

**MINUTES OF 191st MEETING OF THE GOA TOWN & COUNTRY
PLANNING BOARD HELD ON 25/10/2023 AT 4.30 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,
Chief Conservator of Forest, Forest Dept. | | Member |
| 5. | Shri Sandeep Faldessai,
Dy. Director Agriculture | | Member |
| 6. | Shri Milind P. Chodankar,
Asst. Planning Officer | | Member |
| 7. | Dr. Uttam L. Desai | | Member |
| 8. | Captain (In) Sanjeev Srivastav
Senior Staff Officer (E & I),
HQ Goa Aval Area, Vasco. | | Member |
| 9. | Eng. Paresh Gaitonde | ... | Member |
| 10. | Arch. Rajeev M. Sukhthanker | ... | Member |
| 11. | Ms. Vertika Dagur | | Chief Town Planner
(Land Use) |
| 12. | Shri. Rajesh J. Naik,
Chief Town Planner (Planning). | ... | Member Secretary |

Item No. 1: Confirmation of the Minutes of the 190th meeting of Town & Country Planning Board held on 21/09/2023.

Member Secretary informed that the Minutes of 190th meeting of TCP Board held on 21/09/2023 were circulated to the Members vide letter No. 36/1/TCP/501/2023/3112 dtd. 10/10/2023 and since no comments on the same were received, the decisions as taken were implemented.

Members took note of the same and accordingly the minutes of 190th meeting were treated as confirmed.

Item No. 2: Appeal under Section 45(1) of the TCP Act, 1974 filed by Mr. Tony Rodrigues against South Goa Planning and Development Authority. (File No. TP/B/APL/278/2022)

Member Secretary informed that earlier, the matter regarding appeal under Section 45(1) of the TCP Act, 1974 filed by Mr. Tony Rodrigues against South Goa Planning and Development Authority was placed before the TCP Board in its 186th meeting held 25/11/2022 under item No. 05 and the Board had decided as under:

“The Member Secretary informed that the Appeal is preferred against Revocation Order issued vide ref.No. SGPDA/P/6403/673/22-23 dated 09/08/2022 regarding Development Permission granted vide ref. No. SGPDA/P/6403/1469/20-21 dated 15/03/2021.

It was further informed that Respondent PDA had granted permission for compound wall under Section 44 of the T.C.P Act, 1974 vide ref. No. SGPDA/P/6403/1469/22-23 dated 15.03.2021 for construction of a compound wall around property bearing Chalta No. 60 P.T. Sheet No. 14 Margao City.

The Appellant states that in order to construct the compound wall, he had submitted construction plan to the South Goa Planning & Development Authority - Margao and the Respondent after perusing the documents and after conducting the site inspection noticed that the said plot is a vacant plot and is affected by 6 meters wide road as per the ODP-2028 on the western side and one more road to eastern side. And whereas, the Appellant in his plan for compound wall had shown 6 meters tarred road on the eastern side, which physically connects the said plot surveyed under Chalta No. 60 of P.T. Sheet No. 14.

The Appellant states that in order to commence with the construction of compound wall, he went to clean the property wherein he was obstructed by the mundkars of the adjoining plot.

The Appellant states that the complaint was lodged by him against the said mundkars before the Fatorda Police Station and also obtained order of Temporary Injunction from Civil Court Margao in Regular Civil Suit No. 208/2021/H, restraining them from interfering and obstructing him.

The Appellant further states that in order to overcome the order of Temporary Injunction of the Civil Court, the said mundkars approached the Member Secretary of South Goa Planning & Development Authority with complaint against him.

The Appellant states that based on the complaint lodged by one Mrs. Caetana Barreto and others, another site inspection was conducted on 18-02-2022 and the Member Secretary of South Goa Planning & Development Authority thereafter issued show cause notice dated 20/05/2022 and Corrigendum dated 24/05/2022 to him and upon receiving the above notice, he replied to the same.

The Appellant states that even after conducting the site inspection and receiving a detailed explanatory reply, the Respondent issued the Revocation Order dated 09.08.2022 bearing ref. No. SGPDA/P/6403/673/22-23.

Appellant states that upon receiving the Revocation Order dated 09.08.2022, he immediately sought legal advice and has preferred the present appeal under Section 45(1) of the Goa, Daman and Diu Town and Country Planning Act, 1974 on the below mentioned grounds.

The appeal memo refers to the following grounds:

- 1) The impugned order issued by the SGPDA is arbitrary, perverse illegal and without any proper reasoning.*
- 2) The Respondent failed to appreciate the fact that there is an injunction order of the Civil Judge Junior Division in R.C.S.No.197/2021/H which is operating against the mundkars of the adjoining plot restraining them from interfering with the Appellant.*
- 3) The Respondent even after conducting the site inspection failed to appreciate the existence of 6 meters wide tarred road on eastern side of the property bearing Chalta No. 60 P.T. Sheet No. 14 Margao City.*
- 4) The Respondent failed to appreciate the fact that there is 6 meters wide proposed road as per the ODP-2028 on the western side of property bearing Chalta No. 60 P.T. Sheet No. 14 Margao City.*
- 5) The Respondent failed to appreciate the fact that the road connecting on the eastern side of property bearing Chalta No. 60 P.T. Sheet No. 14 Margao City is 6 meters tarred road and is a public road tarred with public funds and underneath there is sewerage pipeline.*

- 6) *The Respondent has failed to verify their own records in order to appreciate the fact that the Respondent themselves have carried out site inspection and approved the plans submitted by the Appellant therefore the impugned order issued against the Appellant is perverse to their own acts.*
- 7) *The Respondent has conducted site inspection and the existence of the road on the eastern side of the property bearing Chalta No. 60 P.T. Sheet No. 14 Margao City is admitted in their records therefore the Respondent has drastically committed an error in holding that on the eastern side of property bearing Chalta No. 60 P.T. Sheet No. 14 Margao City lies private property of the complainant.*

The Appellant states that cause of action arose on 10-08-2022 when he received the impugned Order bearing ref. No. SGPDA/P/6403/673/22-23 and hence the appeal is filed within the period of limitation.

The Appellant has therefore prayed for the following:

- (a) *The appeal be allowed.*
- (b) *The impugned Order under ref.No. SGPDA/P/6403/673/22-23 dated 09-08-2022 be quashed and set aside;*
- (c) *Necessary and appropriate compensation be granted to the Appellant or be directed to be paid to the Appellant by the Respondent for causing unnecessary harassments and mental torture to the Appellant; and*

During the hearing, Adv. Jagannath Sambari represented the Appellant, whereas Member Secretary Shri Shaikh Ali Ahmed was present on behalf of South Goa PDA.

The Appellant argued that although he had validly obtained the development permission for the construction of the compound wall, the same was revoked by the PDA by citing the reason that there is no 6.00 mts. road shown on eastern side of the property as per ODP-2028 and by further stating that 6.00 mts. wide road shown on the eastern side of the property by providing road widening area, is not as per provision of the ODP and that part of property of Chalta No. 61 of P.T. Sheet No. 14 is also shown as road by him.

The Appellant further stated that he had submitted the plans by showing the accessibility to his plot as existing on site, as per which, the width of road on eastern side is 6.00 mts. The Appellant also clarified that the same road although not reflected on ODP is existing on site and hence is reflected on site plan.

While arguing on behalf of the Authority, Member Secretary Shri Shaikh Ali Ahmed stated that while replying to the Revocation Order dtd. 9/8/2022, the Appellant has not clarified regarding 6.00 mts. road shown towards eastern side of his property. He further stated that no clear details are provided by the Appellant pertaining to availability of 6.00 mts. road shown towards

eastern side of his property and that the same is also not reflected in ODP – 2021.

After considering the arguments placed before it by both the parties, the Board felt that the Appellant has already reflected the roads as existing on site, which is not denied by the Respondent thus, the Board was of the view that the approval earlier granted by the Authority is valid as it reflects the site condition.

The appeal therefore is allowed by the Board and revocation order issued by the Authority is set aside”.

It was then informed that the Government had accorded approval to the recommendation of the Board vide Note No. TP/B/APL/278/2022/85 dated 09/01/2023 and accordingly an Order to this effect was issued by the Chief Town Planner (Planning) & Member Secretary, TCP Board vide ref. No. TP/B/APL/278/2022/260 dated 20/01/2023.

The Board was further informed that subsequently, the Department is in receipt of an Order dated 25th July 2023 of Hon’ble High Court of Bombay at Goa, issued in the matter of Writ Petition No. 1084 of 2023 (F) filed by Fredy Barreto and anr. v/s State of Goa, through Chief Secretary and 4 others, which it is mentioned that the Respondent, Petitioner and contesting parties have agreed by consent that the appeals against the Order of the TCP Board having ref.No. TP/B/APL/278 and TP/B/APL/279, filed by the Respondent No. 4 need to be heard afresh and consequently the Hon’ble High Court had set aside the Orders passed by the Board and the appeals are accordingly are remitted back to the Board for hearing afresh after hearing the Respondent No. 4 i.e. the original Appellant as well as the Petitioners, who are the original complainants, on the basis of whose complaint, the order of revocation was passed by the South Goa Planning and Development Authority.

