

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA**

**PIL WRIT PETITION NO. 2104 OF 2023 (Filing No.)**

DEELIP BABAL NAIK

AND 9 ORS

..... Petitioners

*Versus*

THE STATE OF GOA THR

THE CHIEF SECRETARY

AND 9 ORS.

.....Respondents

**WITH**

**PIL WRIT PETITION NO. 28 OF 2023**

ABHIJIT PRABHUDESAI

.....Petitioner

*Versus*

THE DEPUTY TOWN

PLANNER, PONDA TALUKA

OFFICE AND 11 ORS

..... Respondents

Mr Nigel Da Costa Frias with Ms B. Andrade and Mr S. Coutinho,  
Advocates for the Petitioners in PILWP No.2104 of 2023 (F).

Mr Abhijit Prabhudesai, Petitioner present in person in PILWP No.  
28 of 2023.

Mr D. J. Pangam, Advocate General with Ms Maria Correia,  
Additional Government Advocate for the Respondents-State in  
PILWP No. 2104 of 2023 (F).

Mr D. J. Pangam, Advocate General with Mr Deep Shirodkar,  
Additional Government Advocate for the Respondents-State in  
PILWP No. 28 of 2023.

Mr Sameer Khedekar, Advocate for Respondent No.4 in  
PILWP No.2104 of 2023 (F) and for Respondent No.7 in  
PILWP 28 of 2023.

Mr S. D. Padiyar with Mr P. Shirodkar and Ms A. Rane,

Advocates for Respondent No.6 in PILWP No.2104 of 2023 (F)  
and for Respondent No.12 in PILWP No.28 of 2023.  
Mr A. D. Bhobe with Ms. A. Fernandes and Ms. R. Prazeres,  
Advocates for Respondent No.9 in PILWP No.2104 of 2023 (F)  
and for Respondent No.10 in PILWP No.28 of 2023.

**CORAM: M. S. SONAK &  
BHARAT P. DESHPANDE, JJ.**

**Reserved on : 14<sup>th</sup> SEPTEMBER 2023  
Pronounced on: 15<sup>th</sup> SEPTEMBER 2023**

**P.C.**

1. Heard the learned counsel for the parties, learned Advocate General, and Mr Abhijit Prabhudesai, the Petitioner who appeared in person in PILWP No.28 of 2023.
2. Arguable issues are raised in both these petitions. Hence, the rule in both the petitions. The learned counsel waive service on behalf of the Respondents whom they represent. The hearing of the rule is expedited.
3. The Respondents are to file their affidavits/additional affidavits within eight weeks after giving advance copies to the Petitioners/their counsel. Rejoinder, if any, to be filed within four weeks from the service of replies.
4. Place these petitions for final hearing in the week commencing from 08.01.2024.

5. Upon considering the material on record and the arguments of the learned counsel for the parties, learned Advocate General and the Petitioner who appeared in person, we are satisfied that the case has been made out for grant of interim relief restraining Respondent Nos. 1, 2, 3 and 9 in PILWP No. 2104 of 2023 (F) from carrying out any further road construction works in the land bearing survey Nos.157/0 and 167/0 of Borim, Ponda Goa until final disposal of these petitions. Brief reasons for the grant of such interim relief are indicated hereafter.

6. Respondent No.9, International Society for Krishna Consciousness (ISKCON) is a private entity owning a mountain top property admeasuring about 32000 square metres in survey No.156, Borim. They claim that this landlocked property was gifted to them.

7. Accordingly, ISKCON, by letter dated 04.11.2021, informed the Hon'ble Chief Minister of Goa, that their gifted property is "landlocked". Further, their "project" will be of "*public welfare and tourist attraction*". Based upon this, ISKCON requested support "*in construction of the road through PWD department at priority*".

8. The text of the letter dated 04.11.2021 is transcribed below for convenience of reference.

*“International Society For Krishna Consciousness  
Founder Acharya: His Divine Grace A. C. Bhaktivedanta Swami Prabhupada,  
ISKCON, GOA*

To,  
Dr. Pramod Sawantji,  
Hon'ble Chief Minister of Goa,  
Goa.

Dated: 4/11/2021

Respected Sir,

Sub: Construction of an approach road to our land at Borim by PWD.

ISKCON has been gifted a land for our activities. The property is ad-measuring about 32,000 sq.mtrs. at survey no. 156 and the proposed road passes through survey nos. 157, 165 and 167 belonging to Comunidade of Borim. We have obtained all the required NOCs from Comunidade, Department of Town & Country Planning as also from Borim Panchayat. The property has no other approach and is thus land-locked. The project will be of public welfare and tourist attraction.

