

BEFORE THE BLOCK DEVELOPMENT OFFICER,

TISWADI TALUKA AT PANJIM

Misc. Panchayat Appeal No 7831 /2024

MR VIVIAN STEPHN LIONEL FERNANDES,

Though his power of attorney, Shri Baptista Fernandes,

son of Minguel Fernandes, major of age,

married, Prop of DYNA DEVELOPERS,

with office at Febama Apartments,

Dhavli, Ponda-Goa.

_____ Appellant

V/S

1. THE SARPANCH

Village Panchayat of Curca,

Bambolim, Panjim-Tiswadi.

2. THE SECRETARY

Village Panchayat of Curca,

Bambolim, Panjim-Tiswadi.

_____ Respondents.

APPEAL UNDER SECTION 201A OF

THE GOA PANCHAYAT RAJ ACT.

MAY IT PLEASE YOUR HONOUR

The appellant submits as under:-

1. The present appeal has been filed under section 201A of the Panchayat Raj Act, 1994, against the failure of the respondents to issue Occupancy Certificate within stipulated period or to reply to the application dated 14-12-2023, filed before respondents for issuance of Occupancy Certificate.

BRIEF FACTS

2. The appellant along with others are the owner in possession of a property bearing survey no 64/10 at Babolim, Tiswadi, Panjim-Goa. The appellant with the intention to construct Residential Row Houses and Villas appointed Shri Baptista Fernandes, son of Minguel Fernandes, married, business and pro. Of DYNA DEVELOPERS, having office at Febama Apartments, Dhavli, Ponda-Goa, to undertake the construction of Residential Row Houses and villas in the said property. The appellant along with other co-owners also issued a Power of Attorney to said Baptist Fernandes to undertake the construction and to complete all other legal formalities relating to the said construction.

3. The appellant states that the power of attorney approached the office of the Town Planner, Town and Country Planning Department, Tiswadi Taluka Office for grant of Technical clearance and approval of plan of construction. The Office of the Town Planner granted Technical Clearance vide Order No TIS/895/BAM/TCP/2018/80 dated 22-1-2028 for construction of Residential Row Houses bearing No RH1, RH2, RH3, and Villas 1,2,3 and 4 as per the proposed plan.
4. The appellant states that thereafter the appellant approached the respondents for grant of Construction License as per the approved plan and the respondent no 2 granted Construction License bearing No VP/CBT/2017-18/Const/2020 dated 8-3-2018.
5. The appellant states that after completing all legal formalities, the appellant undertook the work of construction the Residential Row Houses and villas in the property bearing survey no 64 sub-division 10 of Bambolim Village, Tiswadi Taluka, Goa.
5. The appellants states that the appellant completed the construction of the sanctioned premises as per the approved plan and obtained completion certificate from the Architect, Shri

Jayesh Phadte dated 20-7-2023. The appellant also obtained structural stability certificate from the Structural Engineer Shri Prakash S.P. Lawande, dated 17-7-2023.

9. The appellant states that thereafter the appellant approached the Office of the Town Planner, Town and Country Planning Department, Tiswadi Taluka, for issuance of Completion Order. The TCP office vide letter dated 01/08/2023 certified the completion of proposed construction of Residential Row Houses bearing No RH1, RH2, RH3 and Vilas 1,2,3 and 4 of the appellant as per the technical Clearance granted by order No TIS/8945/BAM/TCP/2018/80 dated 22-1-2018.

10. The appellant, thereafter approached the office of Directorate of Health Services, Government of Goa, Primary Health Centre, Chimbal to issue necessary N.O.C from the sanitary Point of view for issuance of Occupancy Certificate and the said office vide letter dated 27-11-2023 granted the required N.O.C.

11. The appellant states thereafter the appellant through his power of attorney filed an application dated 14-12-2023 to the respondent no 1 for grant of necessary occupancy Certificate as per law. The said letter was received by the office of the

respondent on `14-12-2023 and produced all relevant documents such as (a) Completion Order issued by TCP, (2) NOC from Sanitary Point of View from Primary Health Centre (3) Completion Certificate issued by the Architect, (4) Structural Stability Certificate along with full set of “as built structural drawings”. The application of the appellant was supported with all required documents which is required for issuance of Occupancy Certificate.

12. The appellant states that power to issue Occupancy certificate has been vested with the respondents. The appellant states that as per new amendment to The Goa Panchayat Raj Act, 1994, section 66(2) (D) confers power on the respective panchayat that the occupancy certificate shall be issued by Panchayat on payment of such occupancy fees as prescribed. The appellant states that therefore it is clear that the respondent only has the power to issue occupancy certificate on payment of prescribed occupancy fees and no other authority has such power.

13. The appellant further states that as per the amended section 66(2)(E) of The Goa Panchayat Raj Act, 1994, the panchayat has to issue occupancy certificate within 30 days from the date of receipt of the application for occupancy certificate and if the panchayat does not determine within such period whether such occupancy certificate should be issued or not and communicate its decision to the applicant, such occupancy certificate shall be deemed to have been issued, if the applicant has obtained necessary completion certificate from the Town and Country Planning Authorities as per the provisions of The Goa (Regulation of Land development and Building Construction) Act, 2008 (Goa Act 6 of 2008) and regulation framed thereunder.
14. The appellant states that, the appellant filed an application before the Respondent Panchayat, for issuance of occupancy certificate dated 14-12-2023 and the same was received by the respondent on 14-12-2023. As per the provision of the Act, the respondents were required to grant occupancy certificate to the appellant within 30 days of such application or communicate to the appellant the reason for refusal to grant such occupancy. The said period of 30 days expired on 14-1-2024. The appellant states

that the appellant neither received occupancy certificate nor any communication from the respondent intimating refusal of such occupancy certificate for any reason.

