

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.347 OF 2023

1. Dr Fenton De Souza,
S/o. Michael De Souza,
Age 39 years, Indian National,
R/o. H.No.1605,
Grand Chivar, Anjuna,
Bardez-Goa.

2. Mr Trevor Mascarenhas,
Son of late Basil Mascarenhas,
Aged 48 years, Indian National,
Resident of Prudential Paradise,
4C3-71, Peddem, Mapusa,
Bardez, Goa.

....Petitioners

Versus

1. State of Goa,
Through its Chief Secretary,
Having its office at Secretariat,
Alto, Porvorim-Goa.

2. The Secretary,
Revenue Department,
Govt. of Goa, Secretariat,
Alto, Porvorim-Goa.

3. The Administrator of Comunidades,
North Zone, Having office at
Comunidade Ghar,
Mapusa, Bardez-Goa.

4. The Comunidade of Anjuna
Through its Attorney
Having its office at Anjuna,

Bardez-Goa.

5. The Secretary
Village Panchayat of Anjuna
Anjuna, Bardez-Goa.

6. Mr John Stepen D'Souza
Major of age, Indian National,
R/o. H.No.630, Vagator,
Bardez-Goa.

7. Spacebound Web Labs Private Limited
CTS No.125, Village Vile Parle,
Near W.E. Highway, Next to Neelkanth
Complex, Sahar Road, Vile Parle (East),
Mumbai 400099.

....Respondents

Mr Nigel Da Costa Frias with Ms Barbara Andrade, Advocates for the Petitioners.

Mr P. Arolkar, Additional Government Advocate for Respondent Nos.1,2 and 3.

Mr Simoes Kher Ceazer John with Ms Neha Kholkar, Advocate for Respondent No.4.

Ms Annelise Fernandes, Advocate for Respondent No.5.

Mr Nitin N. Sardesai, Senior Advocate with Mr Nikhil Pai, Advocate for Respondent No.7

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

Reserved on: 25th SEPTEMBER 2023

Pronounced on: 28th SEPTEMBER 2023

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

1. Heard Mr Nigel Da Costa Frias and Ms Barbara Andrade for the petitioners, Mr P. Arolkar, learned Additional Government Advocate for

respondent nos.1,2 and 3, Mr Simoes Kher with Ms Neha Kholkar for respondent no.4, Ms Annelise Fernandes for respondent no.5 and Mr Nitin N. Sardesai learned Senior Advocate with Mr Nikhil Pai for respondent no.7.

2. After the records showed that service was complete upon all the respondents, including the sixth and seventh respondents, by order dated 03.07.2023, this petition was posted for final disposal at the admission stage. On 06.09.2023, the matter was partly heard but had to be adjourned on the request of Mr Pai, the learned Counsel for the seventh respondent. The matter was finally heard on 25.09.2023 and reserved for orders.

3. Rule. Learned Counsel appearing for the respondents waived service.

4. The petitioners are the Gauncars/Zonnkars of the Comunidade of Anjuna, which is governed under the Code of Comunidades, 1961 (the Code). They challenge the action of the first to the fourth respondents, allowing the sixth and seventh respondents the temporary use of Comunidade property surveyed under no.206/1 of Anjuna village, admeasuring 50,000 sq. mtrs. (for a period of nine days) and 1,42,856 sq. mtrs. (for a period of thirty days) to hold music festivals on a commercial scale by paying an amount of ₹3,32,880/- (Rupees Three Lakhs Thirty-Two Thousand Eight Hundred and Eighty only) and ₹38,04,264/- (Thirty-Eight Lakhs Four Thousand Two Hundred and Sixty-Four only), even though the general body of the Comunidade

of Anjuna had resolved that such permission could be granted to sixth and seventh respondents against payment of an amount of ₹16,00,000/- (Rupees Sixteen Lakhs only) and ₹75,00,000/- (Rupees Seventy-Five Lakhs only), respectively. In effect, therefore, this petition complains about short charging and consequently short payment to and by the sixth and seventh respondents and seeks appropriate direction to them to make good the balance payment to the Comunidade of Anjuna.

5. The petitioners also seek some declaratory reliefs in the context of the Government's guidelines dated 15.12.2021 for the grant of Comunidade lands on a temporary basis by alleging that these guidelines were being misinterpreted or misconstrued by the Administrator of Comunidade. The petitioners alleged that based upon such patent misconstruction, the Administrator issued the impugned communications, resulting in short charges to the sixth and seventh respondents. The petitioners point out that, as a result, the Comunidade of Anjuna was deprived of legitimate revenue due to it. This, in turn, affected the rights and entitlement of the petitioners, who are the components of the Comunidade entitled to receive dividends, zons, etc., from the Comunidade. The petitioners contend that even otherwise, the Comunidade cannot be permitted to fritter away the Comunidade's property in breach of the Code of Comunidades or for consideration lesser than the consideration resolved to be charged by the general body of the Comunidade members.

6. The parties, like the sixth and the seventh respondents, organise and hold commercial music festivals on a large scale on Comunidade properties, including the property surveyed under no.206/1 at Anjuna. One Trevor Mascarenhas instituted Writ Petition No.1119/2021, complaining that the Comunidade was involved in permitting such parties to hold music festivals on a large commercial scale without there being any guidelines regulating the grant of Comunidade properties or providing for the scale of fees to be charged for such events. The allegation was that the Comunidades and the Administrator of Comunidades were frittering away the Comunidade's properties, taking advantage of the fact that there were no guidelines or rates prescribed for the grant of such permissions.

7. The Division Bench of this Court comprising of T.V. Nalawade and Smt. Bharati H. Dangre, JJ. disposed of Writ Petition No.1119/2021 by order dated 15.02.2021. This petition was disposed of by recording learned Advocate General's statement that guidelines would be framed within four months and such guidelines would be made effective. Pursuant to this Court's order dated 15.02.2021, disposing of Writ Petition No.1119/2021, the Government framed guidelines dated 15.12.2021 for the grant of Comunidade lands on a temporary basis. These guidelines are on pages 53 and 54 of the paperbook of this petition.

