1997 prohibits cutting any hill or fill up of low lying land without written permission. The preparation of Development Plan is provided for present land use, is dealt with in Chapter V. The Chapter VI deals with preparation of Development Plans. Chapter VII deals with control of development and use of land. Section 42 states that every change in land use and every development in the area covered by

the development plan shall conform to the provisions of the Act and development plan as approved. Section 43 prohibits development without payment of development charges and without permission.

20. Section 44 of the Goa Town and Country Planning Act deals with grant of permission, which reads thus:

> *"44. Grant of permission.— (1) Any person intending to carry out any development in respect of, or change of use of, any land shall make an application in writing to the Planning and Development Authority for permission in such form and containing such particulars and accompanied by such documents and plans as may be prescribed.*
>
> *(2) (a) In the case of a Department of the Central or Union territory Government or local authority intending to carry out any development in respect of, or change of use of any land, the Department or authority concerned shall notify in writing to the Planning and Development Authority of its intention to do so, giving full particulars thereof accompanied by such documents and plans as may be prescribed, at least two months prior to the undertaking of such development or change, as the case may be, and shall obtain permission in respect thereof.*
> *(b) Where the Planning and Development Authority has raised any objection in respect of the conformity of the proposed development or change of use either to any Development Plan under preparation or to any of the regulations in force at the time, or due to any other material consideration, the Department or authority*

concerned, as the case may be, shall, either make the necessary modifications in the proposals for such development or change of use to meet the objections raised by the Planning and Development Authority or submit the proposal for such development or change of use together with the objections raised by the Planning and Development Authority to the decision of the Government.

(c) The Government on receipt of such proposals together with the objections of the Planning and Development Authority shall, in consultation with the Chief Town Planner (Land Use), either approve the proposals with or without modifications or direct the Department or authority concerned, as the case may be, to make such modifications in the proposals as they consider necessary in the circumstances.

(3) On an application having been duly made under sub-section (1), and on payment of the development charges, if any, as may be assessed under Chapter IX, the Planning and Development Authority may—

(a) pass an order —

(i) granting permission unconditionally; or

(ii) granting permission subject to such conditions as it may think fit to impose; or

(iii) refusing permission; or

(b) without prejudice to the generality of clause (a), impose conditions—

(i) to the effect that the permission granted is only for a limited period and that after the expiry of that period, the land shall be restored to its previous condition or the use of the land so permitted shall be discontinued; or

(ii) for regulating the development or use of any land under the control of the applicant or for the carrying out of

> *works on any such land as may appear to the Planning and Development Authority expedient for the purpose of the permitted development.*
> *(4) The Planning and Development Authority in dealing with the applications for permission under this section shall have regard to —*
> *(i) the provisions of any Development Plan which has come into operation;*
> *(ii) the proposals or provisions which it thinks are likely to be made in any Development Plan under preparation, or to be prepared;*
> *[(iii) to the relevant bye-laws or regulations of the local authority concerned; and]*
> *(iv) any other material consideration.*
> *(5) When permission is granted subject to conditions or is refused, the grounds for imposing such conditions or such refusal shall be recorded in writing in the order and such order shall be communicated to the applicant in the manner prescribed."*

Thus, the Section 44(4) requires the Planning and Development Authority to have regard to the provisions of the development plan. The proposals and provisions are likely to be made, to the relevant bye laws or regulations of the local authority, and any other material consideration.

21. The Goa Panchayat Raj Act, 1994 empowers the Panchayat to consider the applications for erection of building falling within their jurisdiction. Section 66 of the Goa Panchayat Raj Act reads thus:

"66. 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.

(2) If a Panchayat does not, within thirty days from the date of receipt of application, determine whether such permission should be given or not and communicate its decision to the applicant, the applicant may file an appeal within thirty days from the date of expiry of aforesaid period, to the Deputy Director who shall dispose of the same within thirty days from the date of filings of such appeal. If the Deputy Director fails to dispose of the appeal within thirty days, such permission shall be deemed to have been given and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or bye-laws made under this Act.

(3) Whenever any building is erected, added to or reconstructed without such permission or in any manner contrary to the rules prescribed under sub-section (1) or any conditions imposed by the permission granted, the Panchayat may,—
(a) direct that the building, alteration or addition be stopped; or
(b) by written notice require within a reasonable period to be specified therein, such building alteration or addition to be altered or demolished.

(4) In the event of non-compliance with terms of any notice under clause (b) of sub-section (3) within the period specified in the notice, it shall be lawful for the Panchayat

to take such action as may be necessary for the completion of the act thereby required to be done, and all the expenses therein incurred by the Panchayat shall be paid by the person or persons upon whom the notice was served and shall be recoverable as if it were a tax imposed under this Act.

(5) Where the Panchayat fails to demolish the building which is erected, added to or reconstructed without the permission of the Panchayat, or in any manner contrary to the rules made under the Act or any conditions imposed in the permission, within a month from the date of the knowledge, the Deputy Director shall assume the powers of the Panchayat under sub-sections (3), (4) and (5) and take such steps as may be necessary for the demolition of such building.

(6) Notwithstanding anything contained in the foregoing provisions, the Block Development Officer concerned may, by notice addressed to the person responsible, stop any construction which is being constructed in violation of the provisions of the Act or rules or bye-laws made thereunder and refer the case to the Deputy Director of Panchayat. On receipt of the notice, such person shall forthwith stop the same.

(7) An appeal shall lie to the Director, within a period of thirty days from any order of direction or notice issued under any of the provisions of this section and the decision of the Director on such appeal shall be final.
Explanation:— For the purpose of this section, failure to communicate the decision by the Panchayat under sub-section (2) and failure to demolish the building under sub-sections (3) and (4) shall be deemed to be 'remiss' in the

performance of duties by the Panchayat.

Section 66(1) of the Goa Panchayat Raj Act deals with the permissions to be granted by the Village Panchayat. Regulations prescribe a questionnaire which has to be fulfilled by the applicant. The applicant also has to submit drawings to show the dimensions of the plot, direction proposed as well as existing structures, access, road widening, distance, location of drains, water bodies and trees, existing well etc. A location map and parking layout has to be produced.

22. The Chapter III of the Goa Panchayat Raj Act, 1994 deals with the functions, duties and powers of the Panchayats. Section 60 states that the Panchayat shall perform the functions specified in Schedule -I appended to the Act. The Schedule —I mandates the Panchayat to look after the construction, repairs, and maintenance of drinking water wells, tanks and ponds. Prevention and control of water pollution and maintenance of rural water supply schemes is also mentioned. The responsibility of Village Panchayat is for maintenance of general sanitation, construction, and maintenance of roads, drains and culverts.

