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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 582 of 2014

Shri Arvind G. Shirodkar, major in age, resident
of House No. 149/A, Alto Torda, Alto Porvorim,
Bardez-Goa.

... PETITIONER

Versus

1. The State of Goa, through its Chief Secretary, having office at Secretariat, Porvorim, Bardez-Goa.
2. The Collector of North Goa & Director of Civil Administration, State of Goa, Panaji, Goa.
3. The Administrator of Comunidades, North Zone, having office at Mapusa, Bardez-Goa.
4. The Comunidade of Serula, through its Attorney, having office at Porvorim, Bardez, Goa.

... RESPONDENTS

Mr. Vithal Naik, Advocate for the Petitioner.

Mr. Pravin Faldessai, Additional Government Advocate for Respondent Nos. 1, 2 and 3.

CORAM:

**PRAKASH D. NAIK &
BHARAT P. DESHPANDE, JJ.**

RESERVED ON:

20th OCTOBER 2023

PRONOUNCED ON:

27th OCTOBER 2023

JUDGMENT: (per Bharat P. Deshpande, J.)

1. The Petitioner in this Petition is challenging the order dated 09.01.2014, whereby his Application for grant of a plot of land for construction of house, without any auction has been rejected.

2. It is the contention of the Petitioner that his Application has been rejected without any sufficient cause and without considering the fact that he has complied with all the necessary formalities for the purpose of grant of plot of land. The Petitioner has claimed that his Application has been rejected illegally and arbitrarily only because he filed some complaints against the illegalities committed by the Comunidade and by the Administrator, while granting/ allotting plots to different persons in the land belonging to Serula Comunidade.

3. Heard Mr Vithal Naik, learned Counsel for the Petitioner and Mr Pravin P. Faldessai, learned Additional Government Advocate for the State.

4. Mr Naik submits that the Application was kept pending without any reason by the Administrator of Comunidade. He further submits that the Application was processed by the Authorities and the Petitioner has complied with all the Rules and Regulations for the purpose of granting of plot for the construction of the house. It is submitted that a meeting was convened for the purpose of granting approval and thereafter, the matter was referred to the Administrator for the purpose of further processing. It is submitted that the Petitioner has submitted salary certificate along

with affidavit and relevant documents showing that he was not holding any land or house within the radius of 8 kilometres.

5. Mr Naik would further submit that the Clerk of the Comunidade certified that the Petitioner complied with all the formalities and a decision was taken by the Managing Committee to allot the said plot to the Petitioner. The Application of the Petitioner was kept pending without any decision and hence, the Petitioner had to approach this Court by seeking directions in Writ Petition No. 681 of 2012.

6. This Court in Writ Petition No. 681 of 2012 directed the Government to give reasons while deciding the Application filed by the Petitioner for grant of plot for construction of the house. Accordingly, a decision was taken by the Government thereby rejecting the Application vide letter dated 09.01.2014, which is challenged in the present Petition on various grounds.

7. Mr Naik would then submit that the Application was processed by the Authorities only after finding it complete in all respect and forwarded it to the Government for its decision. The Government unnecessarily delayed the matter and raised frivolous objections. He would then submit that the Government/Administrator called the Petitioner to submit further documents. Mr Naik would submit that such approach on the part of the

Administrator was without any basis as all the documents were already furnished by the Petitioner and the additional documents called upon by the Administrator were not required for deciding the Application. He then submitted that the Petitioner asked the Administrator to furnish the provisions/Rules under which, such information was called, however, there was no reply received from the Administrator. He then submitted that the Petitioner was entitled to the allotment of the plot. However, he has been deprived, though, he fulfilled all the conditions.

8. It is his further contention that the decision of the Government in rejecting the Application is on extraneous grounds and there are no legal grounds for rejection of the Application. He claimed that the action of the Administrator is clearly arbitrary and without following the procedures. It is submitted that the Petitioner has been deprived of allotment of plot from the year 1991 and accordingly, he was unable to construct his own house.

9. He then submitted that the observations of the Under Secretary that the Petitioner is not entitled for the plot on the ground of annual income exceeding the limit, suffers from perversity. He then submitted that the impugned order is in breach of the Code of Commuidade and the same is arbitrary as it is given on the grounds which are not available to the Government.