It was then informed by the Member Secretary that the matter was therefore placed before the Board in its 189th meeting held on 11/08/2023 under item No. 2 and after deliberation, it was decided to issue notices to the concerned parties for hearing in the matter afresh.

The Board was then briefed that the matter was again heard in its 190th meeting held on 21/09/2023 and was adjourned as per the request made by the parties.

During argument in the present matter, the complainant Shri Fredy Barreto and Milagres Barreto submitted their written arguments, which mentions as under:

1. *That the Appellant has failed to produce any documentary evidence to prove that the eastern side access to his properties is public or maintained by the Government, but had illegally shown road widening area which is not as per the ODP as mentioned in the revocation order dated 09/08/2021 passed by the SGPDA Authority. The said revocation order was passed on strong grounds that, there is no 6 meters road on eastern side and the Appellant has failed to clarify regarding 6 mtrs road towards the eastern side of his properties and the same is not reflected in ODP-2028 and part of property Chalta No. 16 of P.T Sheet No. 14 is also shown as road and the road widening area shown towards eastern side is not as per the provision ODP .*
2. *The development plan of the Appellant dated 15/03/2023 for Chalta No. 60 of P.T.S No. 14 itself enough to prove that the eastern side access is not 6 meters as because the Appellant had left road widening area on the eastern side to show the said road as 6 meters wide road and in the revocation Order dated 09/08/2023 passed by the SGPDA Authority, it is very much clear that the road widening provided by the appellant was not as per the provision of the ODP and the same came to the knowledge of the SGPDA Authority after carrying out the site inspection dated 18/02/2022 based on which the said revocation orders were passed.*
3. *That there is a litigation pending before the District Court Judge 3 Margao in respect of the access linked to this present case which is in process of final arguments, in the matter of Milagres Barreto v/s Tony Rodrigues in case No. MCA 49/20222 and Rosario Miranda v/s Tony Rodrigues in case No. MCA 44/2022.*

Shri Fredy Barreto has therefore prayed to quash and set aside the present appeal filed by the Appellant at cost.

While presenting his matter, Appellant Shri Tony Rodrigues informed the Board that the permission was earlier granted to him by SGPDA for construction of compound wall, which was subsequently revoked and against which, an appeal filed by him was allowed by the Board in its 186th meeting held on 25/11/2022.

While arguing on behalf of the Respondent PDA, Member Secretary Shaikh Ali Ahmed informed that in compliance with another order passed by the TCP Board in the matter of construction of compound wall by Shri Tony

Rodrigues for the property under Chalta No. 61 of PTS No. 14, Appellant Shri Tony Rodrigues has submitted an application for approval of revised plans, which is yet to be decided by the Authority.

On inquiry from the members, it was clarified by the Member Secretary that both these plots i.e. Chalta No. 60 of PTS No. 14, for which present appeal was being heard and the property under Chalta No. 61 of PTS No. 14, for which revised plan is filed before the SGPDA are adjacent to each other and sharing a common boundary and as such, any decision taken in the matter of application for revised plans for property Chalta No. 61 of PTS No. 14 shall also have its bearing on the approval granted for the property under Chalta No. 60 of PTS No. 14.

The Board deliberated on the matter considering the arguments placed before it and took note that Shri Tony Rodrigues has submitted revised plans to South Goa PDA for Chalta No. 61 of PTS No. 14, by revising the width of abutting road, which is a continuous road affecting also the property under Chalta No. 60 of PTS No. 14.

Considering these aspects, the Board was of the opinion that any decision taken by the Authority with regard to Chalta No. 61 of PTS No. 14 shall affect the approval granted by the Authority for Chalta No. 60 of PTS No. 14.

Considering the related issues, it was decided by the Board to remand the matter back to SGPDA to decide on the same by considering the decision arrived in the matter of application filed by Appellant Shri Tony Rodrigues for plot under Chalta No. 61 of PTS No. 14 and by considering the issues raised in the complaint made by Shri Fredy Barreto.

Member Secretary was accordingly directed to communicate the decision of the Board to SGPDA.

Item No. 3: Appeal under Section 45(1) of the TCP Act, 1974 filed by Mr. Tony Rodrigues against South Goa Planning and Development Authority. (File No. TP/B/APL/279/2022)

The Member Secretary informed that the matter regarding appeal under Section 45(1) of the TCP Act, 1974 filed by Mr. Tony Rodrigues against South Goa Planning and Development Authority was placed before the TCP Board in its 186th meeting held 25/11/2022 under item No. 06.

The deliberations in the matter and the decision of the Board is as under:-

“The Member Secretary informed that the Appeal is preferred against the Revocation Order vide ref. No. SGPDA/P/6403/673/22-23 dated 09/08/2022 regarding Development Permission No. SGPDA/P/6403/1469/20-21 dtd. 15/03/2021.

It was further informed that Respondent PDA had granted permission for compound wall under Section 44 of the T.C.P Act, 1974 vide ref. No. SGPDA/P/6403/1469/20-21 dated 15.03.2021 for construction of a compound wall around property bearing Chalta No. 61, P.T. Sheet No. 14 Margao City.

The Appellant states that in order to construct the compound wall he had submitted the construction plan to the South Goa Planning & Development Authority the Margao and the Respondent after perusing the documents and after conducting the site inspection noticed that the said plot is a vacant plot and is affected by 6 meters wide road as per the ODP-2028 on the western side and one more road to eastern side. And whereas, the Appellant in his plan for compound wall had shown 6 meters wide tarred road on the eastern side, which physically connects the said plot surveyed under Chalta No. 61 of P.T. Sheet No. 14.

The Appellant states that in order to commence with the construction of compound wall, he went to clean the above property wherein he was obstructed by the mundkars of the adjoining plot.

The Appellant states that the complaint was lodged by him against the said mundkars before the Fatorda Police Station and also obtained order of Temporary Injunction from Civil Court Margao.

The Appellant further states that in order to overcome the order of Temporary Injunction of the Civil Court, the said mundkars approached the Member Secretary of South Goa Planning & Development Authority with complaint against him.

The Appellant states that based on the complaint lodged by one Mrs. Caetana Barreto and others another site inspection was conducted on 18-02-2022 and the Member Secretary of South Goa Planning & Development Authority thereafter issued show cause notice dated 20/05/2022 and

Corrigendum dated 24/05/2022 to him and upon receiving the above notice, he replied to the same.

The Appellant states that even after conducting the site inspection and receiving such detailed explanatory reply, the Respondent issued Revocation Order dated 09.08.2022 bearing ref. No. SGPDA/P/6403/673/22-23.

Appellant states that he has given all the clarifications required by the Respondent wherein he informed the Respondent about the approved plan and the construction license, which were issued after perusing the documents and conducting site inspection. The Appellant further states that he informed the Respondent that the complainant, who have complained are trying to harass him without any basis however the Respondent has failed to lend its ears to the contentions put forth by him and proceeded to issue Revocation Order.

Appellant states that upon receiving the Revocation Order dated 09.08.2022, he immediately sought legal advice and has preferred the present appeal under Section 45(1) of the Goa, Daman and Diu Town and Country Planning Act, 1974 on the below mentioned grounds:

The appeal memo refers to the following grounds:

- 1) The impugned order issued by the SGPDA is arbitrary, perverse illegal and without any proper reasoning.*
- 2) The Respondent failed to appreciate the fact that there is an injunction order of the Civil Court passed in R.C.S.No.197/2021/H which is operating against the said mundkars retraining them from interfering with the Appellant.*
- 3) The Respondent failed to appreciate the fact that after discussion with the member secretary the eastern side road as shown on the plan was proposed road in case of any future development and not an existing 6 meters wide road. Therefore the Appellant was directed to maintain 3 meters setback from the centre point of the said road.*
- 4) The Respondent failed to appreciate the fact that the road existing on the eastern side of property bearing Chalta No. 61 P.T. Sheet No. 14 Margao City is a public road tarred with public funds and underneath there is sewerage pipeline.*
- 5) The Respondent has failed to verify their own records in order to appreciate the fact that the Respondent themselves have carried out site inspection and approved the plans submitted by the Appellant therefore the impugned order issued against the Appellant is perverse to their own acts.*
- 6) That the plans that were approved by the Respondent were after perusing the documents, conducting site inspection and after discussion with the member secretary therefore in case of any objections the Respondent should have directed the Appellant to revise the approved*

plans. Therefore straight away passing the impugned order of revocation is arbitrary and bad in law.

