

MINUTES OF 173rd MEETING OF THE TOWN & COUNTRY PLANNING BOARD HELD ON 03/02/2021 AT 3.30P.M. IN CONFERENCE HALL, MINISTER'S BLOCK, SECRETARIAT, PORVORIM - GOA.

The following attended the meeting:

1. Shri. Chandrakant Kavlekar,
Hon. Minister for TCP ... Chairman
2. Shri Filipe Nery Rodrigues,
Hon'ble Minister for WRD & Fisheries ... Member
3. Shri Punnet Goel
Secretary (TCP) ... Member
4. Shri Nevil Alphonso,
Director of Agriculture ... Member
5. Shri Raju B. Dessai,
DCF/Chairman (16B) Forests
(Representative) ... Member
6. Shri S. R. Prabhu
Asst. Conservator of Forest
(Representative) ... Member
7. Shri Jose Colaco,
South Goa Forest
(Representative) ... Member
8. Dr. Manish Gaunekar
Directorate of Health Services
(Representative) ... Member
9. Capt. V. P. Vinayagam,
HQ GNA (Indian Navy) ... Member
10. Megha S. Kerkar,
Supdt. of Fisheries
(Representative) ... Member
11. Smt. Deepa D. Jamble,
Executive Engineer,
WD XIX, PWD
(Representative) ... Member

12. Shri Ganesh R. Teli, Asstt. Director, Dept. of Tourism (Representative)	...	Member
13. Shri Tolentino Furtado, Dy. Director, DPSE Porvorim – Goa. (Representative)	...	Member
14. Rajan Satardekar Director Transport	...	Member
15. Shri. Antonio P. Diniz	...	Member
16. Arch. Rajeev M. Sukhthanker	...	Member
17. Shri. Rajesh J. Naik, Chief Town Planner (Planning)	...	Member Secretary

Item No. 1: Confirmation of the Minutes of the 172nd(Adj.) meeting of Town & Country Planning Board held on 23/12/2020.

Member Secretary informed that the minutes of 172nd(Adj.) meeting of TCP Board held on 23/12/2020 were circulated to all the members and it was further informed that no comments on the same are received from any of the member. The Board therefore confirmed the said minutes.

Item No. 2: Appeal under Section 52(2)(B) of the TCP Act, 1974 filed by Shri Lyndon D'Silva and Maria Colaco D'Silva against South Goa Planning & Development Authority (File No. TP/B/APL/187/19).

Member Secretary informed that the matter is against final notice dated 06/12/2019 bearing No. SGPDA/P/Illegal/1289/19-20, vide which the Respondent PDA has directed the Appellant to demolish toilet on open terrace and covering of the roof by zinc sheets consuming additional FAR.

It was informed that the Appellants Shri Lyndon D'Silva and Maria Colaco D'Silva owns a duplex flat on 4th floor of building bearing H.No. FF9 which was purchased by them about 5 years back. Appellant states that there was a need to

make the entire flat in a livable condition as it was closed for 20 years. The Appellant therefore sought permission from Respondent and Margao Municipal Council for the said work. It is the say of the Appellant that their duplex flat had a covered terrace which had broken finolex sheets and hence it was replaced by new sheets and the RCC stair case which served as an access to upper floor was replaced by fabricated stair case. Upon complaint dated 09/03/2019, the Margao Municipal Council issued a Stop Work Order on 02/04/2019 for the work undertaken which was however withdrawn on 06/05/2019 and so also, as per the directives of Margao Municipal Council, exposed roof that was removed earlier was put again and other minor works were carried out by the Appellant.

Member Secretary briefed the Board that during earlier hearing, Respondent PDA had informed that they had not received any copy of appeal memo and hence were not aware as to what were the grounds for appeal and therefore the Appellant had issued a copy of appeal memo to the Respondent PDA.

It was further informed that the matter was again taken up in earlier Board meetings which however was not attended by Appellant on health grounds.

The matter was earlier placed before the 168th meeting of the TCP Board held on 27/01/2020. During the hearing, Member Secretary informed that an application dtd. 17/3/2020 was received from Sarika E. D'Souza, Margao Goa for intervention in the matter stating that she apprehends that the Respondent No. 1 & 2 representing the State will not put up an effective case on merits and further will not raise vital points of defence or will under perform in order to give the Appellant an upper hand to succeed in getting reliefs in the appeal. It was therefore decided to call the intervener for the next hearing.

During the present hearing, Adv. Menino Pereira remained present on behalf South Goa PDA and Adv. Laxmi Sawant was present on behalf of Intervenor.