10. He then claimed that the observations of the Under Secretary that the Petitioner did not submit salary certificate, is incorrect and contrary to the record itself as the Clerk while furnishing the format to the Administrator, forwarded all necessary documents, including the salary certificate showing the income of the Petitioner.

11. He then claimed that when the Application was filed in the year 1991, the condition that the annual income of the Applicant should not exceed Rs.30,000 was amended and it was made up to Rs.60,000 vide notification dated 26.11.1985. Thus, according to him, the observations of the Under Secretary regarding the income limit are contrary to the notification issued by Government, thereby increasing annual income to Rs.60,000. He therefore claimed that such observations of the Under Secretary while rejecting the Application are self contradictory. He then submitted that the Petitioner filed the affidavit in the format as provided under the Rules stating therein that he is not holding any land or house in his name within radius of 8 kilometres of the said village. Further, the Petitioner had also produced income certificate issued by the Mamlatdar stating that the family of the Petitioner is not earning more than Rs.60,000 per annum.

12. He then submitted that the Government filed an affidavit in Writ Petition No. 157 of 1995 wherein it has been clearly stated that

Applications for allotment of plots are governed by the Code of Communitade and the Rules framed by the Government which are applicable at the time of filing Application and not the subsequent amendments. He then claimed that the Government cannot now, turn around and claim that the amendments would be made applicable to the case of the Applicant. Even otherwise Petitioner's Application was within the criteria for the purpose of allotment of the plot.

13. Per contra, Mr Faldessai appearing for Respondent Nos. 1, 2 and 3 would submit that the Petitioner failed to submit the relevant documents along with his Application and also when he was asked to do so by a separate letter. He then submitted that the Government is not bound to answer the queries raised by the Petitioner and also to inform him about the Rules and Regulations. According to him, the Petitioner failed to submit his salary certificate, the affidavit disclosing that Petitioner, his spouse and other family members are not holding any land or house. He then claimed that in the year 2006, the Government revised the rates regarding lease of plots and the Petitioner was informed to give his consent for the purpose of revised rates. However, the Petitioner instead of responding to such letter, made allegations against the Officers.

14. He then submitted that the income of the Petitioner was more than Rs.30,000 per annum on the date of filing of the Application i.e. in the year 1991 and therefore, the Applicant was not entitled for grant of any plot of land. He claimed that the Application of the Petitioner was rightly rejected and no interference is warranted in such an order.

15. In order to consider the case put forth by the Petitioner, relevant dates, are very much important. Admittedly, the Petitioner filed an Application on 19.08.1991 for allotment of plot of land in Survey No. 176/55 of village Serula. After processing the Application, the Administrator directed that the notice be issued/published as per Article 330 of the Code of Commuidade on 30.07.1992. Accordingly, a notice inviting objections was published in the official Gazette on 06.08.1992. The Administrator issued a certificate on 22.10.1992 stating that no objections were received in connection with the Application filed by the Petitioner for allotment of the said plot. A general body meeting was called on 28.02.1993 for the purpose of considering the Application of the Petitioner for grant of lease. During the said meeting, the Application of the Petitioner was not considered due to some confusion and therefore, the matter was placed before the managing committee on 01.09.1993, wherein it was resolved to approve the Petitioner's

Application for grant of plot and to forward the file to the Administrator for further processing.

16. On 18.10.1993, the Administrator informed the Petitioner that an Appraiser would be appointed for the purpose of inspection of the site. Accordingly, the inspection was carried out on 29.04.1994 and the plot was valued at Rs.30,000. A certificate dated 17.01.1995 was issued by the Clerk, thereby certifying that paras 1, 2 and 4 of Article 325 have been complied with. Since the Application of the Petitioner was not considered by the Administrator, he wrote an Application/Representation on 05.12.1995 praying for early disposal of his Application. The Deputy Collector vide his letter dated 25.06.1996, called upon the Administrator to furnish additional information such as fresh salary certificate, information, whether wife of the Petitioner is a Government servant, her salary certificate and whether the Petitioner's wife and child does not possess any land in the State of Goa. Accordingly, vide letter dated 02.07.1996, the Administrator called upon the Petitioner to furnish such information. The Petitioner replied to the above letter vide his reply dated 26.07.1996 by stating that the Petitioner has already complied with necessary formalities as required under the Code of Communitade and his application is pending for last five years. Thereafter, another letter was addressed by the Petitioner on 21.08.1996 asking the Collector to decide the Application.

