

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1153 OF 2021 (F)**

1. Save Old Goa Action Committee
A society duly registered under the Societies registration Act having Regd No.1194/Goa/2011 With address at C/O Fatima Pereira, House No. 198/6, Calwaddo, Corlim, Tiswadi, Goa. Through its President Fatima Pereira, Aged 51 years, married, wife of Franklin Pereira, Indian national, House No. 198/6, Calwaddo, Corlim, Tiswadi, Goa Petitioner

Versus

1. Union of India Through the Secretary, Ministry of Culture, Department of Archaeology New Delhi.
2. The State of Goa Through its Chief Secretary Alto Porvorim Goa.
3. The Archaeological Survey of India Through its Director (Monuments —II) Government of India, Dharohar Bhavan, 24 Tilak Marg, New Delhi.
4. The Superintendent Archaeologist, The Archaeological Survey of India Government of India, Goa Circle, Church Complex Old Goa.
5. The Senior Conservation Assistant The Archaeological Survey of India Goa Circle Church Complex Old Goa.
6. The Office of Chief Town Planner and Member Secretary of Conservation Committee, Town & Country Planning Department, 2nd Floor, Dempo Towers, Patto Plaza, Panaji Goa.

7. The Village Panchayat Se-Old Goa
Through the Secretary Old Goa,
Tiswadi Goa.
8. Suvrana Suraj Lotlikar, Aged
about 40 years, Indian National,
wife of Suraj L. Lotlikar, C/O Gopi
Mhamal, Manasa Sarover, 1st
Level Near Govt Circuit House,
Altinho, Panaji—Goa 403 401.
9. Goa Coastal Zone Management
Authority, Through its Member
Secretary, 4th Floor, Dempo
Towers, Patto, Panaji, Goa. Respondents

Mr. John Abreu Lobo, Advocate for the Petitioner.

Mr. Raviraj Chodankar, Standing Counsel for Respondent
Nos. 1, 3, 4 and 5.

Mr. Devidas J. Pangam, Advocate General with Ms. Ankita
Kamat, Additional Government Advocate for Respondent
Nos. 2, 6 and 9.

Mr. D. Lawande with Mr. Pradosh Dangui and Ms. A.
Joglekar, Advocates for Respondent No. 8.

WITH
WRIT PETITION NO. 1160 OF 2021 (F)

1. Suvarna Suraj Lotlikar, c/o Gopi
Mhamal, Manasa Sarovar, 1st
Level Near Govt. Circuit House,
Altinho, Panaji-Goa 403 401. Petitioner

Versus

1. Union of India, Through the
Secretary, Department of
Archaeology, New - Delhi;
2. The Archaeological Survey of India
Through its Director (Monuments
—II) Government of India,
Dharohar Bhavan, 24 Tilak Marg,
New Delhi;
3. The Superintendent Archaeologist,
The Archaeological Survey of India
Government of India, Goa Circle,
Church Complex, Old Goa;

4. Shri K. Amarnath Ramkrishna,
The Superintending Archaeologist,
Archaeological Survey of India,
Goa Circle, Old Goa; Respondents

Mr. D. Lawande with Mr. Pradosh Dangui and Ms. A. Joglekar, Advocates for the Petitioner.
Mr. Raviraj Chodankar, Standing Counsel for Respondent Nos. 1, 2 and 3.

**WITH
CONTEMPT PETITION NO. 1162 OF 2021 (F)
IN
WRIT PETITION NO. 1161 OF 2021 (F)**

1. Suvarna Suraj Lotlikar, 42 Years,
c/o Gopi Mhamal, Manasa Sarovar,
1st Level Near Govt. Circuit
House, Altinho, Panaji-Goa 403
401. Petitioner

Versus

1. Mr. K. Amarnath Ramakrishna, the
Superintendent Archaeologist, The
Archaeological Survey of India,
Government of India, Goa Circle,
Church Complex, Old Goa. Respondent

Mr. D. Lawande with Mr. Pradosh Dangui and Ms. A. Joglekar, Advocates for the Petitioner.

