

**GOA STATE INFORMATION COMMISSION**

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**Appeal No. 183/2023/SCIC**

Shri Francisco Tavora,  
"Trionora Building", 3<sup>rd</sup> floor,  
Above Hotel Navtara, Panaji, Goa,  
403001

....Appellant

V/s.

1. State Public Information Officer,  
Office of Directorate of Settlement and Land Records,  
Panaji-Goa

2. Dy. Director (Admin),  
Settlement and Land Records,  
Panaji-Goa

..... Respondents

**Shri. Vishwas Satarkar**, State Chief Information Commissioner

**Filed on: 26/05/2023**

**Decided on: 18/01/2024**

**FACTS IN BRIEF**

1. The Appellant, Francisco Tavora, Office in 'Trionara Apartment'. Above Hotel Navtara, Municipal Market, Panaji, Goa, vide his application dated 13/12/2022 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as Act), sought following information from the Public Information Officer, (PIO), Office of Director of Settlement and Land Records, Panaji-Goa.

*"Kindly, provide the undersigned information as asked below:*

- 1. Kindly provide corresponding certificate stating that the New survey No. 119/1 named as Uddo of Siolim Village of Bardez Taluka corresponds with Old Cadastral No. 516 named as Uddo of Siolim Village of Bardez-Taluka.*
- 2. Kindly provide information of the next appellate authority of your department under RTI Act, 2005.*
- 3. If information not available in your office, kindly provide it through to the concerned public authority as per section 6(3) of the RTI Act, 2005.*

2. The said application was responded by the PIO on 04/01/2023 in the following manner:

*"With reference to your application dated 13/12/2022 on the subject cited above, the serial no. wise information requested by you is as follows:-*

*As regard to Sr. No. (1) it is informed that the Corresponding Certificate stating that the New Survey No. 119/1 named as Uddo of Siolim Village of Bardez Taluka corresponds with old Cadastral Number 516 named as Uddo of Siolim Village of Bardez Taluka is not readily available, hence the information sought does not fall under section 2(f) of R.T.I. Act 2005.*

*As regard to serial No. (2) the information of the next appellate authority of this Department is as under:-*

*Mandar M. Naik,*

*Dy. Director (Admin)*

*First Appellate Authority*

*Settlement and Land Records, Panaji*

*As regard to serial No. (3), the said information can be availed from this office provided applicant has duly filled*

*the prescribed application (Form-I) with mandatory certified/notarized documents enclosed to it and on payment of prescribed fees as per the criteria laid down in the Notification No. 26/24/2016-RD/198 dated 25/01/2018 for issuance of Corresponding Certificate.”*

3. Being aggrieved and not satisfied with reply of the PIO, the Appellant filed first appeal before the Deputy Director (Admn), Settlement and Land Records, Panaji Goa, being the First Appellate Authority (FAA).
4. The FAA, vide its order dated 10/03/2023, allowed the first appeal and directed the PIO to provide the information within the period of 30 days.
5. Since the PIO failed and neglected to comply with the order of the FAA dated 10/03/2023, the Appellant landed before the Commission by this second appeal under section 19(3) of the Act, with the prayer to direct the PIO to comply with the order of the FAA dated 10/03/2023 and furnish the information as per his RTI application and prayed for penal action against the PIO as prescribed under section 20(1) and 20(2) of the Act, for denying the information.
6. Notices were issued to the parties, pursuant to which, Adv. Pritesh Shetty put his appearance on behalf of the Appellant, representative of the PIO, Shri. Abhijit Khaunte appeared and placed on record the reply of the PIO dated 09/08/2023, the representative of the FAA Shri. Babaji Parab appeared on 04/07/2023, however opted not to file any reply in the matter.

7. It is the case of the Appellant, that vide application dated 13/12/2022, he sought information with regards to Corresponding Certificate stating that the New Survey No. 119/1 named as Uddo of Siolim Village of Bardez Taluka corresponds with Old Cadastral No. 516 named as Uddo of Siolim Village of Bardez Taluka. However, according to the Appellant, said information has been denied to him, with the reply that the information sought for is not readily available, hence the information sought for does not fall under section 2(f) of the RTI Act.

Further, according to the Appellant, he challenged said reply before the designated First Appellate Authority, The Deputy Director (Admn) of Settlement and Land Records, Panaji Goa, who in turn, by its order dated 10/03/2023, was pleased to allow the first appeal on merits, thus directing the PIO to prepare the information in the form of Correspondence Certificate and provide it to the Appellant within 30 days.