8. The sixth and the seventh Respondents applied to the Comunidade of Anjuna (respondent no.4) for permission to organise a

music festival on a commercial scale under the names and styles of “Rider Mania” and “Sunburn Music Festival” for periods between 14th to 22nd November and 10th December to 10th January in the Comunidade property surveyed under no.206/1. Upon receipt of such applications, the Comunidade published a notice in the local newspapers convening an extraordinary general body meeting of the Comunidade members to be held on 13.11.2022 to decide the said applications for grant of Comunidade lands on a temporary basis to the sixth and the seventh respondents to hold music events on a commercial scale.

9. The general body of the Comunidade of Anjuna which met on 13.11.2022 resolved to grant sixth respondent permission to organize its musical event (Rider Mania) on an area admeasuring 50,000 sq. mtrs. from out of the Comunidade’s property surveyed under no.206/1 for a period of nine days from 14th to 22nd November, subject to the sixth respondent making a lump sum payment of ₹16,00,000/- (Rupees Sixteen Lakhs only) to the Comunidade of Anjuna. Similarly, the general body of the Comunidade of Anjuna, in the above meeting held on 13.11.2022, resolved to grant the seventh respondent permission to organize the musical event (Sunburn Music Festival) in the area admeasuring 1,42,856 sq. mtrs. from out of the Comunidade’s property surveyed under no.206/1 for a period of thirty days from 10th December to 10th January 2022 subject to payment of lump sum of ₹75,00,000/- (Rupees Seventy Five Lakhs only).

10. The above resolutions were forwarded by the Comunidade (respondent no.4) to the Administrator of Comunidades (respondent no.3) in compliance with the guidelines dated 15.12.2021. The Administrator of Comunidades by the impugned communication dated 18.11.2022 returned the sixth respondent file to the Comunidade by observing that the amount resolved by the general body of the Comunidade to be charged from the sixth respondent was not in accordance with the guidelines/Office Memorandum dated 15.12.2021. The Administrator of Comunidades (respondent no.3) therefore directed the Comunidade to charge the sixth respondent in terms of the guidelines/Office Memorandum dated 15.12.2021.

11. In so far as the seventh respondent's file was concerned, the Administrator of Comunidade (respondent no.3) addressed a communication dated 21.11.2022 to the Director of Civil Administration/Collector, North Goa District, in which the Administrator recorded that the charges payable by the seventh respondent would be ₹31,70,220/- (Rupees Thirty One Lakhs Seventy Thousand Two Hundred and Twenty only) to be paid to the Comunidade of Anjuna, ₹6,34,044/- (Rupees Six Lakhs Thirty Four Thousand Forty Four only) payable to the Administrator of Comunidades and ₹3,17,022/- (Rupees Three Lakhs Seventeen Thousand and Twenty Two only) payable to the Director of Civil Administration towards administrative service "as per the calculations mentioned in Office Memorandum no.17/11/2021-RD-I/5583 dated

15.12.2021". A copy of this communication was marked to the Attorney/President of the Comunidade of Anjuna.

12. At this stage, the petitioners instituted the present petition. This Court, in order dated 21.12.2022 noted that the Administrator and the Comunidade had *prima facie* misinterpreted the Office Memorandum dated 15.12.2021 because the rate of ₹4,500/- (Rupees Four Thousand Five Hundred only) per sq. mtr. stated therein was only by way of an example and not the rate that the general body of the Comunidade was expected to base its workings on. Even the learned Advocate General clarified that the Administrator had only directed the Comunidade to be guided by the ready reckoner under the Goa Stamp (Determination of True Market Value of Property) Rules, 2003 as revised or reissued on 05.08.2020. It was submitted that these reckoner rates are the minimum below which the Comunidades could not charge. In effect, this meant that there was no bar for the Comunidades to charge higher amounts. Accordingly, the Comunidade made a statement that it would levy fees by taking the land rate at ₹5,400/- (Rupees Five Thousand Four Hundred only) per sq. mtr. as an interim measure. This statement was recorded and as an interim measure, the Comunidade was directed to act accordingly.

13. In our order dated 21.12.2022, we had directed the Comunidade to furnish details of other events that may have taken place on the Comunidade land by similarly misinterpreting the Office Memorandum dated 15.12.2021, thereby short-charging the organizers

of such events. Based upon this Court's interim order, the Government, vide communication dated 26.12.2022, approved the proposal for a temporary grant of the Comunidade land to the seventh respondent. These communications dated 26.12.2022 were addressed to the Administrator of Comunidade (respondent no.3) and the Collector (North), who functions as the Director of Civil Administration.

14. Mr Costa Frias, the learned Counsel for the petitioners submitted that the Office Memorandum dated 15.12.2021 refers to the rate of ₹4,500/- (Rupees Four Thousand Five Hundred only) per sq. mtr., only as an illustration or as an example. In any case, he submits that the reckoner rates referred to by the learned Advocate General only prescribe the minimum rates or the base rates so that the Comunidade cannot levy charges below such minimum or base rates while granting permission for the user of Comunidade lands on a temporary basis. He submits that the general body of the Comunidade was empowered to decide on the rates at which the sixth and the seventh respondents could be granted permission to use the Comunidade lands as long as such charges were not below the minimum prescribed rates in the reckoner dated 05.08.2020 referred to by the learned Advocate General. Mr Costa Frias submitted that neither the Administrator nor the Government had any power under the Code of Comunidade or even otherwise to insist upon the Comunidade's reducing the charges as determined by the general body of the members of the Comunidade or otherwise forcing the Comunidade to grant its lands to the sixth and

the seventh respondents for charges much lesser than those determined by the general body of the Comunidade.

15. Mr Costa Frias referred to certain provisions of the Code of Comunidades in the context of the powers of the general body of the Comunidade, the Administrator and the Government. He submitted that under Article 5 of the Code of Comunidades, because the Comunidades were under the administrative tutelage of the State, minimum rates could perhaps be prescribed by the Government. However, Mr Costa Frias submitted that the power of tutelage which was meant to be exercised for protecting the interest of the Comunidade and preventing the Comunidade from frittering away its property could not be used by the Government to insist upon the Comunidades allotting its properties even on a temporary basis for rates much lesser than the rates determined by the general body of the Comunidade. Mr Costa Frias, therefore, submitted that the actions of the Administrator and the Government in insisting upon the Comunidade of Anjuna allotting the Comunidade lands on a temporary basis to the sixth and seventh respondents upon levy of charges much lesser than what were determined by the general body of the Comunidade was ultra vires and arbitrary. He submitted that necessary directions must be issued to the respondents to make good the difference within a time-bound period.

