

IN THE HIGH COURT OF BOMBAY AT GOA

P. I. L. Writ Petition No. _____ of 2021

In the matter of:

The Goa Heritage Action Group, }
through its authorized representatives, }
1. Heta Pandit, Vice Chairperson, }
aged __ years, Indian national, }
69, Vasudha Colony, Lane 2, }
P.O. Bambolim Complex, Goa. }
2. Cezar Pinto (Hon Treasurer), }
aged __ years, Indian national, }
69, Vasudha Colony, Lane 2, }
P.O. Bambolim Complex, Goa. }
having its registered office at }
69, Vasudha Colony, Lane 2, }
P.O. Bambolim Complex, Goa. }
PAN NO: AAATG4251H }
E-mail ID: ghaggoa@gmail.com }
Tel: +91-832-2459109/+91-9822581065 } ... Petitioner.

Versus

1. The State of Goa, }
through Chief Secretary, }
Government of Goa, }
Secretariat, Porvorim, }

- Bardez, Goa. }
- }
2. Goa Tourism Development Corporation, }
- Through its Managing Director, }
- 3rd Floor, Paryatan Bhavan, }
- Patto, Panaji, Goa. }
- }
3. The Chief Town Planner, }
- Town and Country Planning Department, }
- Government of Goa, Patto, }
- Panaji, Goa. }
- }
4. The Goa Coastal Zone }
- Management Authority, }
- Through its Member Secretary, }
- having its office at 4th floor, }
- Dempo Towers, Patto, Panaji, }
- Goa. }
- }
5. Village Panchayat of Candolim, }
- Through the Secretary, }
- Candolim, Goa. }
- }
6. North Goa Planning and }
- Development Authority, }
- through its Member Secretary, }
- Archdiocese Building, 1st Floor, }
- Mala Link Road, Panaji, Goa. }

- }
7. Archeological Survey of India, }
- Goa Circle, through the }
- Superintending Archeologist, }
- Church Complex, Old Goa, Goa. }
- }
8. Archaeological Survey of India, }
- Through the Director (Monuments), }
- Government of India, }
- 24, Tilak Marg, New Delhi. }
- }
9. The Chairperson, }
- National Monuments Authority, }
- 24, Tilak Marg, New Delhi. }
- }
10. The Member Secretary, }
- National Monuments Authority, }
- 24, Tilak Marg, New Delhi. }
- }
11. The National Monuments Authority, }
- through its Member Secretary, }
- 24, Tilak Marg, New Delhi. }
- }
12. The Conservation Committee, }
- through its Chairperson, (Minister, }
- Town and Country Planning) }
- Government of Goa, }
- Secretariat, Porvorim, Goa. }

	}	
13. Bagkiya Constructions Pvt. Ltd.,	}	
With offices at SF-3-SF-4, Building No. 3, Techno Cidade, Chogm Road,	}	
Alto Porvorim, Bardez-Goa, 403 521,	}	
And at Plot No. 41, Shed No. 03-03,	}	
Thivim Industrial Estate, Karaswada,	}	
Bardez, Goa, 403 507.	}	
	}	... Respondents

All addresses are registered addresses.

MEMORANDUM OF WRIT PETITION

(Under Article 226 of our Constitution)

To,

The Hon. The Chief Justice and the Hon. Judges

of this Hon. High Court of Judicature,

The humble writ petition of the Petitioner, named hereinabove,

Most Respectfully Sheweth:

1) **Particulars of the Cause against which this PIL is filed:**

This Petition concerns the purported “repair / renovation” work which has been done at the erstwhile Aguada Central Jail, in Candolim, Goa, in violation of various laws in force. Under the guise of renovating the historical structure, various laws meant for the protection of heritage structures, have been violated with impunity. Under the guise of “repairing” the heritage structure, materials foreign and antithetical to the said heritage structure have been used. UUPVC roofing, cement blocks, and cement washes on the walls have been carried out. There can be no doubt that the use of such material is not in tune with the era in which the original structure was constructed, and it amounts to changing the very ethos and character of the original structure.