Further, according to the Appellant, instead of complying the order of the FAA, the PIO filed an evasive reply dated 03/04/2023 thereby raised new query that order, passed by the Custodian of Evacuee property in the case No. CEP/GDD/JUDL/50/63 dated 14/10/1996 is not supported by a plan. According to the Appellant, the Directorate of Settlement and Land Records is the Custodian of the Survey Plans and also the Cadastral Survey Plans and therefore raising the above issue is ill motivated and with malafide intention only to deny the information.

8. On the other hand, the PIO through her reply dated 09/08/2023, reiterated that she has rightly replied the RTI application on 04/01/2023 stating that information sought for is not readily

available and does not fall under purview of section 2(f) of the Act.

Further according to the PIO, in the first appeal proceeding, she had given authority to Shri. Abhijit Khaunte (Head Surveyor) to appear in the matter who was not conversant with the legal aspect and agreed before the FAA that he will process the Correspondence Certificate, after the PIO gives approval.

Further according to the PIO, upon the receipt of order of the FAA dated 10/03/2023, Shri. Abhijit Khaunte placed a noting sheet alongwith the order of the FAA before the PIO, only then the PIO realized that such a Correspondence Certificate cannot be issued to the Appellant, and therefore, vide letter dated 03/04/2023, she informed the Appellant that, she cannot comply with the direction and provide the Corresponding Certificate, as same is not available in the records maintained by the office and therefore not coming within the purview of section 2(f) and 2(i) of the Act, and to substantiate her case, she relied upon the Judgement of Hon'ble Supreme Court in the case of **Central Board of Secondary Education and Anr. V/s Aditya Bandopadhyaya and Ors (C. A. No. 6454/2011)**

9. The rival contention of the parties, now fall for my consideration.

10. In this context, it would be necessary to refer to the Provisions of Section 2(f), 2(i) and 2(j) of the Act, which reads as under:-

**"2 Definitions.** – *In this Act, unless the context otherwise requires, --*

**(f)** *"information" means **any material in any form**, including records, documents, memos, e-mails,*

***opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held*** in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

***(i) "records" includes-***

- (a) any document, manuscript and file;
- (b) any microfilm, microfiche and facsimile copy of a document;
- (c) any reproduction of image or images embodied in such microfilm (whether or not ); and
- (d ) any other material produced by a computer or any other device;

***(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to\_\_***

- i. Inspection of work, documents, records;*
- ii. taking notes extracts or certified copies of documents or records;*
- iii. taking certified samples of material;*
- iv. obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device,"*

From the plain reading of the above, it is clear that information means any material in any form and same is accessible under the Act and same is retrievable from the official

records. Further, Section 2(j) of the Act contemplates that, the PIO is required to supply such material in any form as held or under the Control of Public Authority.

11. The Government of Goa by virtue of Notification dated 25/01/2018 framed the rules known as the Goa Land Revenue (Issuance of Identification and Corresponding Certificate) Rules 2018, Sub Section (b) of the Rule 2 of the said Rules reads as under:-

***"2. Definitions:-** In this rules, unless the context otherwise requires, \_*

*(b) "Corresponding Certificate" means certificate issued by Directorate of Settlement and Land Records to identify the new survey numbers corresponding to old cadastral survey numbers."*

Rule 3 states that the 'Corresponding Certificate' issued under said Rules shall be used for the purpose of carrying out mutation and partition in the survey records and not for any other purpose or before any authority of the Government and court of law.

Further, Rule 9 of the said Rules states that, if the Office of the Directorate of Settlement and Land Records after verifying the records available decides to issue Corresponding Certificate than the applicant shall be asked to pay the fees and Corresponding Certificate shall be issued accordingly by the Superintendent of Surveys and Land Records, in Form IV.

It is not in dispute that the office of Directorate of Settlement and Land Records are custodian of Survey plan and Old Cadastral Survey Plan. It is also matter of fact that Section 108-A of the Land Revenue Code lays down that, the

Director of Settlement and Land Records is empowered to issue Corresponding Certificate. Therefore, providing a Corresponding Certificate is a statutory requirement of the office of DSLR, as a consequence, the office of DSLR is not expected to hold the information on the ground that same is not readily available in the records.

Considering the above legal provision, it is established that a citizen has a legal right to obtain 'Corresponding Certificate' and said document is required to be issued by the public authority by superimposing new survey map on Old Cadastral survey map and it does not involve any field work. Therefore, it is sufficiently clear that 'Corresponding Certificate' is a document and falls within the purview of the definition of 'information' as laid down under section 2(f) of the Act.