16. Mr Arolkar, the learned Additional Government Advocate fairly admitted that the Administrator had misconstrued the Office Memorandum dated 15.12.2021. He conceded that the rate of

₹4,500/- (Rupees Four Thousand Five Hundred only) was only an example and the said rate was never intended to apply either to the Comunidade of Anjuna or apply uniformly to all the Comunidades in the State of Goa to whom the Office Memorandum dated 15.12.2021 was directed or addressed.

17. Mr Arolkar pointed out that the learned Advocate General had already clarified that even the rates referred to in the reckoner dated 05.08.2020 were only the minimum or base rates. He, therefore, submitted that there could be no bar to the general body of the Comunidade levying charges determined at rates higher than the rates reflected in the reckoner. He submitted that this is what the Administrator had actually meant but he accepted that there was no clarity in the communications addressed by the Administrator to the Comunidade of Anjuna.

18. To the Court's query as to whether there was any power to the Code of Comunidade empowering the Government to unilaterally reduce the rates determined by the general body of the Comunidade while granting approval for the proposal of the Comunidade to allot its lands temporarily for music festival, jatras, feasts, etc., Mr Arolkar accepted that there was no such provision under the Code of Comunidades. However, he submitted that Article 5 of the Code of Comunidades provides for Administrative tutelage by the Government. He submitted that under this Article, the Government could always prescribe the minimum rates that could be levied in such cases by the

Comunidades so that Comunidade properties were not frittered away or allotted for illusory consideration or consideration having no realistic nexus with the market prices. He submitted that this was more so when it came to grant of approvals for commercial events.

19. Mr Simoes Kher, learned Counsel for the Comunidade of Anjuna submitted that the Comunidade was interested in receiving compensation at the rates determined by its general body which is ₹16,00,000/- (Rupees Sixteen Lakhs only) from the sixth respondent and ₹75,00,000/- (Rupees Seventy Five Lakhs only) from the seventh respondent. He submitted that to this extent, the Comunidade supported the reliefs sought for in the petition.

20. Mr Sardessai, the learned Senior Advocate for the seventh respondent, at the outset, pointed out that the petitioners had not bothered to challenge the Government's decision reflected in a communication dated 26.12.2022 approving rate of ₹5,400/- (Rupees Five Thousand Four Hundred only) per sq. mtr. and determining the compensation at ₹31,70,220/- (Rupees Thirty One Lakhs Seventy Thousand Two Hundred and Twenty only) payable to the Comunidade of Anjuna with a markup of 20% (payable to the Administrator) and a markup of 10% payable to the Director of Civil Administration. He submitted that the Government had taken into account the reckoner rates which, according to him, was the regular practice adopted by the Comunidade, the Administrator and the Government.

21. Mr Sardesai submitted that even in the past charges were levied according to the ready reckoners of 2003, 2009, 2020, etc. He submitted that in the present case, both the Administrator and the State Government had misinterpreted or misconstrued the ready reckoner issued under the Stamp Act. He pointed out that the Comunidade property which was allotted to the seventh respondent was largely classified as an orchard zone in the Regional Plan prepared under the Goa, Town and Country Planning Act. He submitted that the reckoner referred to by the learned Advocate General had in fact provided the rate of ₹4,500/- (Rupees Four Thousand Five Hundred only) in so far as the Anjuna village was concerned. He pointed out that the rate of ₹5,400/- (Rupees Five Thousand Four Hundred only) was only the proposed rate which could be applicable from the following financial year.

22. Mr Sardesai pointed out that even the rates of ₹4,500/- (Rupees Four Thousand Five Hundred only) or ₹5,400/- (Rupees Five Thousand Four Hundred only), as the case may be, were based on the premise that the property was in the SI zone having an area of up to 1000 sq. mtrs. These base rates were meant to change as indicated in the appendix to the ready reckoner. He pointed out that since the land allotted to the seventh respondent was in the orchard zone and having an area above 50,000 sq. mtrs., the appendix to the reckoner provided the rate of 70% less than the base value. Mr Sardesai submitted that the Administrator and the Government by misconstruing its ready

reckoner took the base rate at ₹5,400/- (Rupees Five Thousand Four Hundred only) when in fact the base rate should have been in the range of not more than ₹1,500/- (Rupees One Thousand Five Hundred only) or thereabouts.

23. Mr Sardesai, however, clarified that the seventh respondent was not in the present matter, objecting to the base rate or the ultimate charges determined by the Administrator and the Government. He pointed out that these amounts were duly paid by the seventh respondent without any protest. He, however, submitted that if the Administrator or the State Government were to have correctly interpreted the ready reckoner rates then it is apparent that they have charged the seventh respondent almost four times the base rates. He, therefore, submitted that there is no warrant to further increase these rates based on the submissions of the petitioners. He submitted that the Comunidade did not choose to file any petition to challenge the communications of the Administrator or the State Government determining the rates.

24. Mr Sardesai submitted that under Article 5 of the Code of Comunidade, the Comunidade has to function under the administrative tutelage of the State. Accordingly, he submitted that it was open to the Administrator and the State Government to reduce the rates proposed by the general body of the Comunidade. He reasoned that high rates would perhaps discourage or deter potential applicants thereby refusing the revenue of the Comunidades.

25. Mr Sardesai referred to Black's Law Dictionary for the expression "*tutelage*". He submitted that this included the Act of protecting or guiding. He submitted that by reducing the rate determined by the general body of the Comunidade, the State Government had in fact protected the interest of the Comunidade and guided the Comunidade in the interests of the Comunidade and its shareholders.