**Coram:- M.S. SONAK &
 M.S. JAWALKAR, JJ.**

Date:- 3rd MAY 2021

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

Heard Mr. J.A. Lobo, the learned Counsel for the petitioner in Writ Petition No. 1153 of 2021 (Filing), Mr. R. Chodankar, the learned Standing Counsel for the Central

Government on behalf of respondent nos. 1, 3, 4, and 5 in Writ Petition No. 1153 of 2021 (Filing) and for respondent nos. 1, 2, and 3 in Writ Petition No. 1160 of 2021 (Filing), Mr. Devidas Pangam, the learned Advocate General, who appears along with Ms. Ankita Kamat, the learned Additional Government Advocate for respondent nos. 2, 6, and 9 in Writ Petition No. 1153 of 2021 (Filing) and Mr. D. Lawande along with Mr. Pradosh Dangui and Ms. A. Joglekar, the learned Counsel appearing for the petitioner in Writ Petition No. 1160 of 2021 (Filing) and Contempt Petition No. 1162 of 2021 (Filing).

2. Rule. Rule made returnable forthwith at the request and with the consent of the learned Counsel for the parties. Having regard to the issues involved in all these matters, we deem it appropriate to dispose of the same by common judgment and order.

3. In Writ Petition No. 1153 of 2021, the petitioner, in the purported public interest has sought the following substantive relief:

“a) For a writ of mandamus or a writ in the nature of mandamus or any other appropriate Writ, Order or direction to the Respondent

quashing/setting aside the Impugned permission dated Approval by the GCZMA dated 28/12/2015, Approval/NOC from the Conservation Committee of the Town and Country Planning Department dated 07/10/2016, Technical Clearance order dated 18/10/2016, Construction license dated 14/11/2016 issued by the Village Panchayat of Se Old Goa and renewal of construction license dated 04/10/2019 issued by the Village Panchayat of Se Old Goa and hold that the permission dated 03/02/2020 issued by the ASI overrides the same as it is specific to the structure as existing in property bearing Survey No. 4/1 of Village Ella in the portion of the property as purchased by the respondent No. 8, and that the works to be carried out in the property Survey No. 4/1 Part Village of Ella be specifically in terms as permitted by the permission dated 03/02/2020 issued by the ASI under the constant supervision and control by the respondent Nos. 4 and 5."

4. In Writ Petition No. 1160 of 2021, which has been instituted by respondent no. 8 (Lotlikar) in Writ Petition No. 1153 of 2021, the petitioner, has questioned the notice dated 08.04.2021 issued by the Superintending Archaeologist (SA) *inter alia* on the ground that the same is unjustified and seeks to overreach the judgment and order made by this Court on 22.09.2020 in LD-VC-CW-132-

2020. On the same ground,⁶ Lotlikar has also alleged that the SA has committed a contempt of court.

5. In essence, therefore, all these Petitions are like cross petitions concerning the same issue, and therefore, it is only appropriate that the same are taken for disposal together.

6. Mr. Lobo, the learned Counsel for the petitioner in Writ Petition No. 1153 of 2021 states that this is a case where Lotlikar has secured permission from various Authorities by misrepresentation and fraud. He pointed out that the sale deed by which the petitioner purchased the property surveyed under no. 4/1 at Old Goa had only sold to the petitioner a hut or a loja for storage of coconuts. He submits that house no. 57 was not the subject matter of conveyance, since, this residential house, had been sold by a separate sale deed by one Munot (HUF). Mr. Lobo submits that from this it is quite clear that Lotlikar could not have obtained any permission from any Authority even for repair or renovation to any house, which was not even existing in the property surveyed under no. 4/1 sold to said Lotlikar. He submits that permissions and approvals granted by various Authorities

are liable to be quashed and set aside on this ground alone.