12. It is pertinent to note that grounds raised in this appeal were also raised before the FAA and same were not accepted by the FAA. The FAA has decided the first appeal on merits on 10/03/2023, the relevant part of the said order reads as under:

*" The representative of the PIO was arguing that since correspondence certificate has separate process under format II it cannot be issued under RTI Act, 2005. The argument forwarded by the Advocate for the appellant is that on the issue of correspondence certificate is not barred by any provision of the Right to Information Act, 2005, hence the refusal to not provide the information in form of Correspondence certificate is not justified . After hearing out both, the Advocate for the Appellant and the representative of the PIO, North SSLR this Authority consider the*



*arguments of the Advocate for the Appellant as withstanding the test of legality and sustainability supported by the documents, produced in support of the appeal of the Appellant before this Authority. It is therefore directed by order of this Authority hearing the present appeal under the Right to Information Act, 2005 that information sought by the Appellant must be provided by the PIO/SSLR North Goa in the form of Correspondence Certificate issued under the Right to Information Act, 2005. The Correspondence Certificate is to be prepared and authorized as per the normal regulated procedure for preparation and issue of Correspondence Certificate but mode of issuing is to be treated as information under Right to Information Act, 2005 within a period of 30 days from receiving this order”*

The FAA has passed a well appraised reasoned order. It is just and equitable in the fact and circumstances of the case.

13. Instead of complying the order of the FAA, the PIO filed her evasive reply in the matter, which is against the judicial hierarchy as the FAA, in its designation, is a senior officer to the PIO and is also an Appellate Authority under the RTI Act. The Hon'ble High Court of Gujrat in the case **Urmish M. Patel V/s State of Gujarat (LNIND 2010 Guj.2222)** has held that:-

*“8.....Nevertheless, I cannot lose sight of the fact that the petitioner did not supply information even after the order of the appellate authority, directing him to do so. Whatever be the nature of the appellate order, the petitioner was duty bound to implement the same, whether it was a speaking order or the appellate authority was passing the same after*

*following the procedure or whether there was legal flaw in such an order, he ought to have complied with the same promptly and without hesitation. In that context, the petitioner failed to discharge his duty. ”*

14. The preamble of the Act, which outlines the principle objective of the Act makes clear that the Act intends to bring transparency and accountability in functioning of the Government and its instrumentalities. Section 3 of the Act reads as under:-

***"Right to Information – Subject to the provisions of this Act, all citizens shall have right to information."***

From bare perusal of the above, it is statutory right given to all citizens subject to the provisions of the Act i.e. those are excluded or exempted under the Act.

15. The Full Bench of the Hon'ble Delhi High Court in the case **Secretary General, Supreme Court of India V/s Subhash Chandra Agarwal (AIR 2010 Delhi 159)** has held as under:-

*"60..... The source of right to information does not emanate from the Right to [Information Act](#). It is a right that emerges from the constitutional guarantees under [Article 19\(1\)\(a\)](#) as held by the Supreme Court in a catena of decisions. The Right to [Information Act](#) is not repository of the right to information. Its repository is the constitutional rights guaranteed under [Article 19\(\(1\)\(a\)](#). The Act is merely an instrument that lays down statutory procedure in the exercise of this right. Its overreaching purpose is to facilitate democracy by helping to ensure that citizens have*

*the information required to participate meaningfully in the democratic process and to help the governors accountable to the governed.*

*61. The words 'held by' or 'under the control of' under [Section 2\(j\)](#) will include not only information under the legal control of the public authority but also all such information which is otherwise received or used or consciously retained by the public authority in the course of its functions and its official capacity."*

18. Adv. Pritesh Shetty, Learned Counsel appearing for the Appellant, took this court through the history of the litigation with the public authority. It was emphasized that Appellant had been running from pillars to post since November 2022 to obtain Correspondence Certificate. He also argued that the information was denied to him with blatant illegal manner and without any basis of law. He also submitted that the Directorate of Settlement and Land Records is the only authority from whom the Correspondence Certificate can be obtained and hence grave prejudice would be caused if information is not provided to him.
19. The PIO, through her written arguments, submitted that the RTI application dated 13/12/2022 filed by the Appellant was not supported by any document and Inventory Proceeding produced by the Appellant is forged document and obtained by suppression of facts. I find no reason to believe such a irresponsible submission which is certainly outside the purview of the RTI Act.
20. Hon'ble High Court of Delhi in the case of **Union of India V/s D. S. Meena (2015) 04 DEL CK 0287** has held as under

*"15 Prior to the enactment of the Act, access to any information pertaining to Public authorities was correlated to the locus standi of the requestor. In other words, it was necessary for the information seeker to show why he/she wanted the information before a decision could be made to give or not to give the information sought by him. With the enactment of the Act this requirement has been changed drastically. The present Act abolishes the concept of locus Standi as under Section 6(2) of the Act no reason need to be given for seeking information."*

21. In so far as the issue with regards to the title of the property is concerned, which is raised by the PIO, same is totally misplaced. Office of the Directorate of the Settlement and Land Records is an administrative Authority. And by no stretch of imagination be construed to imply that the PIO of the office of DSLR is empowered with adjudicatory powers to decide the validity of title of the property. It is well settled proposition of law that, the title of the property can only be decided by civil courts, under the prevailing laws.
22. Right to Information is a fundamental right, therefore denial of such right has to be based on exemptions provided under the Act. Undisputably, the information sought by the Appellant is available in the office of Public authority. In this context said information could be accessed/retrieved by the PIO. Therefore, the stand taken by the PIO is completely erroneous and not acceptable.