The Appellant submits that the said Impugned Order is arbitrary, illegal, over sighted, violating the principles of natural justice and hence is liable to be quashed and declared as null and void.

The Appellant states that cause of action arose on 10-08-2022 when he received the impugned Order bearing ref. No. SGPDA/P/6403/673/22-23. and hence the appeal is filed within the period of limitation.

The Appellant therefore has prayed for the following:

- (a) The appeal be allowed.*
- (b) The impugned Order 09-08-2022 be quashed and set aside;*

During the hearing, Adv. Jagannath Sambari represented the Appellant, whereas Member Secretary Shri Shaikh Ali Ahmed was present on behalf of South Goa PDA.

The Appellant argued that although he had validly obtained the Development Permission for the construction of the compound wall, the same was revoked by the PDA by citing the reason that there is no 6.00 mts. road shown on eastern side of the property as per ODP-2028 and by further stating that 6.00 mts. wide road shown on the eastern side of the property by providing road widening area, is not as per provision of the ODP and that part of property of Chalta No. 61 of P.T. Sheet No. 14 is also shown as road by him.

The Appellant further stated that he had submitted the plans by showing the accessibility to his plot as existing on site and has proposed the road widening area for providing better accessibility and keeping in view the future widening of the same road. The Appellant further stated that the Authority while granting the approval earlier, had appreciated this and accordingly had considered the proposal for approval wherein, road widening area was clearly shown thereby making this road on the eastern side as 6.00 mts., which actually is in the larger interest of the planning.

While arguing on behalf of the Authority, Member Secretary Shri Shaikh Ali Ahmed stated that while replying to the Revocation Order dtd. 9/8/2022, the Appellant has not clarified regarding 6.00 mts. road shown towards eastern side of his property. He further stated that no clear details are provided by the Appellant pertaining to availability of 6.00 mts. road shown towards eastern side of his property and that the same is also not reflected in ODP – 2021.

After considering the arguments placed before it by both the parties, the Board was of the opinion that the plans approved earlier by the Authority was by keeping in view the planning point wherein the scope for widening of the public road is available.

The Board was also of the opinion that the Authority cannot adopt two different views at two different times. The Board therefore was of the opinion that the approval granted earlier was correctly issued and therefore allowed the appeal.

The appeal therefore was dismissed by giving the directions to the Appellant to submit the revised plans before the Respondent PDA by giving necessary clarification about existence of the road vis-à-vis provisions under ODP.

The South Goa PDA was accordingly directed to consider the application for revised plan on receipt of the same”.

It was then informed that the Government had accorded approval to the recommendation of the Board vide Note No. TP/B/APL/279/22/84 dated 09/01/2023 and accordingly an Order to this effect was issued by the Chief Town Planner (Planning) & Member Secretary, TCP Board dated 20/01/2023.

The Board was further informed that subsequently, the Department is in receipt of an Order dated 25th July 2023 of Hon’ble High Court of Bombay at Goa issued in the matter of Writ Petition No. 1084 of 2023 (F) filed by Fredy Barreto and anr. v/s State of Goa, through Chief Secretary and 4 others, in which it is mentioned that the Respondent, Petitioner and contesting parties have agreed by consent that the appeals against the Order of the TCP Board having ref.No. TP/B/APL/278 and TP/B/APL/279, filed by the Respondent No. 4 need to be heard afresh and consequently the Hon’ble High Court had set aside the Orders passed by the Board and the appeals are accordingly remitted back to the Board for hearing afresh after hearing the Respondent No. 4 i.e. the original appellant as well as the petitioners, who are the original complainants, on the basis of whose complaint, the order of revocation was passed by the South Goa Planning and Development Authority.

It was then informed by Member Secretary that the matter was therefore placed before the Board in its 189th meeting held on 11/8/2023 and it was decided to issue notices to concerned parties for hearing in the matter afresh.

The Member Secretary informed that the matter was again placed before the TCP Board in its 190th meeting held on 21/09/2023 and was adjourned as per the request made by the parties.

During argument in the present matter, the complainant Shri Fredy Barreto and Milagres Barreto submitted their written arguments, which mentions as under:

1. *That the Appellant has failed to produce any documentary evidence to prove that the eastern side access to his properties is public or maintained by the Government, but had illegally shown road widening area which is not as per the ODP as mentioned in the revocation order dated 09/08/2021 passed by the SGPDA Authority. The said revocation order was passed on strong grounds that, there is no 6 meters road on eastern side and the Appellant has failed to clarify regarding 6 mtrs road towards the eastern side of his properties and the same is not reflected in ODP-2028 and part of property Chalta No. 16 of P.T Sheet No. 14 is also shown as road and the road widening area shown towards eastern side is not as per the provision ODP.*
2. *The development plan of the Appellant dated 15/03/2023 for Chalta No. 61 of P.T.S No. 14 itself enough to prove that the eastern side access is not 6 meters because there is road widening area shown in the approved plan which is not as per the provision of ODP as mentioned in the revocation Order dated 09/08/2022 passed by the SGPDA Authority and the Appellant had shown 6.00 mts. Wide road towards mundkarial house-B of the respondent/complainant Milagres Barreto and in the revocation order dtd. 9/8/2023 passed by the SGPDA authority, it is very much clear that the road widening provided by the appellant was not as per the provision of the ODP and the same came to the knowledge of the SGPDA Authority after carrying out the site inspection dated 18/02/2022 based on which the said revocation orders were passed.*
3. *That there is a litigation pending before the District Court Judge 3 Margao in respect of the access linked to this present case which is in process of final arguments, in the matter of Milagres Barreto v/s Tony Rodrigues in case No. MCA 49/2022 and Rosario Miranda v/s Tony Rodrigues in case No. MCA 44/2022.*

Shri Fredy Barreto has therefore prayed to quash and set aside the present appeal filed by the Appellant at cost.

While presenting his matter, Appellant Shri Tony Rodrigues informed the Board that in compliance with a order earlier issued, he has filed an application before the South Goa PDA for approval of the revised plans, approval for which is awaited.

While arguing on behalf of the Respondent PDA, Member Secretary Shaikh Ali Ahmed informed that in compliance with order passed earlier by the TCP Board in the matter of construction of compound wall by Shri Tony

Rodrigues for the property under Chalta No. 60 of PTS No. 14, Appellant Shri Tony Rodrigues has submitted an application for approval of revised plans, which is yet to be decided by the Authority.

The Board took note that the application is already filed by the appellant before the SGPDA and hence it would be appropriate to await for the decision of the authority in the matter. Member Secretary SGPDA was accordingly directed to dispose off the application expeditiously.

It was therefore decided by the Board to remand the matter back to SGPDA to decide on the application filed by Appellant Shri Tony Rodrigues for approval of the plans for plot under Chalta No. 60 of PTS No. 14 by considering the issues related to the road width and the complaint made by Shri Fredy Barreto.

Member Secretary was accordingly directed to communicate the decision of the Board to SGPDA.

Item No. 4: Appeal under Section 52 of the TCP Act, 1974 filed by Shri. Narendra Shah against Greater Panaji Planning and Development Authority and North Goa Planning and Development Authority.

The Member Secretary informed that the Appellant has challenged the Revocation Order-cum-Rejection of Revised Plan dated 03/08/2023 bearing ref. No. NGPDA/60/PNJ/1459/2023 passed by the Respondent No. 2, wherein the Respondent No. 2 has directed the Appellant to remove alleged illegal construction carried in alleged violation of the Development Permission granted vide Order No. GPPDA/637/PNJ/650/2021 dated 06/10/2021, within a period of one month from the date of issuance of the Order, failing which the Respondent No. 2 shall proceed to demolish the alleged illegal structure and recover the cost of the demolition from the Appellant.

The Appellant states that the Respondent No. 1 was Planning and Development Authority which was created by the Government of Goa having jurisdiction over Panaji Planning Area. The Appellant states that as per the Notification dated 24/08/2022, wherein the Government of Goa now brought Panaji Planning and Development Authority under the jurisdiction of North Goa Planning and Development Authority, which is having jurisdiction over

Mapusa Planning Area, Calangute-Candolim Planning Area as well as Arpora-Nagoa-Parra Planning Area. Therefore, in view of this development, the Appellant has also arrayed North Goa Planning and Development Authority as party Respondents to the present Appeal as it will be the Respondent No.2 now will be necessary party to the Appeal.

The Appellant states that he and his other family members are the owners of the properties under Chalta Nos. 32, 33, 34 of P. T. Sheet No. 60 of Panaji Goa. The Appellant states that in the said properties, he and his family members have their residential house consisting of ground plus first floor having House No.10/44(E-568) and said house is in existence for more than 82 years.