26. Mr Sardesai pointed out that the resolutions/decisions of the Comunidade under Article 30(4)(f) or (j) are not enforceable without the approval of the Government. He submitted that while granting the approval, the Government was well within its power to modify the conditions proposed by the general body of the Comunidade. Mr Sardesai also referred to Article 153 of the Code to submit that the Government was empowered under sub-clause 16 of Article 153 to do everything that the Comunidade was empowered to do under the Code. Based on all this, Mr Sardesai submitted that the Administrator's and Government's orders were *intra vires*. He submitted that there was no arbitrariness or non-application of mind because the Administrator/Government had charged the seventh respondent almost four times the base rates as per the ready reckoner under the Stamp Act.

27. Mr Sardesai submitted that if the seventh respondent were to have been informed that they had to pay ₹75,00,000/- (Rupees Seventy Five Lakhs only) as resolved by the general body, perhaps the seventh respondent would not even have held its music festival on this

Comunidade's property and scouted with alternate venue. He, therefore, submitted that at this stage it would be harsh to require the seventh respondent to pay the balance amount to the Comunidade or to the Administrator and the State Government. He vaguely raised the issue of estoppel or promissory estoppel.

28. Mr Sardesai submitted that to the best of the seventh respondent's knowledge, no less than twenty events were held on the Comunidade's property surveyed under no.206/1 in the past years. He, however, submitted that the petitioners have singled out only the sixth and seventh respondents. He submitted that neither the Comunidade nor the Administrator have disclosed the details of all such events. He, therefore, submitted that this petition was not bonafide because it was targeting only the sixth and seventh respondents. For all the above reasons, Mr Sardesai submitted that this petition may be dismissed.

29. Mr Costa Frias submitted that the petitioners have rushed to this Court to challenge the communication of the Administrator refusing the rates by misconstruing the Office Memorandum dated 15.12.2021. He submitted that the approvals by the State Government were subsequent to the institution of this petition and in the context of interim orders made by this Court on 21.12.2022. He, therefore, submitted that such orders were subject to the final orders in this petition and there was no necessity of a formal challenge to the same. He submitted that this is the reason why neither the Administrator nor the State Government have raised such a technical objection in this

petition. He submitted that such hyper-technical objection on behalf of the seventh respondent ought not to be entertained.

30. Mr Costa Frias submitted that since the Administrator's orders were *ex-facie ultra vires* or even otherwise based on a patent misconstruction of the Office Memorandum dated 15.12.2021, the sixth and seventh respondents cannot be permitted to retain the benefit unduly obtained by them based upon the patently *ultra vires* and arbitrary directions of the Administrator of Comunidades. He submitted that in such cases no question of any estoppel or any equities arise. He, therefore, submitted that the rule in this petition should be made absolute, and the sixth and seventh respondents must be directed to make good the balance amounts to the Comunidade of Anjuna, the Administrator and the State Government within a time-bound period.

31. Mr. Costa Frias submitted that the petitioners had no interest in selectively targeting the sixth and the seventh respondents. So, if additional events were held, directions must be issued to the respondents to recover the charges as determined by the general body of the Comunidade.

32. The rival contentions now fall for our determination.

33. As noted earlier, the issue involved in Writ Petition No.1119/2021 concerned the Comunidades allotting lands on a temporary basis for festivals, jattras, feasts and other such events without there being any guidelines or fetters to guide or restrict the powers of

the Comunidades, particularly in the matter of levy of parties from the allottees.

34. Accordingly, Writ Petition No.1119/2021 was disposed of by a co-ordinate Division Bench by accepting the learned Advocate General's statement that suitable guidelines would be framed for the grant of Comunidade lands on a temporary basis. This Court directed the Government to frame such guidelines within four months from the date of order, that is, 15.12.2021.

35. After some delay, the State Government framed the guidelines vide Office Memorandum dated 15.12.2021. Since the impugned orders made by the Administrator of Comunidades purport to rely on this Office Memorandum dated 15.12.2021, it is only appropriate that this Office Memorandum dated 15.12.2021 is transcribed below for the convenience of reference :

*“Revenue Department,
Government of Goa,
Secretariat, Porvorim, Goa. 403 521*

No. 17/11/2021-RD-I

Dated: 15/12/2021

Guidelines for Grant of Comunidade land on Temporary Basis

1. Introduction

In W.P. No.1119 of 2021, Hon'ble High Court of Bombay at Goa directed the State Government to frame the guidelines regulating the Grant temporarily of Comunidade land on temporary basis. Comunidade land is being used for various purposes such as festivals, jatras, feasts. The Code of Comunidade is silent on grant of land for temporary purposes. Therefore, these guidelines provide for the procedure and fees for temporary use of the Comunidade land.

2. **Objective:** Under these guidelines, the Comunidade land can be allowed to be used for a maximum period of 30 days for temporary purposes such as organizing Feasts, Jataras and Festivals. The time limit of 30 days cannot be extended or renewed in any circumstances.

3. Identification of land

- a. The Comunidades shall identify and communicate the list of parcels of land identified under Rule 12 of the Goa, Daman and Diu Legislative Diploma No. 20/70 dated 15/04/1961 Rules, 1985.
- b. Administrator shall prepare and notify a list of parcels of such land identified under clause (a) immediately.

4. Process

- a. Applicant will apply to the concerned Comunidade,
- b. The Comunidade will forward the Proposal to the Administrator, with the resolution of the General Body, with the details of fees to be charged, area to be given, and time period (less than the maximum prescribed under these guidelines).

The Fees should be charged as per the following example:

- Total land to be allotted	- 2,25,000 sq. mtrs.
- Rate per sq. mtr	Rs. 4,500/-
- Lease to be paid	- 20 years
- Lease of property for Temporary use	- 30 days

Calculation:

- 1) 20 years Rent :Rs.2,25,000 x Rs.4500 = Rs.1012500000/-
- 2) Annual Rent :Rs. 1012500000/20 = Rs. 50625000/-
- 3) Per day Rent : Rs. 50625000/365 = Rs. 138699/-
- 4) Rent for 35 days :Rs. 138699 x 30 = Rs. 4160970/-
- 20% additional on rent amount in form of "Derrama" to Administrator Office.