17. The matter was kept pending till 2010 without any decision.

18. On 17.03.2010, the Administrator wrote to the Collector stating that the file is returned back to the Government as the Petitioner failed to furnish relevant information. On 04.06.2010, the office of the Collector, Civil Administration Branch addressed a letter to the Administrator stating that the lease rent is not fixed as per the revised rates of land as conveyed by their letter dated 04.10.2006. Accordingly, the Administrator directed the Petitioner to give his acceptance to the market rate as per the revised rates in terms of the Government letter dated 04.10.2006. The Petitioner in his reply informed the Administrator that the Government in their affidavit filed in Writ Petition No. 157 of 1995 stated that the Application for allotment shall be considered on the basis of Rules applicable on the date when the Application was made and not as per the changed/ amended Rules. The Administrator accordingly forwarded the file to the Collector for consideration on 23.08.2010. The Deputy Collector conveyed its decision to the Administrator on 18.02.2011.

19. The Petitioner approached this Court by filing Writ Petition No. 681 of 2012, thereby challenging communications dated 04.02.2011 and 18.02.2011 as arbitrary and illegal. While deciding the said Petition, this Court directed the Authority to decide/dispose

of the Application of the Petitioner within a period of six weeks from the date of the order. The Secretary (Revenue) was pleased to reject the Application of the Petitioner for allotment of plot vide its order dated 09.01.2014, which is impugned herein by the Petitioner.

20. Rival contentions fall for our consideration as under.

21. Admittedly, the Petitioner is one of the component of Serula Comunidade and he applied for grant of plot for construction of house without holding auction. Vide his application dated 19.08.1991, which is produced at Annexure-A, the Petitioner has clearly mentioned in his Application that he is a resident of Panaji and desires to obtain a plot of land on lease basis for construction of a residential house, the uncultivated and unused land bearing Survey No. 176/0 covering an area of 400 square metres and identified as plot no. 55. In the Application, the Petitioner has disclosed the boundaries of the plot and also attached the affidavit as required by the Rules. The affidavit discloses that the Petitioner is not having any land within the radius of 8 kilometres of the said village. The affidavit further disclosed that the Petitioner is also not having any residential house within the said area. The Application further discloses that the Petitioner is a Government servant and is a Gaunkar of the said Comunidade.

22. There is an endorsement of the Clerk of Comunidade to show that the Petitioner is a Jonoiro of the Comunidade of Serula and he fulfills all the required conditions for grant of a plot. The Application further shows that affidavit as well as residential certificate is enclosed along with it. The certificate issued by the Mamlatdar of Tiswadi Taluka shows that the Petitioner is a resident of House No. E/72 in Mala ward of Panaji. This certificate is dated 05.07.1991. The affidavit discloses that the Petitioner is not having his own residential accommodation or building within the radius of 8 kilometres and he does not possess any land on lease for house construction. A notice was published in the Government Gazette disclosing the details of the plot which the Petitioner proposed to obtain on lease. A copy of this notice published in the Government Gazette is produced, which shows that it was published on 16.07.1992, calling objections within a period of 30 days. The Administrator thereafter issued a certificate dated 22.10.1992 certifying that no objection was received within the period of 30 days from the publication of notice in the Government Gazette in connection with the plot applied by the Petitioner and accordingly, he forwarded the file to the Authority for consideration.

23. The Petitioner then placed on record the minutes of the meeting dated 25.01.1993 by which the Comunidade in its meeting confirmed that the plot could be allotted to the Petitioner since he

has complied with all the formalities and he is eligible for it. This decision was then published in the Government Gazette for the purpose of compliance of Article 330. A copy of Government Gazette is placed on record, showing that a decision is taken by the Comunidade to allot the plot of 400 square metres to the Petitioner. Thereafter, the Petitioner received a letter from the Administrator dated 18.10.1993 requesting him to remain present at the time of inspection of the site and to carry out valuation by appointing Appraiser. Accordingly, the Petitioner remained present and inspection was carried out of the plot and accordingly, the proceedings of inspection are placed at page no. 61 of the Petition which show that plot no. 55 was considered for the purpose of valuation and it was valued at Rs.30,000. The certificate dated 17.01.1995 issued by the Comunidade of Serula shows that the provisions of paras 1, 2 and 4 of Article 325 of the Code have been complied with and the land is measured which does not come under the exceptions and a maximum rent of the last nine years plus its 10% does not exceed to Rs.50 only and the land has been separated for the purpose of construction of residential house. This certificate was issued as per the order of the Administrator at page 37 of the file.