We request your kind support in construction of the road through PWD department at priority.

Your sincerely

Sd/-

Arjun Priya Das  
(Member)  
ISKCON Goa”

Sd/-

Anant Gaonkar  
(Member)

9. In a report prepared by the Assistant Engineer, PWD (which appears to have no date), it was stated that the estimated cost for the construction of approach road for proposed Vedic Village Project of the International Consciousness at Borim village of Shiroda Constituency of Ponda Taluka is Rs.3,12,31,800/-. The checklist

accompanying this report states that the total population that would be benefited by this road is 1500.

10. Based upon the above letter dated 04.11.2021 and the report/checklist of the Assistant Engineer, it appears that the Government decided to provide an approach road to ISKCON's private property after accepting Respondent No.3's tender bid in an amount of Rs.2,76,49, 424.160.

11. The learned AG submitted that ISKCON intends setting up of vedic village, a temple and a goshala, all of which constitute a "public purpose". He, therefore, submitted that there was no bar to the State agreeing to provide an approach road to ISKCON's private property where such project was going to be set up. He submitted that there are several instances where the State constructs roads for the benefit of people owning landlocked properties. The learned AG submitted that existence of any policy for construction of roads providing access to land-locked property was not a sine qua non for State undertaking such activities. He submitted that ISKCON was a secular organization, having its presence and projects even in Pakistan and Arab countries.

12. The learned AG relied on *Bajirao T. Kote and Another Vs State of Maharashtra – (1995) 2 SCC 442* and pointed out how the Hon'ble Supreme Court upheld the acquisition of land for a road to connect

two temples at Shirdi as being an acquisition for “*public purpose*”. He submitted that based on the law laid down in this decision, there was no warrant to interfere with the State Government's decision to provide an approach road to ISKCON's private property by spending an amount of approximately Rs.2.76 crores.

13. Apart from ISKCON's letter dated 04.11.2021 and Assistant Engineer Report/checklist, we were not shown any other material based upon which the impugned decision to provide an approach road to private property at the cost of taxpayers was arrived at by the State Government. Based on the material shown to us, we think at least *prima facie*, doling out of such a largess to a private party may not pass the Constitutional muster.

14. In *Kasturi Lal Lakshmi Reddy vs. State of Jammu and Kashmir and another – (1980) 4 SCC 1*, the Hon'ble Supreme Court has held that there are two limitations which structure and control the discretion of the Government in regard to the grant of largess by it. The first is in regard to the terms on which largess may be granted, and the other in regard to the persons who may be recipients of such largess.

15. As regards the first limitation, it is imperative that if the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be

tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid. The Hon'ble Supreme Court held that, in no uncertain terms, the State cannot act arbitrarily, capriciously or in an unprincipled manner.

16. As regards the second limitation, the Court held that it is well settled that the Government is not free, like an ordinary individual, in selecting the recipients for its largess, and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The Governmental action must not be arbitrary or capricious but must be based on some principle which meets the test of reason and relevance. The Court enunciated this rule as a rule of administrative law, and the Court also validated it as an emanation flowing directly from the doctrine of equality embodied in Article 14.

17. In *Common Cause vs. Union of India – (2014) 6 SCC 552*, the Hon'ble Supreme Court held that it was duty bound to interfere whenever the Government acts in a manner which is unreasonable and contrary to public interest. *In succinct, the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to the public interest.*

18. In *Natural Resources Allocation, in Re, Special Reference No.1 of 2012- (2012) 10 SCC 1*, the Hon'ble Supreme Court held that executive action should have clearly defined limits and should be predictable. The man on the street should know why the decision has been taken in favour of a particular party. The lack of transparency in the decision making process would render it arbitrary. The fundamental principle of executive governance is based on the realisation that sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people-oriented. Every holder of public office is accountable to the people in whom the sovereignty vests. All power should be exercised for the sake of society. But where the public functionary exercises its discretion capriciously or for considerations which are mala fide, the public functionary himself must shoulder the burden of compensation held as payable. The reason for shifting the onus to the public functionary is that when a Court directs payment of damages or compensation against the State, the ultimate sufferer is the common man because it is taxpayers' money out of which damages and costs are paid when the State or its instrumentality is made liable.