- 5) Amount to be paid to Administrator Office :
Rs. 4160970/- x 20% = 832194/- (Round up)

- c. Administrator will scrutinize the application, and if found in order, will submit the application to the Director of Civil Administration with his recommendations and charges of 10% additional fees over the fees proposed in the clause (b), towards administrative services.
- d. The Director of Civil Administration shall forward the application, with the Recommendation to the Government for decision.

5. The applicant shall vacate the land immediately after the lapse of time

period for which permission was granted. Administrator of the Comunidade to ensure that the land is recovered in conditions as it was granted.

6. The person in possession of the land granted under these guidelines shall have no rights of whatsoever nature in the land so granted.

*Sd/-
(Sudin A. Natu)
Under Secretary (Revenue-I)*

To,

- 1. The Collector (North), North Goa District, Panaji, Goa.*
- 2. The Collector (South), South Goa District, Margao, Goa.*
- 3. The Administrator of Comunidades, North Zone, Mapusa, Bardez, Goa.*
- 4. The Administrator of Comunidades, South Zone, Margao, Salcete, Goa.*
- 5. The Administrator of Comunidades, Central Zone, Panaji, Tiswadi, Goa.”*

36. In our judgment, the guidelines could have been better and clearer, particularly in the context of the rates or fees to be charged to the allottees for temporary allotment of Comunidade lands for music festivals, jattras, feasts, etc. However, the Office Memorandum dated 15.12.2021 is quite clear and unambiguous, when it provides that the rate of ₹4,500/- (Rupees Four Thousand Five Hundred only) referred to by the Administrator in the impugned communication was only an illustration or “*an example*”. That was not meant to be the rate applicable either to the lands belonging to the Comunidade of Anjuna or the rate applicable to the lands belonging to all the Comunidades in the State of Goa across the Board. This is evident from the clause soon after clause 4(b) in the Office Memorandum dated 15.12.2021. The rate was taken as an example for providing the methodology to calculate

the fees to be charged by the Comunidade for the grant of Comunidade lands on a temporary basis. This position was not even seriously disputed by any parties. In particular, this position was not disputed by the government which issued these guidelines.

37. Secondly, the Office Memorandum dated 15.12.2021 does not even purport to fix any precise rate as such for the Comunidades to determine the charges for allotment of its lands on a temporary basis. In any case, as was pointed out by the learned Advocate General and reiterated by Mr Arolkar, the learned Additional Government Advocate that the impugned communications merely referred to the minimum rates or the base rates determined according to the reckoners provided by the Government under the Goa Stamp (Determination of True Value Property) Rules issued from time to time. The communications were intended to convey that charges less than those prescribed in the ready reckoner under the Stamp Act may not be levied by the Comunidade. True, the wordings of the impugned communications suggest some sort of a ceiling or restriction on the Comunidade by reference to the example rate in the guidelines or the minimum or base rates in the ready reckoner. But both the learned AG on the earlier occasion and the learned Additional Government Advocate were clear that the government only intended to ensure that the Comunidades while determining charges, do not go below the minimum or base rates in the ready reckoner under the Stamp Act published from time to time.

38. From the scheme of the Code of Comunidades and the phraseology employed in the Office Memorandum dated 15.12.2021, it is apparent that the Office Memorandum dated 15.12.2021 was issued by the State Government not only in pursuance of the directions issued by this Court on 15.02.2021 in Writ Petition No.1119/2021 (which directions were based upon the statement made by the learned Advocate General) but in the exercise of the powers or rather the responsibility of tutelage conferred upon the State Government under Article 5 of the Code of Comunidades. Therefore, it is unlikely that the Office Memorandum dated 15.12.2021 provided for any fixed rates that the Comunidades could levy for the grant of its lands on a temporary basis. Instead, as was stated by the learned Advocate General and the Additional Government Advocate, the intention was to fix minimum rates or base rates so that the Comunidades could not allot its lands even on a temporary basis by determining the fees or charges at rates below such minimum rates or base rates.

39. Article 5 of the Code of Comunidades provides that the Comunidades shall be under the administrative tutelage of the State, in terms established in the Code, and its immovable properties may be granted on emphyteusis and alienated in the manner provided in this Court. There are several provisions in the Code of Comunidades which relate to the control of the Administrator and the State Government as regards the functioning of the Comunidades. There are several provisions relating to the administrative and fiscal controls exercised by the Administrator and the State Government, particularly when it

comes to the finances and properties of the Comunidades. A Comunidade is required to obtain approval from the Administrative Tribunal before settling or compromising any litigation *inter alia* concerning the Comunidade property.

40. In *Raghupati R. Bhandari, son of Ramkrishna Bhandari; Comunidade of Bandora V/s. Comunidade of Bandora*¹, the Division Bench of this Court has analyzed the scheme of the Code and held 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 Code. There are checks and balances provided in the said Code to ensure that the Managing Committees of the Comunidades do not fritter away Comunidades' properties for their private gains or without regard to the interests of the Comunidades and its members. The Hon'ble Supreme Court dismissed the Special Leave Petition No.6767/2022 on 19.09.2022, challenging the decision of the Division Bench in the case of *Raghupati R. Bhandari* (supra).

41. The Division Bench, after referring to the provisions of the Code and the commentaries of scholars like **Dr Rui Gomes Pereira** and **Serra e Moura**, held that though the Comunidades may be the owners of their lands, the Comunidades still hold such lands or manage such lands in trust for the village communities. Therefore, there is an obligation

¹ 2021 G.L.D. OnLine 3605

upon the Managing Committees of such Comunidades to ensure that the Comunidade lands are not frittered away for some private gains but that dealings with the Comunidade lands are guided to achieve the best interests of the Comunidades and its members. This is the reason why certain fetters are imposed on Comunidades when it comes to dealing with their properties. The Government and the Administrative Tribunal have to be alive to this position even while considering the request from the Comunidades for disposal of its properties or for approval to admit any claims or enter into any compromises which will affect the land rights of the Comunidades.

