

MINUTES OF 187th MEETING OF THE GOA TOWN & COUNTRY PLANNING BOARD HELD ON 20/03/2023 AT 11.00 A.M. IN CONFERENCE HALL, VAN BHAVAN, ALTINHO, PANAJI.

The following attended the meeting:

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| 1. | Shri. Vishwajit P. Rane,
Hon. Minister for TCP | ... | Chairman |
| 2. | Smt. Deviya V. Rane,
Hon'ble MLA | ... | Member |
| 3. | Shri Rajesh Faldessai,
Hon'ble MLA | ... | Member |
| 4. | Shri Ramesh Verma
Secretary (UD) | ... | Member |
| 5. | Shri Praveen Kr Raghav,
Chief Conservator of Forest. | ... | Member |
| 6. | Shri Satyavan K. Dessai,
Agriculture Officer, Directorate of Agriculture. | ... | Member |
| 7. | Dr. Raj Naik,
Directorate of Health Services. | ... | Member |
| 8. | Shri Sanjeev Srivastav,
Captain Indian Navy, HQ Goa Naval Area,
SSO (Works). | ... | Member |
| 9. | Shri Ralph A. S. Barbosa,
Research Assistant, D.P.S.E., Porvorim-Goa. | ... | Member |
| 10. | Shri Paresh Gaitonde | | Member |
| 11. | Arch. Rajeev M. Sukhthanker | | Member |
| 12. | Shri Ralph De Souza,
President GCCI (Representative) | ... | Member |
| 13. | Adv. Nilesh Amonkar | ... | Special Invitee |
| 14. | Shri Gajanan Karkare,
Representative of IEI | ... | Special Invitee |
| 15. | Shri Aakash Khaunte
Representative of CII | ... | Special Invitee |
| 16. | Smt. Snehalata Pednekar,
Nominee ITPI, Goa Chapter | ... | Special Invitee |
| 17. | Shri Amit Sukhthankar,
IIA, Goa. | ... | Special Invitee |
| 18. | Shri. Rajesh J. Naik,
Chief Town Planner (Planning). | ... | Member Secretary |

Item No. 1: Confirmation of the Minutes of 186th meeting of Town & Country Planning Board held on 25/11/2022.

Member Secretary informed that Minutes of 186th meeting of TCP Board held on 25/11/2022 were circulated to the Members of the Board.

Since no comments were received from any of the Members, Board confirmed the same.

Item No. 2: Appeal under Section 52 of the TCP Act, 1974 filed by Smt. Sandhya Korgaonkar against North Goa Planning and Development Authority. (File No. TP/B/APL/218/2022)

Member Secretary informed that an appeal was earlier filed by Smt. Sandhya Korgaonkar against North Goa Planning and Development and the same was heard by the Board in its 180th meeting held on 09/06/2022 under item No. 6 and was dismissed, with the decision as under:

“Member Secretary informed that the appeal is filed under Section 52 of the TCP Act, 1974 in respect of notice issued by North Goa PDA.

Member Secretary further informed that the Appellant is the co-owner of property bearing Sy.No. 6/1, PTS No. 170, Mapusa which was originally owned by Mr. Ramkrishna Pednekar, father of Appellant and upon his death on 30/09/2007, it is developed upon by his wife Radhabai Pednekar and children including Appellant.

Shri. Ramkrishna Pednekar had put up a small gaddo in the suit property in the early eighties. Thereafter, out of will and love for Appellant, he gave her the gaddo alongwith surrounding area admeasuring 150m2 which is now in exclusive possession of Appellant.

The Appellant, with consent of all other legal representatives, installed a proper kiosk in the said area by replacing the gaddo, known as Durvesh General Stores with kiosk No. 13 with license No. T/O/4682. Directorate of Fire and Emergency Services have also given NOC dated 01/09/2013. The Appellant has been paying requisite fees for occupation of the premises. The Appellant has obtained license from Mapusa Municipal Council and NOC from her mother.

The Appellant states that with passage of time, the Respondent No. 2 started interfering with the Appellant. The Appellant was constrained to file a Regular Civil Suit No. 274/2019/C before Court of CJSD, Mapusa. The matter went to High Court also and High Court has granted interim relief to the Appellant.

Appellant states that Mr. Shankar Pednekar, Mrs. Radhabai Pednekar Respondent s have been filing all sorts of frivolous complaints before various authorities and the objections filed by them cannot be considered as they are restricted from changing status quo and possession of Appellant is protected by Court.

Appellant further states that the GPPDA has issued notice to the Appellant for appearance for which, the Appellant remained present and produced few documents relied upon by her in support of her case, however the matter was not heard on merits. In fact, the Appellant was intimated that she would be notified about the next date on which the matter would be heard and decided on merits. However, without giving her the hearing, the impugned order dated 28/12/2021 was passed by the Greater Panaji PDA.

The Appellant, being aggrieved by the said order, has preferred this appeal.

Member Secretary informed that the matter came up for hearing in the 179th meeting of TCP Board held on 17/05/2022 during which the Appellant expressed the desire to move for an

amendment to the main petition and the same was agreed by the Board and the matter was disposed accordingly.

During the present hearing, Adv. Hanumant Naik appeared on behalf of the Respondent , whereas the Appellant remained absent. The Board therefore heard only the Respondent who stated that the Authority stand by its observations and requested the Board to consider the same.

The Board observed that the Appellant, although had stated that she would move for an amendment, no such amendment has been filed nor has appeared for the hearing.

Considering the facts placed before it by the Respondent Authority, the Board therefore dismissed the appeal on merit”.

The Board was informed that Smt. Sandhya Korgaonkar had then filed an appeal in Hon'ble High Court of Bombay at Goa (Writ Petition No. 423 of 2022) against the order of the Board stating that the Respondent No. 1 ought to have seen that the NGPDA erred in ignoring the fact that the structure in question was existing for the past several decades and that the same was mentioned in the suit filed before the Hon'ble Civil Court and the Hon'ble High Court of Bombay. It is also stated by the Petitioner that she had obtained NOC from her late father and the Respondent No. 1 and the authorities as well and that the permissions could not have been revoked just because Respondent No. 2 & 3 had a change of heart as the Petitioner also had unfettered right to the said property.

It is further submitted by the Petitioner that the NGPDA could not have passed the impugned order after lapse of four years from the alleged development/change. The time period specified in the said notice is also 15 days and not one month in contravention of Section 52 of the TCP Act. Furthermore, it is stated by the Petitioner that there was no power to revoke the permissions without hearing her, that too in the manner done and further no power to direct demolition.

The Appellant has further stated as under:

1. The Respondent No. 1 has passed orders without hearing the petitioner and only after hearing the Respondent .
2. The submissions of the Respondent NGPDA have also not been recorded in the said order of the Respondent No. 1.
3. The alleged facts placed before the Respondent No. 1 by the NGPDA have also not been mentioned in the order.
4. There is absolutely no reasoning given for passing orders against the Petitioner and it appears as though the intention has been to penalize the petitioner for missing that one hearing before the Respondent No. 1.

Member Secretary then briefed the members that as informed by the Advocate appearing for the Government, the matter came up for hearing before Hon'ble High Court on 12/10/2022 and that the Court was of the opinion that reasoning ought to have been given in the order and that the matter shall be further heard on 17/10/2022.

The Board was then informed that the matter was again discussed in 185th meeting of TCP Board held on 14/10/2022 and the issues raised were deliberated and the Board was of the opinion that points raised by the Petitioner before the Hon'ble High Court need to be considered and accordingly it was decided to withdraw earlier Order dtd. 21/7/2022 passed by it and it was further decided that the appeal shall be heard again to give opportunities to the parties to give their say in the matter and the Member Secretary was accordingly directed to immediately communicate the decision of the Board to the Advocate appearing in the matter such that Hon'ble High Court could be informed of the decision.

The Appellant Smt. Sandhya Korgaonkar was accordingly informed vide letter No. TP/B/APL/218/2022/2765 dtd. 14/10/2022 that the Order dtd. 21/7/2022 is withdrawn and that the appeal shall be heard again.

Member Secretary then informed that notices are accordingly issued to parties to remain present for the meeting for arguments in the matter.

During the argument, the Petitioner Smt. Sandhya Korgaonkar personally appeared and requested for adjournment of the matter as her Advocate could not remain present for the hearing in view of prior engagement of his.

The Board considered the request and accordingly the matter was adjourned.

Item No. 3: Appeal under Section 45(a) of the TCP Act, 1974 filed by Mr. Rudresh Parodkar against South Goa Planning and Development Authority. (File No. TP/B/APL/352/2023)

Member Secretary informed that vide present appeal, the Appellant has challenged an Order dated 21/12/2022 passed by the Member Secretary of the South Goa Planning and Development Authority, on his Application for approval of revised/updated plan.

It was informed that the South Goa PDA had issued a Challan dated 22/04/2022 to the Appellant towards issue of Development Permission and requisitioned amount was duly paid by the Appellant vide Demand Draft drawn by Bank of Maharashtra in favour of 'South Goa Planning and Development Authority' and the same was accepted by South Goa Planning and Development Authority.

It is the case of the Appellant that despite there being specific order approving the development and accepting fees thereof, the Member Secretary of South Goa Planning and Development Authority by its Impugned Order dated 21/12/2022 has rejected his application for approval of the revised plan, thereby dishonouring earlier commitment of the Authority given with the Order dated 12/08/2020 for approval of sub division of plots.

The Appellant has therefore filed the present Appeal on the grounds that:

1. The Impugned order is illegal and passed contrary to the records and preceding orders of the same authority.
2. The Member Secretary erred in not appreciating that the order dated 12/08/2020 had become final for want of any challenge and thus, his office was functus officio to deliberate upon the provision of cul-de-sec.
3. The Member Secretary also erred in rejecting the said approval after issuing challan thereof.

Adv. Parag Wagle appeared on behalf of the Appellant and whereas South Goa PDA was represented by the Member Secretary Shri Shaikh Ali.

While arguing, Adv. Parag Wagle informed that earlier, a Development Permission bearing No. SGPDA/P/1300/45/0506 dtd. 14/01/2006 was issued by the SGPDA in favour of Shri Shekhar Parodkar for sub division of plot No. 19, 20 & 21 of property bearing Sy. No. 148/0 at Ponda.

It was then informed that subsequently, a Development Permission for construction of building in plot No. 21 of approved sub division was granted by SGPDA vide Order No. SGPDA/P/3151/399/18-19 dtd. 26/3/2019 in favour of Shri Rudresh Parodkar.

It was then brought to the notice of the Board that a revised sub division approval under ref.No. SGPDA/P/1300/93/20-21 dtd. 12/08/2022 was then granted by SGPDA for plot Nos. 19, 20 & 21 and it is in plot No. 21 of this approved sub-division, he had applied for issue of Development Permission for residential building, which on acceptance, the PDA issued a challan dtd. 22/4/2022 for payment of infrastructure tax. It was however stated by Adv. Parag Wagle that inspite of issuing him the challan for payment of infrastructure tax, the SGPDA rejected his application stating that “*request cannot be considered in view of regulation No. 12.1(f) and (g) of GLDBCR-2010*”.

Adv. Parag Wagle therefore argued that it is absolutely improper on the part of SGPDA to reject his application citing the observations under regulation No. *12.1(f) and (g) of GLDBCR-2010* as the same are not applicable to his present proposal and as the SGPDA itself had earlier approved the revised sub division layout, of which plot No. 21 is a part.

Adv. Parag Wagle also impressed upon the Board that the rejection order as issued by SGPDA is nothing but an afterthought, as SGPDA had proceeded in granting him the challan for payment of infrastructure tax, which presumably is done only after finding that the application made is in conformity with the regulations in force and therefore SGPDA is liable for grant of Development Permission to him.

It was therefore the argument of Adv. Wagle that he is made answerable for the query raised on some other development approved by the same Authority and as such requested the Board that PDA be directed to grant him Development Permission in view of the commitment earlier made by the same Authority in granting the said sub-division approval.

While arguing on behalf of SGPDA, Member Secretary admitted that the ground for refusal as mentioned in the rejection Order dtd. 21/12/2022 were certainly not related to the application made by the Appellant and were more specific to the Development Permission dtd. 12/08/2022 earlier granted by the Authority for sub-division of plots 19, 20 & 21.

