

MINUTES OF 196th MEETING OF THE GOA TOWN & COUNTRY PLANNING BOARD HELD ON 13/02/2024 AT 4.00 P.M. IN CONFERENCE HALL, VAN BHAVAN, ALTINHO, PANAJI.

Following attended the meeting:

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| 1. | Shri. Vishwajit P. Rane,
Hon. Minister for TCP | ... | Chairman |
| 2. | Dr. Deviya Rane,
Hon'ble MLA, Poriem | | Member |
| 3. | Shri Rajesh Faldessai,
Hon'ble MLA Cumbharjua | | Member |
| 4. | Shri Praveen Kumar Raghav,
CCF, Forest Dept. | | Member |
| 5. | Rena Menezes,
Dy. Director Agriculture | | Member |
| 6. | Dr. Rupa Naik,
Directorate of Health Services | | Member |
| 7. | Shri Ralph A. S. Barbosa,
DPSE, Porvorim | | Member |
| 8. | Shri Shrivallabh Pai,
SE-I, PWD | | Member |
| 9. | Eng. Paresh Gaitonde | | Member |
| 10. | Arch. Rajeev M. Sukhthanker | | Member |
| 11. | Lt. Abhishek Varshney
ATS | | Invitee |
| 12. | Captain Prashant V. Kamat | | Invitee |
| 13. | Ms. Vertika Dagur | | Chief Town Planner
(Land Use) |
| 14. | Shri. Rajesh J. Naik,
Chief Town Planner (Planning). | ... | Member Secretary |

Item No. 1: Confirmation of the Minutes of the 195th meeting of Town & Country Planning Board held on 29/01/2024.

Member Secretary informed that the Minutes of 195th meeting of TCP Board held on 29/01/2024 are prepared and the same were placed before the Board for confirmation.

Members took note of the minutes circulated and as there was no further suggestions/correction, the same were treated as confirmed.

Item No. 2: 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 by Mr. Umesh Naik against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-Y-74)/2022-23/1085, passed by the Respondent and that the matter was earlier heard in 187th and 192nd TCP Board meetings held on 20/03/2023 and 21/11/2023 respectively.

It was further informed that the appeal was again heard in 195th meeting of the TCP Board held on 29/01/2024, during which, the Board had taken note of the arguments placed before it and was accordingly of the opinion that the Competent Authority i.e. Naval Authority has given its ruling in terms of violation and therefore the same need to be dealt very strictly. The Board was also appraised of the cognizance taken by the Hon'ble High Court and the Order dtd. 22/1/2024 passed in this regard.

The Board was of the opinion that the concerned issue was of very serious nature and pertained to aircraft safety at the Goa International Airport at Dabolim, Goa and the Board had therefore found it fit to direct the Appellant to demolish the offending part of the structure, which violated the Obstacle Limitation Surface by 0.1239 mts., under the supervision of the MPDA and the Indian Navy and the same demolition to be undertaken on or before 12th February 2024, failing which the MPDA was directed to demolish the offending part of the structure, which violated the Obstacle Limitation Surface and the same had to be to the satisfaction of the Indian Navy. MPDA was accordingly asked to file a report in this regard with the Board by 20th February 2024.

Member Secretary then informed that an Order No. TP/B/APL/354/2023/411 dated 31/01/2024 was accordingly issued to the parties for necessary compliance.

During the meeting, Member Secretary, MPDA Shri Sanjay A. Halornekar informed that Appellant Mr. Umesh Naik has already carried out demolition of offending part of the structure, which violated the Obstacle Limitation Surface as per the Order issued by Member Secretary, TCP Board vide No. TP/B/APL/354/2023/411 dated 31/01/2024 and therefore no issue remains in the matter, as the directions of the Board stands complied with.

The same was taken note of by the TCP Board and accordingly Member Secretary was directed to mention about the same in the Compliance Report to be filed before the Hon'ble High Court.

Item No. 3: 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 by Mr. Demappa Vantamuri against the Order dated 04/11/2022 bearing No. MPDA/9-N-88(9-V-

44)/2022-23/1087, passed by the Respondent and that the matter was earlier heard in 187th and 192nd TCP Board meetings held on 20/03/2023 and 21/11/2023 respectively.