42. The Division Bench relied upon the decision of the Hon'ble Supreme Court in the case of *Chenchu Rami Reddy and Anr. Vs Government of Andhra Pradesh and Ors.*², where the Hon'ble Supreme Court, in the context of devasthan property held that more often than not a detriment to what belongs to 'many', collectively, does not cause pangs to 'any', for no one is personally hurt directly. That is why public officials and public-minded citizens entrusted with the care of 'public property' have to show exemplary vigilance. What is true of 'public property' is equally true of property belonging to religious or charitable institutions or endowments. The Hon'ble Supreme Court concluded by observing that the property of such institutions or endowments must be jealously protected. It must be protected, for, a large segment of the community has a beneficial interest in it (that is

² (1986) 3 SCC 391

the *raison d'etre* of the Act itself). The authorities exercising the powers under the Act must not only be most alert and vigilant in such matters but also show awareness of the ways of the present-day world as also the ugly realities of the world of today. They cannot afford to take things at their face value or make a less than the closest-and-best-attention approach to guard against all pitfalls. The approving authority must be aware that in such matters the trustees, or persons authorized to sell by private negotiations, can, in a given case, enter into a secret or invisible underhand deal or understanding with the purchasers at the cost of the concerned institution. Those who are willing to purchase by private negotiations can also bid at a public auction. Why would they feel shy or be deterred from bidding at a public auction? Why then permit sale by private negotiations which will not be visible to the public eye and may even give rise to public suspicion unless there are special reasons to justify doing so? And care must be taken to fix a reserve price after ascertaining the market value for the sake of safeguarding the interest of the endowment.

43. The provisions in Article 5 of the Code of Comunidades, which provide that the Comunidades shall be under the administrative tutelage of the State, cannot be interpreted to mean that the State Government, in the exercise of its powers of tutelage or rather its responsibility of tutelage can force the Comunidade to give up its property even temporarily for fees which are almost 50% to 70% lesser than the fees resolved to be levied by the general body of the Comunidade. Such an interpretation would amount to doing violence

to the salutary provisions imposing the responsibilities or duty of tutelage upon the State Government when it comes to Comunidade and the properties of the Comunidades. Fortunately, this was not even the stand of the State Government before us. This was the stand of the seventh Respondent, who was the beneficiary of the Administrator's ultra vires and ambiguous impugned communications based upon which this respondent made a short payment of almost ₹35,00,000/- or thereabouts.

44. Even the definition of “*tutelage*” in the Black’s Law Dictionary (Eighth Edition) relied upon by Mr. Sardesai refers to “*tutelage*” being “*the act of protecting or guiding*”. This means that if the Managing Committee or even the general body of the Comunidade wishes to fritter away the Comunidade property for charges lesser than the market value, even for a temporary basis, the State Government, in the exercise of its responsibility of tutelage, can step in and prevent the frittering away of the Comunidade property. Such an intervention would amount to protection of the Comunidade or the Comunidade properties. Such an intervention would amount to guiding the Comunidade in the matter of disposal of its properties in the best interest of the Comunidades and its members.

45. However, forcing the Comunidades to part with its properties even temporarily for charges much lesser than those determined by the general body of the Comunidade which is the owner of the property, would not amount to an act of tutelage or an act of protecting the

Comunidade or the Comunidade properties. Such an act would also not amount to guiding the Comunidade but might perhaps sound in the arena of misguiding the Comunidade. Therefore, Mr Sardesai's contention that the State Government is competent to reduce the rates proposed by the Comunidades in the exercise of its powers of tutelage cannot be accepted particularly in a case where the Comunidade property was to be temporarily allotted for a commercial purpose. Such a contention, finds support neither from the Government nor from the legal provisions of the Code or the precedents on the subject.

46. In *Martha Luis V/s. State of Goa and Ors.*³, the Division Bench of this Court comprising of M.S. Sonak and M.S. Jawalkar, JJ., commented upon orders made by the Government for regularizing the encroachments on Comunidade's properties in the excess of 200 sq. mtrs. The rule relied upon by the petitioner permitted regularization to the extent of 200 sq. mtrs. only. The Division Bench held that Rule 15 of the said Rules was quite clear and it provided that only 200 sq. mtrs. of encroachment could be regularized if the encroachment was within the jurisdiction of the Municipal Council. The Bench held that this rule could not have been breached either by the Comunidade or the Government because ultimately it was to be borne in mind that there was a public interest in ensuring that the properties of the Comunidade are not frittered away by encroachments and easy regularizations of such encroachments. The Comunidades are under the tutelage of the State

³ 2021 2 BomCR 661

Government and, therefore, there is a duty and responsibility cast on the State Government to ensure that Comunidade properties are not frittered away, particularly, by encroachments.

47. Another co-ordinate Bench of this Court (Reis F.M. and Wadane K.L., JJ.) in the case of *Trajano D'Mello and Anr. V/s. State of Goa and Ors.*⁴, has held that the ancient system of Village communities of Goa was governed by the Code of Comunidades in which many of their practices came to be codified into clear provisions. The Comunidades are governed by their own laws, that is Code of Comunidades. The Code is a compilation of customary laws codified from age-old customs and usages and is the law of shareholders' (Gaunkars) self-determination and for the development of common and joint welfare interests in the respective localities. The Code of Comunidades was declared to be a Public Law by Diploma Legislative No.2070 dated 15.04.1961. The Bench has observed that this Code acknowledges that the properties and consequently the Comunidade did not have the obligation to pay the ground rents to the State Government.

48. The Division Bench held that the beauty of the Comunidades lies in its system of administration (governance). Thus, though the Comunidades are legalized and their activities codified, it had a tool by which they could function and survive in posterity. The Comunidade is large in system of administration and most of the decisions taken have

⁴ 2016 5 Bom C.R. 146

to be by consensus. The decisions taken by the General Body by proper quorum on any item or issue, is what is meant as the say of the respective Comunidade. This can only take place by strictly following the procedure on any issue, within the scope and powers of the General Body. It becomes final only in case it is not contrary to the provisions of the Code. The Managing Committee cannot substitute the General Body and/or overrule the decision of the General Body. The say of the Managing Committee is not the say of the Comunidade to bind the Comunidade unless supported by the minutes of the appropriate General Body Meeting.