Considering the arguments placed before it by the Appellant and submission made by the Member Secretary on behalf of Respondent PDA, the Board was of the considered opinion that the respondent PDA ought to have granted the Development Permission to the Appellant, as no such technical observation related to Appellant’s application were made and the Appellant was made answerable to the queries pertaining to other development permitted by the Respondent PDA itself.

Considering these factors and that the infrastructure tax challan already stands issued by the Respondent PDA, the Board allowed the appeal with direction to the Respondent PDA to consider the application of the Appellant for grant of Development Permission.

Item No. 4: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Maruti G. Phadke & Mrs. Sudha M. Phadke against Mormugao Planning and Development Authority. (File No. TP/B/APL/294/22)

Member Secretary informed that an appeal is filed against Order dated 04.11.2022 bearing ref No. MPDA/9-N-88(9-F-40)/2022-23/1094 passed by Mormugao Planning and Development Authority (MPDA) i.e. Respondent, to the extent that MPDA has grossly erred by holding that the development is carried out in violation/deviating from the approved plan. The Appellant being aggrieved by same has challenged the Order by the present appeal u/s 52(2)(b) of the TCP Act.

The Appellant states that the perusal of the Order clearly reveals that Order is cryptic, arbitrary, illegal, unreasoned, bad in law, without application of mind and is contrary to the provision of the Goa Land Development and Building Construction Regulations, 2010 (*Building Bye-laws*). Appellant further states that the Order suffers from material irregularity, is in violation of principal of natural justice and passed without giving appropriate reasonable opportunity to the Appellant to deal with the show-cause notice dated 05.09.2022 and therefore, is liable to be set-aside. It is further stated that the MPDA, rather than considering the reply dated 14.09.2022, and appreciating the fact that concerned structure has been constructed upon taking all the requisite permissions from all the Competent Authority, passed the Order in contravention of the building bye-laws and the law laid down by the Hon'ble Supreme Court and other High Courts in catena of judgments/precedents.

The appeal memo states that Appellant has purchased plot No. 3 admeasuring 300 sq.mts. vide Deed of Sale dated 06.06.2005 and upon taking requisite permission from the Competent Authority, have constructed a Multi family Dwelling ground plus one structure, existing thereon.

The Appellant upon obtaining requisite construction license dated 22.12.2014 bearing ref. No. VP/CHI/11/2014-15/23/342 from Village Panchayat of Chicalim and Development Permission dated 06.11.2014 bearing ref No. MPDA/9-F-40/2014-15/641 from MPDA, has constructed the structure.

The Appellant has also obtained completion Certificate dated 26.04.2016 bearing ref. no MPDA/9-F-40/2016-17/90 and has obtained Occupancy Certificate dated 31.05.2016 bearing ref No. VP/CHI/79/Occup/2016-17/5/494 from Village Panchayat of Chicalim. Flag Officer Commanding had also issued NOC dated 10.03.2014 for construction of concerned structure in the said property.

Furthermore, upon issuing the said Completion Certificate/Occupancy, there have been no material alteration or changes to the concerned structure warranting any action in terms of provision of law. It is submitted that concerned structure as existing at *loco* is in-terms of the approved plan and there is no variation or deviation of any nature. Any attribution that the concerned structure is unauthorised or illegal is specifically denied by the Appellant as being false and untrue.

Appellant states that somewhere in the year 2022, MPDA issued show cause notice dated 05.09.2022 to him contending the Flag Officer by letter dated 22.07.2022 have intimated MPDA that he has undertaken construction of house by Violating the Obstacle Limitation Surface (OLS) by 1.3028 mts. within the transitional surface in the said plot and called upon him to show-cause why action under section 52 of the TCP Act should not be taken. MPDA issued another letter titled as "Issuance of Final Order for unauthorised construction around Dabolim Airport, Goa infringing obstacle limitation surface." dated 17.08.2022

Appellant states that upon receipt of both the aforementioned letter from MPDA, he has filed a composite reply dated 14.09.2022, wherein it is categorically brought to the notice of MPDA that the letter issued by Flag Officer dated 22.07.2022 and the directions of the Hon'ble High Court in-fact pertains to taking action against unauthorised structure existing on Survey no. 60/2 of Dabolim Village and not 60/1 of Dabolim, wherein the concerned structure has been constructed upon taking requisite permissions from Competent Authority including Flag Officer (Aviation), Goa.

The Appellant therefore states that the impugned order is bad in law, arbitrary, illegal, unreasoned, capricious, whimsical and *contra legume* and liable to be set-aside.

The grounds mentioned by the Appellant are as under:

- a. The impugned order is bad in law, unreasoned, capricious, arbitrary, contrary to material on record, perverse and passed without considering the material on record and as such, liable to be quashed and set-aside.
- b. The impugned order is vulnerable and is liable to be set aside in as much as the impugned proceedings stem out of letter dated 22.07.2022 issued by Flag Officer, which categorically records that “*a report of survey no. 60/2 was submitted for final order on 04.08.2021 with 41 obstructions as obstructions infringing Obstacle Limitation Surface (OLS). Survey no. 60/2 falls in Approach Surface of Runway.*” This clearly indicates that OLS restrictions on height pertain to structures in survey no. 60/2. Whereas the construction of the Concerned structure falls within 60/1 of Village Dabolim and not 60/2 of Dabolim Village. That apart, Flag Officer has issued NOC for the concerned structure by letter dated 10.03.2014 therefore, it is apparent that impugned order is passed without any application of mind, completely in mechanical manner.
- c. The MPDA has failed to consider that structure is constructed pursuant to construction license dated 22.12.2014 bearing ref. No. VP/CHI/11/2014-15/23/342 from Village Panchayat of Chicalim and Development Permission dated 06.11.2014 bearing ref. No. MPDA/9-F-40/2014-15/641 from MPDA and NOC dated 10.03.2014 issued by Flag Officer that upon completion of construction, Village Panchayat and MPDA upon verifying that same is in-terms of the construction license and same is fit for human occupation, MPDA issued Completion Certificate dated 26.04.2016 bearing ref. No MPDA/9-F-40/2016-17/90 and Village Panchayat issued Occupancy Certificate dated 31.05.2016 bearing ref. No. VP/CHI/79/Occup/2016-17/5/494. Therefore submitted that Impugned Order is erroneous, bad in law, cryptic, arbitrary, unreasoned and liable to be quashed and set aside.
- d. The impugned order is in flagrant violation of principle of natural justice as MPDA without affording an opportunity of oral hearing on the matter has passed the impugned order. It is submitted that had an oral hearing was granted to this Appellant, the Appellant would have brought it to the notice of the MPDA that concerned structure does not fall within OLS restriction of Flag Officer and that same is constructed upon taking requisite permissions from concerned authorities and NOC of the Flag Officer.
- e. The MPDA in compliance with principle of natural justice ought to have afforded personal hearing to the Appellant herein. Considering the fact that by the impugned order there are far reaching civil consequences upon the Appellant herein, it was mandated that the Appellant are duly heard before passing the impugned order.
- f. The MPDA has grossly erred by failing to consider letter dated 22.07.2022 issued by Flag Officer and the Permissions/Licenses/NOC as regards concerned structure. The NGPDA ought to have verified the said facts by conducting appropriate site inspection in-terms of provision of law.
- g. The impugned order is untenable and bad in law as the same is vague, cryptic and arbitrary. It is submitted that perusal of the impugned order clearly reveals that MPDA has not verified the facts at *loco* and have been unduly influenced by the letter dated 22.07.2022 issued by Flag officer. In-fact the impugned order does not specify exactly which portion of the entire structure is unauthorised or violating obstacle limitation surface. The vagueness and generality of the impugned order itself renders it bad in law and liable to be quashed and set-aside.

- h. Without prejudice, assuming without admitting that there are certain violation of OLS, however, considering that MPDA has not conducted a site inspection to ascertain the portion of which is in violation, execution of the impugned order would not only jeopardise the structural stability and integrity of the remaining legal structure but would also render the Appellants and their children homeless.
- i. The impugned order is based on surmises and conjectures without any fact-finding exercise being done by the MPDA, in-fact perusal of the impugned order reveals that MPDA has been unduly influenced by the letter dated 22.07.2022 issued by Flag officer, without any application of mind in as much as the said letter refers to OLS violation by structures in property bearing survey no. 60/2. Whereas the construction of the Concerned structure falls within 60/1 of Village Dabolim and not 60/2 of Dabolim Village and considering that MPDA in consonance with provision of law without any site inspection to ascertain any violation of OLS restrictions has passed the impugned order in mechanical and arbitrary manner and as such same deserves to be quashed and set-aside.
- j. The impugned order is vulnerable, bad in law, contrary to the factual scenario at *loco* and is ought to be quashed and set aside as MPDA has failed to consider that structural situation as existing today has not been altered by the Appellant since grant of Completion Certificate and Occupancy in the year 2016 as such, any irregularity alleged today, after a span of 4 years is barred by delay and latches. Alterations/Modification, if any should have been suggested prior to issue of the completion certificate and occupancy.
- l. The impugned order suffers from material irregularity, perversity and is passed by the MPDA to please the Complainants without considering the material on records.
- m. The impugned order passed by MPDA is unreasoned and without spelling out any findings in the impugned order and the same is passed in a cryptic and arbitrary manner.
- k. The MPDA erred in law by not considering the documents and materials on record and failed to exercise jurisdiction vested in it in terms of law and without application of mind to the facts of the case and as such the same is liable to be rejected.
- l. Any other further ground that may be advanced or raised during the course of arguments in the interest of justice with leave of this Hon'ble Authority.

The Appellant states that the Respondent issued the impugned directions and have fixed arbitrary timeline of 30 days to demolish the concerned structure and further states that if the structure is demolished, it shall cause huge financial loss and jeopardising to the Appellant besides affecting the structural stability/integrity of the entire structure.

It is further stated by the Appellants that they are the owners of the said property under reference and considering that the concerned structure is put up after obtaining valid license/occupancy, they have a good prima-facie case and the balance of convenience lies in their favour and as such, operation of the impugned order ought to be stayed pending hearing and final disposal of the present appeal.

It is stated that in light of facts and circumstance stated herein above, the Appellant is entitled for an Order from the Board quashing and setting aside the Order dated 04.11.2022 bearing ref. No. MPDA/9-N-88(9-F-40)/2022-23/1094 passed by Mormugao Planning and Development Authority, wherein the MPDA has issued demolition order against the Appellants.

The Appellant states that pending hearing and final disposal of the appeal, they are entitled for an Order of the Board calling for the records and proceedings in the Case No. MPDA/9-N-88(9-F-40)/2022-23/1094 from MPDA.

The Appellant states that pending hearing and final disposal of the present appeal, they are entitled for an Order of the Board staying the operation of the impugned order and restraining Respondent (MPDA) from taking any coercive action.

The Appellant states that if the operation of the impugned order is not stopped, great loss and or injury will be caused to them and the proprietary rights of the Appellant would be jeopardized.

The appeal is filed invoking Section 52(2)(b) of the Goa Town and Country Planning Act, 1974, challenging the order passed by the NGPDA dated 04.11.2022.

The Appellant has therefore prayed:

For an Order of this Hon'ble Authority calling for the records and proceedings in the case No. MPDA/9-N-88(9-F-40)/2022-23/1094 from MPDA and on perusal of records and proceedings for an order quashing and setting aside the impugned order dated 04.11.2022 bearing ref No. MPDA/9-N-88(9-F-40)/2022-23/1094 passed by Mormugao Planning and Development Authority;

Adv. Abhishek P. Sawant appeared on behalf of the Appellant whereas Adv. A. S. Verenkar holding for Adv. Nikhil Pai appeared on behalf of Respondent PDA. While arguing, Adv. Abhishek P. Sawant informed that Respondent PDA ought to have given them a reasoning for the issue of demolition notice by citing specifically the details of extent of so called "illegal development" and it is only after that, he will be in the position to give explanation on the matter.

Adv. A. S. Verenkar informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter.

Considering the reasons cited, the Board agreed with the request made and accordingly the matter was adjourned.

Item No. 5: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Joao Baptiste Pereira against Mormugao Planning and Development Authority. (File No. TP/B/APL/282/22)

Member Secretary informed that an appeal is filed against Order dated 04/11/2022 bearing ref. No. MPDA/7-P-99/2022-23/1104 passed by the Mormugao Planning and Development Authority i.e. Respondent. The Appellant states that prior to the issue of notice dated 04/11/2022, a show cause notice dated 05/09/2022 was sent to the Appellant and no transgression report was attached to the said notice. The Appellant states that he has duly replied the said notice vide its reply dated 26/09/2022, and have given the factual position of the matter, however despite the said reply, the Respondent has issued him the notice dated 04/11/2022.