23. The Petitioners have challenged the orders granting conversion Sanad by the Collector, construction licence by the Village

Panchayat and the Technical clearance by the Town and Country Planning Department.

24. In brief, the basic challenges are : The need for a reliable contour analysis; the shortage of water and sanitation facilities; the availability FAR; the need for adequate access; the demarcation of No Development Zone; and the Sanad granted for commercial use.

25. The Petitioners have alleged the infringement of statutory provisions. The Petitioners have also raised various concerns. These are as follows. The Village does not have the capacity to bear the effect of the project. Drinking water and water for agriculture will be drastically affected. State is not in a position to provide water to the Project. Additional pressure would deplete the groundwater. There is no garbage disposal system in place in the Village. Influx of population would result in contamination of the water table, accumulation of garbage and affect the health of the residents. The project constructed on a gradient would be a hazard and would affect the ecology, flora and fauna of Village. The sudden demographic change will cause social upheaval and tension and competition for the limited amenities and resources.

26. The proposed project is a business venture for the

Developer. It is not a public utility project, that the advantages and disadvantages are broadly distributed. No construction as such has been put up. In the records, the project is referred to as the *Proposed Premium Housing and Commercial Development at Village Khandola, Taluka Ponda*. The total plot area is shown as 121383 square meters. The map placed on record shows the proposed construction. It shows that there will be Type-1 villa covering 1741.88 square meters, the Type-2 villa would cover 2166.30 square meters, the Type-3 villa would cover 2184.50 square meters, the Type-4 villa would cover 205.84 square meters, the Type-5 villa would cover 197.15 square meters. Then there would be Type-1, Type-2, Type-3, Type-4, and Type-5 villas proposed covered area. There would be town centers, clubhouses, 384 flats are being proposed which required parking for one car per plot with 384 that is Type-1 would be total flats of 1BHK, 2BHK numbering 384, Type-2 —2BHK flats would be 128, Type-3 3BHK flats would be 112, Type 4- 1BHK flats would be 62. The Commercial Town Centres-1 shows the need for parking is 36 on surface and 31 in the basement. The Commercial Town Centres-2 shows the need for parking is 24 on surface and 25 on the basement. Total parking provided under the plan is approximately 1000 square meters. There are three different types of villas, several buildings consisting of 1BHK, 2BHK, and 3BHK flats, town centers, which have been referred to as Commercial, and the

clubhouses. Thus it is virtually a mini township.

27. We are informed that the population of the village Betqui-Candola is around 10,000 to 12,000. It is a small village, with undulating hills and substantial tree cover. The villagers primarily depend on agriculture for livelihood. It is clear that the impact of the Project on the Village would be significant.

28. The Petitioners have raised concerns regarding the ecology, availability of water, sanitation and of livelihood. They protest the infringement of their fundamental rights. The rigors of judicial scrutiny and the deference the Court may give to the statutory permissions may be different, if some minor development work is proposed. But, if the magnitude of project is such that it may overwhelm the resources of the village then the position would be different. The grievance of the villagers, their apprehensions, and complaints of the breach of fundamental rights then would entail an anxious consideration by the Constitutional Court.

29. Having heard the learned counsel at length and perusing the written submissions and the pleadings, we find that the Authorities have simply omitted various crucial aspects from consideration. The

record demonstrates an exercise of mechanically granting permissions, defeating the very purpose of planned development. We will now proceed to elaborate the reasons why we say so.

30. As regards the contour analysis, the Petitioners contend that the property is a hilly terrain with a dense tree canopy. They contend that the Developer has submitted different contour plans on different occasions which do not tally with each other. The Town and Country Planning Department has stated that the official contour plan is not available on record and so also the contour plan submitted by the Developer. It was submitted that the Chief Town Planner has granted approval without verifying the contour plans and has ignored the file noting of its own department that a contour analysis is required to be done in a manner which relates to the Survey of India Topographic Sheets.

31. The Developer contends that the contour plan was submitted by the Developer on 5 May 2009. Again on 6 July 2009, the Chief Town Planner, after hearing the Petitioners, directed the Developer to submit the contour plan from the registered Chartered Surveyor, and the registered Chartered Surveyor appointed by the Developer submitted a contour plan which has been taken into

consideration. The Developer submitted that the Town and Country Planning Department is within its rights to consider such a contour plan and necessary technical clearance has been granted. Affidavit in reply is filed by the Chief Town Planner. It is submitted that the Developer was directed to submit a contour plan by order dated 16 October 2014 and that was considered and an order granting permission was correctly passed.

32. It is not in dispute that the property has a gradient. What is disputed is the degree of the gradient and how much area falls on the prescribed gradient. Division Bench, by the order dated 9 September 2014 in PILWP No.3 of 2014, had directed the Town Planner to consider the issue of technical clearance after considering the representation of the Petitioners. Following the order, both, the Petitioners and the Developer, were present before the Town Planner. Petitioners had filed a representation putting forth their points. The Petitioners had pointed out that the survey of the property was necessary to determine the sloping area under the No Development Zone. They had stated that the Survey of India Topographic Sheets show the highest point in survey no.33/1 as 61 meters above the sea level and there is a drop of more than 30 meters. The Petitioners again made a representation on 9 October 2014, referring to a meeting held

on 8 October 2014, in respect of the written submission. The Petitioners requested the Town Planner to ascertain the correct area under the slope and the gradient to arrange for a survey and preparation of contour plan with the help of an independent surveyor.

33. During the hearing before the Chief Town Planner in its chamber on 16 October 2014, the Petitioners repeated their request of resurvey of the contour plans. The Developer objected to resurvey. Thereupon the Chief Town Planner directed the Developer to submit the contour plan from the registered Chartered Surveyor of its choice. The Developer submitted the contour plan, based on which the Technical Clearance order was passed on 20 March 2015.

34. The learned Government Advocate contends that the furnishing of contour plan prepared by the Chartered Surveyor to be submitted by the applicant, is provided under the Rules and Regulations themselves. While the Petitioners contend in the facts of the present case, the Town Planning Authorities should have carried out a survey and sought independent survey report to the satisfaction of the Town Planning Authority and the contour plans provided by the Developer should not have been blindly accepted.