24. Since there was no decision taken by the Administrator or the Government, the Petitioner vide his letter dated 05.12.1995,

addressed to the Administrator requested to look into the matter and issue necessary certificate to him so that he could start construction of his residential house in the said plot. He also requested the Administrator to give him benefit as per the circular issued by the Government on 07.04.1995. The Petitioner again attached the affidavit, residential certificate, income certificate and the copy of circular dated 07.01.1995. The salary certificate of the Petitioner issued by the Directorate of Accounts in the year 1990 show that his gross salary was Rs. 3,147 per month. Another salary certificate issued to the Petitioner is dated 02.07.1993 wherein his salary is shown as Rs. 5,001 per month.

25. The note from the office of Administrator dated 15.03.1996 is very much relevant and it reads thus:—

“NOTE

On fifteenth day of March of the year nineteen hundred ninety six, this file has been forwarded to the Administrator of Comunidades of North Zone and I said Morajkar, who did this Report No. 1-213-91—ACB/180.

Shri Arvind G. Shirodkar, from Fontainhas Mala, Panaji-Goa, has requested on permanent lease an uncultivated and unused plot of land for construction of residential house, without the formalities of auction, as the applicant is a Government Servant as well as Comunidade

“Gaunkar”. The description of plot applied for is as follows:

Application dated 19-08-91 at page 2, plot in the Comunidade of Serula, situated at Penha de Franca Village, Name of land: ----, Lote No. ----, Survey No. 176/0, plot No. 55, area requested 400.00 sq. metres.

2. The applicant has submitted following documents :-

- i) Residential Certificate from Mamlatdar, page 47.
- ii) Income certificate from Department/ Mamlatdar at pages 46, 47 & 45.
- iii) Normal required affidavit, page 5.
- iv) N. P. D. A. letter approving the sub-division along with site plan, pages 30 & 42.
- v) Letter from Government fixing market value page 49.
- vi) Certificate as Gaunkar is at page 44.

3. As required under Code of Comunidade following formalities have been completed. Notice in terms of Article 330 of the Code of Comunidades describing the plot and inviting objections from interested party was published in two successive Official Gazettes No. 18 & 19 dated 30-07-92 and 06-08-92 respectively, pages 12 and 13. There is no claim from anybody within the prescribed time limit, as can be seen from the certificate at page 14.

4. The General Body of Comunidade convened for the purpose did not meet and in its default the Managing committee resolved that it has no objection to grant the plot to the applicant as can be seen from

the resolution of meeting held on 1-9-93 which may be seen from pages 18 to 20.

5. Site inspection of the plot, description of which has been given in para (1) of this report, was carried out and the plot was carried out and plot was measured and demarcated. The details of inspection are as follows:- i) Date of inspection 29-4-94; ii) Area covered during inspection 300.00 sq. metres; iii) The annual lease rent fixed to Rs. 1,500/--- (Rupees One Thousand Five Hundred only) iv) Value of plot assessed to Rs. 30,000/- (Rupees Thirty thousand only) at the rate of Rs. 100/- per sq. metre. Inspection report from pages 34 and 35.

6. The certificate issued by the Clerk of concerned Comunidade certifying that compliance was given in that Comunidade to paras 1, 2 and 4 of article 325 of the Code of Comunidades and that the plot in question does not come under the exception is at page 38.

7. xx

8. xx

9. A copy of letter submitted to Dy. Collector, Mapusa for conversion may please be seen at page 36.

10. Undertaking is at page 40.

11. Acceptance of market rate to be fixed by the Government has been obtained from the applicant is at page 41.

In view of above and since the formalities as per the Code of Comunidades have been completed the plot of land description of which again given below may be granted to the applicant without auction in terms of Article No. 334/A (vi); read with article No. 153(9) of the Code of Comunidades by higher authorities to the applicant Shri Arvind G. Shirodkar, r/o Fontainhas Mala, Panaji,Goa. Government Servant as well as Comunidades "Gaunkar" in the Comunidade of Serula, situated at Penha de Franca in the land named ---, with Lote No. ---, Survey No. 176/0, Sub-divided plot No. 55 with the area proposed to be granted 300.00 sq. metres with the annual lease rent proposed to Rs. 1,500/- (Rupees One Thousand Five Hundred Only).