2) **Particulars of the Petitioner:**

2.1) The Petitioner is a society registered under the Societies Registration Act, 1860, under Registration No. 160/Goa/2000. All its members are citizens of India. The average annual income of the Petitioner is approximately around Rs. 10,00,000/- which is earned from the contributions/membership fees of its members. There are no civil, criminal, or revenue litigations involving the Petitioner which has, or could have a legal nexus with the issue involved in this petition. The Registration Certificate of the Petitioner and its list of office bearers are annexed at ***Exhibit P1*** ***Colly.***

2.2) The Petitioner is dedicated to the conservation, preservation, and celebration of heritage structures, within the state of Goa, and has played a part in the restoration of the Betim Cross, the Tonca Pillar, and markers in Old Goa. The Petitioner has held over the years several art festivals, folk festivals and heritage festivals to spread the message of awareness on Goa’s heritage. The Petitioner also brings out a journal periodically and holds seminars and webinars to educate the general public on matters of heritage conservation and preservation. The Petitioner has,

amongst its membership, professionals, architects, writers, museum-ologists and art historians and institutions of high calibre and deep knowledge and expertise in matters related to heritage.

2.3) The Petitioner has approached this Hon. Court before, in Writ Petition No. 294 of 2001, in which a part of the Draft Outline Development Plan of 1996 was challenged. The Petition concerned issues regarding zoning, and constructions being allowed on hill slopes. The Respondents in the said Petition conceded that no constructions would be permitted in areas having a gradient of 25% or higher, as recorded in Order dated 13/10/2008, passed in a companion Writ Petition No. 257 of 2001, which was filed by the People's Movement for Civic Action, the Goa Foundation and others, by which the said Writ Petition was disposed off as infructuous. Due to a miscommunication between the Petitioner and its advocate, Writ Petition No. 294 of 2001 eventually came to be disposed off for default by Order dated 23/10/2008, though it was also infructuous by then.

2.4) The Petitioner had also approached this Hon. Court in Writ Petition No. 569 of 2006, in which the Regional Plan 2011 was under challenge. Since the operation of the said Regional Plan was withdrawn by Notification dated 07/02/2007, this Petition was also disposed off by Order dated 29/11/2012.

3) **Declaration and Undertaking of the Petitioner:**

3.1) This petition is filed in Public Interest and the Petitioner does not have any personal interest in the matter.

3.2) The entire litigation costs and other charges are being borne by the Petitioner from its own funds.

3.3) Adequate research has been conducted in the matter raised through the petition and all relevant material has been annexed to the petition. The Petitioners crave leave to produce such other and/or further documents as may become necessary or as the ends of justice may demand.

3.4) The Petitioner has understood that, in the course of hearing of this Petition, if the Court may require any security to be furnished towards costs or other charges, the Petitioner shall comply with such charges.

3.5) The Petitioner has not instituted any other proceeding, against the Respondents, with regards to the subject matter of this petition, and/or issues raised herein, before this Hon. Court, the Hon. Supreme Court and/or any other Court of Law.

4) **Facts constituting the cause:**

4.1) The Aguada Fortress is a Portuguese era fort built in the 17th century. It is a site of great historical, cultural, and architectural importance. It is a heritage structure, and an “ancient monument” within the definition given to the term in the *Ancient Monuments and Archaeological Sites and Remains Act*, 1958 (“the Act”). Furthermore, the erstwhile Aguada Central Jail lies within a “regulated area”, as defined in Section 2(l) read with Section 20B of the Act. It is therefore entitled to the protections afforded to it, as an ancient monument under the law. The “Aguada Fortress (Upper)” and the “Fortification wall of Aguada Fortress (Lower)” are also listed as Protected Monuments of the Archaeological Survey of India, Goa Circle, in the *Goa Land Development and Building Construction Regulations, 2010* (“the 2010 Regulations”).

4.2) The process of applying for repair/renovation/re-construction of a structure within a regulated area is as follows:

a) Under Section 20C of the Act, the prior approval of a “Competent Authority” under the Act is required for the repair/renovation/re-construction of any structure within a regulated area. Respondent No. 3, i.e., the Chief Town Planner has been designated as the Competent Authority for the State of Goa, for the purposes of the Act.

b) The Competent Authority, upon receipt of an Application for permission for repair/renovation/re-construction under Section 20C of the Act, is required to forward the same to Respondent No. 11, i.e., the National Monuments Authority as per Section 20D(2) of the Act.

c) However, prior to forwarding such Applications to Respondent No. 11, the Competent Authority, i.e., Respondent No. 3, is required to comply with the requirements of the *Ancient Monuments and Archaeological Sites and Remains (Framing of Heritage Bye-Laws and other Functions of the Competent Authority) Amendments Rules, 2018* (“the 2018 Rules”).

d) In particular, as per the mandate of Rule 4 (2) of the 2018 Rules, Respondent No. 3 is required to obtain archaeological assessment reports, survey or inspection reports connected with grant of permissions. The said reports are required to be forwarded to Respondent No. 11, prior to Respondent No. 11’s recommendations, so that Respondent No. 11 could deliberate upon the same.