49. The Division Bench, significantly held that the State continues to be under the constitutional obligation to comply with the duty to provide the same tutelage and respect the “Code”. The Administrator and other staff of the administration are lawfully bound to give timely assistance and compliance to the provisions of the Code. The Comunidades are the absolute owners of the land. They reserved large tracks of land for grazing cattle in the village for the benefit of the farmers and cultivators and also reserved land for religious and festival purposes such as Temples and Churches, Crematoriums and Cemeteries besides other common benefits for the community. It also provides for health centres and shelter for needy villagers and farmers. The income from the produce as well as the revenues generated are spent for the welfare of the people. Thus, the Court found that the activities of the Comunidade are regulated by the Code and it is the duty of the State

to ensure that the provisions of the Code which have been enacted for the specific purpose are strictly followed.

50. The Shorter Oxford Dictionary (Sixth Edition) also defines tutelage as protection, care, guardianship, patronage, instructions or tuition. None of these meanings can be expanded to permit the State to insist that the Comunidade allots its lands even temporarily for rates lesser than those determined by its general body. Such a direction would not amount to either protection, care or even patronage. Thus, the dictionary meaning of the expression “*tutelage*” or the case law on the subject does not support Mr Sardessai’s contention about the State in the exercise of its duty of tutelage having the power to force the Comunidade to allot its property even temporarily for charges lesser than those determined by the general body of the Comunidade, particularly, when it comes to allotment of Comunidade property for commercial purposes.

51. The learned Additional Government Advocate for the State also did not endorse or support the interpretation suggested by Mr Sardesai on behalf of the seventh respondent. The learned Additional Government Advocate, in fact, fairly admitted that the Administrator’s communications were based upon a misconstruction of the Office Memorandum dated 15.12.2021. Even the learned Advocate General submitted that the reckoner rates should be taken as the minimum rates below which a Comunidade should not go while determining the

charges to be collected from an allottee of Comunidade land on a temporary basis.

52. The above decisions and dictionary meanings support Mr Costa Frias's contentions, which incidentally align even with the government's stand on the matter. Therefore, Mr Sardesai's contention that the State Government is competent to reduce the rates proposed by the Comunidades in the exercise of its powers of tutelage cannot be accepted, particularly in a case where the Comunidade property was to be temporarily allotted for a commercial purpose.

53. Thus construed, the contention about misconstruction or misinterpretation of the reckoner rates becomes irrelevant. Even if it is assumed that the property which was temporarily given to the sixth and seventh respondents to hold their music festivals on a commercial basis was an orchard land and, therefore, the minimum rate or the base rate was only ₹1,500/- (Rupees One Thousand Five Hundred only) and not ₹5,400/- (Rupees Five Thousand Four Hundred only) that would make no difference whatsoever. Ultimately, the rates provided in the reckoners published under the Stamp Act or the Stamp Rules are concerned with the registration of documents or determining the value for the purpose of registration of the document. There is nothing in the ready reckoner which bars a vendor from bargaining for a price which is much higher than the minimum rates or the base rates in the reckoner. A purchaser or a transferee can never insist that the property be sold or

transferred only at the minimum rate or the base rate in the ready reckoners.

54. The position when it comes to Comunidades can also not be different. The State can, however, in the exercise of its duty or responsibility of tutelage, insist that the Comunidades do not go below the minimum rate or a base rate prescribed in the ready reckoners under the Stamp Act published from time to time. The State can, in a situation where that Comunidade or its general body or its managing committee is out to fritter away its property by basing its charges at rates even below those prescribed in the ready reckoner, decline approvals unless, of course, very strong or exceptional reasons exist and the general body of the Comunidade makes out a case for the same. For example, in the case of a feast or jatra held as a village tradition for centuries where no commercial element is involved or where the local school holds a function or a sporting event without any commercial element being involved. However, under these provisions of tutelage, the State Government or the Administrator cannot force a Comunidade or its general body to reduce the charges or reduce the rate for which the Comunidade was prepared to allot its property even on a temporary basis. Such a force or insistence would then cease to be tutelage as understood in the Code.

55. The Office Memorandum dated 15.12.2021 nowhere empowers the Administrator to tie down a Comunidade to the rate or rather the illustrative rate referred to in the Office Memorandum dated

15.12.2021 or the rates in the reckoner of 2020. In fact, the Office Memorandum dated 15.12.2021 does not even refer to the reckoner rates. The learned Advocate General stated that the reckoner rates are usually taken as guidance and, therefore, the reckoner rates are only the minimum rates or the base rates. The Office Memorandum dated 15.12.2021 does not restrict the general body or the managing committee from charging amounts over and above those illustrated in the Office Memorandum or in the ready reckoners under the Stamp Act. The Office Memorandum dated 15.12.2021 would have to be construed accordingly.

56. There is no material on record to suggest that each year, the State Government grants approvals for allotment of Comunidade lands on a temporary basis by adhering to the rates reflected in the ready reckoners. In any case, even assuming this was so, the same was neither legal nor proper considering the scope of the expression “*tutelage*” in Article 5. No instance has been pointed out to us by either the seventh respondent or the Administrator/State Government where the general body of the Comunidade had proposed a particular charge/rate, but the Administrator/Government reduced its charge/rate to the base levels in the ready reckoner. Even if such ultra vires action were to have been taken by the Administrator/Government, the same can neither be cited as a precedent nor, based upon the same the sixth and the seventh respondents, justify the action of the Administrator and/or the State Government.

57. The argument about there being no specific challenge to the State Government's approval for the rate of ₹5,400/- (Rupees Five Thousand Four Hundred only) per sq. mtr. vide communications dated 26.12.2022 must be rejected. Firstly, these communications approve the rate of ₹5,400/- (Rupees Five Thousand Four Hundred only) per sq. mtr. only because of the interim order made by this Court on 21.12.2022. Secondly, these orders were made after the institution of the petition, and therefore, the same would have to abide by the final orders in this petition. Thirdly, if the Administrator's impugned communications, which are challenged and which have now been accepted as illegal by and on behalf of the State Government, are to be set aside, then, obviously, the orders dated 26.12.2022 which only accept the recommendations of the Administrator, will no longer survive. For all these reasons, Mr Sardesai's argument about there being no specific challenge to the Government's approval order dated 26.12.2022 cannot be accepted.