15. The appellant therefore submits that as per the provision mentioned above, the occupancy certificate is deemed to have been granted as the respondent has not communicated on the said application of the appellant dated 14-12-2023 till date.

16. The appellant states that after the completion of the 30 days as required under the law, the appellant, through his power of attorney approached to the respondent and requested to issue a copy of the Occupancy Certificate and requested to specify the fees required to be paid for such occupancy certificate. The respondent has failed to respond and have issued occupancy certificate nor given the details of the prescribed occupancy fees to be paid.

19. The appellant states that since the premises as approved are duly constructed as per approved plan and have also obtained completion order/certificate and stability certificate as required and also NOC from Primary health Centre from sanitary point of

view nothing remains to be done by the appellant and all legal formalities have been completed by the appellant.

20. The appellant states that since the respondent have failed to issue occupancy certificate as required under the law and that appellant is suffering on account of such failure on the part of the respondent and unable to occupy the constructed premises have approached to this court/office for appropriate relief in the matter under section 201A of The Goa Panchayat Raj Act, 1994.

21. The appellant states that the premises constructed by the appellant are situated at Bambolim and within the jurisdiction of village Panchyat of Curca, this court has jurisdiction to entertain the present appeal.

22. The appellant has not preferred any other appeal and no any appeal is pending before any other court in respect of the subject matter of present appeal.

23. The appellant, therefore, prays

(a) that this court /Office be pleased to declare that the Occupancy Certificate be deemed to have been issued by the respondent Panchayat in respect of Residential Row

Houses bearing No RH1, RH2, RH3 and Villas no 1,2,3 and 4 situated in the property bearing survey no 64 sub-division no 10 of Bambolim Village, Tiswadi Taluka and as per the completion order/certificate issued by Office of The Town Planner, Town and Country Planning Department, Tiswadi Taluka Office, dated 1-8-2023 and that appellant is entitled to occupy and use the same.

(b) That this Office/Court be leased to direct the respondents to issue details of the Occupancy Fees payable in respect of the same and to accept such fees from the appellant and issue necessary Occupancy Certificate in appropriate form.

(c) For any other order as deemed fit and proper.

Panjim

18-3-2024

Shri Baptista Fernandes

P/A for Appellant.

AFFIDAVIT

I, Shri Baptista Fernandes, son of Minguel Fernandes, major of age, married business and Prop. Of DYNA DEVELOPERS, having office at Febama Apartments, Dhavli, Ponda-Goa and power of attorney holder for the appellant do hereby state that the contents of the above appeal are true to my knowledge.

Solemnly affirmed at Ponda

This day of March, 2023.

Deponent

Identified and explained

Advocate.

BEFORE THE BLOCK DEVELOPMENT OFFICER,
TISWADI TALUKA AT PANJIM

Misc. Panchayat Appeal No /2024

MR VIVIAN STEPHN LIONEL

FERNANDES, _____ Appellant

V/S

1. THE SARPANCH

Village Panchayat of Curca, and anr. _____ Respondents

LIST OF DOCUMENTS

1. Copy of Power of Attorney.
2. Copy of letter filed before
respondents 14-12-2023
3. Copy of NOC from Primary
Health Centre Chimbai 27-11-2023
4. Copy of Completion Order
from TCP . 22-8- 2023
5. Copy of Completion Certificate issued
By Architect. 20-7-2023
6. Copy of Structural Stability issued by
Structural engineer 17-7-2023
7. Copy of Construction License along
With Renewal
8. Any other document with permission.

Panjim

18-3-2023

Adv. for Appellant

BEFORE THE BLOCK DEVELOPMENT OFFICER, TISWADI BLOCK
AT PANAJI GOA

Appeal No. 201(A)/ /2023-24

✓ Mr. Vivian Stephen Lionel Fernandes,
Through his power of attorney, Shri. Baptista Fernandes,
Office at Fabama Apartments,
Dhavli Ponda Appellant

Vs

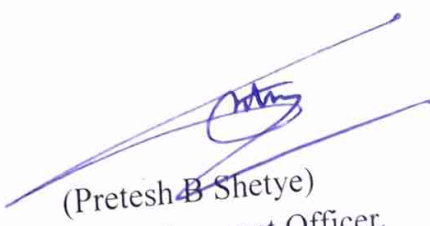
1. Village Panchayat Secretary/ Sarpanch
V.P Curca Bambolim and Talualim
Tiswadi Goa Respondent

NOTICE

Take notice that the above matter is fixed for hearing on **15/05/2024 at 10:30**
am in the chamber of the undersigned at 6th floor, 4th lift Junta House, Panaji Goa.

You are therefore directed to remain present in person or through your duly
authorized agent/pleader on the aforesaid date, time and place, failing which the
matter will be heard ex-parte.

Given under the seal of this office on this 05/04/2024


(Pretesh B Shetye)
Block Development Officer,
Tiswadi Goa.