The Appellant informed the Board that upon directions of Margao Municipal Council, they made an application to the Respondent PDA to obtain the permission for the development referred. He further stated that on 01/08/2019, the Respondent issued Show Cause Notice to them for not having obtained permission for the work undertaken, which he replied on 12/11/2019.

Appellant further stated that a second Show Cause Notice was therefore again issued to them by the Respondent on 22/11/2019, which again was replied by them on 02/12/2019. The Appellant however stated that the reply given was not found satisfactory by the Respondent and therefore a final notice was issued.

During the hearing, the Appellant informed that the issue is only regarding renovation done of a small toilet on their private covered terrace, which already existed during the time of their purchase of flat. As regards to covering of terrace, he stated that the roofing only of the covered terrace was changed as the earlier frame with finolex sheets was totally rusted and the same he said was very clear from the letter of municipality dtd. 6/5/2020 by which they were instructed to once again cover the expose roof. He further stated that letters from the neighbours and also jointly signed letters by other residents is issued to him stating that they have only renovated the place and the roof which is replaced only to prevent leakage and is beneficial to others. He also cited that there are two more sheds which have been put on the terrace of the same building which did not exist earlier. It was further stated by him that the intervener and other members of the neighbouring society have made similar sheds and that he has made complaints regarding the same before the Respondent authority, which however has not been acted upon and hence requested for setting aside notice of SGPDA dtd. 6/12/2019.

Adv. Menino while arguing on behalf of Respondent PDA stated that during the site inspection carried out by the Authority it was found that the Appellant had constructed an additional toilet on the open toilet and that the open terrace was covered with zinc sheets and that these both illegalities consumed additional FAR. Shri Menino further argued that there is an admission by the Appellant of guilt by virtue of the fact that plans for regularization was submitted by the Appellant to the authority. He also stated that the Respondent has failed to give any proof that the toilet and the zinc sheets pre-existed. It was also brought to the notice of the Board that the additional FAR, even if available, cannot be exclusively used by the Appellants since such FAR belongs to all the occupants of the building.

Petitioner while arguing brought to the notice of the Board that the erection of shed and the toilet have been unauthorisedly undertaken by the Appellants and there is no consent for the same from most of the flat owners, even otherwise the

intervener insisted that the appeal ought to be dismissed by the Board as it is clearly brought out by the Respondent PDA that the development referred has consumed the additional FAR, and the same is not considered by the Respondent PDA for regularization.

The Appellant however stated that he would like to further argue on his case only after going through the contents of the written arguments placed before the Board by the Respondent, which he said he received only after the last hearing on 5/2/2021 and expressed his desire to file the rejoinder accordingly to the appeal.

Considering all the arguments placed before it and the request made by the Appellant, the Board decided that the matter shall be finally heard during the next meeting and decided accordingly.

Member Secretary was accordingly directed to issue notices to all the parties to appear before it for the next hearing.

Item No. 3: Appeal under Section 45 of the TCP Act, 1974 filed by Sant Nirankal Mandal against North Goa Planning and Development Authority.

Member Secretary informed that the matter is regarding appeal under Section 45 of the Town & Country Planning Act, 1974 in respect of letter bearing No. NGPDA/M/1806/1554/2020 dated 27/07/2020 communicating preliminary observations as raised by North Goa PDA and regarding erroneous change of zoning of the property bearing Chalta No. 1/13 of P.T. Sheet No. 127 at village Mapusa, Taluka Bardez.

It was informed that the Appellant is a charitable society who had purchased a property in 2006 under Chalta No. 1/13 P.T. Sheet 127 of Mapusa admeasuring 1981 sq.mts. which at the relevant time was zoned as "Settlement/Residential" under ODP for Mapusa in operation in the year 2016 and which was purchased for the purpose of setting up of Sant Sang Bhavan. The Appellant further states that the Conversion Sanad bearing No. RB/CONV/BAR/COLL/43/2014/ 647 dated 01/12/2016 was granted for residential use with 100 FAR, which was much prior to the notification of the Final ODP (Mapusa) dated 27/12/2016 which was published in the Official Gazette Series III No. 38 dated 28/12/2016.

It is further stated by the Appellant that they could not commence the construction of Sat Sang Bhavan as they did not have required funds for the same. The Appellant on 18/3/2020 applied for Technical Clearance to the North Goa PDA, however vide letter bearing No. NGPDA/M/1806/1554/2020 dated 27/07/2020, the same was not considered by the North Goa PDA citing three observations, one amongst which was that the property is now earmarked as Recreational zone in the Mapusa Outline Development Plan 2021 and hence the coverage and FAR permissible shall be 5% and 5.00 respectively and the maximum permissible height shall be 5.00 mts. The Appellant therefore states that the proposal was not considered by North Goa PDA for approval as Coverage, FAR, and height of the building exceeded permissible limit.