7. Mr. Lobo without prejudice to the aforesaid submits that in any case the activities which said Lotlikar proposes to undertake will have to be strictly confined to permission dated 03.02.2020 issued by the ASI that is the apex authority in terms of section 19 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (said Act). He submits that this position has been reiterated by this Court in its judgment and order dated 22.09.2020. He submits that at the site, said Lotlikar is carrying out reconstruction, contrary to the express prohibition for the same in the permission dated 03.02.2020 issued by the ASI. Mr. Lobo, therefore, submits that the relief as prayed for by the petitioner that the construction is restricted to the specific conditions set out in the permission dated 03.02.2020 is liable to be granted.

8. Mr. Lawande, the learned Counsel appearing for Lotlikar makes it clear that Lotlikar is acting strictly within the confines of the permission dated 03.02.2020, more particularly, as interpreted by this Court in its judgment

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and order dated 22.09.2020.⁸ He submits that Lotlikar has no intention whatsoever to transgress the permission dated 03.02.2020 and this may be recorded once again by this Court as a statement made on behalf of said Ms. Lotlikar. He submits that upon this being clarified, there is no reason to entertain Writ Petition No. 1153 of 2021. He also submits that there is no misrepresentation or fraud involved and the petitioner, cannot seek to reopen the permissions and approvals granted in the year 2015 and 2016 by several Authorities after examining the matter in detail.

9. Mr. Lawande submits that the SA, by issuing notice dated 08.04.2021 is seeking to reopen the very issues which were completely settled by this Court in its judgment and order dated 22.09.2020. He submits that several communications similar to notice dated 08.04.2021 were specifically set aside by this Court after directing said Ms. Lotlikar to strictly abide by permission dated 03.02.2020 issued by the ASI. Mr. Lawande submits that there is no justification for the issuance of notice dated 08.04.2021 and for stopping the work at the site as was attempted even earlier by this very Officer. Mr. Lawande submits that the SA is bent upon overreaching the orders

made by his superiors as also this Court.

10. Mr. Chodankar, the learned Standing Counsel submits that Ms. Lotlikar will have to abide by permission dated 03.02.2020 issued by ASI as interpreted by this Court in its judgment and order dated 22.09.2020. He points out that the SA, even now, only seeks the implementation of the permission dated 03.02.2020 and it is in this regard that the notice was issued. He submits that as long as Ms. Lotlikar confines the activities to the permission dated 03.02.2020, there can be no difficulty. He submits that all conditions concerning color, facade, not exceeding the existing plinth will have to be completed by Ms. Lotlikar.

11. The rival contentions now fall for our determination.

12. As regards this very construction and in the particular context of permission dated 03.02.2020, we had passed the detailed judgment and order dated 22.09.2020 in LD-VC-CW-132-2020 instituted by Lotlikar. To this Petition, the Archaeological Survey of India (ASI), the Superintending Archaeologist (SA), the Senior

Conservation Assistant as well as several others were impleaded as respondents. The reasoning therein may, therefore, be regarded as a part of the reasoning in this judgment and order, as well.

13. In the judgment and order dated 22.09.2020, we had recorded and even today, it is not disputed before us that Lotlikar had applied for and had obtained from the following Authorities permissions/approvals/NOCs to undertake the activities in the property bearing survey no. 4/1:

- (a) Approval dated 28/12/2015 issued by the Goa Coastal Zone Management Authority;
- (b) Approval/NOC from the Conservation Committee of the Town and Country Planning Department dated 7/10/2016;
- (c) Plans approved by the Conservation Committee of the Town and Country Planning Department;
- (d) Technical clearance order dated 18/10/2016 issued by the Town and Country Planning Department;
- (e) Construction licence dated 14/11/2016, issued by the Village Panchayat of SE Old Goa; and
- (f) Renewal of Construction Licence dated 4/10/2019 issued by the Village Panchayat of SE Old Goa.