Administration Office of the Comunidades of North Zone Mapusa, on 15th March 1996."

26. The above note clearly goes to show that all formalities were completed by the Petitioner and the file was thereafter forwarded to the Administrator. Office of the Administrator also opined that since all the formalities as per the Code has been completed, the plot of land, the description of which is given in the said note, be granted to the Applicant without auction in terms of Article 334-A (vi) read with Article 153(9) of the Code.

27. Thereafter, vide letter dated 25.06.1996, the Deputy Collector addressed a letter to the Administrator, thereby returning the file of the Petitioner's Application for allotment of plot on the ground that further information is required for compliance. In this letter, the Deputy Collector asked the Administrator to produce fresh salary certificate from the Applicant. Similarly, the Applicant was asked as to whether his wife is a Government servant and if so, what is her salary. Further, if the wife of the Petitioner is not a Government servant, then documentary evidence to the effect that she is not working needs to be obtained. The third condition was that information to be called from the Petitioner indicating that his spouse or minor child do not possess any plot of land/ house/ flat/ apartment in the State of Goa.

28. According to Mr Naik, such additional information was absolutely unwarranted as entire information was furnished by the Petitioner along with his Application and that too on affidavit. The additional information sought for by the Deputy Collector was not in accordance with any Rule of the Code. It is his contention that by calling such additional information, the Deputy Collector was unnecessarily delaying the matter. Further more, such information and that too, a fresh salary certificate was absolutely unwarranted as the Petitioner had submitted his salary certificate at the time of filing of his Application, which was available on record and in the file and

it was processed by the Administrator's office, wherein there was absolutely no objection. The income of the Petitioner was well within the limit for the purpose of applying plot of land at the relevant time. We observe that submissions of Mr Naik are having force.

29. On receipt of the letter from the Administrator dated 02.07.1996, the Petitioner filed his reply dated 26.07.1996, thereby informing the Administrator that all necessary information is already available and requested him to provide relevant Rules for calling for the additional information. The Petitioner, thereafter, addressed a letter to the Collector, North Goa, Panaji dated 21.08.1996 asking him to look into the matter and decide the Application for grant of plot. The record further show that from 1996 onwards till 2010, the Application filed by the Petitioner was kept pending without any further progress.

30. The Mamlatdar of North Goa vide his letter dated 04.06.2010 addressed to the Administrator informed that in the case of the Petitioner, the lease rent has not been fixed as per the revised rate of land as conveyed vide Government letter dated 04.10.2006. Accordingly, vide letter dated 01.07.2010, the Administrator intimated the Petitioner that the file has been returned from the office of the Collector in order to fix lease rent as per the revised

rates. The Petitioner was called upon to submit his acceptance letter of the market rate for the purpose of resubmitting the file to the office of the Collector. The Petitioner vide his reply dated 30.07.2010 informed the Administrator that there is no question of revision of rates of lease as per the circular issued by the Government since his Application is pending since year 1991 and the inspection was already carried out by fixing the lease rent in accordance with the Rules. The Petitioner also placed the copy of the Government letter dated 07.04.1995, which was issued by the Under Secretary and addressed to the Collector of North Goa and South Goa regarding grant of Comunidade land. This letter shows the legal opinion with regard to grant of land which reads thus:

“I am directed to state that legal opinion on the matter of grant of Comunidade land has been obtained which is as follows:-

“An Applicant who was eligible at the time of his application may become ineligible thereafter for no fault of his. So also an applicant who may not be strictly eligible at the time of his application may become eligible subsequently during the pendency of his application as a result of amendment in judicial decision.

Thus there may be cases where an applicant may satisfy the requirement of annual income of Rs. 80,000/- as on the date the amendment came into force and his application for grant was pending as on that date though not at the time of grant by

Comunidade or approved by Government at a later date.

As a general rule one may only say that by and large subsequent changes should not adversely affect although if such subsequent changes are beneficial. Applicants would be entitled to such benefits.

You are requested to submit the cases in light of the above legal advice, including those which were returned to you earlier”

31. The Under Secretary vide his letter dated 04.02.2011 informed the Collector, North Goa that the Application filed by the Petitioner for allotment of plot without holding auction cannot be considered on account of non-compliance of the required formalities under the Code. In view of this letter, the Administrator informed the Petitioner vide letter dated 18.02.2011, the decision of the Government.