23. When an application is made under section 6(1) of the Act a refusal of information can only be based on the RTI Act and can only be denied under section 8(1) or 9 of the Act. Hon'ble Delhi High Court in the case of **Union of India V/s Central Information Commission P. D. Khandelwal and Ors. (W. P. No. 8396/2009)** has held that

*....Once an applicant seeks information as defined in section 2(f) of the RTI Act, the same cannot be denied to the information seeker except on any of the grounds mentioned in section 8 and 9 of the Act. The Public Information Officer or Appellate Authorities cannot add and introduce new reasons or grounds for rejecting furnishing of information."*

24. In the present case, the PIO initially took a stand that information is not "readily available" and hence the information sought does not fall under section 2(f) of the Act.

After the receipt of the order of the FAA dated 10/03/2023, the PIO raised the issue that Order passed by the office of Custodian of Evacuee Property, Goa Daman and Diu dated 14/10/1966 produced by the Appellant is not supported by a plan so as to superimpose the same. Whereas in this second appeal, there was a complete change in the stand of the PIO and she submitted that 'Corresponding Certificate' cannot be furnished in view of Rule 4 of the Goa Land Revenue (Issuance of Identification and Corresponding Certificate) Rules 2018. Such a change in stand would go on to show that there was an intention to withhold the information for one or the another reason. From the above it emerge that the conduct of the PIO is inconsistent

and perverse. The PIO cannot act as per her own whims and fancies, in dealing with RTI matters.

25. The whole purpose of the Act is to bring about as much transparency as possible in relation to activities and affairs of public authorities. Section 20 of the Act, clearly lays down that in case the information has not been supplied to the information seeker within the time limit, without any reasonable cause, then the Commission shall impose the penalty.

26. The High Court of Delhi in the case of **State Bank of India V/s Mohd. Shahjahan (W.P. ( c ) 9810/2009)** has held as under:-

*"22. The very object and purpose of the RTI Act is to make the working of public authorities transparent and accountable. For the purpose of the RTI Act, all information held by a public authority is accessible except to the extent such information is expressly exempted from disclosure as provided in the RTI Act itself. In other words, unless the public authority is able to demonstrate why the information held by it should be exempt from disclosure, it should normally be disclosed. The burden, therefore, is entirely on the public authority to show why the information sought from it should not be disclosed."*

27. The High Court of Kerala in the case **Janilkumar v/s State Information Commission & Ors (LNIND 2012 Ker.982)**, the Court has held that failure to furnish information is penal under section 20 of the Act.

28. The High Court of Bombay, Goa Bench in the case **Johnson B. Fernandes V/s The Goa State Information & Anr. (2012 (1) ALL MR 186)** has held that, law contemplates supply of information by the PIO to party who seeks it, within the stipulated time, therefore, where the information sought was not supplied within 30 days, the imposition of penalty upon the PIO was proper.
29. Considering the ratio laid down by various High Courts, the Commission comes to the conclusion that the PIO has miserably failed to concede to the mandate of the act. Hence, it is fit case for imposing penalty under Section 20(1) of the Act against the PIO. However, before any penalty is imposed, the principle of natural justice demands that an explanation be called from the concerned PIO as to why she failed to discharge the duty cast upon her as per the RTI Act. I therefore pass the following:

### **ORDER**

- The appeal is allowed.
- The PIO, Ms. Anisha A. Matondkar, Superintendent of Surveys and Land Records, Panaji Goa is directed to comply with order of the FAA dated 10/03/2023 and provide the information to the Appellant free of cost, as per his RTI application dated 13/12/2022 within a period of **THIRTY DAYS** from the date of receipt of the order.
- Ms. Anisha A. Matonkar, the PIO of Directorate of Settlement and Land Records, Panaji Goa is hereby directed to show cause as to why penalty should not be

imposed on her for dereliction of duty under section 20(1) of the Act.

- The reply to the Show Cause Notice to be filed on 22/02/2024 at 10.30 a.m.
- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

**(Vishwas R. Satarkar)**  
State Chief Information Commissioner