e) Before giving its recommendations, Respondent No. 11 must comply with the requirements of the *National Monuments Authority (Conditions of Service of Chairman and Members of the Authority and Conduct of Business) Rules, 2011*, (“the 2011 Rules”).

f) Rule 7 of the 2011 Rules, mandates that the Member Secretary of the National Monuments Authority (Respondent No. 10) shall, whilst examining applications forwarded by a Competent Authority, obtain details such as site inspection notes, ground conditions, heritage bye-laws, and specific comments about the visual impact of works proposed in regulated areas.

g) Rule 7 of the 2011 Rules also mandates that Respondent No. 10 shall obtain reports and comments on impact of major public works.

h) In fact, Rule 7(v) of the 2011 Rules also mandates that only in exceptional cases, where the Competent Authority is unable to prepare the heritage bye-laws within the specified period of 60 days, the same may be extended by Respondent No. 11 only by a further period of 60 days.

i) Rule 15 of the 2018 Rules, stipulates that Respondent No. 3 may only grant permission in absence of the Heritage Bye-Laws, in “exceptional cases”.

j) Once the National Monuments Authority (Respondent No. 11) has examined an application for repair/renovation/re-construction, it must intimate to the Competent Authority, i.e., Respondent No. 3, the impact of

the proposed development / repair works by considering the Heritage Bye-Laws. Based on this intimation, the Competent Authority is required to grant or refuse the application for repair/renovation/re-construction.

k) The scheme for the preparation of the Heritage Bye-Laws has been laid out in Section 20E of the Act. As per Section 20E, it is the Competent Authority, i.e. Respondent No. 3 in this case which is responsible for preparation of the said Bye-Laws. As per the proviso to section 20D (7), the Competent Authority may grant approval in the absence of Heritage Bye-Laws only in exceptional circumstances.

l) Rule 4 (4) of the 2018 Rules also mandates that Respondent No. 3 is required to formulate time bound programmes for preparation of Heritage Bye-Laws for regulated and prohibited areas, for each protected monument and protected area.

m) Rule 4(3) of the 2018 Rules also mandates that Respondent No. 3 is required to formulate time bound programmes for preparation of detailed site plans for regulated and prohibited areas, for each protected monument and protected area.

n) Rule 4(6) of the 2018 Rules also mandates that Respondent No. 3 is required to develop a website to host information related to construction, re-construction, repair, renovation, bye-laws, detailed site plans, awareness, capacity building, and to publish details of its activities.

o) Moreover, Annexure IX to the 2010 Regulations specifically contains regulations for the conservation of heritage structures. The Aguada Central Jail is a “Heritage Building” as has been defined in Regulation 1 (d) of

Annexure IX. Regulation 2 of these Regulations bars development / re-development / repairs of any of the listed buildings without the prior written permission of the Chairperson, Conservation Committee, i.e. Respondent No. 12.

p) Furthermore, Regulation 6 of Annexure IX, and Regulation 6 (8) in particular, tasks Respondent No. 12

with the following:

“(8) To prepare or oversee the preparation of design guidelines for listed buildings/precincts/conservation zones from the point of view of height control, maintenance of essential façade characteristics and other design elements, of style and to suggest suitable designs adopting new materials for replacements keeping the old form intact as far as possible and with universally accepted conservation principles in special sensitive areas identified by the Committee”.

4.3) Clearly, the law has placed thorough, and indeed necessary safeguards, before repair / renovation of

heritage structures which lie within regulated areas is permitted. The purpose of such thorough safeguards is that

heritage structures carry with them an intrinsic intangible value, that may not be possible to restore, if lost. If they are

to be renovated, their spirit must not be lost at the hands of commercialisation, and mere shallow aesthetic qualities.

One of the cardinal rules of preservation of such heritage structures is that whenever they are renovated, as far as

possible, only the materials which were originally used in their construction must be utilised. It is not only the material

used which must remain the same, but also the outward appearance.

a) In other words, if there is a fresh water stream which lies within a regulated area, which is beautiful in its

simplicity and revered for its sacred and medicinal value by the local community, then the precepts of preservation of

heritage structures, and the purpose of the laws enumerated above, would be to preserve the simplicity of this fresh

water stream, and that it not be “revamped” or made a glamorous “tourist attraction” or destroyed completely.

4.4) As it so happens, the Aguada Fortress is named for the fresh water spring named *Aqua do Forto*, that gives the fort a constant supply of potable water, “agua” being the Portuguese word for water, and “Aguada”, signifying a place where water is collected. The fresh water stream lies within the Fortress, and is part and parcel of the Fortress, and its character (and in fact, the genesis of the name of the Fortress, “agua” meaning water in Portuguese).