58. Significantly, the technical and incorrect objection about there being no specific challenge to the Government's order dated 26.12.2022, was not even raised by either the Administrator or the State Government. The Administrator and the State Government were very much aware that the Government's approval orders made during the pendency of this petition and based upon the interim orders made by this Court were undoubtedly subject to final orders made in this petition. Therefore, neither were those orders defended nor was any plea based upon a formal challenge pressed before us.

59. The argument based on equities or some sort of estoppel also cannot be accepted. The sixth and the seventh Respondents are beneficiaries of orders/communications from the Administrator and State Government based upon which they paid to the Comunidade, Administrator and DCA an amount of only ₹3,32,880/- (Rupees Three Lakhs Thirty Two Thousand Eight Hundred and Eighty only) and ₹38,04,464/- (Rupees Thirty Eight Lakhs Four Thousand Four Hundred and Sixty Four only) as against the amounts of ₹16,00,000/- (Rupees Sixteen Lakhs only) and ₹75,00,000/- (Rupees Seventy Five Lakhs only), respectively. Now that it is found that the orders of the Administrator and the State Government were ultra vires and, in any case illegal, there is no question of the sixth and the seventh respondents resisting the payment of the balance amount to the Comunidade/Administrator and the DCA.

60. Ordinarily, there is no question of either any estoppel or equities in such matters. We may refer to *Union of India v. Godfrey Philips India Ltd.*,⁵ the Hon'ble Supreme Court, reiterated the ratio in *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.*,⁶ and held that there can be no estoppel against the law. Further, the Court held that even promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the

⁵ (1985) 4 SCC 369

⁶ (1979) 2 SCC 409

officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel, being an equitable doctrine, must yield when the equity so requires. This was not a case of some representation being held out to the seventh respondent. The general body of the Comunidade had already resolved to charge ₹75,00,000/- (Rupees Seventy-Five Lakhs only). There are no pleadings about estoppel or promissory estoppel in the reply. Therefore, based upon the vague oral submission, such a plea cannot be allowed to prevail.

61. This petition was instituted at the earliest instance and it is only by way of interim relief that the seventh respondent could hold its musical event from 28th to 30th December 2022. If, as was sought to be contended, the seventh respondent was not willing to pay the charges of ₹75,00,000/- (Rupees Seventy-Five Lakhs only) and was even prepared to scout for an alternate venue then nothing prevented the seventh respondent from doing so after this Court made the interim order dated 21.12.2022 and the issue of payment of charges determined by the General body of the Comunidade was writ large in this petition. The respondents had clear notice that should the petitioners' pleas in this petition prevail, they would have to make good the balance amounts. Having proceeded with the event, the seventh respondent cannot legitimately plead estoppel or equities. None favour the seventh respondent. The sixth respondent has not even bothered to defend the impugned action or raise pleas of estoppel and equity.

62. The argument based on Article 31 or Article 153 of the Code of Comunidade made on behalf of the seventh respondent can also not be accepted. Article 31 only provides that the decision of the Comunidade under Article 30(4)(f) and (j) shall be devoid of enforceability without the approval of the Government. However, based on the provision for approval, the Government cannot unilaterally set aside the resolution of the general body of the Comunidade or modify the resolution and grant such approval by modifying the charges proposed by the general body. In this case, neither the Administrator nor the State Government bothered to even grant an opportunity of hearing to the Comunidade even though its decisions would visit the Comunidade with pecuniary liabilities, including by way of forgoing the amount subject to which the general body resolved to permit the sixth and seventh respondents to hold their commercial music festivals.

63. Article 153 of the Code does not empower the Government to bypass the other provisions of the Code of Comunidades or to usurp the functions of the general body or even the Managing Committee. The provisions of Article 153 are not intended to interfere with the autonomy of the Comunidades. The provisions are basically to enable the Government to discharge its responsibilities of tutelage effectively. Therefore, provisions are made under Article 153 to oversee and to even grant approvals in the actions of the Comunidade, particularly in relation to the dealings of the Comunidade with the Comunidade property.

64. For all the above reasons the rule is made absolute in this petition. The impugned communications or decisions of the Administrator and the State Government, to the extent they reduce the charges payable by the sixth and seventh respondents, are quashed and set aside. As a consequence, the sixth and seventh respondents are directed to pay to the Comunidade of Anjuna (respondent no.4) the balance amount of ₹12,67,120/- (Rupees Twelve Lakhs Sixty-Seven Thousand One Hundred Twenty only) and ₹36,95,736/- (Rupees Thirty-Six Lakhs Ninety Five Thousand Seven Hundred Thirty-Six only) within a period of eight weeks from today. If the amounts are not paid within this period, they shall carry an interest of eight percent.

65. Further, we direct that unless the sixth and seventh respondents pay this amount, their applications for allotment of Comunidade lands must not be considered by the Comunidades or the State Government. In addition, the State Government is free to determine the amounts payable by the sixth and seventh respondents to the Administrator and the Director of Civil Administration by making necessary computations in terms of the Office Memorandum dated 15.12.2021. Upon such computations being made, the Administrator and the State Government are at liberty to raise demands for payment of such amounts upon the sixth and seventh respondents. The Administrator and the State Government are also granted liberty to take out appropriate proceedings to recover these additional amounts from the sixth and seventh respondents. However, it is clarified that until such amounts are paid or recovered, the Administrator or the State

Government will not consider granting approvals to the sixth and seventh respondents for holding music festivals.

66. Further, we direct the Comunidade to take steps within three months from today to recover additional charges from the temporary allottees of the Comunidade properties from 15.12.2021, i.e. the date of the government's guidelines. Such parties will have to be given notices, and principles of natural justice will have to be complied with because these parties, unlike the sixth and seventh respondents, were not before us.

67. The Comunidade of Anjuna must file necessary compliance reports with the Administrator with copies to the Petitioners within three months from today.

68. The rule is made absolute in the above terms. There shall be no order for costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.