32. The Petitioner thereafter filed Writ Petition No. 681 of 2012 before this Court challenging such communication. While deciding the said Petition on 28.11.2013, the statement was made on behalf of Government that the concerned Authority would pass fresh orders by giving reasons for rejection of the Application for allotment of plot. On the basis of such a statement made by the Government Advocate, the Petition was disposed of with the direction to the Government to decide afresh the Application of the Petitioner by

giving reasons. Accordingly, the Under Secretary of Government of Goa informed the Collector, North Goa that the Application of the Petitioner cannot be considered for non-compliance of the required formalities. In all, eight grounds are disclosed in the impugned order for which the Application of the Petitioner was not considered, which has been challenged in the present Petition.

33. Article 334-A was inserted in the Code vide amendment dated 05.01.1985. As per the said Article the Government may grant land on lease for construction of residential house without auction to a Government servant and landless Jonoieros provided that annual income of such person does not exceed Rs.30,000/-. At this stage, it is necessary to note that the Application filed by the Petitioner was processed by the Administrator and even notices were published in the Government Gazette thereby calling for objections. At that stage, there was absolutely no objection raised by such Authority that the documents enclosed by the Petitioner to his application, were either ineligible or showing that the Petitioner was not entitled for the plot of land being his income more than the required income as provided under the Rules. The procedure is that the file is processed from the office of Administrator and the Clerk of the Comunidade so as to comply with all the formalities. The Administrator at the first instance needs to satisfy himself about the eligibility of the Petitioner and only thereafter, he recommends the file to the

Government. At no stage, the office of the Administrator raised any objection with regard to any document produced by the Petitioner along with his application.

34. The first objection raised by the Under Secretary (Revenue) in the impugned order is regarding the income of the Petitioner which exceeds the limit of Rs.30,000. He refers to official Gazette dated 17.01.1985, which provide that the annual income of the person for grant of land shall not exceed Rs.30,000. However, he further observed that the income of the Petitioner was shown as Rs.37,764 which exceeds Rs.30,000 per annum.

35. The Petitioner in his Petition and more specifically in ground (d), has claimed that though the income of Rs.30,000 per annum was mentioned in the official Gazette dated 17.01.1985, this limit was enhanced in terms of Rules dated 26.11.1985 to Rs.60,000 per annum. Thus, it is the contention of the Petitioner that as on the date of filing of the Application, the maximum limit was Rs.60,000 per annum and not Rs.30,000 as tried to be contended on behalf of the Government. In this regard, Mr Naik placed on record the Government Gazette showing that on 26.11.1985, the limit of income was Rs.60,000 per annum. He then claimed that this fact is admitted by the Respondents in their affidavit filed in Writ Petition

No. 157 of 1995 in paragraph 2 and more specifically, in paragraph no. 2(c) as quoted below:

“2. I say that I am placing the facts of the various Legislations relevant for the purpose of the petition in chronological order, for correct appreciation of the Legislation prevailing at the relevant time, and as amended from time to time:-

(a) I say that the Goa, Daman & Diu (Legislative Diploma) 2070 dated 15/4/1961 (Amendment) Act, 1984 (Act 1 of 1985), the then Government of Goa, Daman & Diu amended the Codigo das Comunidades 1961 (hereinafter referred to as the Code of Comunidade) whereby new Article 334-A was inserted.

This Article provided for grant of Comunidade land on lease for construction of house or building without auction to persons indicated in the categories therein:

This new Article also provided certain other requirements/ qualifications for the purpose of a persons being eligible for such grant. (Annexed hereto is a copy of the Amendment Act 1984 above referred and the same is marked as Annexure R1 hereto).

(b) By the Goa, Daman & Diu (Legislative Diploma) dated 15/4/1961 (Amendment) Act, 1985 (Act 9 of 1985), the then Government of Goa, Daman & Diu amended the Article 153 of the Comunidades, whereby new item (19) was inserted, empowering the Government to make Rules to carry into effect the

provisions of the Code. There was also an amendment to Article 334-A, wherein the requirement of 25 years residence for persons in categories (vi), (vii) and (viii) mentioned in Article 334-A was reduced to 15 years, (Annexed hereto is a copy of the Amendment Act, 1985 above referred and the same is marked as Annexure R2 hereto).