The Appellant states that since the said house has become old, he and his other family members proposed and decided to reconstruct the same and accordingly, applied for Development Permission under Section 44 of the Goa Town & Country Planning Act, 1974, to the Respondent No.1 being the Planning Authority having jurisdiction over the Panaji Planning Area. The Appellant states that he while submitting the plans clearly mentioned that he proposed to reconstruct the said house on the existing plinth, however, in the application which came to be submitted to the Authority, he inadvertently mentioned as “Proposed Alteration and Addition to the Existing House and Amalgamation of the Property”.

The Appellant states that the property under reference falls in Commercial zone as per the ODP 2011 and therefore, he otherwise is also entitled to construct the commercial building in the said property.

The Appellant states that after obtaining the Development Permission from the Respondent No. 1, then he applied for the Construction License from the Corporation of City of Panaji; and accordingly, the Construction License dated 03/11/2021 came to be issued. He also states that since he in his application mentioned as ‘Proposed alteration and addition to the existing house and amalgamation of the property’ even the Development Permission as well in the Construction License came to be issued wherein it is mentioned construction for ‘Proposed alteration and addition to the existing house and amalgamation of the property’. Further he states that both the authorities actually charged fees for reconstruction of the said structure. He also paid the

total amount of Rs. 16,12,052/- to the said Respondent No. 1 as well as CCP which includes infrastructure tax.

The Appellant states that accordingly, he commenced the reconstruction of the existing house and when the construction has reached the stage of Ground plus First floor, the Respondent No. 3, who is otherwise the next door neighbour of him, has filed the complaint before the authorities including the Respondent No.1.

The Appellant states that thereafter the Respondent No. 3 even filed Writ Petition (f) No. 67/2022 before the Hon'ble High Court of Bombay at Porvorim-Goa seeking direction to the Respondent No. 1 and CCP to hold the Site Inspection and to take immediate steps to remedial measures upon receiving report and further directed to revoke the approvals granted by the Authority. The Appellant states that in the said Writ Petition, also it is not the case of the Respondent No. 3 that entire construction is illegal but the allegations were made that under the garb of repairs the Appellant has undertaken reconstruction without maintaining proper set back.

The Appellant states that in the meantime, as per the direction of the Hon'ble High Court, the joint Site inspection was carried out by the officials of the Respondent No.1 and the CCP wherein certain observation in respect of the said structure were made.

The Appellant states that pursuant to the said Site Inspection Report, CCP issued Work Stoppage Order-cum- Show Cause Notice dated 08/02/2022 to the Appellant wherein the Appellant was directed to Show Cause as to why under Section 269(2) of the City of Corporation Panaji Act, 2002 should not be passed for the demolition of the illegal activities.

The Appellant states that since the Respondent No. 3 started making grievance about the said construction that he has undertaken reconstruction of the existing structure under the garb of the "Proposed Alteration And Addition To The Existing House and Amalgamation of the Property", he submitted revised plan dated 28/03/2022 indicating certain internal deviations during construction without changing the existing plinth dimensions before the Respondent No.1.

The Appellant states that thereafter the Respondent No. 1 also issued the Show Cause Notice dated 15/06/2022 to him.

The Appellant states that thereafter the Hon'ble High Court of Bombay at Goa vide Judgement and Order dated 24/06/2022 disposed of the Writ Petition filed by the Respondent No. 3, wherein the direction was issued to the Respondent No.1 to dispose of the Show Cause Notice within 8 weeks from the date of the said Order.

The Appellant states that as far as the Show Cause Notice is issued by the Respondent No. 1 is concerned, he submitted reply dated 03/08/2022 wherein he provided explanation.

The Appellant states that thereafter the said the Respondent No.1 called the Appellant as well as the Respondent No. 3 for personal hearing and since the hearing did not take place, the hearing was fixed on 17/08/2022 on the Show Cause Notice and this hearing was then held with complainant present.

The Appellant states that thereafter vide letter dated 17/08/2022, he requested the Respondent No.1 to consider the revised plan submitted on 28/03/2022 before taking any decision on Show Cause Notice.

The Appellant states that on 17/08/2022, the Appellant through his Attorney remained present for hearing before the Member Secretary of the Respondent No.1, who alone heard him without any authorization from the Respondent No.1, wherein the Respondent No.3 produced copy of the Judgement and Order passed by the CCP.

The Appellants states that subsequently, in the evening on 17/08/2022, he also received copy of the Judgement and Order passed by the CCP wherein it was observed that the Appellant has not replied to the Show Cause Notice so also he has failed to remain present before the Commissioner of the CCP and therefore, he has been directed to demolish the alleged illegal construction and restore the land to its original condition. The Appellant being aggrieved by the said Judgement and Order passed by the CCP has preferred Appeal before the Government of Goa as provided under the City Corporation of Panaji Act, 2002.

The Appellant states that subsequently on 26/08/2022, the Appellant also received copy of the Order dated 19/08/2022, passed by the Respondent No. 1 which was arbitrary, unreasonable, illegal in as much as the Appellant has submitted revised Plan for the consideration of the Respondent No. 1 and the Respondent No. 1 without considering the said revised Plan and despite request made by the Appellant has proceeded to pass Order dated 19/08/2022 when the Respondent No. 1 had clearly observed that the Appellant had undertaken construction on the same plinth however had directed him to demolish the development which is in contravention of the Development Permission. He further states and submits that in the Order the Respondent No. 1 had not given any reasons as to how the development undertaken by him is in violation of the Development Permission when he had undertaken construction in accordance with approved Plan maintaining the same plinth dimension.

The Appellant states that the Respondent No. 1 herein ought to have decided the revised Plan first which were submitted in March 2022 even before the Show Cause Notice came to be issued therefore, the Respondent No. 1 committed error and passed the Order when the application for regularization/ revised Plan submitted by him was pending before the Respondent No. 1.

The Appellant states that the Member Secretary of the Respondent No. 1 without placing the matter before the Authority on pressure exerted by the Respondent No. 3 had proceeded and passed by the Order without considering the revised Plan submitted by the him and without giving any reasons as how the construction undertaken by the him was in violation of the approved Plan.

The Appellant states that the he was constrained to file an appeal challenging the Order dated 19/08/2022 passed by the Respondent No. 1 before the Authority.

The Appellant states that the Authority vide Order dated 09/01/2023 allowed the said appeal and directed that the application for revised Plan submitted by him be considered and while deciding the said application, the Respondent No. 2 should consider whether the relaxation can be granted as far as setbacks are concerned.

The Appellant states that the Respondent No. 3 challenged the Order dated 09/01/2023 passed by this Authority vide Writ Petition No. 175/2023 before the Hon'ble High Court of Bombay at Goa.

That vide its Order dated 20/03/2023 the Hon'ble High Court expressing any comments on the merits of case and without setting aside the Order passed by this Authority on 09/01/2023 issued directions to the Respondent No. 2 to take decision on revised Plan submitted by him in view of observation made in para 6 of the said Order, after hearing the parties.

The Appellant states that pursuant to the direction issued by the Hon'ble High Court of Bombay at Goa in Writ Petition No. 175/2023, a personal hearing was conducted on 12/04/2023 wherein the written submission of Respondent No. 1 as well as his application dated 28/03/2023 was placed in the Authority meeting held on 02/05/2023.

The Respondent No. 2 contending that the request for consideration of the relaxation as sought by him decided that the matter should be referred to the Government for necessary decision. However, the Government returned the file to the Respondent No. 2 with a remark to place the file before the Town & Country Planning Board.

The Appellant states that the Respondent No. 3 thereafter once again preferred a Writ Petition before viz. Writ Petition No. 1217 (F) before the Hon'ble High Court of Bombay at Goa.

The Respondent No. 2 in view of the time bound direction issued by the Hon'ble High Court of Bombay at Goa placed in the records in relation revised Plan submitted by him before the Respondent No. 2 Authority in its meeting held on 31/07/2023.

The Appellant states that the Respondent No. 2 vide Revocation Order-cum-Rejection of revised plan 'the impugned order' dated 03/08/2023 bearing Ref. No. NGPDA/60/PNJ/1459/2023 refused to approve the Revised Plan dated 28/03/2023 and directed the Appellant to remove the illegal construction within the period of 1 month from the issuance of this order failing which the Respondent No. 2 shall demolish the said illegal structure and recover the cost of demolishing from the Appellant.

The Appellant thus being aggrieved by the Impugned Order passed by the Respondent No.2 prefers this Appeal on following amongst the other grounds which are taken without prejudice and alternate to each other.

The grounds for appeal as mentioned by the Appellant are as under:

A. The Appellant submits that the Impugned Order passed by the Respondent No. 2 is illegal, arbitrary, capricious and unreasonable and consequently the same is required to be quashed and set aside.

B. The Appellant submits that the construction undertaken by the Appellant is on the very same plinth without exceeding any FSI in any manner and since the reconstruction is undertaken on the existing structure the Appellant was under bonafide impression that there is no need to keep any future setbacks and since now the building is reconstructed the Hon'ble Board may consider the case of relaxing the setbacks and direct Respondent No.2 to granted approval of Revised plans as submitted by the Appellant . In any case there is ample road available at the site for the users which in any manner not interfered or encroached by the Appellant.