It was further informed that the appeal was again heard in 195th meeting of the TCP Board held on 29/01/2024, during which, the Board had taken note of the arguments placed before it and was accordingly of the opinion that the Competent Authority i.e. Naval Authority has given its ruling in terms of violation and therefore the same need to be dealt very strictly. The Board was also apprised of the cognizance taken by the Hon'ble High Court and the Order dtd. 22/1/2024 passed in this regard.

The Board was of the opinion that the concerned issue was of very serious nature and pertained to aircraft safety at the Goa International Airport at Dabolim, Goa and the Board had therefore found it fit to direct the Appellant to demolish the offending part of the structure, which violated the Obstacle Limitation Surface by 1.0328 mts., under the supervision of the MPDA and the Indian Navy and the same demolition to be undertaken on or before 12th February 2024, failing which the MPDA was directed to demolish the offending part of the structure, which violated the Obstacle Limitation Surface and the same had to be to the satisfaction of the Indian Navy. MPDA was accordingly asked to file a report in this regard with the Board by 20th February 2024.

Member Secretary then informed that an Order No. TP/B/APL/356/2023/412 dated 31/01/2024 was accordingly issued to the parties for necessary compliance.

During the meeting, Member Secretary, MPDA Shri Sanjay A. Halornekar informed that the Authority has already issued notice for demolition dtd. 15/01/2024 to the Appellant Mr. Demappa Vantamuri which shall be further acted upon by them, in case the Appellant fails to undertake the demolition of the offended portion of the structure by himself. .

The same was taken note of by the TCP Board and accordingly Member Secretary was directed to mention about the same in the Compliance Report to be filed before the Hon'ble High Court.

Item No. 4: 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 by Mr. Channaveerappa Jamalingappanava against the Order dated 04/11/2022 bearing No. MPDA/9-N-88/2022-23/1057, passed by the Respondent and that the matter was earlier heard in 187th and 192nd TCP Board meetings held on 20/03/2023 and 21/11/2023 respectively.

It was further informed that the appeal was again heard in 195th meeting of the TCP Board held on 29/01/2024, during which, the Board had taken note of the

arguments placed before it and was accordingly of the opinion that the Competent Authority i.e. Naval Authority has given its ruling in terms of violation and therefore the same need to be dealt very strictly. The Board was also apprised of the cognizance taken by the Hon'ble High Court and the Order dtd. 22/1/2024 passed in this regard.

The Board was of the opinion that the concerned issue was of very serious nature and pertained to aircraft safety at the Goa International Airport at Dabolim, Goa and the Board had therefore found it fit to direct the Appellant to demolish the offending part of the structure, which violated the Obstacle Limitation Surface by 1.1008 mts., under the supervision of the MPDA and the Indian Navy and the same demolition to be undertaken on or before 12th February 2024, failing which the MPDA was directed to demolish the offending part of the structure, which violated the Obstacle Limitation Surface and the same had to be to the satisfaction of the Indian Navy. MPDA was accordingly asked to file a report in this regard with the Board by 20th February 2024.

Member Secretary then informed that an Order No. TP/B/APL/361/2023/413 dated 31/01/2024 was accordingly issued to the parties for necessary compliance.

During the meeting, Member Secretary, MPDA Shri Sanjay A. Halornekar informed that the Authority has already issued notice for demolition dtd. 15/01/2024 to the Appellant Mr. Channaveerappa Jamalingappanava which shall be further acted upon by them, in case the Appellant fails to undertake the demolition of the offended portion of the structure by himself. .

The same was taken note of by the TCP Board and accordingly Member Secretary was directed to mention about the same in the Compliance Report to be filed before the Hon'ble High Court.

Item No. 5: 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)

Taken alongwith item No. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35.

Member Secretary informed that Appeals are filed by Zuari Agro Chemicals Ltd. as mentioned at respective Agenda Item No. in respect of all Notices issued under Section 52(2) of the Goa Town & Country Planning Act, 1974, as passed by the Respondent MPDA.

Member Secretary then informed that the matter mentioned in all the Notices, as issued by the Respondent are pertaining to the findings of Naval Authorities, as per which the construction mentioned in the respective Notices have exceeded the permissible height within the notified area.