35. The assertion of the Petitioners that the Authorities which have granted the permissions did so without satisfying themselves about the area under gradient, has not been effectively dislodged. The learned Government Advocate merely pointed out to the provision that the contour map can be provided by the Chartered Surveyor. But what was before the Town Planner was not a routine circumstance.

36. The Petitioners had made a grievance that the contour maps submitted by the Developer were not consistent. The Petitioners had produced their surveyor's report. The surveyor had analyzed the Developers plans as follows.

> *"Comparing the contour survey plan no. I with the survey plan II. I say that the contour plan no.II of Saldanha 2001 is not the same as the contour plan no.I, it shows almost the entire survey No.33/1 as having gentle slop.*
>
> *Comparing the contour survey plan no. I with the contour survey plan no. III of Environs Architects, I say that said contour survey plan no. III is not the same as contour plan no. I. The plot area on the north is shown as almost flat.*
>
> *Comparing the contour survey plan no.I with the contour survey plan no. IV of M.J. Pai dated 5 May 2010, I say that said contour survey plan no. IV is the same as contour plan no. I.*
>
> *Comparing contour survey plan no. I with the contour survey plan no. V submitted to G.S.E. I. A. A., I say that said contour survey plan no.V is the same as contour plan*

no. I except that the drainage line is shown as Nalla in the south west.

Comparing the contour plan no. I with the contour survey plan of Survey of India. The highest point is shown as 61 metres (above sea level) and the lowest point on the west in the plot bearing survey no.33/1 which is superimposed by me is about 15 metres.

The copies of all the above mentioned plans verified by me are attached to this report."

The report submitted by the Petitioners pointed out the inconsistencies after the analysis of the plans. The Developer had submitted six different contour plans, and they varied. Two different Authorities were involved. Site inspection was thus absolutely necessary. The Petitioners did not have access to the site. Therefore the Authorities ought to have done a thorough inspection and obtained a reliable contour plan.

37. The Chief Town Planner ignored the analysis put forth by the Petitioner and only relied on the report of the Chartered Surveyor of the Developer. The order refers to the fact that the request of the Petitioners is opposed by the Developer and then directs the Developer to produce the contour plan and thereafter granted the Technical Clearance only relying on the same. All the requests of the Petitioners regarding the contour plan and for joint surveys, were ignored.

38. The Petitioners had filed a petition in this Court making a grievance regarding the proposed development and complaining about the gradient. After this Court issued directions, the Chief Town Planner had heard the parties. The Petitioners repeatedly had requested for a joint survey. Once the Division Bench directed the consideration of the permission after hearing the Petitioners, the anomalies in the contour plans pointed out by the Petitioners ought to have been taken seriously. The Petitioners had proposed a joint survey and preparation of contour map, however, the Chief Town Planner merely relied upon the contour plan submitted by the Developer through the Chartered Surveyor. Though reliance on the map of the private Chartered Surveyor is not impermissible, the present circumstances were not a routine matter and of some insignificant construction. Further, when the order was passed directing the Chief Town Planner to consider the representation of the Petitioner, the order had a purpose and the matter had to be considered carefully. The decision had to be taken with care and application of mind. Unless there is a genuine and certain contour plan, it is not possible to decide about the land which has natural gradients. The requirement of a reliable contour plan is a necessity.

39. Regulation 12.3 of the Goa Land Development and Building Construction Regulations, 2010 relates to sloping sites.

Regulation 12.3 deals with regulation regarding the sloping sites. Regulation 12.3 reads thus :

> *"12.3 Regulations regarding sloping sites:*
>
> *(a) When submitting plans of sub-division of land or layout of private street proposals in a plot which has a gradient of 1:10 or more, the plan should indicate block levels at 5.00 m. centre to centre or alternatively contour plans at 1.00 m. intervals prepared by a Chartered Surveyor.*
>
> *(b) The levels/contours should be drawn with reference to a bench mark clearly indicated on the site plan.*
>
> *(c) Such block levels/contour plans prepared by a Chartered Surveyor are obligatory in case the site exceeds 10,000 m2 in area.*
>
> *(d) No part of the plot which is having an inclination of more than 25% slope shall be permitted for development as useable/saleable plots. [ ] plots. [This however shall not be applicable to the sub-divided plots already approved prior to the coming into force of these Regulations]."*

At the time of submitting the contour plan, 1.10 square meters interval is to be submitted. The level/contours sites have to be drawn with reference to the benchmark indicating on the site plan. No part of the plot which has an inclination of more than 25% slope is permitted for development as useable plots. Unless a reliable contour plan is placed on record, the Planning Authority can never be sure as to the extent of slope with an incline of more than 25%. This has to be physically

verified by going to the site and carrying out a survey and/or the contour plan submitted by the Chartered Surveyor must be completely free from doubt and reliable and its veracity has to be cross-checked.

40. Though some area is shown as Undeveloped, does not mean that it is the correct position. For lack of reliable contour maps, in the factual backdrop of the case, the Town Planner could not have been sure about the benchmark of 25% specified in Regulation 12.3. Instead of being cautious and cross verifying the situation at loco, the Town Planner stated that there is no requirement to carry out the contour analysis vis-à-vis Survey of India Topographic Sheets. Similar is the stand taken before us in the arguments.

41. The legislatures of various States have acknowledged a need for orderly and sustainable land development. Several enactments are brought in force regulating the development of land. The full Bench of this Court in the case *of Mehtab Laiq Ahmed Shaikh And Anr vs State Of Maharashtra and 2 Ors* has noted the underlying objects of the planning laws. The full bench has observed thus:

> *59. .. Town Planning achieves various social and economic objectives. Careful and proper planning, by providing a physical environment conducive to health and well-being, leads to better quality of life. Well through-out transportation facilities provide convenient and easier commuting which in*

> *turn leads to social cohesiveness. Parks, gardens, open spaces enrich the physical and mental health of the residents. Planning yields economic results by increasing productivity. Town planning is aimed at fulfilling social and economic objectives which go beyond the physical form and arrangement of buildings, streets, parks, utilities and other parts of the urban environment. Town planning is thus essential for efficiency, well-being of all and leads to increase in wealth in the long run.*

Though the observation are in the context of town planning, they underscore the long term benefits of planning living spaces.

42. The laws regulating and controlling constructions on slopes are not mere formalities. There is a duty on the Authorities to check that uncontrolled constructions on the slopes do not lead to disasters. Rigorous scrutiny required to ensure that calamities such as landslides do not occur, especially so in the hilly areas. When the construction of this magnitude is admittedly proposed to be put up on a slope, it was mandatory for the Chief Town Planner to fully satisfy himself. The Chief Town Planner, in the background of this case, ought to have held a joint survey and obtained an authentic contour plan.