The Appellant states that he has not carried out any illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 1.962 square metres, within the approach funnel zone in the property bearing Plot No.26, of survey No.176/1 of Sancoale Village Mormugao Goa. The Appellant states that his house has been constructed as per the approved plans of the Respondent.

The Appellant further states that the Respondent No.1 without going into the facts of the matter, has sent a Notice dated 04/11/2022 under Section 52 of the Town and Country Planning Act, 1974. The Respondent has sent a demolition notice without even inspecting the site and the said notice is very vague and ambiguous, as no details of the illegality are mentioned, as such same has to be quashed and set aside. The Appellant therefore states that the show cause notice sent is in clear violation of any Act, law and the rules applicable.

The Applicant states that he has not carried out any illegal construction in violation of any rules and regulations and that the construction has been carried out by keeping proper setback, and also as per the plan approved by the Respondent and that the notice sent to him is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant states that in order to harass him and on the false complaint, the notice has been sent in a very casual manner without even going into the factual position and that the Respondent is acting on the basis of the complaint filed by some authority without even looking into the reality of the structure.

The Appellant states that he was surprised to receive the final notice from the Respondent directing him to demolish/remove the illegal development within 30 days from the receipt of the notice dated 4/11/2022 failing which this Authority shall cause the demolition/removal of the same. The Applicant states that there is no Transgression report about the alleged illegality to him. The notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent No.1, Appellant has filed the present appeal.

The grounds mentioned by the Appellant are as under:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction or development as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind, and on the false complaint filed by the Flag Officer Commanding.
- f) The Notice is not supported by any documentary evidence, and is absolutely vague without even showing any illegal development extension which is given by the Respondent and bad in law and hence liable to be rejected. The Respondent had not looked into the Complaint filed by the Flag Officer and has not conducted an inquiry into the matter.
- g) The impugned notice has been issued on political pressure by not looking into the reality at the site.
- h) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- i) Despite the reply filed by the Appellant to the earlier notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.

- j) The Appellant has necessary documents to show that his house has been constructed as per the approved plan of the Respondent.
- k) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- l) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 15/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which it shall cause the demolition/ removal of the same and cost for the said work would be recovered from the Appellant.

The Appellant has therefore prayed:

- a. To call for Record and Proceedings in Order/Notice dated 04/11/2022 under reference No. MPDA/7-P-99/2022-23/1104 and after Perusing the same may be quashed and set aside.
- b. Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Adv. Naveen Sharma appeared on behalf of the Appellant whereas Adv. A. S. Verenkar holding for Adv. Nikhil Pai appeared on behalf of Respondent PDA. While arguing, Adv. Naveen Sharma cited the notice issued to him and stated that the same should have contained the details of specific illegality committed by them.

Adv. A. S. Verenkar informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter.

Considering the reasons cited, the Board agreed with the request made and accordingly the matter was adjourned.

Item No. 6: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Parshuram H. Naik against Mormugao Planning and Development Authority. (File No. TP/B/APL/281/22)

Member Secretary informed that the Appellant has submitted the appeal memo stating as under:

By deed of sale dated 26th May 2009, registered before the Sub Registrar of Mormugao, under Registration No. 612, at pages 209 to 222, Book No I, Volume No. 956, dated 29/05/2009, the Appellant purchased a plot bearing Plot No. D-28, admeasuring 300 sq. mts. of the property surveyed under No. 174/1-A of Sancoale village, Mormugao Taluka.

By virtue of the said Deed of Sale, Appellant has become the owner in possession of the said plot No. D-28, admeasuring 300 sq. mts. of the property surveyed under No. 174/1-A of Sancoale Village, Mormugao Taluka.

The Appellant obtained permission and approval from the Village Panchayat of Sancoale and Mormugao Planning and Development Authority, towards the construction of the residential house in the plot No. D-28 of the property surveyed under No. 174/1-A of Sancoale Village.

In pursuance to the said permission and approval from the concerned authorities, the Appellant carried out the construction of the house in the said plot and occupies the said house alongwith his family in the year 2010 and since then, he is in peaceful occupation and possession of the house bearing No. 174/1-A in the plot No. 28, of the property surveyed under No. 174/1-A of Sancoale village without any obstruction or objections from any authority.

That the office of the Respondent has issued him a show cause notice dated 05/09/2022 and the said show cause notice was replied by him by reply dated 17/10/2022, stating therein that the wrong notice has been issued to him, as he is the owner in possession of the plot No. 28 of the property surveyed under No. 174/1-A of village Sancoale and that show cause which was issued to the Appellant was in respect to the plot No. 27.

The Appellant further stated that the Respondent thereafter issued Notice dated 04/11/2022 under ref. No. MPDA/9-N-88(7-N-170) 2022-23/1103, stating therein that Notice issued under ref.No. MPDA/9-N-88(7-N-170) 2022-23/799 dated 05/09/2022 for carrying out illegal development i.e. construction of house by violating the Obstacles Limitation Surface (OLS) by 3.9215 mts., within the approach funnel in the property bearing plot No. D-27 of survey No. 172/1-A of Sancoale, Mormugao Taluka and was directed to demolish/remove the illegal development referred above within 31 days from the receipt of this notice.

The Appellant states that he replied to the said notice vide letter dated 17/11/2022 stating that he is the owner in possession of the Plot No. 28 of the property surveyed under No. 174/1-A of Sancoale village and that the notice is issued to the Appellant claiming that the Appellant is the owner of the Plot No. 27 of the property surveyed under No. 172/1-A of Sancoale village.

The impugned notice is passed under Section 52 of the Goa Town and Country Planning Act and hence this appeal in terms of Section 52(2)(b).

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Appellant is not the owner of the Plot No. D-27 surveyed under No. 172/1-A, but owner of the Plot No. D-28 of the property surveyed under 174/1-A of Sancoale village and on this count itself impugned notice dated 04/11/2022 deserves to be withdrawn.
- b) That the impugned notice is bad in law as the authority did not carry out the site inspection and without site inspection, the respondent issued show cause notice and the impugned notice.
- c) The Member Secretary came to the erroneous finding that the Appellant carried out illegal development i.e. construction of the house by violation of the obstacles limitation surface (OLS) by 3.9215 mts. within the approach funnel in the property bearing plot No. D-27 of survey No. 172/1-A of Sancoale village, Mormugao Taluka, without there being any inspection report.
- d) The Member Secretary failed to take into account that the Appellant has carried out construction with the permission from the concerned authorities i.e. the Village Panchayat of Sancoale and the Mormugao Planning and Development Authority.
- e) The impugned notice is malicious and without justifications; it is non-speaking notice and the same cannot be allowed to operate on flimsy or extraneous grounds.
- f) The Member Secretary failed to apply its mind to the facts of the case. The notice is non-speaking and hence liable to be set aside.

- g) The impugned notice is contrary to good development and a clear violation and in breach of the development regulations.
- h) That the impugned notice is illegal, unwarranted by the facts on record superficial and inconsistent with and contrary to the documentary evidence on record.
- i) The impugned notice suffers from non-application of mind and is contrary to the provisions of law.

The Appellant has therefore prayed:

- a) That the record and proceedings of the Respondent pertaining to this file be called for.
- b) That the impugned notice dated 04/11/2022 be quash and set aside.
- c) Pending hearing and final disposal of the appeal, dated 04/11/2022 be stayed.

Adv. Sudhir K. Naik appeared on behalf of the Appellant whereas Adv. A. S. Verenkar holding for Adv. Nikhil Pai appeared on behalf of Respondent PDA. While arguing, Adv. Sudhir K. Naik cited that the development has been validly undertaken by them and that no illegalities have been committed by them in the plot owned by him.

Adv. A. S. Verenkar informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter.

Considering the reasons cited, the Board agreed with the request made and accordingly the matter was adjourned.

Item No. 7: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/320/22)

Member Secretary informed that the Appeal is preferred to the Board under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1056 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

A Show Cause Notice bearing ref. No. MPDA/9-N-88/2022-23/820 dated 5th September, 2022, was issued by the Respondent purporting to allege that the Appellant had carried out construction of house No. 48 by violating the Obstacle Limitation Surface (OLS) by 2.2 mtrs within the IHS in the property at Sancoale Village Mormugao Taluka, without prior permission of the Authority as required under Section 44 of the Act. The said Show Cause Notice was received by the Appellant on 21st September, 2022.

Vide Communication dated 03rd October, 2022, Appellant brought to the notice of the Respondent that they are unable to identify the specific structure as referred to in the subject Show Cause Notice as House No. 48 and as such was unable to effectively respond to the notice unless the alleged construction is exactly specified and identified.

The Appellant states that by the said communication dated 03rd October, 2022, he has requested the Respondent to furnish specific details and identification of House No. 48 as referred to in the show cause notice and on furnishing such details, to afford at least 15 days time therefrom to submit the response to the notice.

The Respondent, issued Impugned Notice dated 04th November, 2022 directing to demolish/ remove the purported illegal development within 30 days from the receipt of the notice.

Being aggrieved by the said Impugned Notice, Appellant has preferred this Appeal under Section 52(2) of the Act to quash and set aside the same on the following grounds:

- a) The Impugned Notice is illegal and null and void ab initio in as much as it violates all the basic principles of natural justice expected to be complied by a statutory authority;
- b) The Impugned Notice is contrary to the settled principles of natural justice and is passed in a very casual manner;
- c) The Impugned Notice is issued without affording a reasonable opportunity to the Appellant to respond to the subject show cause notice and to place the true and correct facts before the Authority;
- d) The subject show cause notice is absolutely vague and unclear in as much as it mentions “construction of House No. 48”. It is stated that nowhere in the records of the Appellant is there existence of any structure identified as House No. 48. It is for this very reason that the Respondent was specifically asked to identify the structure which was the subject matter of the show cause notice;
- e) It is respectfully submitted that issuance of the Impugned Notice without identifying the structure which is the subject matter of the show cause notice and further non grant of effective opportunity to the Appellant to respond, is illegal, unreasonable, arbitrary and completely in violation of the basic principles of natural justice;
- f) It is respectfully submitted that the Appellant cannot be expected to respond to the show cause notice unless the Authority specifically identifies the structure or construction which is the subject matter of the said show cause notice;
- g) The observation in the Impugned Notice that the Appellant has shown cause in its letter dated 03rd October, 2022, is not only shocking but also a complete misreading of the said letter. By the said Letter, the Appellant had only requested the Respondent to provide specific details and thereafter to afford at least 15 days time to the Appellant to respond to the show cause notice;
- h) The Impugned Notice is passed in a very careless and cavalier manner and without considering that such a drastic notice would have severe adverse consequences and hardships to the Appellant;
- i) The Impugned Notice is issued without affording a personal hearing to the Appellant and as such, illegal, null and void;
- j) The Impugned Notice is passed without jurisdiction and is ab initio null and void;

The Appellant has therefore prayed to call for the records of the case and on examining the legality thereof, to quash and set aside the Impugned Notice bearing ref. No. MPDA/9-N-88/2022-23/1056 dated 4th November, 2022 issued by the Mormugao Planning & Development Authority.

Adv. Shri Yogesh Nadkarni appeared on behalf of the Appellant and whereas Respondent PDA was represented by Adv. Narcinva A. S. Verenkar.

Adv. Narcinva A. S. Verenkar informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter.

While arguing, Adv. Shri Yogesh Nadkarni requested for written comments of the Respondent on the notice served upon them, such that the same could be subsequently argued by them. Adv. Narcinva A.S. Verenkar agreed to file a detail reply/comments on behalf of MPDA in the matters before the Board pertaining to appeals against Zuari Agro Chemicals Ltd. and therefore requested for adjournment of the matters.

Considering the reasons cited, the Board agreed with the request made by the Respondent PDA and accordingly adjourned the matter with direction to Respondent PDA that the comments in the matter of notice issued shall be offered to the Appellant before the next date of the hearing.

Matter accordingly stands adjourned.

The Member Secretary then informed the Board that Adv. Shri Yogesh Nadkarni appearing for Zuari Agro Chemicals Ltd. and Adv. Narcinva A. S. Verenkar holding for Adv. Nikhil Pai, appearing for MPDA are also representing the Appellant and Respondent PDA in other appeal matters listed at item No. 8 to 37, wherein the reasons and grounds for issue of notices are similar.