C. The Appellant respectfully submits that this Authority vide order dated 09 /01/2023 whilst allowing the appeal preferred by the Appellant herein had directed that the Respondent No . 2 to consider the Application for revised plan submitted by the Appellant and further to consider whether the relaxations prayed for , can be granted as far as setbacks are concerned.

D. The Appellant states that the Respondent No 2 has failed to take into consideration that the new setbacks regulations cannot be applied to the Appellant's case as the construction is on the same plinth which was the original structure and which is without utilizing the full FSI /FAR of the plot. Moreover, the building is not a high rise building which could otherwise be built on the said plot.

E. The Appellant states that the new building regulations are not clear on matters of reconstruction inasmuch as it is not clearly specified whether the setbacks have to be maintained as the term reconstruction means constructing an existing house and a reconstruction cannot be equated to a fresh/ new construction and should infact be construed as an old structure with the same parameters on which it was approved and not looked at as if it is a fresh/ new construction.

F. The Appellant respectfully further states that the requirement of giving due consideration to the Application for Revised Plan dated 28/03/2022 and to disclose reasons for its disallowance was necessary and mandatory in law and more particularly in view of the directions issued by the Hon'ble High Court in its Order dated 20/03/2023 wherein the Hon'ble High Court was pleased to observe that the Respondent No. 2 was obliged to consider the revised plans in terms of Regulation 3.8 of the Building Rules and Regulations 2010.

G. The Appellant respectfully submits that the Respondent No. 2 in terms of the Impugned Order fails to disclose any reason whatsoever as to why the Application of Revised Plan dated 28/03/2022 cannot be approved and the relaxations prayed therein cannot be granted.

H. The Appellant respectfully submits that the Respondent No. 2 has been unmindful of the fact that the Original approved plan still holds and the same has till date not been either revoked or annulled.

I. The Appellant respectfully submits that the Respondent No. 2 has failed to consider that the construction undertaken by the Appellant is on the very same existing plinth and structure which was existing on the said property for last several years as per the plan approved by the Authorities and that the peripheral dimensions confirm this position at loco as revealed even during the site inspection.

J. The Appellant respectfully submits that the Respondent No. 2 has failed to consider that FAR, coverage and setbacks were based on this site inspection and the deviations are only as far as internal modifications in staircase and doors, etc not affecting FAR and other planning parameters of approvals.

K. The Appellant submits the Respondent No. 2 is vested with powers to grant relaxation without prejudice to the regulations in order to meet the exigencies posed by the location and site conditions. it is further submitted that at the time of either a grant or refusal of relaxations it is imperative for the Authority to allude to such site conditions and consider whether in a given case relaxation was required to be granted. It is respectfully submitted that the Respondent No. 2 has failed to give a mindful consideration to the request for relaxation made by the Appellant.

L. The Appellant respectfully submits that it is not the case of the Respondent No. 1 as well as the Respondent No. 3 that the entire construction carried out by the Appellant is in violation of the law or the permission but that

the Appellant under the garb of repair has undertaken reconstruction without maintaining proper set back. The Appellant submits that this fact alone reveals that the Appellant had never intended to deviate but was *per force* constrained to seek revision on account of the collapse of the old structure which was existing at site. In such circumstances grant of relaxations to the Appellant ought to have been considered by the Respondent No. 2. Therefore, the Respondent No. 2 has committed serious error in arriving at the Order of demolition without understanding the factual backdrop of the case.

M. The Appellant submits that the above factual situation and exigency was duly supported by the Letter of the Engineer of the Appellant, which was duly furnished to the Respondent No. 2. However, the same has been disregarded by the Respondent No. 2 without any valid reason and has thus misguided itself into arriving at the impugned order.

N. The Appellant submits that admittedly there was an old house existing in the said Property and when Appellant commenced construction as per approved drawings, the walls of the said old house collapsed. In such circumstances the Appellant had to demolish the existing walls and reconstruct the same and to for that purpose the Appellant vide letter dated 05/11/2021, had informed the Respondent No.1 about the same which communication is a contemporaneous proof of the happening.

O. The Appellant submits that the grievance of the Complainant is that since the Appellant has reconstructed the structure the Appellant has to maintained setbacks from the road. There is inherent frivolity and fallacy in this contention of the Complainant as there are structures existing abutting the said road and the walls constructed by the Appellant are on very same place where the old house existed. There is no scope to widen the width of the road which can be ascertained at loco and therefore the Hon'ble Board may consider relaxing the setbacks and direct the Respondent No. 2 to consider the proposal as submitted vide revised plan.

P. The Appellant respectfully submits that the Appellant indeed obtained the approval of the Authorities and the plans approved by the Authorities clearly shows that the Appellant had actually submitted the plans for reconstruction of the existing structure and merely because there is some deviation that has taken place while undertaking the said construction cannot be considered that entire construction is illegal.

Q. The Appellant respectfully submits that the Respondent No. 2 has passed the Impugned Order in violation of the provisions of law and therefore, for the reasons and ground taken herein the Impugned Order is required to be set aside.

R. The Appellant submit that they are senior citizens and have embarked on the restoration of their ancestral house by availing huge loans and grave injustice will be occasioned to them if the impugned order is not set aside.

S. Such other and further grounds that may be urged at the time of hearing of Appeal.

The Appellant states that the impugned Revocation Order-cum-Rejection of Revised Plan passed by the Respondent No.2 is illegal and violation of provisions of law and therefore if the operation of the said Order is not stayed it will cause irreparable loss to the Appellant. The Appellant has good case on merits of the Appeal as well as balance of convenience of convenience tilts in favour of the Appellant.

The Appellant states that the fact that the Respondent No. 3 has constructed his building and has been residing there using this passage when the original building as well as the one on the side existed and lasted for last 30-35 years. There is no cause for any inconvenience to him now.

The Appellant has therefore prayed that:

- a) That the Hon'ble Authority/Government be pleased to quash and set aside the Impugned Revocation Order-cum-Rejection of Revised Plan dated 03/08/2023 bearing Ref no. NGPDA/60/PNJ/1459/2023 passed by the Respondent No. 2.
- b) That the Board be pleased to order and direct the Respondent No. 2 herein which is the Authority having jurisdiction to consider and approve the Revised Plan submitted by the Appellant on 28/03/2022, by relaxing the setbacks requirement if any, and accordingly grant revised Development Permission and approve the Plans submitted by the Appellant.
- c) That pending and hearing of final disposal of this Appeal the Hon'ble Authority/Government be pleased to stay the operation and execution of the Impugned Revocation Order-cum-Rejection of Revised Plan dated

03/08/2023 bearing Ref no. NGPDA/60/PNJ/1459/2023 passed by the Respondent No. 2 and further restrain the Respondent No. 2 from demolishing the construction undertaken by the Appellant.

The Member Secretary informed that the matter was earlier placed before the TCP Board in its 190th meeting held on 21/09/2023 under item No. 4 and considering the request made by the Respondent PDA, the matter was adjourned.

During the present hearing, Adv. R. Rao appeared for Appellant Shri Narendra Shah, whereas Respondent No. 2 i.e. North Goa PDA was represented by Adv. Hanumant Naik. Respondent No. 3 i.e. Shri Rasiklal Gangani was represented by Adv. Rohit Bras de Sa.

During the hearing, Respondent No. 3 filed reply opposing the Appeal. Ld. Advocate appearing for Appellant Shri. Narendra Shah sought time to deal with the reply of the Respondent No. 3 and accordingly, requested for time.

The Board accordingly accepted the request of the Advocate for Appellant and decided to keep the Appeal for hearing in its next meeting considering the fact that the Appeal has to be decided within time granted by the Hon'ble High Court.

Member Secretary was accordingly directed to issue notices to the concerned parties regarding hearing in the matter, once the date of the meeting is finalized.

Item No. 5: Appeal under Section 52 (2) of the TCP Act, 1974 filed by Mrs. Dinamati Gomes and Mr. Navnath Gomes alias Navnath Kankonkar against North Goa Planning and Development Authority.

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 Order bearing ref. No. NGPDA/ill-const./12/Tlg/1129/2023 dated 06/07/2023 issued by the Respondent NGPDA.