43. The Petitioners have also raised an issue of availability of access. The Petitioners contend that the access provided by the

Developer is inadequate and not as per Rules. To this assertion, we will have to note the response of the Town Planner. In the earlier petition the Town Planner was directed to consider the objections of the Petitioners. The Petitioners had stated that there is a less than three meters wide road and the material for construction is passing through the residential colony using their internal road. The Petitioners called upon the Town Planner to verify that there is no 12 metres access road to the site. In the order dated 16 October 2014, the Chief Town Planner recorded the contention of the Petitioners as the access to the site is inadequate and noted the order dated 8 August 2014 passed by the Principal Secretary. Then the Chief Town Planner referred to the statement of the Developer that at the time of the approval of the change of zone, three metres wide tar road existed to the plot and conditions were put to provide a suitable road and accordingly, the owner of the adjoining land had granted N.O.C. for 12.5 metres wide road in the year 2007. The Developer contended that under the Regulation 6.A.3.1, the road required is 8 metres only for commercial to the extent of 50%. It was stated that under Regulation 12.2, the subdivision for commercial and group housing only six metres road had been contemplated and road as far as what is necessary is already provided.

44. However, the Chief Town Planner in the order of 16 October 2014 has not referred to the issue of access at all. It is now in the arguments that a justification is being put forth by the Developer and the Chief Town Planner.

45. In the affidavit in reply the Chief Town Planner has stated that the revised plans were approved subject to conditions that the approach road of 12.5 metres shall be developed for a group housing project as shown in the site plan and minimum road required for multi-dwelling units is 6 metres as per the Regulation 6A 4.16.

46. The issue of access has to be considered at two levels. First what the Regulations mandate. Secondly, the reality of the traffic that may be the result of the Project. The Petitioners have pointed out an anomaly. It is not made clear by the Respondent whether the proposed project is a purely residential project or it is a residential cum commercial project. The Environment Clearance dated 31 October 2016, speaks about a purely residential project. In the technical clearance order, the work is referred to as the construction of group housing project. There is no reference to the commercial user in the environment clearance dated 31 October 2016, but while mentioning the requirement, commercial complex has been referred to. In the

project map of the Developer 'Town Centers' have been referred as 'commercial user'. The Developer is not being candid as to whether the project is a group housing project or it is a residential cum commercial project.

47. The Chief Town Planner has proceeded on the basis that it is a group housing project and minimum road required for multi-dwelling housing is six metres. The Group Housing project is a concept under the Regulations. There is an amendment to the Regulations by which the commercial user is of one or more number floors is restricted to 50% provided the building is abutting the public road. It is not possible for us to decide such an issue merely on oral arguments. The order does not refer to this aspect at all. The permissions granted by the Authorities are questioned before us. The orders must indicate the provision invoked. The least the Authority expected to do is to explain to us as to under which provision, the permission for access has been granted and what are the requirements for a particular type of project. In the affidavit, the Chief Town Planner has merely stated that since it is a group housing project, the access should be of a particular width. He has not taken any cognizance of the anomaly in the plans of the Developer and reference to the commercial units in the environment clearance.

48. The Chief Town Planner has merely accepted the statement of the Developer on the N.O.C. of the Comunidade produced by the Developer, The Petitioners have placed on record No Objection of the Communidade. No objection certificate is given to *'whomsoever it may concern'* and signed by only the attorney of the Comunidade. Such an N.O.C. cannot be transferable. It is not explained under what authority the Attorney by himself has granted this largesse at the cost of the Comunidade. The Petitioners' assertion that the N.O.C. of Comunidade is dubious, holds merit by a bare look at the document. But the Chief Town Planner has not found it necessary to reflect on the same.

49. The Petitioners have annexed a general order passed by the Chief Secretary directing the authorities to ensure that there is an adequate access whenever the constructions are proposed in the State. In the decision of *Ashley Fernandes and others vs The State of Goa*[1], the Division Bench of this Court reiterated the directions in the case of *Calangute United Social and Cultural Association Vs State of Goa*[2] where directions were issued by the Court in public interest and public safety that there should be no obstruction to free and smooth flow of traffic and access to the traditional village houses cannot be blocked,

1 WP No.843 of 2010 dated 15 March 2011
2 WP No.372 of 2009 dated 11 January 2010

and the Town and Country Department must ensure the access. This direction had come in light of the traffic problem caused in Goa due to narrow roads.

50. On the aspect of actual increase in traffic, the Authorities make no reference at all to the concerns expressed by the Petitioners. The assertion of the Petitioners that the access road is not adequate and there is a likelihood of chaotic traffic situations, has not even found a mention in the replies. No attempt has been made by the Authorities to verify these crucial matters. The affidavit of the Town Planner merely states that adequate access has been provided and is available and there will be no traffic situation. The Chief Town Planner has also not ascertained that parameters and impact would differ if the commercial units are included in the project. Commercial user would not only change the nature of the traffic, but also its timing and volume.

51. Next issue raised by the Petitioners is regarding the availability of the Floor Area Ratio. The Petitioners contend that the project cannot have 80% FAR, as in Regional Plan 2021, the Village Candola has been classified as VP-2 with permissible FAR of 60%. The Petitioners contend that the project put up by the Developer was considered as a new project to grant the environmental clearance. The

conversion Sanad was issued on 23 April 2013, and the revised plans were approved on 20 March 2015 and, therefore, the Circular dated 5 August 2011 would not apply to the Project. It was contended that by order dated 4 June 2012 it is stipulated that pending drafting and notification of the Regional Plan 2021, the Regional Plan 2001 should be used as Regional Plan. It was contended that the Developer would be therefore entitled to 60% of FAR and not 80% of FAR.

52. This submission was countered by the Developer stating that the Developer filed the application for group housing project on 24 June 2010 and it was resubmitted for approval on 1 October 2010. It was contended that the Town and Country Planning Board decided that all the applications received before 24 November 2010 would be cleared as per the earlier policy of 80% FAR to honour the past commitments. It was contended that the Developer had submitted the plan before 24 November 2010 and only certain queries were raised. The plans were resubmitted, and the revised plans were given technical clearance. It was contended that therefore, the application has to be considered as submitted before 24 November 2010. It was contended that the technical clearance for the plans submitted under the application dated 24 June 2010 was granted with 80% FAR on 18 November 2011. The Developer contends that the Circular could not be made retrospectively

applicable in case of the present project as the proposal already stood granted in terms of the earlier decision. It was contended that only because the application was returned with direction to resubmit with modification, does not mean it was a fresh application.