4.5) In the renovation of the Aguada Fortress, many of the safeguards which the law has put in place, have been ignored, and violated. The chronology of how these violations occurred is explained below:

4.6) On 14/07/2016, a meeting was held at the precincts of Respondent No. 2, the Goa Tourism Development Corporation (herein and thereafter referred to as “GTDC” for the purpose of this Petition) to discuss the “Aguada Jail Renovation Project”. The minutes of this meeting are annexed at *Exhibit P2*.

4.7) These minutes disclose that the purpose of the meeting was to discuss the “proposed concept for beautification/development of Aguada Jail as world-class tourist destination”. These minutes speak for themselves and disclose that it was intended to enlarge the entrance gate, create a space for multiple souvenir shops, a café, and a restaurant, amongst other attractions. Significant changes were suggested to the temple and the fresh water spring. A new roof was discussed for the entire historic complex, including the historic internal chapel, jailhouses and allied buildings.

4.8) The Petitioner has obtained information under the Right to Information Act, 2005, (“the RTI Act”) that a meeting was held by the Director (Monuments) of the Archaeological Survey of India (Respondent No. 8), on 11/01/2018 to deliberate upon the development works which were then proposed. It appears from the minutes of this

meeting that Respondent No. 8 had opined that the proposal for the proposed development works would be accepted “in principle”, though the approval was made subject to “field inspection before the project is cleared by the National Monuments Authority”. It was also opined by the officials of Respondent No. 8, that if any of the proposed developments infringe upon the prohibited area, then it would not be permitted. However, it was also opined that development in the regulated area could be cleared subject to the norms of Respondent No. 11. All of this was conveyed by Respondent No. 8, to Respondent No. 11, by communication dated 31/01/2018, which is annexed at *Exhibit P3 Colly* along with the minutes of the meeting held on 11/01/2018.

4.9) All of these recommendations made by Respondent No. 8, were made without considering any Heritage Bye-Laws, as no such Bye-Laws have even been drafted or formulated till date, by Respondent No. 3, despite the mandate of the law, to the best of the knowledge of the Petitioner.

4.10) The Petitioner has learnt by way of information obtained under the RTI Act, that based upon the resultantly speculative deliberations of Respondent No. 8, by Note dated 21/08/2019, Respondent No. 11 recommended that approval was to be granted “under the supervision of ASI [sic] and as per the Memorandum of Understanding (MOU)” which was to be entered into by the GTDC (Respondent No. 2) and the Archaeological Survey of India (Respondent No. 8). By letter dated 23/08/2019, approval was granted by Respondent No. 11, to the Competent Authority Respondent No. 3, for the proposed development works, subject to Respondent No. 2, obtaining other required clearances / NOCs. This Note dated 21/08/2019 and letter dated 23/08/2019 are annexed at *Exhibit P4 Colly*.

4.11) This Note dated 21/08/2019 and letter dated 23/08/2019, were issued in violation of Rule 7 of the 2011 Rules, which requires Respondent No. 11 to examine site inspection notes, ground conditions, specific comments about

the visual impact of works proposed in regulated areas, and most importantly, Heritage Bye-Laws, which have never been framed, to the best of the knowledge of the Petitioner.

4.12) Despite the aforesaid violations of the mandatory requirements of the Act and Rules, Respondent No. 3 granted permission for the proposed development works, on 11/03/2020 subject to certain conditions. This permission dated 11/03/2020 is annexed at *Exhibit P5*.

4.13) Apart from the various violations enumerated hereinabove, this permission dated 11/03/2020 was also granted in violation of Rule 15 of the 2018 Rules, which stipulates that the Respondent No. 3 may only grant permission in absence of the Heritage Bye-Laws, in “exceptional cases”. The grant of the permission dated 11/03/2020 to Respondent No. 2, was not granted in an exceptional case. Indeed, there was no urgency at all in granting the same. The Aguada Fortress was not in danger of collapsing, or causing injury or damage to any persons or property. This permission was in fact granted at a time during which the world was reeling from the beginnings of a health crises, being the COVID-19 pandemic, which brought the world to a halt, and led to the loss of innumerable lives. The purported beautification of an Ancient Monument, at such a time could never be “exceptional”, by any stretch of the imagination.

4.14) Furthermore, the conditions spelt out in the permission dated 11/03/2020 have themselves never being complied with. The first condition in the said permission, is that a detailed Memorandum of Understanding (“MOU”) was required to be entered into between Respondent No. 2, Respondent No. 8.