The Appellant therefore states that their property has been wrongly, erroneously and ex-post facto after grant of Sanad has been zoned as “Recreational zone” in the Final Mapusa ODP 2021 by the Respondent.

The Appellant has therefore prayed for quashing and setting aside letter dated 27/07/2020 of North Goa PDA bearing ref. No. NGPDA/M/1806/1551/2020 and for awarding them Technical sanction in respect of the proposed construction.

It was informed that the matter was earlier taken up for hearing by the Board and was adjourned.

During the hearing, Adv. R. Rao remained present on behalf of petitioner, whereas Shri R.K. Pandita, Member Secretary, North Goa PDA remained present on behalf of the Authority.

While arguing in the matter, the Appellant placed before the Board the following additional documents:

- a) Application for issue of license for construction of compound wall dated 20/9/2011.
- b) Form F dated 18/10/2011 bearing ref.No. NGPDA/M/1072/1858/11 permitting construction of compound wall; and
- c) Order of the PDA dtd. 28/10/2011 under Section 44 of the Town and Country Planning Act, 1974 granting Development Permission in the property bearing Chalta No. 46 P.T.S. No. 127 for compound wall on the ground that the property is owned as Settlement (S-1).

The Appellant asserted that the additional documents as placed before the Board proceeds to show that the Conversion Sanad granted to him had not only been acted upon, but also construction pursuant to the above permissions was indeed carried out in accordance with law and therefore stated that the PDA shall honour the past commitment made in granting the permissions under Section 44 in the same property and accordingly grant them the permission for construction of Sat Sang Bhavan and shall accordingly undertake necessary corrections in the ODP.

While arguing on behalf of the Respondent, Shri R.K. Pandita, Member Secretary, North Goa PDA stated that the PDA has merely acted upon the provisions under the ODP in force and has accordingly rejected the application of the Respondent as zone was not found to be in conformity to permit the development as proposed.

The Board deliberated at length and took cognizance of the past commitment made by the PDA in terms of grant of Development Permission under Section 44 for the development proposed in the property under reference mentioning clearly therein the zone of the property as "Settlement".

The Board also took note that the Conversion Sanad has also been obtained by the Appellant for the property under reference. The Board was of the opinion that these permissions were obtained by the Appellant as per the provisions of the ODP which was in operation at the relevant time and the PDA ought to have regarded this material consideration at the time of designating the zone to the property under reference at the time of revising the ODP.

The Board therefore was of the opinion that necessary changes in the ODP shall be made by the PDA during the process of revision of the same and accordingly grant the development permission for construction of Sat Sang Bhavan to the Appellant by considering this provision which is to be made by the Respondent in the ODP under preparation or to be prepared.

The appeal of Sant Nirankal Mandal was therefore allowed with direction to the NGPDA as above.

Item No. 4: Appeal under Section 52(2)(B) of the TCP Act, 1974 filed by Mrs. Filomena D’Cruz against Mormugao Planning & Development Authority (File No. TP/B/APL/196/19).

Member Secretary informed that the Appellant had earlier filed an appeal u/s 52(2) (b) against Notice dtd. 18/12/2018 of MPDA for carrying out illegal development in the property bearing Chalta No. 174(P), P.T. Sheet No. 35 of Vasco city and the same was heard in 166th meeting of the Board held on 10/7/2019 under item No. 5. After considering the arguments placed before it by both the parties, the Board had decided that the Appellant shall apply to MPDA for regularization of development undertaken and thereafter MPDA was to decide on the same on technical parameters as prescribed under the Goa Land Development & Building Construction Regulations, 2010.

The decision of the Board was accordingly communicated to the parties by the Chief Town Planning vide Order dtd. 27/04/2020. On the basis of the said Order passed by the Board, the MPDA vide its letter dtd. 22/5/2020 further requested the Appellant to submit her application for regularization of development undertaken within 10 days of receipt of their letter. In compliance of the said directions of MPDA, the Appellant vide her letter dtd. 2/6/2020 applied to the MPDA for regularization of the structure.

Whereas the Member Secretary vide his letter dtd. 17/6/2020 communicated observations to the Appellant, also mentioning therein that the application submitted for regularization of unauthorized development was not as per GLDBCR-2010 and further gave one weeks time to the Appellant to comply with the requirement. The Appellant then vide her letter dtd. 23/6/2020 further requested MPDA to extend the time till end of July 2020 or keep in abeyance the decision till health issues arising out of COVID – 19 comes under control.