53. The Chief Town Planner in the affidavit in reply has stated that the original application was received on 24 June 2010. Thereafter, he had made certain observations, and proceeded based on the Circular dated 5 August 2011 which stated that the applications received before 24 November 2010 can be processed. The Chief Town Planner has dealt with this contentious issue in one paragraph of the reply, which reads thus.

> *"13. I state that an original application dated 24 June 2010, was received by the office of this Respondent from the Respondent No.2 requesting for issuance of NOC. I further state that vide letter dated 28 July 2010, the office of this Respondent had reverted raising certain observations to be fulfilled before the granting of the said NOC. I further state that on 18 November 2011 the office of this Respondent issued a Technical Clearance as per the regulations. I state that the Technical Clearance was issued to the Respondent based on the Circular dated 5 August 2011 which stated that applications received before 24 November 2010, i.e.,, up to 23 November 2010 shall be processed and cleared as per the earlier policy i.e. with 80 FAR".*

This is simply narration of dates and events. It is not clear on what ground the application was sent back. Whether the application would be considered as a fresh application or whether it was existing application resubmitted or what was the effect of not starting of construction, has not been clarified in the reply. No stand is taken.

54. The Petitioners have raised a categorical issue that the FAR could not be 80% but has to be 60%. The question was raised regarding the policy of the State as to the grant of FAR. Neither in any communication, nor is it in the affidavit in reply, the Chief Town Planner has placed the correct position on record. It was expected of the Chief Town Planner to deal with the issue squarely raised, and to decide whether in the facts of the present case the Circular would apply or not. The difference between FAR available is of 20%, which is substantial. The Chief Town Planner is the Authority to ensure that the correct FAR is made available. This responsibility cannot be abdicated in this fashion. The authorities cannot file such noncommittal affidavits. They must analyze the issue and either pass a proper order or state their stand clearly in the affidavit. The Chief Town Planner has done neither.

55. The Petitioners have argued that the proposed area is hilly

terrain with a dense tree canopy. The approved plan dated 20 March 2015 shows the demarcation area as 18000 square metres. The Petitioners contend that the conversion Sanad, Plan does not demarcate the area but shows the area not proposed for conversion due to the steep slope as 9203 square metres. The grievance of the Petitioners is that location and extent of No Development Zone with dense tree canopy and steep slope differs. The Petitioners have also made grievance regarding hill cutting permission dated 28 March 2015, has having been issued without site inspection and contour analysis. The conversion from Orchard to the Settlement Zone was also subject to verification of the contour plan.

56. The Petitioners have relied upon a report of the Architect in support of its contention that the construction shown in the plan approved by the Town and Country Planning Department is not in accordance with the area granted for conversion as per the Sanad. When the Town and Country Planning Department changed the zone from Orchard to Settlement, it was specifically stated that it has to be worked out as per the contour plan. The area was allowed to work out as per the contour plan, and it was approved subject to strict verification and subject to availability of the required access. Therefore, the requirements of the contour plan and access, were an integral part even

for the conversion of the zone, and our earlier observation will apply to this aspect as well.

57. Now we turn to the issue raised by the Petitioners regarding the impact of the proposed project on the basic amenities of the Village, including that of water.

58. Hydrological data of Betqui-Candola is enumerated in the Report of the watershed development project under the National Watershed Development project. This project was implemented in Betqui-Candola Micro Watershed. The data shows that there are around 68 water wells, the number of ponds/tanks are 45. The Report indicates that the area wherein the Project is sought to be put up recharges the fresh-water to the surrounding wells and run off leads to the ponds. Major crops grown in the village are paddy and vegetables. Majority of the population is engaged in agriculture and farming activities, most of them being small and marginal farmers. With the initiatives from the farmers, various works are carried out, such as the renovation of wells, construction of gutters, de-silting of farm ponds and construction of bandharas, trenches for soil erosion and water harvesting structures. The Report cautions that even though there are wells and water holding structures, the water table is decreasing year after year. The Report

recommends that all measures should be taken to improve the water retention capacity.

59. Coming now to the requirement of water for the Project. The Goa State Pollution Control Board granted the Consent to Establish under Air Act and Water Act. The other permissions granted by the Health Authorities were in respect of health and proposed certain measures. The Environment Clearance dated 31 October 2016 notes the details of the property. The water requirement during the construction phase will be 150 CMD and during the operational phase will be 494 CMD. It is stated that source would be PWD, tankers and STP and Government supply. Certain measures regarding conservation of water were incorporated both in pre-construction and post-construction phase. The Goa State Environment Impact Assessment Authority has not specified as to what is the source of water.

60. When the Developer submitted its project proposal for the environment clearance, it specified the details in the checklist on water consumption. It is stated that for the construction phase, the source of water was PWD for domestic use and tankers for construction activities. For the operational phase, the source was from PWD for domestic and treated water from the proposed STP for flushing. It is clear that the

Developer is dependent on the State supply. Even if the water is to be brought from the tankers, it will have to be brought from the nearby area. From where such water would be brought from tankers is also not specified. The Developer has specified the water required for the club house, town centers, commercial visitors and all domestic purposes. The project proposal submitted by the developer gives details in question and answers form. As retards the availability of water, the answer given is: for the construction and for domestic consumption PWD water will be used and for construction activities partly tankers will be used. As regards the ground water, it is stated that ground water tapping is not proposed. Therefore on paper each of the questions have been replied in a standard format, but it is clear that the source is primarily the State supply.

61. Petitioners have asserted that the village has no capacity of accommodate this demand of the multi-dwelling project and it will result in serious infringement of the fundamental rights of the villagers. It is stated that villagers, through the watershed project, with their own efforts, have somehow conserved the water available for irrigation. The Petitioners express a serious apprehension that the State is not in a position to supply the water required by this mega housing project and the water would be fetched from the bore wells, further depleting the

entire water table in the village.

62. These assertions are dealt with by the Chief Town Planner in one line in the reply as under :

> "*As regards to water and power supply, there are many areas reserved for sub-stations in the property and power supply and water supply is proposed to obtain from state authority".*

In the affidavit in reply, the Developer has not referred to the issue of water. The Developer has only stated that the Goa State Environment Impact Assessment Authority has granted environment clearance. But as stated earlier, this Authority has not stated about where the supply will be from nor has it assured the same.