4.15) In letter dated 29/01/2021 issued by the Goa Circle of the Archaeological Survey of India (Respondent No. 7), which was issued in response to a query under the Right to Information Act, Respondent No. 7 has categorically admitted that no such MOU had yet been entered into. Despite this, the development works commenced in full swing, months earlier in the middle of a global pandemic. This letter is annexed at **Exhibit P6**.

4.16) The second condition in the said permission dated 11/03/2020 which has been violated, is this: that the Plan approved by the North Goa Planning and Development Authority (Respondent No. 6), shall be vetted by Respondent No. 8, after entering into the MOU. To the best of the knowledge of the Petitioner, no such vetting has been done. The development works were not even conducted under the supervision Respondent No. 8, as required.

4.17) Respondent No. 2 also obtained other permissions, including an NOC dated 06/04/2018 from Respondent No. 4, a development permission dated 13/05/2020 from Respondent No. 6, a construction license dated 15/05/2020 from Respondent No. 5, and an NOC dated 26/02/2020 from Respondent No. 12. These permissions (save for the NOC dated 26/02/2020 from Respondent No. 12) are annexed at **Exhibit P7 Colly**, along with the Approved Plan. The Petitioner has no cudgel *per se* with these permissions, except for the fact that all of the permissions are predicated on the fact that the conditions of all other permissions were being complied with, which is not the case.

4.18) Despite all of these violations, Respondent No. 2 commenced repair/ renovation/development works, at the Aguada Fortress, in Survey Nos. 91 & 92, at Sinquerim, Candolim, Bardez, Goa in March 2020, during the lock-down imposed due to the pandemic.

4.19) In order to begin the said works, the tender was awarded to Respondent No. 13 by communication dated 08/03/2019, which is annexed at *Exhibit P8*. On 20/07/2020, the Petitioner wrote to Respondent No. 2, expressing concern over the use of UUPVC roofing, which was visible even from a distance. The Petitioner requested that the members of the Petitioner society be permitted to visit the site, and be taken into confidence, before using material such as UPVC, which is antithetical to a Heritage Structure such as the Aguada Fortress. This letter met with no response from Respondent No. 2. It is annexed at *Exhibit P9*.

4.20) After months, a site visit was finally arranged for the members of the Petitioner in January 2021, by persons who identified themselves as employees of “Dhrishti Marine”, who claimed to be one of the proposed contractors who were in the running to manage the “Aguada Fortress product”. The members of the Petitioner society noticed that under the guise of “repairing” the heritage structure, materials foreign and antithetical to the said heritage structure were being used. UPVC roofing, cement blocks, and cement washes on the walls had been carried out. It was noticed that the fresh water stream along with the decorative built platform etc. around it, was completely demolished, along with the entrance gateway, and that a new concrete block wall was constructed in front of the proposed Reception Block. There can be no doubt that the use of such material is not in tune with the era in which the original structure was constructed, and it amounts to changing the very ethos and character of the original structure. All of this was pointed out in another letter dated 18/01/2021 addressed to Respondent No. 7, which is annexed at *Exhibit P10*. In fact, by communication dated 06/01/2021, Respondent No. 2 was specifically cautioned by Respondent No. 7, against the use of such material. This letter dated 06/01/2021 is annexed at *Exhibit P11*.

4.21) These complaints went unheeded by Respondent No. 2, and the development works continued in the same fashion. By a subsequent notice dated 07/04/2021, the Petitioner put all of the Respondents to notice of the illegalities

being perpetrated under the guise of renovating the Aguada Fortress. None of the Respondents responded to this notice either. It is annexed at *Exhibit P12*, along with the requisite proof of service.

4.22) The Petitioner understands that the renovation work at the Aguada Fortress is now complete. However, the Petitioner also notes that all of the development work has taken place without fulfilling the conditions spelt out in the permission dated 11/03/2020. Furthermore, that permission itself was granted without even preparing the Heritage Bye-Laws, to the best of the knowledge of the Petitioner.

4.23) This has resulted in the following mistakes, which in the Petitioner's opinion, are entirely reversible still:

a) The roofing material used throughout the renovated Aguada Fortress is comprised of UUPVC, and the traditional roofing material of Mangalore tiles has been replaced. The original material used has been removed.

b) The original fresh water spring Aqua do Forto, has been completely demolished. The restoration and beautification of the same with Azulejo tiles, etc. as recommended and stated in the Environmental Impact Assessment Report has not been carried out. Instead, the entire stream, and its environs have been destroyed and obliterated.

c) The original entrance gateway has been completely changed. Its low scale (height) has been increased. When it was originally built entirely of laterite, it is evident that it is now replaced with concrete blocks, which are merely covered with laterite cladding, to give the appearance of laterite.