(c) The then Government of Goa, Daman & Diu by virtue of Powers conferred by item (19) of Article 153 of the Code, framed Rules for the grant of land namely, the Goa, Daman & Diu (Legislative Diploma) 2070 dated 15/4/1961 Rules 1985, wherein it was provided that the maximum area which would be allotted would be restricted to 400 sq.mts.; that the applicant to be eligible for the allotment of land should not own any residential accommodation or building site within a radius of 8 kms. from the Comunidade from which he intends to take land on lease; that the applicant to be eligible for grant of land on lease without auction shall not be a person whose annual income from all sources exceed Rs.60,000/-. It was also provided in the said Rules that the Administrator was required to complete formalities in respect of grant or allotment of Comunidade land either by auction or without auction within a maximum period of six months from the date of receipt of the application. (Annexed hereto is a copy of the Rules, 1985 and the same is marked as Annexure R3 hereto).

(Emphasis supplied)

36. The Petitioner placed on record the Government Gazette dated 05.01.1985, by which, Article 334-A was inserted in the Code wherein the limit was Rs.30,000 per annum for the purpose of grant of a plot of land to a Government servant without auction and for construction of a house. This Government Gazette is placed at page 120 of the Petition. Similarly, the Petitioner also placed on record the notification issued by the Under Secretary (Revenue), Government of Goa dated 25.11.1985 wherein the Government notified Rules called as Goa, Daman and Diu Legislative Diploma No. 2070 dated 15.04.1961 Rules, 1985. Rule (3) deals with eligibility wherein it has been provided that the Applicant to be eligible for allotment of a land should not own any residential accommodation or a building within radius of 8 kilometres from which he intends to take land on lease. Clause (2) of Rule 3 provides that the Applicant to be eligible for grant of land on lease without auction shall not be a person whose annual income from all sources exceeds Rs.60,000. Thus, it shows that notification dated 05.01.1985 provides that a person whose income is below Rs.30,000 per annum is entitled to apply for a plot of land for the construction of house, and that he should be a Government servant, having no land or house within the radius of 8 kilometres. The Rules notified on 25.11.1985 provide that a person whose annual income is not exceeding Rs.60,000 per annum from all sources and who is a Government servant without any land or house within the radius of 8 kilometres, is entitled to

apply for a plot of land for construction of house and that too without an auction. Further, vide Government Gazette dated 26.05.1993, the said limit was enhanced to Rs.80,000 per annum. Thus, it is clear from the record that the Application of the Petitioner was pending for adjudication when the income limit was enhanced to Rs.80,000. The objection raised by the Under Secretary, in his letter is without considering his own earlier letter dated 07.04.1995 wherein clarifications have been given as to how the change in the amount by way of amendment should be applied to the pending Applications. The portion of the letter dated 07.04.1995 is already quoted above, which clearly discloses the intention of the Government to consider the Application pending in view of the amendment and increase of the limit.

37. Admittedly, the Petitioner placed along with his Application, salary certificate which show that his annual income was Rs.37,764 in the year 1990. The amendment as discussed earlier shows that in the year 1985, the limit was increased to Rs.60,000 per annum from all sources. Accordingly, the first ground on which the Application of the Petitioner was not considered for grant of plot and specifically on the ground of exceeding the limit of Rs.30,000, is clearly arbitrary and perverse. When the application was pending till the year 1996, the limit was enhanced to Rs.80,000 per annum and according to the opinion of the Government, as disclosed in letter dated

07.04.1995, the Petitioner was entitled to be considered with the enhanced annual income up to Rs.80,000. By not considering its own opinion in the letter dated 07.04.1995, the Under Secretary committed grave error. Such amendment was necessarily to be considered as beneficial for the purpose of allotment of plots to the Government servants.