63. In the affidavit in rejoinder, the Petitioners have relied upon a letter received from the office of the Executive Engineer, Public Works Division —III that at present the Department is not in a position to supply water to the residents of *'enchanting woods*' in Betqui- Candola. When the information is sought for from the office of the Executive Engineer, following was the answer.

> *Q1: Mega Projects (GERA) with 818 and (Adwalpalkar) with 500 dwellings are coming up in Candola Village. Will the department be able to supply water to these Multi Dwelling projects/ From which tanks the supply will be done ?*
>
> *Ans. With the existing infrastructure and pipeline network it is not possible to supply water to this Multi Dwelling project.*

The Petitioners on 24 February 2015 sought details and the Asst. Engineer of the PWD replied as under :

> *" With reference to above cited subject and reference letter it is to state that this office is taking up the new 25MLD water treatment plant project at Ganjem on Madei river. Your water requirement for the residents residing in the Enchanting Woods in Betqui-Candola village, will able to meet only after commissioning of the said project."*

The Petitioners then asked information under the Right to Information again on 5 May 2017 and they were given the following answers to the questions.

> *Q1: With reference to the letter No.AE-IV/WD-III/PHE-N/PWD/F.65/14-15/2454 dated 24/02/2015, is the Water Treatment Plant at Ganjem Village on river Madei commissioned ?*
> *Ans. No.*

> *Q2: Are you in a position to supply water to residents of "Enchanting Woods" in Betqui-Candola a Mega Housing Project M/s. Gera Development Pvt. Ltd.?*
>
> *Ans. At present this office is not in position to supply water to residents of "Enchanting Woods" in Betqui-Candola a Mega Housing Project M/s Gera Developments Pvt. Ltd.*
>
> *Q3: What is the latest status with regard to commissioning of plant at Ganjem (i) land acquired (ii) machinery instlled (iii) required pipeline laid till Betqui-Candola ?*
>
> *Ans. (i)Land acquisition is in process.*
>
> *(ii) No.*
>
> *(iii) No.*

Thus to a specific query as to whether the State is in a position to supply the water to the residents of '*enchanting woods'* in Betqui -Candola for a project of the Developer, the reply was that at present the Department is not in a position to supply water to the residents of the project and it will be supplied only after the project is commissioned. As to the stage of the project, it is informed that the land acquisition is in process. What is the stage of the land acquisition is not specified.

64. As regards the power, similar information was sought under the Right to Information Act, and the reply was given on 31 August 2015. To the question whether the power would be supplied to 4970

domestic new users in a mega housing project with the present infrastructure available at the substation in question the answer was categorical: "*No*". As regards to increasing the capacity of the sub-station, it was informed that : 'the land acquisition is under process'.

65. The question which goes to the root of decision making in the present case is the implications the Development will have on the water supply to the villagers, the future occupants of the project, and for construction, without affecting the water table and ecology. The State is on record admitting that it is unable to supply water in the present state of affairs. The concern of the Petitioners that the Project would severely threaten the water supply to them, is therefore justified from the responses received from the State.

66. In the technical order dated 20 March 2015, the Town Planner has placed responsibility on the Village Panchayat to ensure various facets of infrastructure. The Village Panchayat has granted the construction licence by the resolution dated 27 November 2015. This does not refer as to how the water table would be affected and how the water would be provided to the project and what would be the impact on the existing population.

67. Neither in the order passed by the State Authorities nor of the Village Panchayat, the question repeatedly posed by the Petitioners of availability of water and the impact on the ground table, has been considered. It is ignored even in the affidavits filed. The Village Panchayat has not filed a reply. The vague statement is made that the project is in contemplation. It is the argument of the Developer that since it would be paying taxes, the water must be made available to it.

68. In such circumstances, it does not need special expertise to visualize the stress that this project will place on the availability of water resources to this village of the population of 10000 to 12000. The dwelling units and town centers are sought to be put up by the Developer are for sale. There would be many occupants. The population will grow. There will be visitors. They would require drinking water, water for daily use, including air conditioner units that would be put up. The off-repeated explanation of fetching water by tankers is not a panacea. It overlooks the fact that the water is brought from other water stressed areas, creating similar problems elsewhere. The Petitioners have repeatedly sent representations to the Authorities. The copies of the representations are on record. The Petitioners wrote to the Minister of Environment for Goa pointing out the water table would be affected leading to health problems. Similar representations were made on 8 July

2013, 19 July 2013, and 27 September 2013. The request was made to the Village Panchayat of Betqui —Candola, stating that as per the Health Department, an N.O.C. granted to the Developer for 898 units are expected to be put up with approximate occupants of 3000 which will affect the entire water table surrounding area, which it cannot sustain. Similar representations have been made to the Goa State Environment Impact Assessment Authority. It was pointed out to the Authority that the Developer would require extra groundwater and when majority of the population is engaged in agriculture, it would seriously affect the people. It was pointed out that lakhs of rupees were spent on increasing the water table and all the efforts will be nullified. None of the Authorities have taken any cognizance of this grave concern.

69. The Goa Panchayat Raj Act mandates the Panchayats to make provisions and to take measures to promote health, safety, education, comfort, convenience or special or economic well being of the inhabitants of the Panchayat area. Section 66 deals with the regulation of the erection of buildings. It states that 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. Section 79 states that for providing power and sufficient water for public and

private purposes, the Panchayat can construct, repair and maintain the tanks or wells and clear stream or watercourses. It may set apart for the supply of water to the public for drinking or culinary purpose. The Panchayat may prohibit bathing, washing of clothes and animals or other acts which are likely to pollute the water of any tank, well, stream or watercourse set apart for drinking or culinary purpose. Section 80 empowers the Panchayat to make bye-laws for the provision of water supply and distribution of water and regulation of water supply and use of water. Section 84 states that Secretary or officer authorized by the Panchayat may call upon any person who has control over the water and another source of water supply even in private property to maintain such water supply, not to pollute the same and conserve the water supply. A penalty also provided for disobedience of directions issued under Section 84. Section 86 empowers the Panchayat to set apart public springs for certain purposes and even water sources owned by the private owners with their consent. Section 88 provides for penalty for using water for certain purposes and using water in the contravention of the Act.