19. The Hon'ble Supreme Court held that every holder of public office, by virtue of which he acts on behalf of the State or its instrumentalities, is ultimately accountable to the people in whom sovereignty vests. As such, all powers vested in the State are meant



to be exercised for the public good and in the public interest. *Therefore, the question of unfettered discretion in an executive authority, just does not arise. The fetters on discretion are clear, transparent and objective criteria or procedure which promotes public interest, public purpose and public good. A public authority is ordained, therefore, to act reasonably and in good faith and upon lawful and relevant grounds of public interest.*

**20.** The Court held that *for the grant of State largesse, transparent and objective criteria/procedures have to be evolved so that the choice out of those who are eligible can be made fairly and without any arbitrariness. The executive must ensure that all eligible persons get a fair opportunity to compete. The exercise of discretion, which enables the competent authority to arbitrarily pick and choose out of several persons falling in the same category, would be arbitrary and, as such, violative of Article 14 of the Constitution of India. Therefore, criteria or procedures have to be adopted so that the choice among those falling in the same category is based on reason, fair play and non-arbitrariness.*

**21.** Mr Costa Frias relied on the *Union of India and others Vs Rafique Shaikh Bhikan and Another – (2012) 6 SCC 265*, on the issue of grant of Haj subsidy by the Union of India to facilitate the travel of pilgrimage to Mecca. Although the Government action was not struck down given the earlier decision in *Prafull Goradia vs Union of India – (2011) 2 SCC 568*, the Hon'ble Supreme Court directed the

Government to progressively reduce the amount of subsidy so as to completely eliminate it within a period of 10 years. The Court held that the subsidy amount may be more profitably used for the upliftment of the community in education and other indices of social development.

22. In *Tata Cellular vs. Union of India – (1994) 6 SCC 651*, the Hon'ble Supreme Court has held that the Government is the guardian of the finances of the State and it is, therefore, expected to protect the financial interest of the State. Even otherwise, it is well settled that the Government holds its resources, like property, finances, etc., in trust for the people from whom such resources are collected. Therefore, the Government cannot claim any unfettered discretion when it comes to the grant of largess. Such a grant must be principle-based, as observed by the Hon'ble Supreme Court in the case of *Kasturi Lal Lakshmi Reddy (supra)*.

23. The Hon'ble Supreme Court held that if the terms and conditions of the contract or the surrounding circumstances show that the State has acted *in order to promote the private interests of someone at the cost of the State, the Court will undoubtedly interfere and strike down the State action as arbitrary, unreasonable or contrary to public interest*. In the present case, at least *prima facie*, the State's action seeks to promote the private interests of ISKCON at the cost

of the State. Therefore, at least *prima facie*, such an action appears vulnerable.

24. The material on record suggests that initially, the ISKCON obtained permissions for the construction of such a road/access in its name. However, since this road/access was not reflected in any of the plans prepared under the Goa Town and Country Planning Act, 1974 (Planning Act), the ISKCON might have encountered difficulties in constructing the same. The Government was approached, and the Government readily obliged.

25. Section 16A of the Goa Town and Country Planning Act (Planning Act) provides that no person shall undertake any work of development in contravention of any provision of the regional plan as in force except the project/schemes/development works undertaken by the Central Government or the Government either by itself or through its agent etc. The relevant extract of the regional plan 2021, which is placed on record, shows that the road which is now being constructed finds no place in the regional plan. Accordingly, the ISKCON would be in no position, at least *prima facie*, to undertake this construction. Therefore, by the above-quoted letter dated 04.11.2021, the ISKCON approached the Hon'ble Chief Minister seeking support in the construction of the road "*through PWD Department at priority*".

26. The provisions of Section 16A of the Planning Act exempt the Central Government or the State Government from its applicability. This exemption, however, cannot be *prima facie* utilised to provide access to ISKCON's land-locked property. At least, *prima facie*, that would not be a legitimate exercise of statutory exemption reserved only for Central and State Governments. What *prima facie* the ISKCON could not achieve directly under the Planning Act (a legislative measure) has been achieved indirectly through an executive measure. This is yet another reason for the grant of the above interim relief.

27. The Petitioners have raised an arguable issue about grant of permissions under Section 17A of the Planning Act read with Regulation 4.10 of the Goa (Regulation of Land Development and Building Construction) Act, 2008 (2008 Act). Admittedly, ISKCON's land-locked property is on the mountaintop, and the construction of the road is, therefore, naturally on the slopping sites. Section 2(10) of the Planning Act defines "*development*", with its grammatical variations and cognate expressions, to mean carrying out of building, engineering or other operations in, on, over or under, land or making of any material change in any building or land or in the use of any building or land, and includes sub-division of any land.