Whereas the MPDA has now issued fresh Notice dtd. 19/10/2020 u/s 52 of the TCP Act directing the Appellant to demolish/remove the illegal development. In the said Notice, it is clearly mentioned by the MPDA that they had considered the request of the Appellant as made for extension of time and had accordingly granted a grace period of 15 days for the compliance however the Appellant did not submit any plan within the extended time and as such the Authority in its meeting held on 16/9/2020 decided to serve the Notice u/s 52 of the TCP Act.

Aggrieved by the said Notice dtd. 19/10/2020, the Appellant has filed the present appeal. During hearing in earlier meeting 172(Adj.) held on 23/12/2020 Advocate Shri Sushant Korgaonkar, remained present on behalf of MPDA whereas the Appellant was absent. However during the proceeding of the hearing, the office of the Minister for TCP/Chairman of TCP Board informed that the Appellant has telephonically informed that she was unable to attend the hearing as she had not received any prior intimation and has therefore requested for adjournment of the matter.

Considering the genuineness of the request, the Board had accordingly adjourned the matter.

During the present hearing, Adv. Michael Fernandes appeared for the Appellant and whereas Respondent PDA was represented by Adv. Menino Pereira.

The Appellant placed on record the Order passed by Dy. Collector (Rev) South Goa District Margao dated 20/11/2020 on her application to grant additional area admeasuring 128 sq.mts. which she said is Government land but in her possession and the said area is in continuation to the property presently owned by her and stated that the matter can very well be settled if her petition was favourably considered by the Dy. Collector.

The Appellant further stated that due to COVID-19 situation she could not comply the direction issued by the Respondent to submit the plan to regularize the alleged illegal construction of 40 sq.mts. It was therefore the request of Appellant to adjourn the matter and fix the next date after a longer period and preferably after Dy. Collector decides the petition for grant of additional area as prayed by her.

While arguing on behalf of PDA, Adv. Menino impressed Board that the Appellant has constructed an additional first floor on the existing ground floor of her house and an extension of an additional room was carried out on the ground floor admeasuring 40 sq.mts. within the setback area. He further submitted that by virtue of the fact that the Appellant desires to regularize the construction, is a clear cut admission that the same is illegal and is done without required approval from the Authority.

He further stated that the nature of cases as referred by the Appellant take very long to decide and may not even be decided in favour of the Appellant and hence requested the Board that no indulgence be shown to the Appellant, who took the law into her hands and has constructed the illegal structure without any approval.

The Board took notice of the Appellants argument as per which she has put an additional claim for an area of 126 sq.mts. under the Land Revenue Code as an encroachment under the Government land and the issue depends on granting or not granting more time for regularization.

Considering all the arguments placed before it, the Board agreed with the Respondent that no more indulgence can be shown to the Appellant as she was not aware whether such an extra area as claimed by her would be granted or not by the Government and if so when would such grant by way of a Sanad would be issued. The Appellant was unable to answer when questioned by the Board on these issues. The Board also took note that the Appellant has not produced any plans with her proposal to show how they propose to regularize the illegal construction.

The Board thus felt that through her request for adjournment, the Appellant requires the Respondent to wait indefinitely to decide on regularization and if such indulgence is given then such an excuse will be a bad precedent for constructions carried out unauthorizedly in Govt. land.

The appeal was therefore dismissed.

Item No. 5: Request for the grant of relaxation in frontage of proposed retail outlet in plot bearing Sy. No. 157/5 of Betalbatim village, Salcete Taluka.

This has reference to representation dtd. 07/01/2020 received from M/s Bharat Petroleum Corporation Ltd. addressed to the Hon'ble Dy. Chief Minister/Minister for TCP and Chairman of TCP Board wherein it is requested to grant relaxation in frontage from 30.00 mts. to 26.00 mts. for the proposal of Retail Outlet (Petrol Pump) in Sy.No. 157/5 of Betalbatim Village, Salcete Taluka.

Earlier, Office of the Senior Town Planner, South had communicated observation for the said proposal vide office letter No. 23/31/268/TCP/2019/2954 dtd. 13/11/2019 stating that frontage of the plot under reference is 26.00 mts. only, which shall be minimum 30.00 mts. as required under the Goa Land Development and Building Construction Regulations, 2010 for fuel filling station.

The Board was informed that under the regulations, requirement of minimum frontage of 30.00 mts. can be relaxed if the property is located in zones C1, C2, C3, C4 wherein the minimum size/area of the plot can be 500.00 sq.mts. with minimum frontage of 25.00 mts.