14. Besides, we had also recorded that the structure which is the subject matter of controversy is at a distance of about 110 meters from the protected monuments under the said Act. It is precisely, for this reason, that Lotlikar was required to and has obtained permission from ASI under the provisions of the said Act. This is the permission dated 03.02.2020. This permission dated 03.02.2020 has not even been challenged by the Petitioner. Rather, it is the case of the Petitioner that works be carried out specifically in terms of such permission dated 03.02.2020. This is quite clear from prayer clause (a) of the Petition that is the only substantive relief claimed.

15. In our judgment and order dated 22.09.2020, we had made it clear that Lotlikar will have to abide by terms and conditions set out in permission dated 03.02.2020 and even directions were issued to Lotlikar to abide by such terms and conditions. To this extent, therefore, Mr. Lobo, the learned Counsel for the petitioner is quite right in his alternate submission that Lotlikar's activities will have to abide by the permission dated 03.02.2020.

16. Even Mr. Chodankar has submitted that Lotlikar

will have to abide by the permission dated 03.02.2020 and as regards the activities undertaken at the site, Ms. Lotlikar will have to abide by the permission dated 03.02.2020 as clarified in the judgment and order dated 22.09.2020.

17. Mr. Lawande, the learned Counsel for Lotlikar has submitted that the activities at the site are consistent with the terms and conditions set out in the permission dated 03.02.2020 and Lotlikar whatsoever has no intention to travel beyond permission dated 03.02.2020.

18. According to us, there is common ground that Lotlikar will have to abide by permission dated 03.02.2020 and cannot travel beyond the same. Since some ambiguity was sought to be raised in the context of some of the terms and conditions in the permission dated 03.02.2020 by the SA, Lotlikar was required to institute a petition before us that culminated in judgment and order dated 22.09.2020. That judgment and Order has been accepted by the Respondents i.e. the ASI and SA. In fact, ASI had not even joined serious issues with the contentions of Lotlikar. Only the SA had raised some issues which were dealt with in the Judgment and order in some detail. Therefore, now the

parties will have to abide by our judgment and order dated 22.09.2020 rendered in the earlier round.

19. Even Mr. Chodankar, the learned Standing Counsel appearing *inter alia* on behalf of the SA submitted that the parties will have to go by permission dated 03.02.2020 as interpreted by this Court in its judgment and order dated 22.09.2020. He submitted that as long as Lotlikar is prepared to go by this, there can be no difficulty in her proceeding with the activities at the site.

20. Accordingly, we make it clear that Lotlikar, will have to abide by the terms and conditions set out in permission dated 03.02.2020 as clarified and construed by us in our judgment and order dated 22.09.2020. The statement made on behalf of Lotlikar that she shall abide by the same is accepted. To this extent, the Writ Petition No. 1153 of 2021 can be partly allowed. The reference to reconstruction will have to be construed in the context of the detailed plans approved not only by the ASI in its permission dated 03.02.2020 but the similar plans approved by the various other authorities including the conservation or the heritage committee of the Planning Department. Thus construed, there is no merit in the

contention about the activity at the site being in breach of the terms and conditions in permission dated 03.02.2020. The stage for compliance with conditions as to color, façade is yet to be reached. There is no allegation of the activity exceeding the specified plinth.

21. In so far as the challenge to the approvals dated 28.12.2015 issued by GCZMA, approval dated 07.10.2016 issued by the Conservation Committee of the Town and Country Planning Department, technical clearance dated 18.10.2016, construction license dated 14.11.2016 or construction license dated 04.10.2019 is concerned, the same, according to us, lacks merits. In the first place, the allegations of misrepresentation or fraud have not been substantiated and in any case, would involve adjudication into highly disputed facts. Secondly, we are not even sure whether the petitioner, who claims to have instituted this Petition in the purported public interest is the proper relator for making such allegations that too, in the absence of the original vendor or Munot (H.U.F.) Thirdly, several Authorities, based on the documents produced have examined the matter threadbare and only thereafter issued the permissions. In the previous round, none of the authorities even hinted at any misrepresentation or fraud.