38. The second ground on which the Application was rejected seems to be only an eye wash. It is claimed by the Under Secretary that the Applicant did not submit his income and salary certificate along with his Application dated 19.08.1991. As discussed earlier, such ground/objection was not raised either by the Administrator or by any other Authority who processed the Application and forwarded it to the Government. Even otherwise, in ground no. 1, the Under Secretary observed that the Applicant's income exceeds Rs.30,000 and he in fact quoted the exact income of the Petitioner as Rs.37,764 per annum. This clearly shows that Under Secretary calculated the income of the Petitioner which was submitted by him on the basis of salary certificate showing his salary of Rs.3,147 per month. Similarly, the note prepared by the Administrator on 15.03.1996 discloses that the Petitioner has produced the residential certificate, income certificate from the Department/Mamlatdar, normal required affidavit, letter approving sub-division, along with site plan, letter from government, fixing market value and certificate

as Gaonkar. Thus, even if it is considered that the Petitioner did not enclose income certificate along with his Application, the same was placed subsequently, and the same has been considered by the Administrator while preparing the note and submitting the file to the Government. In the year 1996, when the note was forwarded to the Government, the income limit was already enhanced to Rs.80,000 per annum. According to the Government vide its letter dated 07.04.1995, the amended income ought to have been considered for the purpose of deciding the Application of the Petitioner. Therefore, ground no. 2 is inconsequential.

39. Ground no. 3, in the impugned order shows that the salary certificate dated 07.07.1990 was not legible. This observation of the Under Secretary is again required to be rejected. For the simple reason that in ground no. 1, he easily calculated the income of the Petitioner on the basis of the figures mentioned in the said income certificate. Even otherwise, such objection was not raised by the Administrator or by any other Officer dealing with the said file. For the first time, such objection is found in the impugned order. According to us, such objection is a frivolous objection and needs to be rejected outright.

40. As far as ground no. 4 is concerned, it is contended that the Applicant refused to comply with the observations, claiming that

whether all shareholders of Comunidade are co-owners of all assets and the land and hence, he cannot be declared as landless unless such persons are eliminated. First of all it is necessary to note that all shareholders of the Comunidade are Jonoieros. The requirement is that such a person should not possess or owe any land, property or a house of his own within the radius of 8 kilometres. If the contention as found mentioned in ground no. 4 is accepted, no shareholder who is in fact landless and is not having his own house will be able to apply for a plot for construction of house. The purpose of enforcing such clause of grant of plot to landless person for construction of house is to encourage the shareholders by constructing their own house within the radius of 8 kilometres. Such ground is otherwise not provided under the Rules or the Code and therefore, rejection of the Application of the Petitioner on such ground is completely erroneous.

41. Ground no. 5 is again a communication to the Petitioner to accept the revised rate of lease, on the basis of the letter of the Government dated 04.10.2006. This ground is again baseless for the simple reason that all formalities including valuation of the plot in question was carried out in the year 1996 itself and the entire file with the approval of the Administrator was forwarded to the Government. This file was kept pending without any decision. As per the Code, the Government is supposed to take a decision on such

Application within a period of six months. Thus, such a ground is of no assistance and it further shows arbitrariness in deciding the Application of the Petitioner.

42. Now coming to ground no. 6, it has been claimed by the Under Secretary that the Petitioner did not produce 13 points affidavit which is mandatory for grant of plot of land. The affidavit produced by the Petitioner was processed by the Administrator, and he did not observe any flaws in such affidavit. Mr Naik pointed out that such affidavit is filed as provided under the Rules and Code. The Under Secretary did not point out either in the impugned order or in the affidavit filed in reply to the Petition as to what is the requirement of the affidavit to be filed along with the Application. Accordingly, it is clear that this ground is also raised only to reject the Application. Such ground clearly shows non application of mind on the part of the Under Secretary. The other grounds are also similar in nature and thus, we are unable to accept such reasons for rejection of the Application for grant of a plot. Reply affidavit filed on behalf of Respondents cannot be accepted for the simple reason that there is delay on the part of the Government in deciding such Application, which is not at all explained. The Petitioner cannot be blamed for such a delay as he produced all the necessary documents in time.

43. For the reasons stated above, we are of the view that the impugned order needs to be quashed and set aside. The Petitioner is therefore entitled for the relief as claimed in the Petition and more specifically in prayer clauses A and B of the Petition, which are quoted below for reference:

(A) This Hon'ble Court be pleased to issue an appropriate writ, order or direction, quashing and setting aside the impugned order dated 09.01.2014 (Annexure "T" to the Petition);

(B) This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the Respondents to allot Plot No. 55 to the Petitioner.

44. Rule is made absolute in above terms. The Petition stands disposed of accordingly. No order as to costs.

BHARAT P. DESHPANDE, J.

PRAKASH D. NAIK, J.