Considering this and submissions made before it, the Board also adjourned all other appeal matters listed at item No. 8 to 37.

Item No. 8: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/321/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1044 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 9: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/322/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1046 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 10: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/323/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1037 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 11: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/324/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1036 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 12: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/325/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1032 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 13: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/326/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1031 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 14: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/327/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1024 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 15: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/328/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1025 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 16: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/329/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1026 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 17: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/330/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1027 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 18: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/331/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1029 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 19: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/332/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing Ref. No. MPDA/9-N-88/2022-23/1030 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 20: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/333/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1043 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 21: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/334/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1042 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 22: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/335/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1035 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 23: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/336/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1034 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 24: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/337/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1033 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 25: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/338/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1023 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 26: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/339/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1045 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 27: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/340/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1061 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 28: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/341/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1052 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 29: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/342/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1051 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 30: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/343/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1049 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 31: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/344/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1028 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 32: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/345/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1048 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the Act and the said notice has been received by the Appellant on 14th November, 2022.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 33: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/346/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1047 dated 4th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 34: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/347/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1039 dated 04th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 35: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. Against Mormugao Planning and Development Authority. (File No. TP/B/APL/348/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1040 dated 04th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 36: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/349/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1038 dated 04th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 37: Appeal under Section 52(2) of the TCP Act, 1974 filed by Zuari Agro Chemicals Ltd. against Mormugao Planning and Development Authority. (File No. TP/B/APL/351/22)

Member Secretary informed that the Appeal is preferred under Section 52(2) of the Goa Town & Country Planning Act, 1974, against the Notice bearing ref. No. MPDA/9-N-88/2022-23/1041 dated 04th November, 2022 issued by the Respondent MPDA under Section 52 of the TCP Act.

Adv. Shri Yogesh Nadkarni appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 7.

Item No. 38: Appeal under Section 52(2) of the TCP Act, 1974 filed by M/s Goa Shipyard Ltd. V/s Mormugao Planning and Development Authority and Goa Industrial Development Corporation. (File No. TP/B/APL/312/22)

Member Secretary informed that the appeal is filed against Notice/Order No. MPDA/9-N-88/2022-23/1054 dated 04/11/2022 issued by the Respondent PDA under Section 52 of the Town and Country Planning Act, 1974, directing the Appellant to demolish/remove warehouse located in plots No. 23 to 26, 33 to 36 of Sancoale Village, Mormugao Taluka, in the property survey under No. 185, which notice is hereinafter referred to as the impugned order.

The Appellant states that a Triplicate Deed of Lease dated 25/01/2018, executed between Appellant, Respondent No. 2 and Umicore Anandeya India Pvt. Ltd. and registered on 29/01/2018 under No. MOR-BK 1-00170-201A before the Sub-Registrar, Mormugao, Goa the Appellant acquired leasehold rights to a plot of land alongwith a building thereon i.e. factory building erected by the previous lessee, located in plots No. 23 to 26, 33 to 36 in Survey No. 185 at Sancoale Industrial Estate of Respondent No. 2.

The Appellant further states that one M/s Anandya Oxides, a partnership firm had initially acquired the said plot of land from the Respondent No. 2 GIDC by registered Deed of Lease dated 12/10/1994, which had erected factory building thereon. That thereafter there was change in the constitution of the said lessee as it was converted to a private limited company,

Anandya Zinc Oxides Pvt. Ltd. which name was subsequently changes to Umicore Anandya India Pvt. Ltd. All aforesaid was incorporated in the Deed of Addendum/Modification dated 29/10/2010 executed between the said company and Respondent No. 2 by registered deed.

That as per the information of the Appellant, based on the content of the deed of lease dated 12/10/1994 referred to above, the warehouse building was erected in the plot by the original Lessee after obtaining permission dated 24/11/1993 from Respondent No. 2 and Occupancy Certificate dated 04/06/1997 from concerned Village Panchayat of Sancoale. That subsequently the Respondent No. 2 also approved the extension to the building with a permission dated 04/10/2012 to said Lessee and issued Occupancy Certificate on 08/09/2017.

That the area where the Sancoale Industrial Estate of Respondent No. 2 is situated was first notified as planning area vide notification No. 4-5-2-84-UDD(part)/05/2737 dated 27/09/2005 published in the Official Gazette Series I No. 25 dated 27/09/2005 issued under sub section (1) and (2) of section 18 of the Town and Country Planning Act, 1974. That prior thereto vide notification No. 4-5-2-84-UDD(part)/04 dated 23/06/1993 published in Official Gazette series I No. 13 dated 24/06/1993 the planning area notified for the purpose of section 18 was only area comprising of Mormugao Municipal Council.

The Appellant states that he received Show Cause Notice under ref. No. MPDA/9-N-88/2022-23/801 dated 05/09/2022 form the Respondent No. 1 stating that Flag Officer Commanding vide letter dated 22/07/2022, addressed to Directorate General Civil Aviation has brought to tits notice that Appellant has carried out construction of warehouse by violating the Obstacle Limitation Surface (OLS) by 1.2 mts. within the approach funnel in the property bearing survey No. 185/P-23 to 26, 33 to 36 of Sancoale village, Mormugao Taluka without prior permission as required under Section 44 of the Town and Country Planning Act, 1974 and hence, Appellant was directed to Show Cause why action under section 52 of Town & Country Planning Act 1974 should not be initiated for the illegal development under section 52 of said Act.

That prior thereto the Appellant has received a communication under reference No. MPDA/9-N-88/2022-23/619 dated 17/08/2022 from the Respondent No. 1 enclosing therewith copy of the letter dated 22/07/2022 from Captain (Air) Commanding Officer addressed to the Director General (Civil) Aviation, New Delhi, directing to submit clarification to the Respondent No. 1 in respect thereof.

That the aforesaid communication dated 22/07/2022 referred to Judgement of Hon'ble High Court of Bombay at Goa and direction of Union of India to act upon the report made by the Flag Officer Commanding Naval, Goa Naval Area to issue final order for unauthorized constructions in survey No. 60/2 and around Dabolim Airport. It referred to the preliminary survey carried out around Dabolim Airport in the months of December and May 2022, which noted prima facie approximately 200 constructions which were likely to continue aeronautical obstruction and the Officer in-charge of Aerodrome served notifications as per para 3 of the Aircraft Rules, 1994 upon the owners seeking details of the construction.

That, However, the information based on which the aforesaid survey conducted was insufficient. That thereafter Joint survey was conducted by representatives of Respondent No. 1 and Goa Police in the months of May and June 2022 as per para 5 of the Aircraft Rule, 1994. After noting at clause (b) of para 6 of report of said survey that 7 constructions constitute aeronautical constructions based on calculation, as per the data provided by Respondent No. 2, Commanding Officer requested to issue final Order in accordance with para 6 of the Aircraft Rules, 1994 directing all residents to reduce the height of the construction/demolish the structure in compliance with Obstacle Limitation Criteria.

The Appellant states that vide letter dated 30/08/2022 addressed to the Respondent No. 1, he had sought clarifications in respect of the survey conducted by the authorities referred to above and also informed that it has not increased the height of the original structure which it acquired from the previous Lessee of Respondent No. 2, GIDC. Therefore, the statement that subject structure was erected by the Appellant was totally incorrect, inasmuch as the Appellant has neither erected the warehouse nor made any alternations thereto with respect to the height. It was also pointed out that it is not clear from the communication of Respondent No. 1 or from the referred communication from the Commanding Officer that which portion of the building structure is infringing the permissible height as the purported survey was done in absence of the Appellant.

That however no clarification as sought was provided by Respondent No. 1 in response to the aforesaid letter from Appellant.

That the Appellant replied to the show cause notice by reply dtd. 22/9/2022 stating that

- a) That the direction from the Director General of Civil Aviation to Respondent No. 1 at para 7 of the referred communication did not disclose that it is based on any power of delegation under the Aircraft Act, 1934 or the Rules framed thereunder.
- b) That consequently, notice under Section 52 of Town and Country Planning Act, 1974 issued by Respondent No. 1 based on such direction in letter dtd. 22/7/2022, is not competent under the said Aircraft Act.
- c) That Section 52 of Town and Country Planning Act, 1974 is limited to situations provided under clauses (a) to (f) of sub section(1) of Section 51 of the said Act. None of the said situations are attracted in the present case.
- d) That in the circumstances, Respondent No. 1 lacked jurisdiction to issue the Show Cause notice or demolition notice.
- e) That without prejudice, there is no violation of any building regulations while erecting the subject structure by the original lessee as permitted by the Respondent No. 2, GIDC. That the subject structure is not unauthorized.

That it may be noted that there is no allegation in said communication of Commanding Officer that Appellant has not obtained prior permission of Respondent No. 1 under section 44 of Town and Country Planning Act, 1974 as it falsely contended in the Show Cause Notice.

Aggrieved by the Notice/Order dtd. 4/11/2022, the Appellant has challenged the same vide the present Appeal on the following grounds:

1. The impugned Notice/Order is without jurisdiction.
2. The Show Cause Notice as well as the notice of demolition is issued under the provision of Town and Country Planning Act, 1974 by Respondent No. 1, the Planning Authority when the subject area where building was located was not notified as planning area under Respondent No. 1.
3. The demolition notice proceeds on the sole ground that the development permission under Section 44 of the Town and Country Planning Act, 1974 has not been obtained from the Respondent No. 1 without any subjective satisfaction as to whether it was required to be obtained.
4. That whereas the Show Cause Notice proceeds on the communication dtd. 22/7/2022 from Flag Officer Commanding to the Director General Civil Aviation, which was squarely referring to the Aircraft Act and Rules thereunder, and not to permission under Section 44 of Town and Country Planning Act, 1974. Respondent No. 1 has usurped the jurisdiction under the said Act, which it did not have.
5. There is total non consideration of the reply of the Appellant to the show cause notice by the Respondent No. 1. Therefore action is patently arbitrary.

6. That the communication dtd. 22/7/2022 from Flag Officer Commanding to the Director General Civil Aviation, at para 7 thereof contemplated issuance of the order under Aircraft Rules, 1994, and not under Town and Country Planning Act, 1974. That in as much as Respondent No. 1 has presumed jurisdiction under Aircraft Rules, 1994, without any delegation, the impugned notice is bad in law.

The Appellant states that if pending the appeal, the impugned notice/order is executed, irreparable loss and injury will be caused to him.

The Appellant has therefore prayed for the following:

- a) Appeal be allowed.
- b) The impugned notice/order dated 04/11/2022 (exhibit A) be quashed and set aside;
- c) Pending the hearing and final disposal of the appeal the impugned notice dated 04/11/2022 be stayed.

Adv. Sudesh Usgaonkar appeared on behalf of the Appellant alongwith Adv. V. Barreto and whereas Respondent PDA was represented by Adv. A. S. Verenkar.

Adv. Narcinva A. S. Verenkar informed the Board that he is holding for Adv. Nikhil Pai, who could not remain present for the hearing in view of short notice issued as Adv. Nikhil Pai had to attend to other prior commitments scheduled at the same time and therefore requested for adjournment of the matter.

While arguing, Adv. Sudesh Usgaonkar informed that the entire development as referred by the PDA is legally undertaken by obtaining necessary permissions wherever required.

Adv. Narcinva A.S. Verenkar holding for Adv. Nikhil Pai, offered to file a detail reply/comments on behalf of MPDA in the matters before the Board pertaining to appeals against M/s Goa Shipyard Ltd. and therefore requested for adjournment of the matters.

Considering the reasons cited, the Board agreed with the request made by the Respondent PDA and accordingly adjourned the matter with direction to Respondent PDA that the comments in the matter of notice issued, shall be offered to the Appellant before the next date of the hearing.

Matter accordingly stands adjourned.

The Member Secretary then informed the Board that Adv. Sudesh Usgaonkar appearing for M/s Goa Shipyard Ltd. and Adv. Narcinva A. S. Verenkar holding for Adv. Nikhil Pai, appearing for MPDA are also representing the Appellant and Respondent PDA in other appeal matter listed at item No. 39, wherein the reasons and grounds for issue of notices are similar.

Considering this and submissions made before it, the Board also adjourned the appeal matter listed at item No. 39.