70. The Goa Panchayat Raj Act places responsibilities on the Panchayat to conserve water and ensure pure drinking water and adequate water for other purposes to the residents. The scheme of the

Act reflects the legislative recognition of the importance for water supply for the villages and the need to conserve and regulate the water supply. Section 44 of the Town and Country Planning Act states that Authorities shall have regard to the relevant bye-laws of the local authority and any other material consideration. In the present case, while granting the technical clearance, the Authorities have merely placed the responsibilities on the Village Panchayat to ensure the water supply. The Village Panchayat has not even applied its mind. It is entirely oblivious to this concern, in spite of the responses of the State Authorities on non availability of water. The conjoint reading of the Goa Panchayat Raj Act, the Goa Town and Country Planning Act and Rules, shows that the availability of water is a critical component of decision making under these statutes.

71. A substantial jurisprudence has evolved in our legal system around the dependence of man on water. Availability of water and the implications of depletion of water table are also human right issues. Right to drinking water is a facet of Article 21 of the Constitution. The recognition by the Courts of the fundamental right to drinking water, is unequivocal. In the case of *Susetha Vs State of T.N. and others*[3], the Supreme Court had an occasion to consider the conservation of water

3 (2006) 6 SCC 543

bodies and artificial tanks in Tamil Nadu. While stressing on the need to conserve water, the Supreme Court has reiterated that the right to drinking water is enshrined in Article 21 of the Constitution of India. The Supreme Court in the said case directed the State and Panchayat to take necessary steps to maintain water resource in the area.

72. In the case of *Andhra Pradesh State Pollution Control Board-II Vs Prof. M.V. Nayudu (Retd.) & Others*[4], the Supreme Court recognized the right of access to drinking water as a fundamental right to life and held that it is the duty of the State under Article 21 to provide clean drinking water.

73. The Apex Court in the case of *M. C. Mehta Vs Union of India and others*[5] took note of a news item on water scarcity and issued notices. The Authorities filed affidavits and reports. The Supreme Court took note of the affidavit filed by the Central Groundwater Board. The report had stated that from the year 1962 onwards the water levels in the country are declining. Considering to the reports and affidavits, the Supreme Court issued directions to the Central Government to constitute a specific authority to deal with the issue. The decision was rendered 20 years ago. The situation regarding the availability of water

4 (2001) 2 SCC 62
5 (1997) 11 SCC 312

has worsened over the last two decades.

74. The magnitude of the impending water crisis, generally in the country and in the State of Goa, is a matter of common knowledge. Official data is available in the public domain. The National Institution for Transforming India, NITI Aayog, is an agency was formed by the Union Cabinet on January 1, 2015. NITI Aayog has published 'Composite Water Management Index Report' in June 2018. The report has highlighted that the country is undergoing the worst water crisis in its history. Already, more than 600 million people are facing acute water shortage. Critical groundwater resources which account for 40% of water supply are being depleted at unsustainable rates. It predicts that by 2030, the country's water demand is projected to be twice the available supply, implying severe water scarcity for hundreds of millions of people and an eventual impact in the country's economic growth. As per the report of National Commission for Integrated Water Resource Development of MoWR, the water requirement by 2050 in high use scenario is likely to bring forth a crisis. The report has underscored a need to put in place interventions that make the water use efficient and sustainable. The World Bank report, *India's Water Economy: Bracing for a Turbulent Future*, examines the challenges facing the water sector and suggests critical measures to address them. Estimates reveal that by

2020, the demand for water will exceed all sources of supply. The Report notes that notwithstanding the catastrophic consequences, inactions have exacerbated the problem.

75. The Goa legislature has taken note of the need to regulate and control the development of ground water resources. The State has framed the Goa Ground Water Regulation Act, 2002 and also Rules therein and has constituted a Ground Water Cell. It shows that the State Legislature has acknowledged the concern and has responded by enacting various provisions.

76. The rights to life, health, and an adequate standard of living are the core of the legal systems. Availability of water is critical to the realization thereof. The *Organisation for Economic Co-operation and Development* (OECD) has summarized certain principles on the water governance. These principles underscore the need to ensure that the water management regulatory frameworks are effectively implemented and enforced in the pursuit of the public interest. Water governance frameworks that help manage trade-offs across water users, rural and urban areas, and generations are encouraged. *Brasilia Declaration of Judges on Water Justice* at the 8th World Water Forum has acknowledged that the impending water crisis is also a crisis of

Governance and Justice. The basic principles are already enshrined in our jurisprudence.

77. India, being signatory to various treaties and conventions, has adopted the goal of Sustainable Development. The Supreme Court in *Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group*[6],has considered the principle of Sustainable Development in the context of the planning laws. The Supreme Court has held that unless so excluded, the principle of Sustainable Development is to be read in the statute, both in the substantive legislation as also delegated legislation. Sustainable Development is a process in which development can be sustained over generations. This principle is recognized as a fundamental concept of Indian law. Its application would require balancing of various factors, which would depend on each situation. As seen from our analysis, the town planning laws and the Village Panchayat laws governing development in the State of Goa do not exclude the principle of Sustainable Development. In fact it is an integral part in them. There is a direct link between water and human survival. Water is a finite resource. Effective water management is a part of Sustainable Development.

6 (2006) 3 SCC 434

78. Another principle which is part of Indian Jurisprudence is the Precautionary Principle. The Supreme Court in *Vellore Citizens Welfare Forum vs Union Of India*[7] has held that uncertainty should not be used as the reason for postponing the measures to be taken to prevent the environmental depredation.

79. Thus, consistent with these principles and the acknowledged depletion of the water resources, the Authorities must resolve the issues concerning water in a way most likely to protect and conserve water resources in the State. It is not permissible, and no longer affordable, for the decision makers in charge of the planned development in the State, to exclude the factum of availability of water from the decision making. On the contrary, it must form an essential part.

80. The Authorities in the present case have not given serious thought as to how water will be made available. There is no study as to how the rights of villagers and of the future occupants would be effectively secured. Authorities do not contend that there is sufficient water at present for this project. The future supply is not assured. Authorities have no clue how they will balance the competing rights. The only argument made before us is that, the Court need not concern

7 1996(5) SCC 647

itself with the issue of availability of water at this stage. Authorities contend that if there is no adequate water, the completion certificate and occupation certificate will not be granted. This stand makes the situation even worse. Further there is no reference to water required for the construction. Developer, in the reply, does not refer to water to at all. The Developer has orally argued that since it is paying taxes and will pay the charges it is the responsibility of the State. The approach of the Authorities in allowing the Developer to put up the construction and then leaving the future occupants and the villagers to fend for themselves, cannot be considered as 'planning' in the barest minimum sense.