28. At least *prima facie*, the activity of providing a road with a length of almost 1½ km (1500 metres) covering an entire mountain

involving substantial extraction and alteration of the landscape or the mountainscape would be an activity covered by the definition “development” under Section 2(10) of the Planning Act.

29. Similarly, the 2008 Regulations define “land development” in Section 2(e) in the following terms:

*“2(e) “land development” with it’s grammatical variations and cognate expressions, means the carrying out of building, engineering, change on the face of land, mining, quarrying or other operations in or on or over or under the land, or the making of any material change in any building or land, or in the use of any building or land, and includes sub-division or amalgamation of land”.*

30. Section 2(c) of the 2008 Regulations defines the expression “engineering operations” in the following terms:

*“2(c) “engineering operations” includes the formation or the laying out of means of access to a road or the laying out of means of water supply, drainage, sewerage or of electricity cables or lines or of telephone lines”*

31. Clause 4.10 of the 2008 Regulations is concerned with the development on sloping sites. This Regulation provides that no development shall be permitted if the gradient exceeds 1:4. A Chartered Surveyor or Civil Engineer is required to certify the contour plans and shall be responsible for the accuracy of the plan.

32. While the learned AG did not seriously dispute that the activity undertaken would fall within the definition of “*development*”. He submitted that clause 4.10 of the Regulations might not apply because, contextually, the same concerns the construction of buildings and not land development. He submitted that this is how the authorities have been consistently interpreting the provisions as a matter of practice. The learned AG also pointed out flaws in the expert report produced by the Petitioners for determining gradient. He submitted that the method adopted by the Planning Authorities for determining gradient in such matters was correct and should be accepted.

33. At this stage, all that we can say is that a serious issue arises regards the interpretation of provisions of the Planning Act and the 2008 Regulations in the context of determining whether the development of this nature can be permitted on the slopping sites. The expert report produced by the Petitioners suggests that the gradient exceeds 1:4. Some notings, which ultimately culminated in the grant under Section 17A flag the issue of the contour plan not being submitted by a Chartered Surveyor. Pending consideration of such arguable issues and looking at the width of the definition of the expression “*development*” or “*engineering operations*” and the regulations governing the development of sloping sites, interim relief is due, as otherwise an irreversible situation would arise.

34. Besides, clause 4.11 of the 2008 Regulations makes provisions for the development of land-locked areas, i.e. areas without access or with inadequate access, to be governed by sub-clauses (a) to (d). The statutory procedure which applies to all persons seeking to develop their land-locked property appears to have been *prima facie* bypassed when it comes to providing access and facilitating the development of ISKCON's property. The learned AG's contention that ISKCON's project amounted to “*a public purpose*” or that ISKCON was a public charitable trust is not a ground at least *prima facie*, to bypass the statutorily provided procedure under the Planning Act or 2008 Regulations.

35. The property through which the Government is constructing the road for the sole benefit of ISKCON has no houses, according to the Petitioners. None of the Respondents asserted that there are houses either along this road or who would benefit from this road being constructed by the public exchequer. The explanation that once the ISKCON set up its project of temple, goshala, etc., the members of the public from the world over would benefit from such a road cannot be *prima facie* accepted.

36. The Managing Committee of the Comunidade (Respondent No.6), after accepting an amount of Rs.10,00,000/- from ISKCON, issued an NOC in its favour granting virtually an irreversible licence

to ISKCON to construct a road spread over almost 10 to 12 thousand square metres of Comunidade property.

37. Mr Padiyar explained that the meeting of the General Body of the Comunidade was convened to consider the issue of NOC. However, for want of quorum, the meeting could not be held. He relied on Article 38 of the Code of Comunidades to contend that when the Comunidade duly convened does not meet, respective powers for approval shall be passed to the Managing Committee. He submitted that, therefore, the Managing Committee derived power to issue NOC dated 07.10.2017 to ISKCON under this Article of the Code of Comunidades.

38. The NOC dated 07.10.2017, which was issued to ISKCON to construct a road at least *prima facie*, stands superseded by a fresh NOC dated 23.03.2018 issued by the Comunidade granting NOC to the PWD/State for construction of this road. Admittedly, the proposal to grant some sort of an irreversible licence to the State Government/PWD was never put to the General Body. Going by Mr Padiyar's own contention, the Managing Committee could not have decided to issue any NOC to the State Government/PWD without the matter being considered by the General Body of the Comunidade in the first instance. These are only *prima facie* observations.