Item No. 39: Appeal under Section 52(2) of the TCP Act, 1974 filed by M/s Goa Shipyard Ltd. V/s Mormugao Planning and Development Authority and Goa Industrial Development Corporation. (File No. TP/B/APL/313/22)

Member Secretary informed that the appeal is filed against Notice/Order No. MPDA/9-N-88/2022-23/1055 dated 04/11/2022 issued by the Respondent PDA under Section 52 of the Town and Country Planning Act, 1974, directing the Appellant to demolish/remove old building located in plots No. 63 to 65, 74 to 75 of Sancoale Village, Mormugao Taluka, in the property survey under No. 181.

Adv. Sudesh Usgaonkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 38.

Item No. 40: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Kamla Prasad Yadav against Mormugao Planning and Development Authority. (File No. TP/B/APL/314/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-16)/2022-23/1122 passed by the Respondent.

As per the appeal memo, the following is submitted by the Appellant:

The Appellant states that the project 'SAFFIREE ENCLAVE' situated at Dabolim Goa has been constructed on the landed property plot B surveyed under survey No. 63/2,3 & 4 of Dabolim village, Mormugao Taluka of which Appellant is an owner.

The said building has been constructed as per the building plan approved by Respondent and after obtaining all the necessary permissions required for the said construction.

As per MPDA Development Permission the NOC from the Civil Aviation Authorities are required only when the plot is falling within Funnel Zone and as per MPDA letter dated 12/11/2019 the said plot where the building has been constructed does not fall within Funnel Zone and hence no NOC is required from the Indian Navy.

The Appellant states that the said building has been completed in all respect and has obtained the completion certificate for the building from the Respondent and has also obtained occupancy certificate for the building from the Village Panchayat of Chicalim and the flat premises are been sold to various buyers who are now occupying the said building.

The Appellant have not violated any law at the time of construction of building nor any condition mentioned in the Development Permission issued by the Respondent and the construction has been carried out as per the approved plan with all valid permissions required at the relevant time.

If any permission was required besides the permissions obtained by the Appellant, then Respondent would not have grant the Development Permission nor the Completion Certificate.

The Appellant states that granting of permissions by the Respondent for the said building shows that no other permissions were required at the relevant time under prevailing law.

The Appellant stated that the Respondent without going into the facts of the matter have chosen to issue show cause notice dated 5/9/2022 to which Appellant had replied with all supporting documents but the Respondent failed to consider the same.

Instead the Respondent has issued Demolition Notice dated 05/11/2022 under section 52 of the Town and Country Planning Act 1974. The Respondent sent a Demolition notice without even inspecting the site.

The said notice sent is very vague and ambiguous, no details of the illegality are mentioned, as such same has to be quashed and set aside. The show cause notice sent is in clear violation of law and the rules applicable.

The Appellant states that he has not carried out any illegal construction in violation of rules and regulations as alleged in notice. The construction has been carried out with all the permissions required under the law.

The Appellant states that the Notice sent to him is against the principle of natural justice, and by not following proper procedure and hence the notice sent itself is illegal.

The Appellant further states that he was surprised to receive the Final notice and the Respondent has directed the Appellant to demolish the structure within 30 days from the receipt of the notice. The demolition notice dated 04/11/2022 is herein after to be referred to as "The Impugned Notice". The Applicant states that there is no Transgression report about the alleged illegality given to him hence the notice is one-sided and hence cannot be looked upon and the same has to be summarily rejected.

Having been aggrieved by the said impugned notice dated 04/11/2022 passed by the Respondent, Appellant has preferred the present appeal.

Grounds of Appeal as stated by the Appellant:

- a) That the impugned notice is bad in law as the Respondent did not give any hearing to the Appellant before issuing the impugned notice.
- b) That the impugned notice issued by the Respondent to the Appellant is without carrying out any site inspection and as such the same is defective and arbitrary without looking the actual position on the site.
- c) The Appellant has not carried out any illegal construction as alleged in the impugned notice. The impugned notice is therefore fictitious.
- d) The impugned notice is arbitrary and against the principles of natural justice and hence deserves to be quashed and set aside.
- e) The Appellant states that the impugned notice was issued by the Respondent mechanically and without any application of mind.
- f) The Notice is not supported by any documentary evidence and is absolutely vague without even showing alleged illegality and bad in law and hence liable to be rejected.
- g) The Appellant has carried out the construction as per the approved plan sanctioned by the Respondent.
- h) The Impugned notice is issued without giving any valid reasons, and without any site inspection.
- i) Despite the reply filed by the Appellant to the show cause notice of the Respondent, the impugned notice was issued. The Respondent has failed to give any inspection report to the Appellant as to on what basis the Respondent has come to the conclusion regarding the illegal construction.
- j) No transgression report has been submitted by the Respondent of the alleged illegal construction. The impugned notice is therefore liable to be quashed and set aside on this ground alone.
- k) The impugned notice is arbitrary, unjust illegal, non application of mind, without any basis of law or facts, and without taking into consideration the actual position at the site.

The impugned notice dated 04/11/2022 was issued by the Respondent and the same was received by the Appellant on 10/11/2022 directing the Appellant to carry out the demolition of the structure, illegal development within 30 days from the receipt of the same, failing which this Authority shall cause the demolition removal of the same and cost for the said work shall be recovered from the Appellant.

The Appellant has therefore prayed:

- (a) To quash and set aside Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-16)/2022-23/1122 issued by Respondent.
- (b) To call for Record and Proceedings in Order/Notice dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-16)/2022-23/1122.
- (c) Pending hearing and final disposal of this appeal, operation of the impugned notice be stayed.

Adv. Chetan Palkar appeared for Appellant and whereas the Respondent PDA was represented by Adv. Narcinva A.S. Verenkar.

At the outset, Adv. Chetan Palkar informed the Board that he is appearing for various other clients, who are the Appellants in the matter of appeal before the Board as listed at item No. 40 to 72.

Adv. Chetan Palkar submitted that the Respondent PDA has erred in many ways in issuing notices to his clients, who are the Appellants in different matters as reflected at item No. 40 to 72 and rather than going into merits of each case at this stage, he would like to inform the Board about lapses on part of the Respondent PDA in issuing the notices, which are either issued in the name of dead persons or are served on wrong persons, which need to be checked and verified by the Respondent PDA. Adv. Palkar further informed that in some of the cases, his clients have applied for documents from the Naval Authorities, which need to be relied upon by him in defence of his clients.

Considering these aspects, Adv. Chetan Palkar requested for adjournment of the present matter and also the matters listed at item No. 41 to 72, such that sufficient time is available with him to place additional documents before the Board.

Adv. Narcinva A.S. Verenkar holding for Adv. Nikhil Pai, while arguing on behalf of Respondent PDA, agreed to look into the issues raised by the Appellant and offered to submit a detail report/comments to the Board and to the Appellant, wherever required.

Considering this and submissions made before it, the Board agreed with the request made for adjournment. The matter therefore stands adjourned.

The Member Secretary then informed the Board that Adv. Shri Chetan Palkar appearing for the present appellant and Adv. Narcinva A. S. Verenkar holding for Adv. Nikhil Pai, appearing for MPDA, are also representing the Appellant and Respondent PDA in other appeal matters, listed at item No. 41 to 72, wherein the reasons and grounds for issue of notices are similar.

Considering this and submissions made before it, the Board therefore also adjourned all other appeal matters listed at item No. 41 to 72.

Item No. 41: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Pramod A. Bandekar against Mormugao Planning and Development Authority. (File No. TP/B/APL/295/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1113 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 42: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Kamla Prasad Yadav against Mormugao Planning and Development Authority. (File No. TP/B/APL/315/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-18)/2022-23/1121 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 43: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Kamla Prasad Yadav against Mormugao Planning and Development Authority. (File No. TP/B/APL/305/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-12)/2022-23/1123 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 44: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Ahmed Usman Patel against Mormugao Planning and Development Authority. (File No. TP/B/APL/302/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1126 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 45: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Ganpat Raghoba Nagam against Mormugao Planning and Development Authority. (File No. TP/B/APL/319/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1070 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 46: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Rihana Kutboddin Talwai against Mormugao Planning and Development Authority. (File No. TP/B/APL/311/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1128 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 47: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Savitri Inas Kauripal against Mormugao Planning and Development Authority. (File No. TP/B/APL/316/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1110 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 48: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Laxmibai Lamani against Mormugao Planning and Development Authority. (File No. TP/B/APL/318/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1112 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 49: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Shri Sannabasappa Harijan against Mormugao Planning and Development Authority. (File No. TP/B/APL/317/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1115 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 50: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Hajrath Kuntaji against Mormugao Planning and Development Authority. (File No. TP/B/APL/350/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1063 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 51: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Renudevi Kashiram Nishad against Mormugao Planning and Development Authority. (File No. TP/B/APL/299/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1127 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 52: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Bhalachandra Khadapkar against Mormugao Planning and Development Authority. (File No. TP/B/APL/310/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1070 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 53: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Sameema Hussain Asif against Mormugao Planning and Development Authority. (File No. TP/B/APL/297/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1071 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 54: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Shri Bapusaheb Parshuram Sannaki against Mormugao Planning and Development Authority. (File No. TP/B/APL/298/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-94)/2022-23/1125 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 55: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Shambhu Amonkar against Mormugao Planning and Development Authority. (File No. TP/B/APL/296/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1130 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 56: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Babulal R. Nadaf against Mormugao Planning and Development Authority. (File No. TP/B/APL/300/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1082 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 57: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Umesh Naik against Mormugao Planning and Development Authority. (File No. TP/B/APL/354/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-74)/2022-23/1085 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 58: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Ellova Yamnappa Harijan against Mormugao Planning and Development Authority. (File No. TP/B/APL/308/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1111 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 59: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Kavita Pravin Kamble against Mormugao Planning and Development Authority. (File No. TP/B/APL/304/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1114 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 60: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Ramesh Shivappa Madar against Mormugao Planning and Development Authority. (File No. TP/B/APL/307/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-95)/2022-23/1116 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 61: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Ajay Singh against Mormugao Planning and Development Authority. (File No. TP/B/APL/253/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1059 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 62: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Demappa Vantamuri against Mormugao Planning and Development Authority. (File No. TP/B/APL/356/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-V-44)/2022-23/1087 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 63: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Mahamud Shaikh against Mormugao Planning and Development Authority. (File No. TP/B/APL/306/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1129 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 64: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Anand Lamani against Mormugao Planning and Development Authority. (File No. TP/B/APL/303/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1064 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 65: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Seeta Anil Naik against Mormugao Planning and Development Authority. (File No. TP/B/APL/309/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-M-94)/2022-23/1081 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 66: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Maria Surendra Kumar Chaudhary against Mormugao Planning and Development Authority. (File No. TP/B/APL/358/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-C-49)/2022-23/1090 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 67: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Ramji Prasad against Mormugao Planning and Development Authority. (File No. TP/B/APL/359/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-P-52)/2022-23/1088 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 68: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Shobha Kamata Prasad against Mormugao Planning and Development Authority. (File No. TP/B/APL/360/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-P-75)/2022-23/1086 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 69: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Channaveerappa Jamalingappanava against Mormugao Planning and Development Authority. (File No. TP/B/APL/361/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1057 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 70: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mrs. Renuka Hadlageri against Mormugao Planning and Development Authority. (File No. TP/B/APL/362/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1062 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 71: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Hariram Sharma against Mormugao Planning and Development Authority. (File No. TP/B/APL/363/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1067 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 72: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Ramesh Fatji against Mormugao Planning and Development Authority. (File No. TP/B/APL/364/22)

Member Secretary informed that the appeal is filed against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1080 passed by the Respondent.

Adv. Chetan Palkar appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 40.

Item No. 73: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Bhaskar K. Gangulikar V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/301/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174 sub-division 1 -A of Sancoale Village of the Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was issued a letter under ref. No. MPDA/9-N-88/2022-23/634 dt. 18.08.2022 by the Respondent asking for clarification to a letter claimed to be received from the Commanding Officer.

The Appellant vide his reply dated 27.08.2022 submitted his detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Appellant was served with a notice under ref. No. MPDA/9-N-88/2022-23/781 dt. 05.09.2022 alleging about illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 1.9148 mtrs., within the approach funnel in the property bearing Plot Nos. 1 & 12 of Survey No. 176-1 of Sancoale Village, Mormugao Taluka.

The Appellant vide his reply dated 04.10.2022 submitted his detailed reply / explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has then issued a notice under ref. No. MPDA/9-N-88(7-G-53)/2022-23/1095 dated 4.11.2022 under Section 52 of the Town & Country Planning Act, claiming that the said reply has not been satisfactory, the Appellant has therefore filed the present Appeal.