d) Apart from the above, the members of the Petitioner also noticed other flaws in the renovation work, which they fear are outside the scope of remedying:

e) The renovation does not take into account water management or waste management systems. The plan is symptomatic of everything that is wrong with the approach to the conservation of the site. The process of determining the inherent significance and values and uses has been obliterated.

f) A concrete ill-maintained tank that is of no value is made to be a center piece of an ill-conceived stepped yard which showcases lack of any kind design sensibility.

g) To conceive such spaces to be air-conditioned only, is a total disregard to the looming climate crises. No provision has been made for fans or to understand the concept of natural light and ventilation.

h) While some areas have been given ramp access, most areas have not.

i) Toilets have been built in the middle of the historic entrance, without any ventilators.

j) There are no overhangs for the walls, and unprotected windows.

k) The pointing work in cement is poorly done, and will result in severe weathering of the laterite masonry of yonder. Lime sand *surkhi*, and flushed pointing should have been employed to secure the ancient masonry everywhere.

l) The restoration work on the Chapel Altar and the painting work is extremely substandard.

4.24) Annexed at *Exhibit P13 Colly* are the two reports, namely the Environmental Impact Assessment Report for the development works prepared by Sadekar Enviro Engineers Pvt. Ltd., and the report prepared by the consultants Darashaw & Co. Pvt. Ltd, which was tabled at a meeting held on 11/01/2018 by the Respondent No. 8. These reports are being relied upon not only to show the scope of the work undertaken, but also because they contain photographs of the Aguada Fortress, prior to its renovation. These photographs can be contrasted with the photographs annexed at *Exhibit P14*, which members of the Petitioner society have clicked after the renovation at a site visit on 07/07/2021 as invited by a representative of Dhrishti Marine, purported to be the contractors with an interest in the maintenance and management of the said historic site, in which members of the GTDC were present along with other private individuals with independent commercial interests in the site.

4.25) The Petitioners are not opposed to renovations of heritage structures in general, and only urge that renovation, must secure and protect the heritage value, which must not be obliterated in the process. They understand that all such structures require skilled maintenance and restoration performed and directed by highly qualified and experienced professionals. They also understand that a part of the renovated Aguada Fortress will be used to honour freedom fighters, which is a noble cause. The Petitioner supports putting the renovated Aguada Fortress to this use. However, the Petitioner wishes to draw attention to a mere 203.8 square metres of the total property being reserved for a museum dedicated to Goa's Freedom Struggle.

4.26) The Petitioner's limited grievance in this Petition, is to the systemic failure of the Respondents to put into practice the mandate of the Act, the 2011 Rules, and the 2018 Rules, by failing to prepare Heritage Bye-Laws, prepare a website, and other such systemic failures. The Petitioner is concerned that future renovations of other Heritage

Structures may also take place in the absence of the protections incorporated in the said Act and Rules. The Petitioner is also concerned that this pattern being replicated in other forts and heritage structures and that this will set an undesirable precedent. The Petitioner is also aggrieved by the failure of the Respondents to comply with the conditions spelt out in the permission dated 11/03/2020.

5) **Grounds and/or Nature & extent of injury caused/apprehended:**

The Petitioner therefore files this Petition on the following, amongst other grounds, which are urged in the alternate, and without prejudice to one another:

5.1) The failure of the Respondent No. 3 in complying with the mandate of Section 20E of the Act, is a gross injustice, and will result in irreversible damage being caused to heritage structures in Goa, in the future. Section 20E of the Act mandates that the Competent Authority, i.e. Respondent No. 3 in this case, shall prepare Heritage Bye-Laws in respect of each protected monument and protected area within its domain. As per Section 20E (7) the Heritage Bye-Laws of each such protected monument and protected area, must be displayed on the website of the Competent Authority.

5.2) The failure of Respondent No. 3 in preparing Heritage Bye-Laws for the Aguada Fortress, which is a Protected Monument, has resulted in egregious errors in restoration efforts undertaken at the Fortress. Rule 7 (v) of the 2011 Rules mandates that only in exceptional cases, where the Competent Authority is unable to prepare the heritage bye-laws within the specified period of 60 days, the same may be extended by Respondent No. 11 only by a further

period of 60 days. Rule 15 of the 2018 Rules, stipulates that Respondent No. 3 may only grant permission in absence of the Heritage Bye-Laws, in “exceptional cases”. No such exceptional circumstances existed in the case of the Aguada Fortress.

5.3) Rule 4(4) of the 2018 Rules also mandates that Respondent No. 3 is required to formulate time bound programmes for preparation of Heritage Bye-Laws for regulated and prohibited areas, for each protected monument and protected area.