Therefore, such permissions, cannot be set aside almost after five to six years after the same were issued based upon such unsubstantiated allegations of misrepresentation and fraud. Fourthly, there is no explanation in the Petition as to why the Petition for challenging these approvals or permissions issued way back in the year 2015-16 was not instituted by the petitioner no sooner the same were issued, assuming that the petitioner, would be a proper relator to raise such issues. To allege that every permission or every survey record was a result of some misrepresentation or fraud, without furnish of any serious particulars cannot be sufficient to set aside such permissions/approvals granted almost five to six years before the instituting of this Petition. Accordingly, the challenge to such permissions and approvals granted by several technical authorities is quite misconceived and is hereby rejected.

22. Now that it is clarified that Lotlikar will have to abide by the permission dated 03.02.2020 as clarified by this Court in its judgment and order dated 22.09.2020, the petitioner in Writ Petition No. 1153 of 2021 is granted partial relief in that terms. Further, with this clarification, there is no justification for the SA to once again restrain

Lotlikar from proceeding further following permission dated 03.02.2020 issued by the ASI as has been clarified or interpreted by this Court in its judgment and order dated 22.09.2020. Significantly, in this case, the ASI, which has issued the permission dated 03.02.2020 does not have any problem with the activities at the site. The SA, even in the past, had attempted to virtually sit in judgment over the permission dated 03.02.2020 issued by ASI, which is an Authority superior to the SA. The series of communications issued by this very SA had been quashed and set aside by us in our judgment and order dated 22.09.2020.

23. Therefore, Mr. Lawande's contention that the notice dated 08.04.2021 now issued by the very same SA is again, an attempt to overreach the permission dated 03.02.2020 issued by his superior i. e. the ASI and also our judgment and order dated 22.09.2020 cannot be lightly brushed aside. However, having regard to the submission made by Mr. Chodankar that the SA was only interested in securing the compliance of the permission dated 03.02.2020 as interpreted by this Court, we refrain from taking the matter any further or initiating any proceedings for contempt, even though, Lotlikar, has instituted

24. Accordingly, we set aside the notice dated 08.04.2021 by accepting the statement made by Mr. Lawande, the learned Counsel for Lotlikar, that Lotlikar, will abide by permission dated 03.02.2020 as clarified and interpreted by this Court in its judgment and order dated 22.09.2020.

25. Mr. Lawande, the learned Counsel for Lotlikar states that the reference to High Court Order dated 22.09.2020 will be removed from the board, which has been put up at the site giving a list of permissions, which Lotlikar has obtained to undertake the activities at the site. He states that this will be done within three days from today. This statement is also accepted and Lotlikar is directed to act accordingly.

26. The Rule is, accordingly made absolute in terms of prayer clause (a) of Writ Petition No. 1160 of 2021.

27. The Rule is also made partly absolute in Writ Petition No. 1153 of 2021 and Lotlikar is directed to abide by permission dated 03.02.2020 issued by the ASI as clarified and interpreted by this Court in its judgment and

order dated 22.09.2020. However, the challenge to the various permissions referred to in prayer clause (a) of the said Petition is rejected.

28. For the reasons indicated above, we do not think that it will be appropriate to initiate any contempt proceedings against Mr. K. Amarnath Ramakrishna, the Superintending Archaeologist, on this occasion. However, we hope and expect that as long as there is compliance with the permission dated 03.02.2020 issued by the ASI as clarified and interpreted by this Court, the Officer, should not create any unnecessary hurdles to the activity at the site.

29. The two Writ Petition (Filing) No. 1153 of 2021 and Writ Petition (Filing) No. 1160 of 2021 as well as the Contempt Petition (Filing) No. 1162 of 2021 are disposed of in the aforesaid terms.

30. There shall be no order as to costs. All concerned to act based on an authenticated copy of this order.

M.S. JAWALKAR, J.

M.S. SONAK, J.

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