The Appellant submits that he had purchased a sub divided plot by virtue of a Court Decree and upon purchasing the said plot, had applied to the office of the Town Planner, Mormugao Goa for construction of a dwelling house along with a compound wall and Development Permission was granted vide No. MPDA/7-G-53/2009-10/1314 dt. 15.10.2009.

The Appellant further submits that upon obtaining the Technical Clearance Order, the Construction License was obtained for the said construction vide Construction License No. 46/2006-07 dated 24.11.2006.

The Appellant states that the said plot was granted Conversion Sanad issued by the office of the Collector, vide letter No. AC-II/SG/CONV/14/2009 dated 14.08.2009.

The Appellant submits that upon completion of the construction of the dwelling house as per the permissions/ licenses issued by the concerned authorities, the Appellant approached the office of the Respondent for obtaining Completion Certificate.

The Appellant states that the Completion Certificate for the said construction was issued vide letter No. MPDA/7-G-63/06-07/1138 dated 06.10.2006.

The Appellant submits that upon completion of the construction of dwelling house as per the permissions/ licenses issued by the concerned authorities, he approached the office of the Village Panchayat for Occupancy Certificate and the Village Panchayat of Sancoale granted Occupancy vide letter No. VP/S/2009-10/778 dated 05.11.2009.

The Appellant state that prior to the said construction and prior to the plans for the said construction, he has approached the office of the Flag Commanding Officer (Navy) for obtaining NOC for height clearance for construction of dwelling house.

The Appellant states that inspite of obtaining the said NOC from the Naval Authorities and applying for construction as per the NOC granted by the Naval Authorities, the Respondent has failed to consider the approvals obtained by the Appellant and Completion granted for the said construction.

The Appellant states that the Naval Authorities have surveyed only few of the constructions while there are many more constructions in the area some of which are illegal and without any permission in comparison to the construction of the Appellant.

The Appellant states that the details as to how the MPDA or the Naval authorities have arrived at the height results is also not known to the Appellant and therefore cannot be accepted to be factually correct.

The Appellant further states that there are electric poles and trees standing in the said area in close vicinity, height of which is far beyond the height of the building of the Appellant. Furthermore, the funnel zone in close vicinity is the hill, full of trees, which has a far greater height than the height of the Appellant's building.

The Appellant states that the Respondent prior to granting of the Completion Certificate had carried out inspection and granted the Completion Certificate after having confirmed that the said construction was as per the approved plans which meant that there was no violation whatsoever to the said construction.

The Appellant states that since the Respondent failed to give any compliance to the reply filed by the Appellant claiming it to be unsatisfactory, the Appellant has preferred to file the above appeal.

Being aggrieved by the said Show Cause Notice, the Appellant has preferred the present Appeal on the following grounds:

- i. The Notice dated 4/11/2022 is bad in law and against the principle of natural justice.
- ii. The notice is arbitrary and capricious and is issued to the Appellant without proper enquiry only to harass the Appellant.
- iii. The Notice is without any application of mind.
- iv. The Notice dated 4/11/2022 is liable to be set aside as no survey to identify the exact claim of the Respondent has been made.
- v. The Respondent has failed to appreciate that the Appellant has carried out a legal construction with all the necessary approvals required for carrying out construction.
- vi. The Respondent has failed to verify the documents on record which are in their possession and part of which documents are issued by the Respondent to the Appellant.
- vii. The Respondent has failed to factually verify the construction of the Appellant and justify its claim of stating that the Appellant had carried out any violation in his construction.
- viii. The Show Cause Notice dated 4.11.2022 is perverse and contrary to the material on record.
- ix. The notice is defective and suffers from procedural lapses.
- x. The Respondent has failed to consider the fact before issuing the said notice dated 4/11/2022 that the burden to establish with supporting documents of exact survey and or violations ought to have been done and obtained from the Naval Authorities based upon which the Respondent has issued the present notice.
- xi. The Respondent has prior to issuing the said Notice dated 4/11/2022 has failed to consider the files in its possession pertaining to approvals granted by the Respondent to the said Construction of the Appellant.

The Appellant has therefore prayed:

- (a) To call for the records and proceedings in the above subject matter and to drop the said proceeding against the Appellant and further withdraw the Notice dated 4.11.2022.
- (b) To quash and set aside/recall/revoke the letter dated 4.11.2022 vide No. MPDA/9-N-88/2022-23/1095.
- (c) To stay the execution of the letter dated 4.11.2022 vide No. MPDA/9-N-88/2022-23/1095.

Adv. Tomy Carvalho appeared for Appellant and whereas the Respondent PDA was represented by Adv. Narcinva A.S. Verenkar.

At the outset, Adv. Tomy Carvalho informed the Board that including the present one, he is also appearing for various other clients, who are the Appellants in the matter of appeal before the Board listed at item No. 74 to 84. Adv. Tomy Carvalho submitted before the Board that the Appellants have applied for certain documents with concerned Village Panchayat and other Authorities including the Naval Authorities and that the same will most likely be obtained within a period of 30 days or so and therefore requested for more time to place such documents/ records before the Board. It was also informed by Adv. Tomy Carvalho that several discrepancies have been observed in the notices issued by the Respondent PDA, which need to be looked into more detail by him and by Respondent PDA and therefore requested for adjournment of the matters.

Considering these aspects, Adv. Tomy Carvalho requested for adjournment of the present matter and also the matters listed at item No. 74 to 84, such that sufficient time is available with him to place additional documents before the Board.

Adv. Narcinva A.S. Verenkar holding for Adv. Nikhil Pai, while arguing on behalf of Respondent PDA, agreed to look into the issues raised by the Appellant and offered to submit a detail report/comments to the Board and to the Appellant, wherever required.

Considering this and submissions made before it, the Board agreed with the request made for adjournment. The matter therefore stands adjourned.

The Member Secretary then informed the Board that Adv. Tomy Carvalho representing for the present Appellant and Adv. Narcinva A. S. Verenkar holding for Adv. Nikhil Pai, appearing for MPDA, are also representing the Appellant and Respondent PDA in other appeal matters, listed at item No. 74 to 84, wherein the reasons and grounds for issue of notices are similar.

Considering this and submissions made before it, the Board therefore also adjourned all other appeal matters listed at item No. 74 to 84.

Item No. 74: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Srinivas Kannan V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/291/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174, sub-division 1 -A of Sancoale Village of Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was issued a letter under No. MPDA/7-K-124/2022-23/623 dt. 17.08.2022 by the Respondent asking for clarification to a letter claimed to be received from the Commanding Officer.

The Appellant vide his reply dated 29.08.2022 submitted his detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Appellant was served with a notice under ref. No. MPDA/7-K-124/2022-23/785 dt. 05.09.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 3.7745 mts., within the approach funnel in the property bearing Plot No. A1-4 of Survey No. 174/1-A of Sancoale Village, Mormugao Taluka.

The Appellant vide his reply dated 16.09.2022 submitted his detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has then issued a notice under ref. No. MPDA/7-K-124/2022-23/1105 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, the Appellant has therefore filed the present Appeal.

Adv. Tomy Carvalho appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 73.

Item No. 75: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Digambar Bhute V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/283/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174, sub-division 1 -A of Sancoale Village of the Mormugoa Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a notice under ref.No. MPDA/7-B-100/2022-23/787 dt. 05.09.2022 alleging about illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 2.7534 mtrs., within the approach funnel in the property bearing Plot No. E-4 of Survey No. 174/1 of Sancoale Village, Mormugao Taluka.

The Appellant vide his reply dated 12.09.2022 submitted his detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has then issued a notice under ref. No. MPDA/7-B-100/2022-23/1097 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, the Appellant has therefore filed the present Appeal.

Adv. Tomy Carvalho appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 73.

Item No. 76: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Puttudas Naik V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/284/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174 sub-division 1 -A of Sancoale Village of the Mormugoa Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a notice under ref.No. MPDA/7-N-173/2022-23/591 dt. 12.08.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 4.5016 mts., within the approach funnel in the property bearing Plot No. D-14 of Survey No. 174/1-A of Sancoale Village, Mormugao Taluka. The Appellant filed a reply dated 29/8/2022.

The Appellant was served with a show cause notice vide a letter No. MPDA/7-R-96/2022-23/790 dated 5.9.2022. The Appellant vide his reply dated 15.09.2022 submitted his detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has now issued a notice under ref. No. MPDA/7-N-173/2022-23/1109 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, the Appellant has therefore filed the present Appeal.

Adv. Tomy Carvalho appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 73.

Item No. 77: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mrs. Priscilla Memon V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/287/22)

Member Secretary informed that the Appellant is the co-owner of the plots admeasuring an area of 450 sq.mts. and 270 sq.mts., forming part of the property bearing survey No. 174 sub-division 1 -A of Sancoale Village of Mormugoa Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a notice under ref. No. MPDA/7-M-107/2022-23/783 dt. 05.09.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 5.4149 mtrs., within the approach funnel in the property bearing Plot No. A1-6, A1-6/2 of Survey No. 174/1-A of Sancoale Village, Mormugao Taluka.

The Appellant vide her reply dated 15.09.2022 submitted her detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has now issued a notice under ref. No. MPDA/7-M-107/2022-23/1107 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, the Appellant has therefore filed the present Appeal.

Adv. Tomy Carvalho appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 73.

Item No. 78: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Israel Shaikh V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/286/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174, sub-division 1 -A of Sancoale Village of the Mormugoa Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a notice under ref. No. MPDA/7-S-241/2022-23/784 dt. 05.09.2022 alleging illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 5.7546 mts., within the approach funnel in the property bearing House No.12AB, Plot No. 02 of Survey No. 174/1-A of Sancoale Village, Mormugao Taluka.

The Appellant vide his reply dated 15.09.2022 submitted his detailed reply explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has now issued a notice under ref. No. MPDA/7-S-241/2022-23/1106 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, the Appellant has therefore filed the present Appeal.

Adv. Tomy Carvalho appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 73.

Item No. 79: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Nemu Rajput V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/288/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174, sub-division 1-A of Sancoale Village of the Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a notice under ref. No. MPDA/7-R-96/2022-2023/790 dated 05.09.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 2.6213 mtrs., within the approach funnel in the property bearing Plot No. D-9 of Survey No. 174/1-A of Sancoale Village, Mormugao Taluka.

The Appellant vide his reply dated 15.09.2022 submitted his detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Appellant vide his reply dated 15.09.2022 submitted his detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has now issued a notice under ref. No. MPDA/7-R-96/2022-23/1108 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory, the Appellant has therefore filed the present Appeal.

Adv. Tomy Carvalho appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 73.

Item No. 80: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Sampath Joseph Vaz V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/289/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174, sub-division 1 -A of Sancoale Village of the Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a notice under ref.No. MPDA/9-N-88/2022-23/607 dt. 17.08.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 3.6756 mts., within the approach funnel in the property bearing Plot No. D-27 of Survey No. 174/1-A of Sancoale Village, Mormugao Taluka. The Appellant filed a reply dated 30/8/2022.

The Appellant was served with a notice under ref. No. MPDA/9-N-88/2022-23/798 dt. 5.9.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 3.6756 mts., within the approach funnel in the property bearing Plot No. D-27 of Survey No. 174/1 of Sancoale Village, Mormugao Taluka.

The Appellant vide his reply dated 12.09.2022 submitted his detailed reply/ explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has now issued a notice under ref. No. MPDA/7-J-32/2022-23/1093 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory. The Appellant has therefore filed the present Appeal.

Adv. Tomy Carvalho appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 73.

Item No. 81: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mrs. Annie Fernandes V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/285/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174, sub-division 1-A of Sancoale Village of the Mormugoa Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a notice under ref. No. MPDA/7-F-91/2022-23/788 dt. 05.09.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 4.6421 mts., within the approach funnel in the property bearing Plot No. C-9 of Survey No. 174/1-A-3 of Sancoale Village, Mormugao Taluka.

The Appellant vide her reply dated 15.09.2022 submitted her detailed reply explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has now issued a notice under ref. No MPDA/7-N-91/2022-23/1098 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory. The Appellant has therefore filed the present Appeal.

Adv. Tomy Carvalho appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 73.