81. Similar is the position for the waste management. It is stated that bio-degradable non-degradable waste will be disposed of by various existing agencies. Which are these existing agencies has not been made clear either by the State or by the Village Panchayat. Whether they have the capacity to handle the waste generated is not made clear. In the arguments it is the stand of the Village Panchayat that everything is sent to the Town and Country Planning Department and it is the Planning Department who grants the permission. Panchayat has overlooked that in the Technical Clearance it is stated that the Village Panchayat should ensure availability of power, water and other infrastructures. Even after

this stipulation, the Village Panchayat has not bothered to file a reply in this Petition. It is not even contended that it has the ability and the infrastructure. It is clear that the Village Panchayat would not be able to cope up with the issues of sanitation and garbage disposal that the Project will bring forth. It has no infrastructure in place to deal with effects of the Project. Village Panchayat appears to be unconcerned with the issues of power, water, traffic and garbage and the potential chaotic situation. There is no assessment study as to how such a project is sustainable, counterbalancing the rights of the villagers and its future occupants in terms of infrastructure and availability of water. Article 243G of the Constitution of India envisages, subject to conditions there in, that the Village Panchayats are also concerned with securing economic development and social justice within their jurisdictions.

82. The Division Bench of this Court in the case of *Ashley Fernandes V/s The State of Goa and Others*[8], faced with similar conduct of the Planning Authorities observed that all the licenses and permissions should be issued in ecological and environmental interest and in the interest of general public. In the case of the *Calangute United Social and Cultural Association Vs State of Goa*[9], the Division Bench of this Court had taken cognizance of a complaint made by the

8 WP No.843 of 2010 dated 15 March 2011

9 WP No.372 of 2009 dated 11 January 2010

citizens group against an unauthorized construction and directed the Chief Secretary to issue appropriate instructions to the Chief Town Planner to carry out a thorough site inspection before granting permission to a housing project. The Court directed the office of the Chief Town Planner not to shift the burden on the Village Panchayats. It held that it is primary duty of the State to be discharged effectively and strictly in complete adherence of the provisions of law. These decisions continue to bind the Authorities in the State.

83. A Civil Application is filed by the Developer in this petition for vacating the order of status quo passed by this Court. Request is made on the basis of the dismissal of the appeal filed by the Petitioners before the National Green Tribunal on 27 November 2017 challenging the grant of environment clearance dated 31 October 2016. We have noted the order passed by the Tribunal. The Tribunal has disposed of the appeal on the ground that it is beyond period of limitation. The challenge is not concluded on merits. The issues in this Petition are different.

84. The Petitioners also contend that conditions of the environment clearance dated 31 October 2016 are not complied with. The environment clearance has stipulated certain conditions. Some of

the conditions are that, there has to be construction of access road prior to construction. No Development Zone has to be marked on the site prior to the commencement of construction. An N.O.C. from the Forests and Wildlife Authorities has to be obtained and a clearance from the Standing Committee of the National Board for Wildlife. The Petitioners have asserted that these conditions have not been complied with. The Environment Clearance granted to the Developer has not yet been set aside by any Authority. But if the conditions of the environment clearance are violated, it can always be brought to the notice of the Authority granting the clearance, which has sufficient powers in a given case to initiate legal action.

85. The decision of the Supreme Court in the case of *Greater Kailash Part II Welfare Association and others Vs DLF Universal Ltd., and others*[10] was relied by the Developer to contend that the Court should not act as an appellate authority over the decision of the executive authority in respect of the Town Planning. In the case before the Apex Court the issue arose regarding the traffic problems faced by the residents on the change of user of a plot and a construction in the city of New Delhi. The Delhi High Court did not find any arbitrariness in the decision and dismissed the writ petition. This decision was

10 (2007) 6 SCC 448

confirmed by the Apex Court. In the present case, what we have found is a complete omission of various germane factors from consideration. Authorities have not taken an informed decision. In such circumstances, parameters of judicial review to assess the *vires* of a decision would be different. The Court would not be then using an appellate power. The Developer relied on the decision of the Supreme Court in the case of *Board of Control For Cricket of India Vs Cricket Association of Bihar and others*[11] to urge the limitation of judicial review in administrative matters. Having gone through the said decision, we find that the case at hand is not the same as one which was under consideration of the Supreme Court. Present case invokes a completely different jurisprudence. The parameters while enforcing fundamental rights and addressing the concerns of lack of basic facilities, are different than reviews of commercial policy, which was under consideration of the Supreme Court in the said case.

86. Thus it is clear that the Planning Authorities and the Village Panchayat have completely ignored the crucial aspects while granting the permissions, such as availability of water and sanitation and basic infrastructure. No independent reliable contour analysis is carried out. There is no clarity in the documents as to whether the Project is

11 (2015) 3 SCC 251

only a group housing project or a residential cum commercial. There is no certainty on the requirement of access. There is no study of the resultant traffic situation. The issue regarding the FAR has not been considered in proper perspective. The State is under obligation to ensure that mechanical grant of permission does not jeopardize the very object of planned development in the State.

87. The core argument of the Respondents that, once all permissions are granted no further scrutiny is permissible or required, is entirely fallacious. The Respondent Authorities do not have an absolute unquestionable power. The Respondent Authorities have a duty to ensure that the objects of the statutes under which they are established, are not defeated. The relevant planning legislations in the State of Goa impose a duty on the Planning Authorities and the Village Panchayats to scrutinize the grant of permissions with due care. These legislations do not expect the Authorities to be mere rubber stamps oblivious to realities and the long term sustainable planning goals. Non consideration of relevant criterions and acting mechanically defeating the purpose of the conferment of power, are well settled grounds of judicial review. Grant of such permissions cannot attach themselves a label of finality and seek immunity from judicial review. These flaws make the decisions *ultra vires* of the statutes. Having considered the

matter in detail, we conclude that the permissions granted by the Planning Authorities and the construction licence granted by the Village Panchayat are liable to be quashed and set aside. The Authorities ought to carry out a study and apply their mind to the various factors as above.

88. Accordingly, the impugned Technical Clearance granted by the Town and Country Planning Department, Goa dated 20 March 2015 and the impugned construction licence granted by the Respondent- Village Panchayat dated 27 November 2015 are quashed and set aside. The grant of fresh permissions, if any, shall only be after evaluating various facets highlighted in this judgment. Rule is made absolute in above terms. No costs.

Prithviraj K. Chavan, J ***N. M. Jamdar, J***