The Board was then informed that in response to the show cause notices, issued by the Respondent purporting to alleged that Appellants had carried out construction by violating the Obstacle Limitation Surface as specified in the respective notices, the Appellant had responded stating that they were unable to identify the specific structure as referred in the subject show cause notices.

The Board was then informed that the matter was earlier heard in 187th meeting of the TCP Board held on 20/03/2023 and again in 192nd meeting of the TCP Board held on 21/11/2023 and in this 192nd meeting of the Board, the Respondent PDA had suggested that the Naval Authority shall also be made party in the hearing as the findings from their side were of utmost importance to decide on the matter of demolition and the same was agreed upon. Accordingly, the notices were issued to the Naval Authorities to remain present for the present hearing.

The Board took note that the issues referred in appeal matters at Sr. No. 5 to 35 are having common subject of violation of Obstacle Limitation Surface (OLS) and therefore it was decided to hear them jointly.

Capt. Prashant K. Kamat and Lt. Abhishek Varshney appeared before the Board on behalf of Naval Authority.

Whereas Adv. Yogesh Nadkarni represented Zuari Agro Chemicals Ltd.

While arguing on behalf of Appellants as referred in appeal matters at Sr.No. 5 to 35, Adv. Yogesh Nadkarni stated that Appellant have not violated any laws, whereas Adv. Nikhil Pai appearing on behalf of MPDA stated that there is no ambiguity in the matter of notices issued in respective cases as the same were issued on the basis of findings of Naval Authority, which clearly spelt out the violations committed by the Appellant in respective cases, in terms of exceeding the permissible limit of height.

While representing their case on behalf of Naval Authorities, representatives Capt. Prashant K. Kamat and Lt. Abhishek Varshney informed the Board that the construction have been carried out by the Appellant in violation of Obstacle Limitation Surface (OLS) within the approach funnel by the height as mentioned in respective notices.

After considering various arguments placed before it, Board felt it necessary to grant a final opportunity to the Appellants to re-apply to the Naval Authority for grant of NOCs in their respective cases and further directed that the process of applying shall be completed within 7 days from the date of hearing i.e. from 13/02/2024. Further, the Board also requested the Naval Authority that the necessary reply from their side shall be issued to the Appellant within 15 days on receipt of any such application of the Appellant. The decision was specially taken in consideration with the time specified by taking into the cognizance of the Order dtd. 22/01/2024 as passed by the Hon'ble High Court in the matter under reference.

Member Secretary was accordingly directed to communicate the decision of the Board to the Appellant for necessary compliance of the decision.

Item No. 36: 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)

Taken alongwith item No. 37

Member Secretary informed that appeals are filed by M/s Goa Shipyard Ltd. As mentioned at respective Agenda item numbers in respect of notices issued under Section 52(2) of the Town and Country Planning Act, 1974, as passed by Respondent Mormugao PDA.

Member Secretary then informed that the matter mentioned in both Notices, as issued by the Respondent are pertaining to the findings of Naval Authority, as per which, the construction mentioned in the respective Notices have exceeded the permissible height within the notified area.

The Board was then informed that in response to the show cause notices, issued by the Respondent purporting to alleged that Appellants had carried out construction by violating the Obstacle Limitation Surface as specified in the respective notices, the Appellant had responded stating that they were unable to identify the specific structure as referred in the subject show cause notices.

The Board was then informed that the matter was earlier heard in 187th meeting of the TCP Board held on 20/03/2023 and again in 192nd meeting of the TCP Board held on 21/11/2023 and in this 192nd meeting of the Board, the Respondent PDA had suggested that the Naval Authority shall also be made party in the hearing as the findings from their side were of utmost importance to decide on the matter of demolition and the same was agreed upon. Accordingly, the notices were issued to the Naval Authorities to remain present for the present hearing.

The Board took note that the issues referred in appeal matters at Sr. No. 36 & 37 are having common subject of violation of Obstacle Limitation Surface (OLS) and therefore it was decided to hear them jointly.

Capt. Prashant K. Kamat and Lt. Abhishek Varshney appeared before the Board on behalf of Naval Authority.

Whereas Adv. Vanessa Barreto represented M/s Goa Shipyard Ltd.