Item No. 82: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Gurunath Kesanur V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/290/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174, sub-division 1 -A of Sancoale Village of the Mormugoa Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was issued a letter under No. MPDA/9-N-88/2022-23/608 dt. 17.08.2022 by the Respondent asking for clarification to a letter claimed to be received from the Commanding Officer.

The Appellant vide his reply dated 30.08.2022 submitted his detailed reply explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Appellant was served with a notice under ref. No. MPDA/7-K-110/2022-23/797 dt. 05.09.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 3.7792 mts., within the approach funnel in the property bearing Plot No. D-15 of Survey No. 174/1-A of Sancoale Village, Mormugao Taluka. The Appellant vide his reply dated 12.09.2022 submitted his detailed reply explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has now issued a notice under ref. No. MPDA/7-K-110/2022-23/1102 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory. The Appellant has therefore filed the present Appeal.

Adv. Tomy Carvalho appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 73.

Item No. 83: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Bhupesh Jain V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/293/22)

Member Secretary informed that the Appellant is the co-owner of the plot forming part of the property bearing survey No. 174, sub-division 1 -A of Sancoale Village of the Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a notice under ref. No. MPDA/7-J-32/2022-23/791 dt. 5.9.2022 alleging that illegal development i.e. construction of house by violating the obstacle limitation surface (OLS) by 3.23 mts., within the approach funnel in the property bearing Plot No. D-10 of Survey No. 174/1 of Sancoale Village, Mormugao Taluka.

The Appellant vide his reply dated 15.09.2022 submitted his detailed reply explanation informing the Respondent that the said construction was a legal construction and was carried out after obtaining all the necessary permissions and or licenses from the concerned authorities.

The Respondent has now issued a notice under ref. No. MPDA/7-J-32/2022-23/1099 dated 4.11.2022 under Section 52 of the Town & Country Planning Act claiming that the said reply has not been satisfactory. The Appellant has therefore filed the present Appeal.

Adv. Tomy Carvalho appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 73.

Item No. 84: Appeal under Section 52(b) of the TCP Act, 1974 filed by Mr. Everton Vales V/s Mormugao Planning and Development Authority. (File No. TP/B/APL/292/22)

Member Secretary informed that the Appellant is the co-owner of the plot admeasuring an area of 3600.00 sq. mts. forming part of the property bearing survey No. 177, sub-division 1 - A of Sancoale Village of the Mormugao Taluka, South Goa, Goa.

As per the appeal memo, the Appellant was served with a letter No. MPDA/9-N-88/2022-23/638 dated 18/8/2022 asking for clarification to a letter claimed to be received from the Commanding Officer. No letter received from the Commanding Officer was annexed nor furnished to the Appellant to verify the contents of the same.

The Appellant submitted a reply to the said letter of the Respondent dated 29/8/2022 whereby, it was informed to the Respondent that prior to the said construction the Appellant had obtained the height clearance from the Naval Authorities and only thereafter the plans for construction were submitted and approved as per the height so permitted.

The Appellant was issued a letter under No. MPDA/9-N-88/2022-23/780 dt. 05.09.2022 by the Respondent wherein it has been alleged that the Appellant has carried out construction of a House (Greva Residency) by violating the obstacle Limitation Surface (OLS) by 2.0464 mtrs within the approach funnel of Dabolim Village, Mormugao Taluka.

The Appellant vide his letter dated 12th September 2022 submitted a detailed reply wherein it was brought to the notice of the Respondent that the Appellant was not in a position to verify as to how the Flag Commanding Officer had arrived at the conclusion that the Appellant had carried out construction that violated the OLS by 2.0464 meters as no such details were furnished to the Appellant by the Respondent and that the construction of the Appellant was carried out with all the necessary approvals from the concerned authorities including the approvals from the Respondent.

The Respondent has now issued a notice under ref. No MPDA/9-N-88/2022-23/1118 dated 04/11/2022 under Section 52 of the Town & Country Planning Act and stating that the said reply of the Appellant has not been satisfactory. The Appellant has therefore filed the present Appeal.

Adv. Tomy Carvalho appeared for the Appellant and whereas Adv. Narcinva A.S. Verenkar, holding for Adv. Nikhil Pai, appeared for Respondent PDA.

Matter stands adjourned in view of the discussion and decision as taken at item No. 73.

Item No. 85: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Estonio Francisco De Almeida against North Goa Planning and Development Authority. (File No. TP/B/APL/355/22)

Member Secretary informed that the appeal is filed against Order under ref. No. NGPDA/ill/17-A/TAL/24/3091/2023 dated 10/02/2023 passed by the Member Secretary, North Goa Planning and Development Authority, which states as follows:

“Therefore, in exercise of powers under Section 52 (a) of TCP Act 1974, the Authority hereby directs you (Mr. Estonio Almeida) to restore the land as per the restoration plan submitted before the Hon’ble High Court in Writ Petition No. 479/2022.

Further you are also directed to give monthly progress report to this Authority upon which necessary site inspection will be conducted. The time limit for completion of restoration work is six months. You have to be fully responsible for sustenance of the restoration work in any eventuality.

You are also hereby directed to pay penalty of Rs. 1,00,000/- (Rupees One Lakh Only) as liable under Section 51 (1), (a), (b), (c) of TCP Act, 1974 for carrying out illegal hill cutting of land, failing which action will be initiated under Section 52 (6) (a) of TCP Act 1974”.

Being aggrieved by the said Order bearing ref. No. NGPDA/ill/17-A/TAL/24/3091/2023 dated 10/02/2023, passed by the Member Secretary, North Goa Planning and Development Authority; the Appellant has preferred the present appeal.

Brief facts concerning the present Appeal are as follows:

Appellant is the lawful owner in possession of the property bearing Survey No. 276/6 of Village Taleigao. In the said property, there exists an old residential house which is renovated by the Appellant with prior permissions from this Authority as well as from the other concerned authorities.

Appellant states that the said property along with the existing house has been peacefully and un-interruptedly enjoyed by him from past several years without any interference from any person of whatsoever nature.

Appellant states that the southern side of the said property bearing Survey No. 276/6 of Village Taleigao is a slopy/hilly area and the Appellant's house in which he resides along with his aged mother is located right below the slopy/hilly area on the northern side of the said property.

Appellant states that somewhere in the month of May, 2021 due to a cyclonic storm "Tauktae" and heavy rains; there was a massive land slide which occurred in the said property. The said cyclonic disaster was so severe that few big boulder stones rolled down right from top of the hill to the Appellant's house and also fell on the vehicles which were parked in the neighbouring property bearing Survey No. 276/7, due to which the Appellant was held responsible by the owners of the said vehicles.

Appellant states that he had immediately informed the Office of Village Panchayat of Taleigao regarding the said incident vide its communication dated 28/06/2021.

Appellant states that due to the said incident which occurred in the Month of May 2021 by Cyclone Taukate, there was huge damage caused to his property and the vehicles which were parked in the neighbouring property bearing Survey No. 276/7 of Village Taleigao.

The Appellant states that he thought of clearing the eroded soil and the trees which were uprooted due to the said disaster and was also trying to clear the big boulder stones which were lying on the slopy/hilly area on the southern side of the said property which posed severe danger to his house in which he resides and which also posed danger to the neighbouring property in which various cars are being parked by the people residing in the building situated in the neighbouring property bearing Survey No. 276/7 of Village Taleigao.

Appellant states that for the purpose of clearing the said big boulder stones and soil eroded which were lying on the slopy/hilly area on the southern side of the said property and which were posing danger to his residential house and neighbouring property, he had to hire a contractor who used JCB and a truck along with few labourers for the said purpose.

Appellant states that the land slide occurred in the month of May 2021, but the soil which eroded was in huge volume which could not be cleared in one time since there was lockdown imposed as well as due to heavy rains as it was in the monsoon season. However, the said work of further clearing of eroded soil had to be postponed in the month of September – October during the end of Monsoon season so that the machines could work on site.

Appellant states that, he had also filed an application in the Office of GPPDA for granting him permission to access his ancestral cross which is situated right on the top of hill i.e. the Southern part of the said property, since the existing old walking pathway from the house which is going up to the cross located on the top of the hill was destroyed due to the land slide which occurred in the month May, 2021

Appellant states that the said cleaning of the property was done by him within his own private property bearing Survey No. 276/6 of Village Taleigao on urgent basis since there was a apprehended danger to the human life as well as the properties bearing Survey No. 276/6 and 276/7 of Village Taleigao.

Appellants states that while clearing the eroded soil and big boulder stones which were lying on top of the hill and which were posing severe danger to the Appellant's residential house in which he resides and which were also posing danger to the neighbouring property, one unknown individual gave a call to the Flying Squad, Collectorate North falsely complaining that there is an illegal hill cutting in the said property.

In lieu of the said complaint, the Office of Collector, North Goa (Flying Squad) was issued STOP WORK ORDER dated 13/10/2021; due to which the Appellant immediately stopped the work of clearing the eroded soil and big boulder stones which were posing danger to the human life in the said property as well as the neighbouring property.

Appellant further states that thereafter, few individuals barged and trespassed into the Appellant's private property by removing videos for the purpose of publicity and thereby falsely alleging that there was huge hill cutting done in the said property. Appellant has informed that Police complaints dated 16/10/2021 and 21/10/2021 have been filed against Ms. Cecille Rodrigues, Mr. Tony Fernandes and various other individuals for criminally trespassing in the Appellant's private property without any permission from the Appellant or from any concerned Government Authorities.

Appellant states that he filed an application dated 18/10/2021 before GPPDA for granting him permission for realignment and cleaning of existing walking pathway leading to his Holy Cross situated on top of the hill.

Appellant states that thereafter, Mr. Tony Rodrigues and Mr. Edwin Cortez filed a false complaint against the Appellant before Greater Panaji Planning and Development Authority, Town and Country Planning Department, Village Panchayat of Taleigao and Forest Department on 20/10/2021 falsely alleging that the Appellant has carried out illegal hill cutting activity when in fact he was just clearing the mud/soil eroded, certain trees which were uprooted due to cyclone and heavy rains, and the big boulder stones which posed a threat in the Appellant's said property as well as the neighbouring property bearing Survey No. 276/7 of Village Taleigao.

Appellant states that on 21/10/2021 he filed his written reply before the Office of Collector (DRO), North Goa to the Stop Work Order dated 13/10/2021 issued to him by giving detailed reply. The said reply was forwarded in the Office of GPPDA Authority by the Office of Collector North Goa.

Appellant states that based on complaint received from Mr. Tony Rodrigues and Mr. Edwin Cortez, the GPPDA issued a letter dated 17/11/2021 to the Sarpanch/Secretary of Village Panchayat of Taleigao to clarify as to the actual position on loco and whether there was any hill cutting activity done in the said property as it was alleged by the complainants therein.

Appellant states that on 04/03/2022, the Office of Village Panchayat of Taleigao was pleased to reply to the GPPDA Letter dated 17/11/2021 stating that, *"there is no substance in the accusation and complaint dated 20/10/2021 made by Mr. Tony Rodrigues and complaint dated 21/10/2021 from Mr. Edwin Cortez and therefore, no action was needed as both have not provided any documentary evidence in support of justifying their claim as against the claim of the Undersigned herein which occurred in the month of May 2021 when the said cyclone Tauktae had caused severe damage not only to his property but to the entire state of Goa."*

Appellant further states that the said complainant Mr. Tony Rodrigues filed a Writ Petition bearing No. 287 of 2022 (Filing No.) seeking direction against the authorities to take action in the matter which was pending before the Member Secretary, GPPDA Authority. In the said Writ Petition, the Hon'ble High Court of Bombay at Goa was pleased to dispose the said Writ Petition vide its Order dated 08/03/2022, thereby directing the Member Secretary to look into the complaint filed by Mr. Tony Rodrigues as expeditiously as possible and in any case within two weeks from the date of disposal of the said writ petition by the Hon'ble High Court.

In the Order dated 18/03/2022 passed by the Hon'ble High Court in Writ Petition No. 287 of 2022 (Filing No.), it was clearly mentioned that if any adverse orders are proposed to be made, there is no doubt the GPPDA will comply with the principles of natural justice and fair play.

In lieu of the said Order dated 08/03/2022 passed by the Hon'ble High Court, the Greater Panaji Planning and Development Authority was pleased to hear the parties to the complaint filed by Mr. Tony Rodrigues and Mr. Edwin Cortez and subsequently; was pleased to pass an order dated 11/04/2022 which reads as follows:

“The subject of disaster which is referred here as Tauktae cyclone/storm by the Respondent comes under purview of Disaster Management Act. Therefore it is better to refer the case back to the office of Dy. Collector to decide under the Disaster Management Act in view of Tauktae cyclone stated by Respondent in his reply. Therefore; on the receipt of the decision of the Dy. Collector, this Authority will take further course of action if required.”