It was informed that the Appellants are aggrieved by the issuance of the Show Cause Notice dated 29.02.2022 issued by the North Goa PDA having ref.No. ill/constn/55/TIg/1455/2022. It is stated by the Appellant that the Member Secretary has wrongly issued the show cause notice which is dehors of law and records and has wrongly dismissed the application dated 5.6.2023. member Secretary then informed that the Appellants has challenged the legality and propriety of the Impugned Orders and has preferred the present Appeal on the grounds mentioned as under:

- a. That the Impugned Orders are issued by the Respondent No. 2 is without following the prescribed procedure and the same is bad in law as well as on facts.
- b. The Impugned Orders have been passed in gross violation of the principles of Natural Justice.
- c. The Impugned Orders are passed by the Respondent No.2 over looking the facts on record and in complete bad faith.
- d. The Respondent No. 2 has not considered that there could not have been any show cause notice issued by the respondent No.2 as the reply of the Appellants were never considered.
- e. That the Respondent No 2 as a Presiding officer in the matter has made statements confirming facts on her own while passing Second Impugned Order.

“At the outset I wish to confirm that Adv. G Panandikar is not on the panel of advocates of this authority and has not represented the NGPDA in any matter/case.”

The said statement is contrary to records as place before the authority.

- f. That the Respondent No 2 has failed to examine that the Advocates have represented GPPDA which is now in turn NGPDA having appeared in the Hon'ble High Court in PIL Writ Petition Nos 33/2022 and 48/2019 against the GPPDA and for the GPPA and in the Case bearing No 12 are appearing before the authority.
- g. That the Respondent No 2 has turned a blind eye to all the illegalities committed by Joe Mathias in the Survey No 249/1-A of Taleigao Village, Tiswadi Taluka.

- h. That the Respondent No 2 has granted various permissions to Joe Mathias having Order dated 14.06.2006 in the property bearing 249/1-A situated at Dona Paula Taleigao having ref no. NGPDA 342/682/06, Order dated 02.02.2007 in the property bearing 249/1-A situated at Donapuala, Taleigao.

The Appellant therefore prayed as under:

1. That the appeal be allowed by this Hon'ble Board and Show cause notice dated 29.02.2022 having reference number ill/constn/55/TIg/1455/2022 before the NGPDA at Panaji of the North Goa Planning and Development Authority, in Complaint no 12, be quashed and set aside; and/or In the alternatively the matter be remanded after quashing and setting aside the impugned Order:
2. That the appeal be allowed by this Hon'ble Board and the application dated 5.6.2023 objecting for the advocates for the complainants and others vide Order dated 06.07.2023 and Development Authority, in Complaint no 12, be quashed and set aside; and/or In the alternatively the matter be remanded after quashing and setting aside the impugned Order;
3. Pending the hearing and adjudication of the present Appeal from the Impugned Orders, this Hon'ble Court may be pleased to stay the proceedings before the North Goa Planning and Development authority which is pending at Panaji, Goa.

During the present hearing, Appellant was represented by Adv. M. D'Souza, whereas Respondent No. 1 i.e. Niteen Sant was represented by Adv. G. Panandikar. Respondent No. 2 i.e. North Goa PDA was represented by Adv. Shri Hanumant D. Naik.

Adv. Shri Hanumant D. Naik, appearing for the North Goa Planning and Development Authority filed preliminary reply to the Appeal and submitted that the Appeal filed by the Appellant is not maintainable in law as there is no decision taken on the Show Cause Notice issued by the said Authority.

Ld. Advocate for the North Goa Planning and Development Authority also submitted that as far as Prayer (b) is concerned, no Appeal lies against such an Order under Section 52 of the TCP Act and therefore submitted that the Appeal be rejected.

The Ld. Advocate appearing for the Appellant accepted this position that no Appeal lies as far as the relief prayed in Prayer Clause (b).

Ld. Advocate for the Appellant Smt. Dinamati Gomes requested for some time to deal with preliminary reply filed by the Respondent No. 1.

The Board thought it appropriate to grant time and to keep the matter in its next meeting.

Member Secretary was accordingly directed to issue notices to the concerned parties regarding hearing in the matter, once the date of the meeting is finalized.

Item No. 6: Appeal under Section 45(A) of the TCP Act, 1974 filed by Mr. Antonio Blasco Da Costa Gracias against South Goa Planning and Development Authority.

Member Secretary informed that the appeal is preferred by the Appellant being aggrieved by the impugned letter dated 05/09/2023 numbered SGPDA/P/6671/1017/23-24 issued by the Respondent.

It was informed further that the Appellant states that the Appellant is the owner in the possession of the property all that sub-plot C of the said PLOT 'B2 fully described under serial no. (ii) in the Second Schedule hereinabove written, which sub-plot 'C' admeasures an area of 540 square meters or thereabouts, and as a distinct and independent unit surveyed under Chalta No. 60 of P.T. Sheet No. 175. (hereinafter referred to as the said plot)

As per the appeal memo, the Appellant is in the business of land development, Constructions etc. and has completed the projects successfully, and hence in order to develop and construct a building project, the appellant purchased the said plot by virtue of a Deed of Sale registered before the Sub-Registrar of Salcete under Registration No. MGO-1-1289-2023 dated 28/03/2023.

The Appellant further states that on purchase of said plot he drew the plan with all the cautions and specifications as required under the Town and Country Planning Act, including the existing alignment of road, which was clearly shown on the Site Plan submitted in the proposal for approval as appearing on site.

Member Secretary then informed that the Appellant moved the file before the S.G.P.D.A office at Margao on 20/07/2023 having inward No.782 dated 20/07/23, which however was not considered by the authority as per the decision communicated to him vide letter under ref.No. SGPDA/P/6671/1017/23-24 dated 05/09/2023.

The Appellant has therefore preferred the appeal stating that the impugned dtd. 5/9/2023 is contradictory to law and is liable to quash and set aside.

During the hearing, Appellant Antonio Gracias was personally present for the hearing and whereas Respondent PDA was represented by Member Secretary South Goa PDA Shri Shaikh Ali Ahmed.

While arguing on the matter Shri Antonio Gracias informed that he submitted the plans for development permission to South Goa PDA by showing the exact position of road as existing on site, which showed the accessibility to his plot and further said that the permission was however refused to him by stating that the plot is affected by 10 mts. Wide proposed ODP road. Shri Antonio Gracias further argued that the notified ODP provides for minor adjustment of the road as per actual site conditions. He further stated that it is within the powers of the authority to consider the ODP road for deletion in case another road is actually existing on the site, which is very much in close vicinity of the proposed ODP road, to the extent that the proposed ODP road is parallelly passing through his property almost parallel to the road existing on site, thus rendering his property useless.

While arguing on behalf of SGPDA, Member Secretary Shri Ali citing the provisions of notified ODP and stated that he has merely abided by the provisions of ODP, which reflects 10 mts. wide road passing through the plot of Appellant.

On inquiry from the members, it was agreed by the Member Secretary that the road existing on site and as shown on the site plan by the Appellant, is running almost parallel to the one proposed on ODP.

During deliberation on the subject, it was mentioned by the Member Secretary that the explanatory memorandum on the notified ODP provides for following:

1. If proposed road is in close vicinity of existing road, the proposed road is to be deleted and its area to be reverted to adjoining landuse.
2. Roads not feasible are realigned /corrected / deleted.
3. Minor adjustment on the basis of actual and condition on the site are allowed which may increase or decrease the area/areas of specified use/uses zones due to shift in the alignment by the executive agency (Government/Local/Self Government/Semi Government). During the course of actual construction of roads/ canals/ nalla/drains/railway and any other non specified infrastructure. The changes shall not amount to violation of Outline Development Plan.

The members deliberated at length on provisions of ODP vis-à-vis the observation letter issued by the SGPDA to the Appellant and were of the opinion that the proposal of the Appellant ought to have been considered by the Authority on the basis of actual site condition and the provisions as mentioned under “Explanatory Memorandum” on the notified ODPs.

Considering the arguments placed before it by both the parties and the statutory provision under the notified ODP, the Board was of the considered opinion that the application of Appellant for grant of Development Permission ought to have been considered by the Authority.

The Board therefore allowed the appeal.

Member Secretary was accordingly directed to issue the Order communicating the decision of the Board.

Item No. 7: Appeal under Section 52(2) of the TCP Act, 1974 filed by various Appellants against Mormugao Planning and Development Authority.

Member Secretary informed that the letter is received from Mormugao Planning & Development Authority regarding Contempt Petition No. 1253 of 2021 (Filing No.) in PIL Writ Petition No. 10 of 2018 in the High Court of Bombay at Goa Order dated 24th July 2023.

Member Secretary further informed that vide Order of Hon'ble High Court of Bombay at Goa, at para 2, it is mentioned that the MPDA alongwith its affidavit/compliance report has indicated that about 81 appeals are pending before the Town and Country Planning Board and as a result of pendency of these appeals, the demolitions of the constructions which are prima facie in the funnel zone are stayed. It was further informed that Hon'ble High Court at Bombay has therefore directed the Town & Country Planning Board to dispose the appeals as expeditiously as possible and in any case within three months from the order taking into account the circumstances that the allegations against the appellants relate to constructions within the funnel zone.

The Board was then informed that the matter was earlier placed before it in its 187th meeting held on 20/03/2023 and considering the submission made by the parties, the matters were adjourned.