While arguing on behalf of Appellants as referred in appeal matters at Sr.No. 36 & 37, Adv. Vanessa Barreto stated that Appellants have not violated any laws, whereas Adv. Nikhil Pai appearing on behalf of MPDA stated that there is no ambiguity in the matter of notices issued in respective cases as the same were issued on the basis of findings of Naval Authority, which clearly spelt out the violations committed by the Appellant in respective cases, in terms of exceeding the permissible limit of height.

While representing their cases on behalf of Naval Authorities, representatives Capt. Prashant K. Kamat and Lt. Abhishek Varshney informed the Board that the construction have been carried out by the Appellant in violation of Obstacle Limitation Surface (OLS) within the approach funnel by the height as mentioned in respective notices.

After considering various arguments placed before it, Board felt it necessary to grant a final opportunity to the Appellants to re-apply to the Naval Authority for grant of NOCs in their respective cases and further directed that the process of applying shall be completed within 7 days from the date of hearing i.e. from 13/02/2024. Further, the Board also requested the Naval Authority that the necessary reply from their side shall be issued to the Appellant within 15 days on receipt of any such application of the Appellant. The decision was specially taken in consideration with the time specified by taking into the cognizance of the Order dtd. 22/01/2024 as passed by the Hon'ble High Court in the matter under reference.

Member Secretary was accordingly directed to communicate the decision of the Board to the Appellant for necessary compliance of the decision.

Item No. 38: 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 the 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 impugned order by the present appeal u/s 52(2)(b) of the TCP Act.

The Appellant states that the perusal of the impugned order clearly reveals that impugned 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 impugned 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 impugned 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 further states that Appellant has purchased the 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 not variation or deviation of any nature. Any attribution that the concerned structure is unauthorised or illegal is specifically denied 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 in firing obstacle limitation surface." dated 17.08.2022

Appellant states that upon receipt of both the aforementioned letter from MPDA, that 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 construction 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.
- k. The impugned order suffers from material irregularity, perversity and is passed by the MPDA to please the Complainants without considering the material on records.

- l. 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.
- m. 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.
- n. 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 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.

The Appellant states that he is the owner of the said property and considering that the structure is put up after obtaining valid license/occupancy, he has a good prima-facie case and the balance of convenience lies in his 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 this Hon'ble Authority 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 wherein the MPDA has issued demolition order against the Appellants.

The Appellant states that pending hearing and final disposal of the present appeal, the he is entitled for an Order of the Hon'ble Authority 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 the Appellant and the proprietary rights of the Appellant would be jeopardized.

The Appellant has therefore filed the appeal 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 prayed for an Order 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;

Member Secretary informed that the matter was earlier heard in 187th meeting of the TCP Board held on 20/03/2023, however the Advocate for Appellant had informed that he has applied for documents from the Naval Authorities and as such requested for adjournment of the matter, such that sufficient time is available with the appellant to place the additional documents before the Board and the same was considered and the matter was accordingly adjourned.

It was further informed that the matter was again heard in 192nd meeting of the TCP Board held on 21/11/2023 and while arguing in the matter, Adv. Nikhil Pai impressed upon the Board that all the matters have arisen out of the findings of Naval Authorities, as per which, the development mentioned in the notices have exceeded the permissible height within the notified area. The Board was further informed that several parties have approached the Naval Authorities for grant of NOCs for the construction undertaken by them, whereas in some cases, the Naval Authorities have granted the NOCs and whereas in some cases, the NOCs have been refused. He therefore suggested that the Naval Authority shall also be made party in the hearing, as the findings from their side were of utmost importance to decide on the matter of demolition, as per the notices issued by the MPDA.

Adv. A. P. Sawant appearing for the Appellant also agreed for the same.

The Board was then informed that it was accordingly decided to issue notices to Naval Authorities as well, to give their say in the matter of appeal filed by different parties. The Board was also informed that the Hon'ble High Court has directed to decide on various appeals, within a stipulated period, and that this given period has already expired. The Board had therefore felt it proper to approach the Hon'ble High Court requesting for additional time to decide on the matter. It was also decided that the Member Secretary of the Board, alongwith MPDA shall obtain advice of Ld. Advocate General regarding further course of action in these matters.