39. Mr Costa Frias relied upon guidelines dated 15.12.2021 issued by the Government for the grant of Comunidade land on a temporary basis. These guidelines show that for the grant of Comunidade land, even on a temporary basis, a detailed procedure is provided. Minimum fees to be charged for such purposes are also specified. These guidelines refer to the necessity of resolution of the General Body of the Comunidade even in matters of grant of Comunidade land on a temporary basis.

40. If the State Government expects that the grant of Comunidade land, even on a temporary basis, warrants a resolution of the General Body and has prescribed minimum fees to be charged, surely, the Managing Committee of the Comunidade, would at least *prima facie* be not competent to take such a major decision of virtually giving away 10 to 12 thousand square metres of Comunidade land by accepting an amount of Rs.10,00,000/- from ISKCON.

41. Mr Padiyar's contention that this was neither a case of lease nor sale nor exchange will require deeper examination. Although these are the terms used in the Code of Comunidade, this is a case where the Managing Committee of the Comunidade has virtually granted an irreversible licence for the user of Comunidade land or user of Comunidade land to the extent of 10 to 12 thousand square metres.

The legality of the action of the Comunidade will have to be examined deeper.

42. Mr Padiyar also submitted that the Comunidade is a private entity and merely because it has to function under the State's tutelage, the lands belonging to Comunidade are not public lands. He suggested that the Comunidades have an unfettered right to deal with their properties and strangers or foreigners have no right to question them. He pointed out that there were no protests from even a single component of the Comunidade.

43. In *Raghupati R. Bhandari Vs Comunidade of Bandora through its attorney – 2021 SCC OnLine Bom 155*, the Division Bench of this Court has considered the status of Comunidade lands in the context of the Code of Comunidades. In para 62, the Court has held that the scheme of the Code of Comunidades suggests that the Comunidades are not free to deal with their properties in the same manner as a private individual or entity. The Comunidades have to deal with their properties following the provisions contained in the said Code. There are checks and balances provided in the said Code to ensure that the Managing Committees of the Comunidades do not fritter away Comunidade's properties for their private gains or without regard to the interest of the Comunidades and its members. The Hon'ble Supreme Court dismissed the SLP against this decision.

44. *Bajirao T. Kote* (supra) relied upon by the learned AG concerns circumstances which have no comparison to the facts in the present case. Saibaba temple at Shirdi has been in existence for several years. The Court found that thousands of pilgrims daily visit the Saibaba temple at Shirdi to pay their homage and seek blessings. The State is responsible for providing facilities, maybe not to the temple but to the thousands of pilgrims who visit this temple. There was a public interest in providing connectivity between the two temples. It is in this context the Court held that providing access to the two temples would be a public purpose. The observations cannot be torn out of the context or de hors from the background facts and applied to the present fact situation. Therefore, based on such observations, at least *prima facie*, the State's action cannot be justified.

45. For all the above reasons, we are satisfied that the Petitioners have made out a *prima facie* case for grant of interim relief. If no interim relief is granted, at least from the photographs shown to us, continued works will have the potential to destroy the landscape of the entire mountain site. The learned AG informed us that, as yet, no payments have been made to the contractor. Learned AG added that the contractor has also not raised any bills to date. The Petitioners have rushed to the Court within a reasonable period of activity of road construction commencing on the mountain sites. Accordingly,

we direct that no payments should be made to the contractor, i.e. Respondent No.3, until the final disposal of this petition.

46. Mr. Bhobe's contention about ISKCON being a secular institution or that it is proposing to put up a project which will benefit the public can always be considered at the stage of the final hearing of the petition. Mr Bhobe also submitted that ISKCON has projects all over the country, but it has a policy to spend amounts received from donations in a particular State for projects in that particular State. He, therefore, submitted that the financial position of ISKCON may not be as strong in so far as its project in Goa is concerned. This was with reference to Mr. Costa Frias's submission based upon some information on the internet that ISKCON had revenue of almost Rs.40 crores in the State of West Bengal.

47. For the above reasons, we grant interim relief in the above terms.

48. Place the matter for final hearing in the week commencing from 08.01.2024. The parties must comply with the timeline for completion of pleadings.

**BHARAT P. DESHPANDE, J.**

**M. S. SONAK, J.**