The Board took note of the urgency in the matter, especially considering the time frame as mentioned in the High Court order and directed the Member Secretary to take up the matters before its next meeting.

Member Secretary was accordingly directed to issue notices to the concerned parties regarding hearing in the matter, once the date of meeting is finalized.

Item No. 8: Objections to the Margao Draft Outline Development Plan 2031.

Member Secretary informed that the South Goa Planning and Development Authority is in process of preparation of ODP-2031 of Margao Planning Area as per the directions given by the Government and informed that the Draft ODP-2031 of Margao Planning Area was notified by the SGPDA in

the Government Official Gazette, Series II, No. 21 dated 25/08/2022 inviting objections/ suggestions within a period of 60 days.

Member Secretary then informed that representation is received from Avinash Tavares on behalf of United Goans Foundation towards objections to the Margao Draft Outline Development Plan 203, wherein it is mentioned that several significant errors and flaws have occurred in the Margao Outline Development Plan (ODP), which causes deep concerns among resident and stakeholders. The representation further states that without addressing the issues, the ODP does not serve the best interests of the community or reflect the ground reality.

Member Secretary then informed that the objections have highlighted following issues:

1. Outdated Land use Plan and Register.
2. Inadequate Parking provisions.
3. Traffic and Transportation.
4. Unclear Access to Western Bypass
5. Reduction in Open Spaces
6. Neglect of Heritage Zones
7. Threat to Conservation Area
8. Overlooking Natural Water Bodies
9. Exclusion of Local Body
10. Traffic Congestion due to Petrol Pumps
11. Absence of Demarcation for Public Amenities
12. Lack of Institutional zones
13. Urban Greens reduced with every ODP Plan
14. Reduction of Urban Green Spaces
15. High Intensity zones SPC 300/SPC 200 placed arbitrarily
16. Errors in Zoning the properties.

It was then informed by the Member Secretary that vide his representation Shri Avinash Tavares further mentions that the issues/ oversights as raised by him will impact the heritage & natural beauty of Margao city and will pose serious challenges to its future development and sustainability. It is therefore prayed by Shri Avinash Tavares that Town &

Country Planning Department to either scrap the current ODP or suspend it until the issues are adequately addressed. It is further requested that the updated plan be placed before the public for scrutiny which will ensure that the public is aware of all the proposed zone changes thereby ensuring natural justice to those affected by the changes.

Member Secretary then informed that another representation is received from the President, Goyche Fudle Pilge Khatir (GFPK) regarding Objections on Margao Draft Outline Development Plan-2031, through which following objections are raised:

- 1) The Margao draft ODP-2031 which a local micro plan has been formed in breach of Urban and Regional Development Plans Formulation and implementation (URDPFI) Guidelines.
- 2) The map at the office website links containing Margao draft ODP 2031 prepared by a private company Turbosketch has major Cartographic errors. In the middle of the city it shows roads with dead ends, railway tracks with disjointed tracks and several other deficiencies.
- 3) Consultation before putting draft ODP 2031 should have been with people, besides this draft ODP 2031 should have been also explained to the citizens.
- 4) Margao draft ODP 2031 put online should being sync with conversation policy of heritage structures of Margao city. It is noted that his draft ODP has done away with protection of heritage sites in Margao instead of promoting and protecting them.
- 5) With latest technology advancement city survey/chalta numbers could have been clearly shown on the draft ODP, however they are omitted from Map.
- 6) Shades of Blue used to differentiate C2 zone from C3 in the draft ODP can barely be differentiated in soft copy of the draft ODP 2031 as well as its print out.
- 7) Sal River tributary that flows into Margao referred to as nallah has been shown as blocked and reduced in width on draft ODP-2031 in comparison to ODP 2016.
- 8) Draft OD 2031 for Margao signals reduced green lungs of the city, filling up of low lying area and comunidade paddy fields.

- 9) Low lying paddy fields are shown as settlement zone with six meters wide road to facilitate conversion of these low lying fields located next to Manohar Parrikar Sports Complex Navelim.
- 10) Paddy fields behind present MLA Vijay Sardesai's residence in Fatorda is shown as Settlement zone defying yet another recognition for green and cultivable land.
- 11) Part of Rajendra Prasad Stadium is shown as commercial (C2) with 150 Floor Area Ratio (FAR).
- 12) Paddy fields opposite Margao Railway Station are shown on draft as commercial C1 zone with 250 FAR. This is low lying area.
- 13) SIP Pressure conduit shown on the ODP no longer exists.
- 14) Low lying paddy fields on Sal river are shown as commercial zone C1 with 200 FAR in draft ODP.
- 15) Portion of land in market is shown as commercial C2 with 150 FAR near Khareband Bridge at Pedda next to the paddy fields on the banks of Sal river.
- 16) At Comba along the ring road paddy fields are shown as C1 with 200 FAR and C2 150 FAR.
- 17) At Comba ring road 20 meters wide, new road to connect western bypass is shown in the middle of paddy fields across Sal river also indicating that the fields are being converted to commercial zones, of C1:200 and C2:150 FAR.
- 18) At Ambaji hill orchard land is shown as commercial C2 zone with 150 FAR. And another part of orchard is shown as settlement residential S1 zone with 100 FAR.
- 19) At Ambaji Chanduwadi Orchard land is cut to make way for residential zone with 100 AR and special Residential (SPR) zone with 200 FAR.
- 20) At Margao-Raia border between Eastern bypass and Chowgule College land zoning is changed from settlement zone to commercial C1 with 200 FAR, and commercial C2 changed into commercial C1 with 200 FAR.
- 21) Residential plots at housing board are shown as C1 commercial zone with 200 FAR.
- 22) Residential zones are shown as commercial zone C1 with 200 FAR at housing board near the Sao Jose De Areal road.

- 23) Along the eastern bypass opposite Pauline Granite three zones are created SPC with 300 FAR and C1 with 200 FAR and C2 with 150 FAR for commercial and SPR for settlement with 200 FAR.
- 24) Next to Hindu crematorium at Pajifond land zoning changes from settlement to commercial C1 zone with 200 FAR seen in Figure 13.
- 25) Absence of information such as contour lines, zones labeling on plan not accompanied with written text makes understanding the draft plan considerably difficult.
- 26) Stretch of a very important road from Railway Over Bridge junction (Navelim side) to Raviraj Hotel (Below R.O.B.) is reduced from 20 to 10 mts. to facilitate construction with lesser road widening setback
- 27) There is an existing asphalted road at ColmorodMargao as shown by the blue arrow.
- 28) Post occupancy audit record with Margao Municipal Council (MMC) with regard to multi dwelling housing projects, group housing projects within its jurisdiction from 2012 to 2022 has not been done so there is no data to understand the impact of vehicles on the parking and other related transport issued, which are actually translating into numerous road deaths in the state.

It is stated by the President, Goyche Fudle Pilge Khatir (GFPK) that the objections be taken into account and resolved satisfactorily before the plan is notified which could lead to unforeseen consequences and potential disputes.

The Board was then informed by the Member Secretary that a note under ref.No. SGPDA/ODP-2031(M)/1199/23-24 dated 23/10/2023 is also received from South Goa Planning and Development Authority stating that Authority is in receipt of number of objections to the Draft ODP-2031 of Margao Planning Area which needs to be considered as per Section 39 of Town & Country Planning Act, 1974. The Board

Member Secretary then informed the Board that the South Goa PDA vide their note dtd. 23/10/2023 has therefore requested to give necessary directions to their Authority for preparation of fresh draft ODP-2031 of Margao Planning Area also by correcting the typographical and cartographical errors.

The Board discussed at length about the issues raised regarding draft ODP-2031 of Margao Planning Area and by considering the same and the request made by the SGPDA, it was recommended that the Government issues directions to SGPDA to re-draft the ODP-2031 of Margao Planning Area by following the due procedure. It was also suggested that the Government issues directions to the SGPDA to invite objections/suggestions as provided under the Act once the ODP-2031 of Margao Planning Area is redrafted.

Member Secretary was therefore directed to submit the proposal to the Government for approval of the recommendation and for issue of necessary direction accordingly.

Item No. 9: Appeal under Section 45 of TCP Act, 1974 filed by Mr. Bhiku Dhulapkar against the Dy. Town Planner, Tiswadi Taluka Office. (File no. TP/B/APL/432/2023)

Member Secretary informed that an appeal is preferred against an Order bearing ref. No. TIS/10533/COR/TCP-2023/1075 dated 12/6/2023 of the Dy. Town Planner, Tiswadi Taluka Office regarding refusal of Technical Clearance for regularization of existing Temple at property bearing Sy.No. 32/3 of Corlim Village, Tiswadi Taluka.

Member Secretary informed that although appeal is filed u/s 45 of the TCP Act, the same is not maintainable, as Section 45 of TCP Act deals only with appeal against order passed or omitted to be passed under Section 44 of the TCP Act by Planning & Development Authorities.