The Board was further informed that the matter was again heard by the Hon'ble High Court on 22/01/2024 and the Hon'ble High Court has taken serious note of the delay caused by the Board in disposing the matter. The Board is therefore directed to decide on the matter by 31/5/2024 and is also required to file monthly report before the Hon'ble High Court mentioning therein the progress/decision in the matter.

Notices were accordingly issued to Naval Authority and other parties to remain present for the meeting for arguments in the matter.

During the hearing, the Appellant was represented by Adv. Siddhi Parodkar and whereas Respondent No. 1 was represented by Nikhil D. Pai and Respondent No. 2 was represented by Captain Prashant K. Kamat and Lt. Abhishek Varshney.

During the course of argument, Adv. for the Appellant Siddhi Parodkar stated that the construction carried out by the Appellant does not violate the permissible limit as notified by Naval Authorities, and whereas the Adv. Nikhil Pai appearing on behalf of MPDA clearly stated that the very cause for issue of notices to the Appellant was on the basis of findings of Naval Authority, which

clearly spelt out the violation committed by the Appellant in terms of exceeding the permissible limit of height.

While representing for Naval Authorities, representatives Captain Prashant K. Kamat and Lt. Abhishek Varshney placed before the Board the facts of the case whereby, it was brought to the notice of the Members that the construction of house is carried out by the Appellant in the property bearing Sy.No. 60/1 of Dabolim village, Mormugao Taluka, by violating the Obstacle Limitation Surface (OLS) by 1.3028 mts., within the approach funnel. Thus, it was brought on record by the Competent Authority i.e. the Naval Authority that the Appellant has clearly exceeded the permissible limit.

The Board took note of the argument placed before it and was of the opinion that the Competent Authority i.e. Naval Authority has given its ruling in terms of violation and therefore the same needs to be dealt very strictly. The Board was also appraised of the cognizance taken by the Hon'ble High Court and the Order dtd. 22/1/2024 passed in this regard.

As the issue concerns a very serious matter of aircraft safety at the Goa International Airport at Dabolim, Goa, the Board found it fit to direct the Appellant to demolish the offending part of the structure which violated the Obstacle Limitation Surface by 1.3028 mts., under the supervision of the MPDA and the Indian Navy, failing which the MPDA was directed to demolish the offending part of the structure which violates the Obstacle Limitation surveyed of the Appellant to the satisfaction of the Indian Navy and file a report in this regard with the Board.

The appeal therefore stands dismissed with directions to the Appellant and the Respondent No. 1 as above.

Item No. 39: Appeal under Section 52(2) (b) of the TCP Act, 1974 filed by Mr. Joao Baptiste Pereira against Mormugao Planning and Development Authority.

Taken alongwith

(i) Item No. 40 pertaining to Appeal filed by Mr. Parshuram H. Naik

(ii) Item No. 41 pertaining to Appeal filed by Mr. Ajay Singh

(iii) Item No. 42 pertaining to Appeal filed by Mr. Sangappa Gangappa Gani

Member Secretary informed that Appeals are filed by various Appellants as mentioned at respective Agenda item numbers in respect of all notices issued u/s 52(2) (b), of the TCP Act, 1974, as passed by the Respondent.

Member Secretary then informed that the matter mentioned in all the Notices, as issued by the Respondent is pertaining to the findings of Naval Authorities, as per which, the construction mentioned in the respective Notices have exceeded the permissible height within the notified area.

The Board was further informed that several parties have been served notices by MPDA for similar violations and accordingly the parties have approached Naval Authorities for grant of NOCs for the construction undertaken

by them, wherein Naval Authorities have granted NOCs for some and in certain cases, the same have been refused.

It was further informed that the Respondent PDA during the last hearing in 192nd meeting of the Board had suggested that the Naval Authority shall also be made party in the hearing as the findings from their side were of utmost importance to decide on the matter of demolition and the same was agreed upon. Accordingly, the notices were issued to the Naval Authorities to remain present for the present hearing.

The Board took note that the issues referred in appeal matters at Sr. No. 39, 40, 41 & 42 are the same. Since all these matter were of common subject and having similar violations, it was decided to hear them jointly.