5.4) The failure of the Respondent No. 3 in complying with the mandate of Rule 4 (3) of the 2018 Rules, is a gross injustice, and will result in irreversible damage being caused to heritage structures in Goa, in the future. Rule 4 (3) of the 2018 Rules mandates that Respondent No. 3 is required to formulate time bound programmes for preparation of detailed site plans for regulated and prohibited areas, for each protected monument and protected area.

5.5) The failure of the Respondent No. 3 in complying with the mandate of Rule 4 (6) of the 2018 Rules, is a gross injustice, and will result in irreversible damage being caused to heritage structures in Goa, in the future. Rule 4 (6) of the 2018 Rules mandates that Respondent No. 3 is required to develop a website to host information related to construction, re-construction, repair, renovation, bye-laws, detailed site plans, awareness, capacity building, and to publish details of its activities. No such website has been published till date.

5.6) That the mandatory conditions stipulated in the permission dated 11/03/2020 issued by Respondent No. 3, were never complied with. The first condition in the said permission, is that a detailed Memorandum of Understanding (“MOU”) was required to be entered into between Respondent No. 2, Respondent No. 8. In letter dated 29/01/2021

issued by Respondent No. 7, Respondent No. 7 has categorically admitted that no such MOU had yet been entered into.

The second condition in the said permission dated 11/03/2020 which has been violated, is that the Plan approved by Respondent No. 6, shall be vetted by Respondent No. 8, after entering into the MOU. To the best of the knowledge of the Petitioner, no such vetting has been done.

5.7) That the failure of the Respondents to put into practice the tenets of preservation of Heritage Structures, as has been envisioned in the Act, the 2011 Rules, and the 2018 Rules, requires the urgent intervention of this Hon. Court, to preclude any further damage done to either the Aguada Fortress, or to other Heritage Structures in Goa. To reiterate, these structures not only have historical, cultural, and aesthetic values, they also possess intangible cultural values which if lost, may be lost forever. In the rush to commercialisation and development of our cultural spaces, it is important that the legacies of these structures, and the stories etched into their walls, are not forgotten, or erased.

5.8) Such other and further grounds that may be urged at the time of hearing of this Writ Petition.

6) **Any Representations etc. made:**

6.1) The Petitioner has made complaints dated 20/07/2020, and 18/01/2021, followed by a representation dated 07/04/2021 (Annexed at Exhibits P9, P10, and P12 respectively).

6.2) The Petitioner has no other quick, alternate and/or equally efficacious remedy, but to approach this Hon. Court by this writ petition, seeking the reliefs hereinafter prayed for, which if granted, shall be complete and adequate in itself, to meet the ends of justice. This Hon. Court should therefore be pleased to grant the same.

7) **Documents Relied Upon:**

The Petitioner relies upon all of the documents which are annexed to this Petition. An entire list of these documents can be found in the Index. All the said documents are true copies of the originals.

8) **Jurisdiction:**

The Aguada Fortress is located in Goa. Other reliefs pertaining to Heritage-Bye Laws, are also restricted to monuments in Goa. This Hon. Court therefore has the territorial jurisdiction to entertain this writ petition.

9) **Source of Information:**

The Petitioner relies upon information received under the provisions of the RTI Act, and the site visit conducted at the Aguada Fortress by the members of the Petitioner society at the invitation of Dhrishti Marine, a private company with a commercial interest in the maintenance and commercial management of the property, in the presence of GTDC officials and other private individuals with independent private interests.

10) **Delay if any, in filing the Petition:**

This petition, seeking the reliefs prayed for, is not barred by delay and/or laches.

11) Caveat:

No caveat application has been received by the Petitioner from any of the Respondents, in so far as the subject matter of this Petition is concerned.

12) Reliefs Prayed For:

a) That by a writ of Mandamus, and/or a writ, order and/or direction in the nature of Mandamus, and/or any other appropriate writ, order or direction, under Article 226 and/or 227 of our Constitution, the Respondent No. 3 be commanded to comply with the mandate of Section 20E of the Act, and prepare Heritage Bye-Laws in respect of each protected monument and protected area in the state of Goa, and to make these Bye-Laws available on its official website expeditiously, or such other period as this Hon. Court may see fit to direct;

b) That by a writ of Mandamus, and/or a writ, order and/or direction in the nature of Mandamus, and/or any other appropriate writ, order or direction, under Article 226 and/or 227 of our Constitution, the Respondent No. 3 be commanded to comply with the mandate of Rule 4(3) of the 2018 Rules, and formulate time bound programmes for preparation of detailed site plans for regulated and prohibited areas, for each protected monument and protected area;