The members sought the details of provisions under Section 44 of TCP Act to which the relevant provisions of the said Section were read out to the Members, which were as under:

“44. Grant of permission.— (1) Any person intending to carry out any development in respect of, or change of use of, any land shall make an application in writing to the Planning and Development Authority for permission in such form and containing such particulars and accompanied by such documents and plans as may be prescribed. 53[Provided that, no such permission shall be required to undertake any activity for which permission/licence is granted under the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act No. 67 of 1957) and rules made thereunder.]

(3) On an application having been duly made under sub-section (1), and on payment of the development charges, if any, as may be assessed under Chapter IX, the Planning and Development Authority may— (a) pass an order — (i) granting permission unconditionally; or (ii) granting permission subject to such conditions as it may think fit to impose; or (iii) refusing permission; or

(b) without prejudice to the generality of clause (a), impose conditions— (i) to the effect that the permission granted is only for a limited period and that after the expiry of that period, the land shall be restored to its previous condition or the use of the land so permitted shall be discontinued; or (ii) for regulating the development or use of any land under the control of the applicant or for the carrying out of works on any such land as may appear to the Planning and Development Authority expedient for the purpose of the permitted development.”

Members then sought the details of Section 45 of the TCP Act under which the appeal was filed by Mr. Bhiku Dhulapkar. The relevant provisions of Section 45 was therefore read out to the members, which were as under:

“45. Appeal against orders passed or omitted to be passed under section 44.— (1) Any applicant may appeal to the Board, (a) where he is aggrieved by an order passed under section 44 within two months of the communication of that order to him, (b) where no order is passed, after the expiry of a period of three months from the date of submission of the application. (2) An appeal under sub-section (1) shall be preferred in such manner and accompanied with such fees, not exceeding 57[ten thousand rupees], as may be prescribed. (3) The Board may, after giving a reasonable opportunity of being heard to the appellant and the concerned Planning and Development Authority, pass an order— (a) granting permission unconditionally; or (b) granting permission subject to such conditions as it may think fit; or (c) removing the conditions subject to which permission has been granted and imposing such other conditions, if any, as it may think fit; or (d) refusing permission: Provided that the Board shall dispose of every appeal within three months of the date of preferring the same and if not so disposed it shall be deemed that the prayer of the appellant is granted.”

Considering the provisions of Section 45 of the TCP Act, the Board was of the opinion that an appeal is not maintainable under the law, as in the present case, no such Order passed by any Planning & Development Authority under Section 44 of TCP Act, is challenged and whereas the matter pertains to the correspondence of Mr. Bhiku Dhulapkar with Tiswadi Taluka Office, Panaji.

The Board therefore decided not to proceed any further with the appeal filed and Member Secretary was accordingly directed to communicate the decision of the Board as above.

Item No. 10: Appeal under Section 45(1) of TCP act, 1974 filed by Mrs. Ercilia Conceicao D’Costa against the Town Planner, South Goa District Office. (File No. TP/B/APL/430/2023)

Member Secretary informed that an appeal is preferred against an Order bearing ref. No. TPM/31052/Curt/2/1-J/2023/4096 dated 03/08/2023 of the Town Planner, Office of the Senior Town Planner, South Goa District Office, Margao, dismissing a complaint dated 06/09/2021 filed by the Appellant and for upholding Technical Clearance letter No. TPM/31052/Curt/2/1-J/2021/1172 dated 12/03/2021 and Completion Order No. TPM/31052/Curt/2/1-J/2021/3037 dated 08/07/2021.

Member Secretary informed that although an appeal is filed u/s 45 of the TCP Act, the same is not maintainable, as Section 45 of TCP Act deals only with appeal against Order passed or omitted to be passed under Section 44 of the TCP Act by Planning & Development Authorities.

The members sought the details of provisions under Section 44 of TCP Act to which the relevant provisions of the said Section were read out to the Members, which were as under:

“44. Grant of permission.— (1) Any person intending to carry out any development in respect of, or change of use of, any land shall make an application in writing to the Planning and Development Authority for permission in such form and containing such particulars and accompanied by such documents and plans as may be prescribed. 53[Provided that, no such permission shall be required to undertake any activity for which permission/licence is granted under the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act No. 67 of 1957) and rules made thereunder.]

(3) On an application having been duly made under sub-section (1), and on payment of the development charges, if any, as may be assessed under Chapter IX, the Planning and Development Authority may— (a) pass an order — (i) granting permission unconditionally; or (ii) granting permission subject to such conditions as it may think fit to impose; or (iii) refusing permission; or

(b) without prejudice to the generality of clause (a), impose conditions— (i) to the effect that the permission granted is only for a limited period and that after the expiry of that period, the land shall be restored to its previous

condition or the use of the land so permitted shall be discontinued; or (ii) for regulating the development or use of any land under the control of the applicant or for the carrying out of works on any such land as may appear to the Planning and Development Authority expedient for the purpose of the permitted development.”

Members then sought the details of Section 45 of the TCP Act under which the appeal was filed by Mrs. Ercilia Conceicao D’Costa. The relevant provisions of Section 45 was therefore read out to the members, which were as under:

“45. Appeal against orders passed or omitted to be passed under section 44.— (1) Any applicant may appeal to the Board, (a) where he is aggrieved by an order passed under section 44 within two months of the communication of that order to him, (b) where no order is passed, after the expiry of a period of three months from the date of submission of the application. (2) An appeal under sub-section (1) shall be preferred in such manner and accompanied with such fees, not exceeding 57[ten thousand rupees], as may be prescribed. (3) The Board may, after giving a reasonable opportunity of being heard to the appellant and the concerned Planning and Development Authority, pass an order— (a) granting permission unconditionally; or (b) granting permission subject to such conditions as it may think fit; or (c) removing the conditions subject to which permission has been granted and imposing such other conditions, if any, as it may think fit; or (d) refusing permission: Provided that the Board shall dispose of every appeal within three months of the date of preferring the same and if not so disposed it shall be deemed that the prayer of the appellant is granted.”

Considering the provisions of Section 45 of the TCP Act, the Board was of the opinion that an appeal is not maintainable under the law, as in the present case, no such Order passed by any Planning & Development Authority under Section 44 of TCP Act, is challenged and whereas the matter pertains to the correspondence of Mrs. Ercilia Conceicao D’Costa with South Goa District Office, Margao.

The Board therefore decided not to proceed any further with the appeal filed and Member Secretary was accordingly directed to communicate the decision of the Board as above.

Item No. 11: Decision on proposals considered in 38th 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 29/09/2023.

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 38th meeting held on 29/09/2023. The same proposals were placed before the Board for its consideration.

While discussing on the proposal of Goa Housing Board, it was observed that the Board has been constantly asking for change of zone of many of their properties located in different part of the State. It was specifically noted that Goa Housing Board has applied for almost all the properties for change of zone either from Settlement to Institutional or from Settlement to Commercial with the intention to avail higher FAR.

The Board also noted the pattern in which the change of zone was constantly sought, whereby it was observed that initially the change of zone of the properties was sought by the Housing Board from Settlement to Institutional zone and after obtaining the same, further change of zone was applied from Institutional to Commercial zone. Thus, it was seen that increase of FAR by virtue of change of zone was either from 60 to 150 or from 80 to 150.

The Board specifically took a serious note of present proposals of the Housing Board whereby change of zone was further sought from Settlement/ Institutional to Commercial zone with FAR of 250.

It was therefore felt by the Board that the very aims and objectives of the Housing Board appears to have been modified by shifting its focus from providing housing facilities to creating commercial spaces.

After having deliberated in detail on these issues, it was finally decided by the Board not to consider the proposals of Housing Board as applied for change of zone for higher FAR. It was also decided that even the change of zone affected earlier to the properties of the Housing Board, shall be restored back to its original status i.e. zones of all these properties shall be reverted back to Settlement zone. The decisions arrived accordingly are as recorded in Annexure-A and Annexure-B, which forms part of these minutes.

Member Secretary was accordingly directed to communicate the recommendation of the Board to the Government for necessary consideration.

Item No. 12: Any other item with permission of Chair.

Regarding amendment to TCP Act

While discussing on the rapid development undergoing in the State of Goa and related issues, the members expressed that with the changing time, the Department also need to relooked into provisions of the TCP Act. At this, Chairman stated that TCP Act, 1974 basically contains more chapters pertaining to functioning and issues as dealt by South Goa Planning & Development Authority.

After having lengthy discussion on related issues, Chairman suggested that the TCP Act, needs to be entirely relooked into, the same was agreed upon by all the members and accordingly it was decided that the new TCP Act shall be made by considering all the latest requirement for the planned development of the State.

Member Secretary was accordingly directed to initiate further steps in this regard.

Meeting ended with thanks to the Chair.