During the hearing, Appellant Mr. Joao Baptiste Pereira was represented by Adv. Adv. Hyder Khilji, whereas (i) in the matter of agenda item No. 40, Appellant Mr. Parshuram H. Naik was represented by Adv. Sudhir K. Naik (ii) in the matter of agenda item No. 41, Appellant Mr. Ajay Singh was represented by Adv. Girish Sardessai and (iii) in the matter of agenda item No. 42, Appellant Mr. Sangappa Gangappa Gani was not present nor the Advocate of the Appellant present for the hearing.

While arguing on behalf of Appellants as referred in these appeal matters, the respective advocates informed that they have not violated any law and that the houses have been constructed within the permissible height. Whereas while arguing on behalf of MPDA, in these appeal matters Adv. Nikhil Pai stated that the notices were issued in respective cases on the basis of findings of Naval Authority, which clearly spelt out the violations committed in respective cases, in terms of exceeding the permissible limit of height.

While representing their case on behalf of Naval Authorities, representatives Capt. Prashant K. Kamat and Lt. Abhishek Varshney informed that the constructions referred in respective appeal matters have been carried out in violation of Obstacle Limitation Surface (OLS) within the approach funnel and the same is therefore required to be removed/demolished.

After considering various arguments placed before it, Board felt it appropriate to grant a final opportunity to the Appellants to re-apply to the Naval Authority for grant of NOCs in their respective cases and further directed that the process of applying shall be completed within 7 days from the date of hearing i.e. from 13/02/2024. Further, the Board also requested the Naval Authority that the necessary reply from their side shall be issued to the Appellant within 15 days on receipt of any such application of the Appellant. The decision was specially taken in consideration with the time specified by taking into the cognizance of the Order dtd. 22/01/2024 as passed by the Hon'ble High Court in the matter under reference.

Member Secretary was accordingly directed to communicate the decision of the Board to the Appellant for necessary compliance of the decision.

Item No. 43: Final approval for Outline Development Plan 2031 for Margao Planning Area and Ponda Planning Area submitted by South Goa Planning and Development Authority.

This has reference to the proposal of the South Goa Planning & Authority for approval of Outline Development Plan of Margao planning Area and Ponda Planning Area-2031 for final approval vide no. SGPDA/ODP-2021/1630/23-24 dated 07/02/2024 under Section 35(6) of the Town & Country Planning Act, 1974.

As per Order No. 47/5/TCP/2022-23/1026 dated 27/04/2022 published in the Official Gazette Series II No. 4 dated 28/04/20, the North Goa Planning and Development Authority and South Goa Planning and Development Authority were directed to prepare fresh Outline Development Plans for their respective planning areas i.e. Mapusa, Margao and Ponda.

The matter was discussed in the 184th TCP Board meeting held on 15/09/2022 and the Board had decided to extend the time limit for another one month. After obtaining approval of the Government & vetting by Law Department for the same, Order was issued by the Chief Town Planner (Planning) & Ex-Officio Joint Secretary directing Member Secretary, South Goa Planning and Development Authority bearing No. 36/1/TCP/426/2022/2928 dated 3/11/2022 under section (1) of Section 132 of TCP Act, 1974 (Act Nos. 21 of 1975) to complete the process of preparation of Outline Development Plan of Margao Planning Area and Ponda Planning Area within a period of 30 days from the date of commencement of the order.

The ODP of Margao Planning area 2031 which was prepared in consultation with Margao Municipal Council, was placed before the 91st Authority meeting of SGPDA held on 14/09/2021 and the said plan was approved by the authority. The said plan was further submitted to the Government under Section 34 of the TCP Act for obtaining its consent to the publication of the notice of preparation of the said draft Outline Development Plan-2031 for Margao Planning Area under section 35 of the TCP Act 1974.

The ODP of Margao Planning Area was then placed before TCP Board its 175th (Adj.) (2nd meeting) meeting held on 24/09/2021 and the same was considered for provisional approval and thereafter for approval of the Government. The Government provisionally approved the said Outline Development Plan 2031 and the same was notified vide Notification No. SGPDA/ODP-2031(M)734/2122 dated 26/10/2021.