It was further informed that in the instant case, the plot is located in village Betalbatim, Salcete, Goa and is having an area of 4200.00 sq.mts. and the property under reference where the retail outlet is proposed, falls under settlement zone in VP2 village category.

It was also brought to the notice of the Board that Hon'ble MP Shri. Francisco Sardinha vide his letter dated 16/12/2020 has requested for relaxation as sought stating that there is a long pending public demand for the proposal as there is no other outlet within the vicinity of 8-10 kms on this MDR-43 (Major District Road), due to which the villagers and adjoining villagers face hardships to commute to a distant place to fill fuel in their vehicles by covering a distance of 8-10kms.

Hon'ble M.P. has further stated in his letter that this is a long pending matter and it also comes under the utility Act and hence the relaxation in frontage may be granted in the larger public interest of the villagers, as a special case.

Member Secretary also placed before the Board a letter dtd. 16/10/2020 of Bharat Petroleum Ltd. requesting for the grant of relaxation in frontage of proposed retail outlet in which it is mentioned that BPCL has proposed retail outlet in the Betalbatim village under Public Utility Act for the benefit and in the interest of villagers. Further it is mentioned that it is a long pending Letter of Intend issued in the year 2005 to SC/ST candidate for which Government of India is following up and helping the candidates to setup retail outlets. The said letter further states that MOP and NG, Government of India has approved the policy pertaining to LOI issued under the Corpus Fund Scheme with timeline of one year within which the

process needs to be completed on priority and they have further mentioned that all the processes in this particular proposal have been completed for exhibition in all other respect except the NOC of the Department.

Member Secretary also informed that the letter dtd. 19/1/2021 is also received from Bharat Petroleum Corporation Ltd. with the request for grant of relaxation in frontage of the retail outlet and has enclosed copy of lease negotiation for land between BPCL, Goa Territory, the plot owner and Mr. Calton Carvalho.

While having deliberation on the proposal, it was brought to the notice of the Board that the frontage of the plot under reference was actually 29.00 mts. out of which a 3.00 mts. width has been maintained as access to the property on the northern side surveyed under same Sy.No. 157/5 and that deduction of this 3.00 mts. width as an access has reduced the frontage of the plot to 26.00 mts. The Board thus took note that the frontage of the plot is actually 29.00 mts.

After having detail discussion on the proposal and considering all the material facts and various representations made, the Board finally decided to consider the request made and grant the relaxation of frontage for setting up of the retail outlet.

Member Secretary was accordingly directed to convey the decision of the Board to the applicant after getting necessary approval from the Government of the decision taken.

Item No. 6: Submission of Budget of North Goa Planning and Development Authority for the financial year 2020-2021.

Member Secretary informed that the North Goa PDA has submitted budget for the year 2020-2021 and the same is placed before the TCP Board under Section 106 of the TCP Act.

The Member Secretary, North Goa PDA explained the salient features of the Budget for the year 2020-2021.

Member Secretary then briefed Members about major components of revenue such as anticipated Grant-in-Aid from the Government towards

development work and towards Town Planning Scheme at Mapusa, Grants-in-Aid towards salary and general revenue etc.

The Budget was summarized by the Member Secretary North Goa PDA stating that it is proposed for Rs. 16,11,40,000.00 including Grants-in-Aid and that the total anticipated expenditure is Rs. 16,04,59,500.00

Detailed discussion on various components of the Budget was then held. The Board however felt that the Budget presented is actually for the year 2020-2021 and the term for which it was prepared, is almost over.

Considering various details presented before it, the Board approved the Budget.

Item No. 7:- Proposals received under Section 16B of the TCP Act for consideration under Section 12 of TCP Act.

With notification of Section 16B of TCP Act, the Town & Country Planning Dept. has started receiving applications u/s 16B. The proposals as received under Section 16B were scrutinized in terms of site conditions and potentialities of the area under Section 10 of TCP Act and were placed before the Board for consideration as required under the provisions of Section 12 of the TCP Act and the decision taken on the same are as recorded in Annexure 'A', which forms the part of these minutes.

Item No. 8: Proposals received under Section 16B of the TCP Act for consideration under Section 13(2) of TCP Act.

With notification of Section 16B of TCP Act, the Town & Country Planning Dept., has started receiving applications u/s 16B. The Board had earlier considered applications under the provision of Section 12 of the TCP Act. The proposals are now placed before the Board for consideration under the provisions of Section 13(2) of the TCP Act and the decision taken on the same are as recorded in Annexure 'B', which forms the part of these minutes.

Item No. 9:- Any other item with the permission of chair.