c) That by a writ of Mandamus, and/or a writ, order and/or direction in the nature of Mandamus, and/or any other appropriate writ, order or direction, under Article 226 and/or 227 of our Constitution, the Respondent No. 3 be commanded to comply with the mandate of Rule 4 (6) of the 2018 Rules, and develop a website to host information

related to construction, re-construction, repair, renovation, bye-laws, detailed site plans, awareness, capacity building,

and to publish details of its activities;

d) That by a writ of Mandamus, and/or a writ, order and/or direction in the nature of Mandamus, and/or any other appropriate writ, order or direction, under Article 226 and/or 227 of our Constitution, the Respondent No. 2 be commanded to reverse the damage enumerated in paragraph 4.23 hereinabove, and to restore the heritage characteristics and/or facets of the Aguada Fortress;

e) For costs.

f) For such other and/or further orders and/or reliefs, that this Hon. Court may deem fit and/or proper in the facts and circumstances of the case and in the interests of justice.

13) Interim Reliefs Prayed For:

a) Pending the hearing and final disposal of this Petition, for an Order staying the inauguration and/or opening of the renovated Aguada Fortress to the public, until the damage done to parts of the Fortress, as enumerated in paragraph 4.23 herein and above, is reversed;

b) For ex-parte, ad-interim relief in terms of interim prayer clause (a);

Panaji, Goa.

Petitioner:

05/08/2021

Heta Pandit
(Vice Chairperson)

Cezar Pinto,
(Treasurer)

VERIFICATION

I, Heta Pandit, aged 67 years, Indian National, authorised representative and Vice-Chairperson of the
Petitioner Society, with registered office at 69, Vasudha Colony, Lane 2, PO Bambolim Complex, Goa, 403 202, do

hereby verify the contents of the accompanying PIL writ petition, and declare that the facts stated in paragraph nos. 1, 2, 3, 4, 6, 7, 8, 9, 10, and 11 are true to my knowledge, and the submissions in paragraph no. 5 are based on legal advice which I believe to be true.

Solemnly verified at Panaji, Goa, on this 5th day of August, of the year Two Thousand and Twenty-One.

Identified by me:

Deponent

Advocate for the Petitioner

IN THE HIGH COURT OF BOMBAY AT GOA

(Rule 4 (e) of the Bombay High Court Public Interest Litigation Rules, 2010)

P. I. L. Writ Petition No. _____ of 2021

In the matter of:

The Goa Heritage Action Group

Petitioner

Versus.

The State of Goa and Others

Respondents

AFFIDAVIT CUM UNDERTAKING

I, Heta Pandit, aged 67 years, Indian National, authorised representative and Vice-Chairperson of the Petitioner Society, with registered office at 69, Vasudha Colony, Lane 2, PO Bambolim Complex, Goa, 403 202, do hereby on solemn affirmation state and submit as under:

1. I say that I am the Vice-Chairperson of the Petitioner in the aforesaid PIL writ petition, which seeks relief prayed for therein. I am conversant with the facts of the case.

2. I have read and understood the contents of the memorandum of the PIL writ petition, and I crave leave to refer to and rely upon them, as if they were incorporated herein, verbatim, for all legal and practical purposes.

3. I say that the facts stated in paragraph nos. 1, 2, 3, 4, 6, 7, 8, 9, 10, and 11 of the memorandum of the PIL writ petition, are true to my knowledge and/or knowledge derived from records.

4. I say that the submissions made in paragraph no. 5 of the memorandum of the PIL writ petition, are based on legal advice, which I believe to be true.

5. I say that all annexures to the writ petition are true copies of the original, and/or office copy, and/or of the copy thereof furnished to me.

6. I say that there is no personal gain, private motive, or oblique reason for filing the aforesaid PIL writ petition.

7. I say that the Petitioner is ready to pay costs as ordered by this Hon. Court, if it is ultimately held that the petition is frivolous or has been filed for extraneous considerations, or that it lacks bona fides.

8. I say that adequate research has been conducted in the matter raised through the aforesaid PIL writ petition, and all relevant material has been annexed to the petition.

9. I say that the Petitioner shall disclose the source of its information, leading to the filing of the PIL writ petition, if and when called upon by this Hon. Court, to do so.

10. I say that the entire costs of this litigation, and other charges connected thereto, are being borne by the Petitioner.

11. I say that the contents of paragraph nos. 1 – 10, supra, are true to my own knowledge.

Solemnly affirmed at Panaji, Goa, on this 5th day of the month of August, of the year Two Thousand and Twenty-One.

Identified by Me:

Deponent.

Advocate for the Petitioner