Similarly, the Outline Development Plan of Ponda Planning Area 2031 was placed before the Town & Country Planning Board in its 175th (Adj.) (2nd sitting) meeting held on 24/09/2021 and the Board considered the said plan for provisional approval and thereafter for approval of the Government. The Government provisionally approved the said Outline Development Plan 2031 and the same was notified vide Notification No. SGPDA/ODP-2031(P)736/2122 dated 26/10/2021.

The SGPDA vide its letter dated 14/09/2022 informed that Authority in its 97th meeting held on 14/09/2022 had taken a resolution to request at least one more month time for receiving objectives/suggestions to the draft ODP -2023 of Margao and Ponda Planning Area.

The Member Secretary, South Goa PDA vide letter No. SGPDA/ODP-2031/16-30/23-24 dated 07/02/2024 has submitted the proposal pertaining to Outline Development Plan of Margao Planning Area and Ponda Planning Area-2031 to TCP Board for issue of final approval under Section 36 of the TCP Act.

The said proposal was placed in the 196th Board meeting held on 13/02/2024 under item No. 43.

The Member Secretary explained the salient features of the ODPs of Margao Planning Area & Ponda Planning Area-2031 to the Board. The Board took note of the explanation/presentation of Member Secretary and recommended the ODPs of Margao Planning Area and Ponda Planning Area – 2031 for issue of final approval and thereafter for submission to the Government for final approval under Section 36 of TCP Act.

Item No. 44: Cases considered by the Committee constituted as per Notification under No. 36/1/TCP/503/2023/3349 dated 31/10/2023 for granting additional FAR.

Member Secretary informed that the Government vide Notification No. 21/1/TCP/2021-23/Steering Committee/107 dtd. 9/8/2023 and published in Official Gazette, Series I No. 18 dtd. 09/08/2023 had notified the amendment to GLDBCR-2010, which provided for following:

“(2) The Government on recommendation of the Town and Country Planning Board shall grant additional height and FAR to the proposals on case to case basis in consideration of the locational aspect, nature of development, use proposed, information available and on any such other criteria, if required. Such relaxation shall however not be relaxed for more than 20% permitted in the prevailing Regulations.”

It was then informed that a Corrigendum vide Notification No. 21/1/TCP/2021-23/Steering Committee/119 dtd. 21/8/2023 was thereafter published in Official Gazette, Series I, No. 21 dtd. 24/08/2023 stating that the regulation as referred above shall be read as under:

“The Government on recommendation of the Town and Country Planning Board shall grant additional height and FAR to the proposals on case to case basis in consideration of the locational aspect, nature of development, use proposed, information available and on any such other criteria, if required.”

The Board was then informed that 5th meeting of the Committee, as constituted in this regard vide Notification No. 36/1/TCP/503/2023/3349 dated 31/10/2023 was held on 07/02/2024 in the office of the Chief Town Planner, TCP Dept., Panaji, during which, the proposals as forwarded by Taluka Offices/PDAs were considered by the Committee and the decisions taken were placed before the TCP Board as required under the amended regulation.

The Board in its 196th meeting of TCP Board held on 13/02/2024 deliberated in detail on the proposals submitted and conformity of the same in terms of notified regulations regarding the same. The Board took note that the proposals stands recommended by the Committee constituted for the purpose and therefore considered the same for approval at its end. The decisions as taken are recorded in Table A as Annexure, which forms part of these minutes.

The Board was also informed that the Committee in its 3rd meeting held on 12/01/2024 has granted additional FAR of 70 i.e. from existing 80 FAR to 150 for the proposed construction of 6 lane elevated corridor from KM 508.00 to KM 513.510 including approaches on National Highway 66 in the State of Goa on E.P.C. mode. Further, Board was also informed that the Committee deliberated the proposal again in the 5th meeting of the Committee held on 07/02/2024 and the Committee recommended to grant overall height upto 20.50 mts. as applicable to the corresponding zone of having FAR of 150 under Goa Land Development and Building Constructions Regulation, 2010.

The Board took note that the proposals stands recommended by the Committee constituted for the purpose and therefore considered the same for approval at its end.

Item No. 45: Any other item with the permission of the Chair.

No other issues were discussed under this item.

Meeting ended with thanks to the Chair.