Thereafter, the Office of Collector, (DRO Flying Squad Section) North vide its Order dated 09/08/2022 has also been pleased to vacate the stop work order dated 13/10/2021 issued by the said Office of Collector based on the documents which were produced by the Appellant herein.

Appellant states that thereafter the said Mr. Tony Rodrigues filed another Writ Petition bearing No. 479/2022 stating that GPPDA Authority is not taking any action in the alleged hill cutting matter filed by Mr. Tony Rodrigues before the GPPDA Authority.

The Hon'ble High Court vide its Order dated 13/02/2023 has been pleased to dispose the said writ petition based on the undertaking given by the Appellant herein that he will restore the land to its original state as per the plan prepared and submitted by the Member Secretary, NGPDA before the Hon'ble High Court in the said writ petition.

It is now learnt by the Appellant that, the NGPDA Authority has been pleased to pass an Order dated 10/02/2023 directing the Appellant to restore the land as per the restoration plan submitted before the Hon'ble High Court in Writ Petition No. 479/2022 and thereby further directing the Appellant herein to pay penalty of Rs. 1,00,000/- as liable under Section 51 (1), (a), (b), (c) of TCP Act, 1974 for carrying out alleged illegal hill cutting of land without giving an opportunity of fair hearing to the Appellant herein.

Being aggrieved and dissatisfied by the Impugned Order dated 10/02/2023 passed by the NGPDA Authority directing the Appellant to pay penalty of Rs. 1,00,000/- as liable under Section 51 (1), (a), (b), (c) of TCP Act, 1974 for carrying out alleged illegal hill cutting of land without giving an opportunity of fair hearing to the Appellant, the present appeal has been preferred on the following amongst other grounds which are urged without prejudice to one another:

The grounds as mentioned by the Appellant are as under:

- a) The impugned Order suffers from non - application of mind which also fails to consider the relevant material available on record and is therefore arbitrary and perverse.
- b) The Authority below has failed to consider the Order dated 08/03/2022 passed by the Hon'ble High Court in Writ Petition No. 287 of 2022 (Filing No.)

In terms of the said order dated 08/03/2022; the Hon'ble High Court had directed the Planning authority that if any adverse orders are proposed to be made then the GPPDA will comply with the principles of natural justice and fair play. It is submitted that despite clear mandate of the Constitutional Court, the authority below has acted not only in violation of principles of natural justice, but also in disregard to the Order passed in aforementioned writ petition which enjoins the authority to give a fair hearing to the Appellant.

- c) The Authority below has failed to appreciate that, the restoration work of the said land will be carried out by the Appellant on its own as per the undertaking given before the Hon'ble High Court in Writ Petition No. 479 of 2022 and hence; there was no requirement of passing an adverse order thereby making Appellant liable to pay a fine of Rs. 1,00,000/-
- d) The Impugned Order is untenable in the eyes of law since the said Order dated 10/02/2023 has been rendered without hearing the Appellant herein and hence; fails to follow the Principles of Natural Justice, Audi Alteram Partem and Principles of Fair Play.
- e) It is stated that, the authority below before passing the adverse order as against the Appellant herein, was enjoined in law to hear the Appellant herein by giving a fair chance and opportunity to put forth its case.
- f) The said Impugned Order is perverse and baseless as the Authority below while passing the said Order has failed to give reasons for passing such adverse Order thereby making Appellant liable to pay a fine of Rs. 1,00,000/-
- g) The authority below has in terms of its Order dated 11/04/2022 arrived at a conclusion that there has to be an ascertainment of fact relating to hill cutting and therefore in terms of the said Order; the matter was referred to the Dy. Collector under Disaster Management Act and when such a reference was made it obviously meant that the said authority had not arrived at any definite conclusion about hill cutting at the alleged instance of Appellant.

In light of such observation/finding in its Order there was no occasion for the officials of NGPDA to arrive at a conclusion that the Appellant has carried out hill cutting in property bearing Sy. No. 276/6 of Village Taleigao more particularly after a lapse of 9 months from the Order dated 11/04/2022 which gives no finding about Appellant carrying out the alleged hill cutting.

- h) The authority below has erred in imposing a fine of Rs. 1,00,000/- which is a penal provision and expected to be imposed only after conclusion of trial by the Court of competent jurisdiction.

The NGPDA has no jurisdiction to impose such a fine in terms of Section 51 of the Act without affording any opportunity to the Appellant.

- i) Any other ground with the specific leave of this appellate authority.

The Appellant is not in receipt of any Caveat Notice from the Respondent herein.

The Appellant has therefore prayed:

- a) That, this Hon'ble Authority be pleased to pass an Order allowing the present appeal thereby setting aside the Order bearing Ref No. NGPDA/ill/17-A/TAL/24/3091/2023 dated 10/02/2023 passed by The Member Secretary, North Goa Planning and Development Authority.
- b) Any other order that this Hon'ble Authority may deem fit and proper in the nature and circumstances of the present case.

Adv. Saish D. Mandrekar appeared on behalf of Appellant whereas Adv. Saish Mahambare appeared for Respondent PDA.

During the argument, Adv. Saish D. Mandrekar informed the Board that Hon'ble High Court vide its Order dtd. 13/2/2023 has already disposed a Writ Petition based on the undertaking given by the Appellant that he will restore the land to its original stage as per the plan prepared and submitted by Member Secretary, NGPDA in the Writ Petition. However he informed that Respondent PDA has passed an Order dtd. 10/2/2023 directing him to restore the land as per the plan submitted and further directing him to pay a penalty of Rs. 1,00,000/- as liable under section (51 (1), (a), (b), (c) of TCP Act, 1974 for carrying out alleged illegal hill cutting of land, without giving any opportunity of hearing him.

He further argued that the Order passed by the Hon'ble High Court enjoins the Authority to give a fair hearing to him and that there was no requirement of passing any adverse order thereby making appellant liable to pay a fine of Rs. 1,00,000/-.

Adv. Saish D. Mandrekar therefore argued that the Authority has erred in imposing a fine of Rs. 1,00,000/- which is a penal provision and expected to be imposed only after conclusion of trial by the Court of competent jurisdiction.

While arguing on behalf of Respondent PDA, Adv. Saish Mahambare informed the Board that the Appellant has already undertaken to restore the land to its original stage, as he had undertaken the hill cutting activity and therefore, as provided under the Act, Appellant is required to pay a penalty of Rs. 1,00,000/- as liable under section (51 (1), (a), (b), (c) of TCP Act, 1974 for having undertaken illegal hill cutting.

Considering the arguments placed before it by the Respondent and the Appellant, the Board was of the opinion that the matter is already decided by the Hon'ble High Court as regards to restoration of land and the issue arisen now is only regarding the applicability of penalty provision, by which the Appellant is asked to pay an amount of Rs. 1,00,000/-. Board also took note that it is the case of the Appellant that the notice for payment has been issued without even hearing them.

The Board therefore was of considered opinion that the matter need to be decided by North Goa PDA as it involves legal provision arising out of an Order passed by Hon'ble High Court, for which purpose the Board felt that if required, the PDA could obtain legal advice.

The Board therefore decided to remand the matter to North Goa PDA with direction to decide on the matter at their end by considering the applicability of provisions under section (51 (1), (a), (b), (c) of TCP Act, 1974 as regards to payment of penalty.

The matter therefore stands disposed off with direction to North Goa PDA as above.

Item No. 86: Submission of Budget of North Goa Planning and Development Authority for the financial year 2023-2024.

Member Secretary informed that the North Goa PDA has submitted budget for the year 2023-2024 and the same was placed before the Board under Section 106 of the TCP Act for discussion.

Member Secretary, North Goa PDA informed the Board that the Budget as prepared for the year 2023-24 by North Goa PDA is for Rs. 7,52,17,000/- which includes the anticipated grant-in-aid. It was further stated that the anticipated expenditure is Rs. 6,88,96,500/-.

Member Secretary, North Goa PDA further briefed the members about the major components for Revenue Receipts as under:

1. Anticipated Grant-in-aid from the Government towards land acquisition development of Gardens and Taleigao market is Rs. 1,67,00,000/-.
2. Anticipated Grant-in-aid from the Government towards Town Planning Scheme at Mapusa is Rs. 25,00,000/-.
3. Consultancy charges for preparation of GIS based ODP of Panaji Planning Area, Mapusa Planning Area and Taleigao Planning Area is Rs. 3,14,67,000/-

Member Secretary further explained the Budget provision as regards to revenue receipts, part capital receipts, expenditure revenue and capital expenditure.

The Board took note and acknowledged the features of the Budget as placed before it.

Item No. 87: Decision on proposals considered in 37th meeting of the 16-A Committee, constituted under sub-rule 4 of Rule 3 of the Goa Town & Country Planning (Public Projects/Schemes/Development work by the Government) Rules - 2008 held on 10/01/2023.

The Member Secretary submitted that proposals as referred in Annexure 'A' were considered by the Committee constituted under sub rule 4 of Rule 3 of the Goa Town & Country Planning (Public Projects/Schemes/Development work by the Government) Rules – 2008 in its 37th meeting held on 10/01/2023. The same proposals were placed before the Board for its consideration.

The Board after deliberation recommended the proposals as listed in Annexure 'A'.

Item No. 88: Any other item with permission of the Chair.

a) Regarding encroachment of Government land

Chairman informed the members that Town & Country Planning Department has acquired different parcels of land by undertaking required land acquisition procedure, however he said that there is no proper maintenance of the records of these acquired lands, which in many cases has resulted into encroachment by unauthorised persons.

Chairman therefore felt it necessary to set a proper mechanism so as to keep check on such acquired land of the Government. It was also expressed by the Chairman that similar is the fate of the acquired land by Planning & Development Authorities. Chairman further expressed his concern over such land acquired by PDAs, which is lying un-utilised, thereby defeating the very purpose of acquisition. It was further expressed that the PDAs could be self sustainable if such land acquired by it, is put to proper utilisation by undertaking development projects, through which it could earn revenue.

The Members expressed that this is a serious issue and need to be properly addressed by the PDAs.

The Chairman therefore directed that the TCP Dept. and all the PDAs shall submit a report to the Board detailing therein the area acquired by them and its present status. The Member Secretary was accordingly asked to instruct the PDAs to submit such a report for detail deliberation on the same, in the next meeting of the Board.

b) Details of revenue generation scheme of PDAs

Chairman informed the Board that considering the revenue and expenditure pattern of PDAs, it is observed that the PDAs are struggling to cope up with the expenditure incurred by them and felt the need of PDAs to relook into its functions. It was expressed by Chairman that actual functions and duties of PDAs are to implement development schemes for public benefit, which, if implemented successfully could generate income for the authorities, to make them self sustainable.

Chairman also brought to the notice of the members that PDAs most of the time request for the funds from the Government to meet their expenses including that for salary component.

Chairman therefore directed that all the Member Secretaries shall submit the detail scheme to the Board regarding schemes to be undertaken by them for revenue generation.

The Chairman also suggested that while deciding on the same, the PDAs shall consider the land acquired by them which is either lying unutilised or is under utilised. It was therefore suggested that the Member Secretaries of the concerned PDAs shall formulate the development schemes for such acquired land, which could be deliberated in the next meeting of the Board.

c) Regarding signing of Memorandum of Understanding (MoU) with IGBC

Chairman briefed the members that in the past the decision has been taken regarding Green initiative to be undertaken by the Department and impressed upon imposing necessary conditions on the development coming up in the State such that Green Concept are more and more encouraged. For this purpose, the Chairman suggested that reputed institution need to be brought on Board by the Department for implementation of such Green initiative.

Considering various agencies and institutions and the role played by them in the State of Goa, it was suggested that IGBC shall be an ideal institution with whom a MoU could be signed by Department for the purpose.

Member Secretary was accordingly directed to undertake further correspondence with IGBC and finalising MoU in this regard, such that the same could be signed at the earliest. It was suggested by the Chairman that once the MoU is finalised, the same could be signed in presence of the Board members and the same was acknowledged by the members.

Member Secretary was accordingly directed to undertake further procedure in this regard.

Meeting ended with thanks to the Chair.