

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

**APPEAL NO. 106 OF 2013
AND
M.A. NO. 1098 OF 2013**

IN THE MATTER OF:

Mrs. Libertina Fernandes,
Resident of C/o. Blue Waves,
Morjim, Pernem-Goa

.....Appellant

Versus

1. Goa Costal Zone Management Authority, through its Member Secretary, having office at C/o. Department of Science, Technology & Environment, Government of Goa, Opposite Saligao Seminary, P.O. Saligao, Bardez, Goa – 403 511
2. The Village Panchayat Morjim Through its Secretary Morjim, Pernem, North Goa – 403 572

.....Respondents

Counsel for Appellant:

Mr. Surinder S. Desai, Sr. Advocate along with Mr. Parag S. Rao and Mr. Niraj K. Misra, Advocate.

Counsel for Respondents:

Ms. Bansuri Swaraj and Ms. Snigdha Pandey Kaushik, Advocates for Respondent No.1.
Mr. Prasad Shahapurkar and Mr. Arpit Batra Advocates for Respondent No.2.

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Prof. A.R. Yousuf (Expert Member)

**Reserved on 24th November, 2014
Pronounced on 13th January, 2015**

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

In the present appeal, the challenge by the appellant is on the legality and correctness of the order dated 15th November, 2013 passed by the Goa Coastal Zone Management Authority, Goa (for short 'Authority'). The material part of the order impugned in the present appeal reads as under:

“The Authority heard the respondent and having considered her reply came to findings that the respondent has admitted that, the structure that has been built over a sand dune and therefore is in CRZ Notification. The authority also conducted that the structure is a recent structure post 1991 Notification. The documents produced cannot be co-related with structure being in the name of some other owner and further there is no approved plans permissions for such structure and under circumstances cannot be considered relevant documents on the record. The authority came to the conclusion that the entire structure besides two walls constructed are in violation of CRZ Notification, 1991 and further in violation of CRZ Notification, 2011. As directed to respondent to remove the structure within period of 15 days failing which the Collector (North) Goa, shall ensure that structure are removed by him and the cost incurred shall be recovered from the respondent as though they were arrears of land Revenue Code.

It is further decided that this decision/order of the GCZMA be placed before the NGT in terms of the directions as contained in order dated 11th September, 2013, passed in Original Application No. 49/2013

Given under our hand on this 5th day of October 2013.”

The challenge to the above order is *inter alia* but primarily on following grounds:

- a) The impugned order is violative of principles of natural justice.

The authority failed to provide adequate opportunity of hearing

to the appellant and in fact, denied her advocate to appear and address the authority.

- b) The order suffers from the infirmity of non-application of mind. The construction at the site in question existed prior to 1991 and as such the findings returned by the Authority, including the direction to remove the structure within 15 days, is contrary to the records. It is based upon an *ex parte* inspection. Even the records produced by the appellant showing grant of permission by the Gram Panchayat to raise construction has been ignored by the authority. Thus, even on merits the impugned order is unsustainable.

In order to examine the merits or otherwise of these contentions raised on behalf of the appellant reference to the facts giving rise to the filing of the present appeal would be necessary.

2. The applicant who claimed to be engaged for 25 years in the protection of coastal areas of Goa filed Application No. 49 of 2013 before the Tribunal, titled, *Goa Foundation v. Goa Coastal Zone Management Authority and Others* on 29th June, 2013. According to the Applicant in that case, the Hon'ble Supreme Court in the year 1996 had struck down the relaxation of 'No Development Zone' along the beaches and rivers and had restored the 1991 setbacks. He had filed the writ petition before the Bombay High Court at Goa in Writ Petition No. 126 of 96 regarding the illegal construction within 200 metres of the high tide line in the Coastal Regulation Zone (CRZ) III coastal stretches and the total failure of the authorities to prevent such violation. The Writ Petition was finally

disposed of by the High Court directing the Authority to examine specific cases and to take action in accordance with the provisions of Environment (Protection) Act, 1986 (for short, 'Act of 1986'). Two of the North Goa's pristine beaches (Morjim and Mandrem) have been declared/recognized as turtle nesting sites (CRZ I areas) first, vide CRZ Notification, 1991 which was reaffirmed vide Notification of 2011. In Original Application No. 49 of 2013, the applicant had given names of different resorts, clubs, hotels and persons who had violated the Notification and had raised constructions within 200 metres, i.e., the 'No Development Zone' of these villages. In this application, the applicant had prayed that the Tribunal should direct demolition of all the constructions listed in that application and those which have been raised in the 'No Development Zone' of the CRZ of Morjim and Mandrem villages. The applicant also prayed that the construction in the CRZ should be ordered to be stopped in these villages.

The reply affidavit was filed by the Authority, Respondent No. 1, in Application No. 49 of 2013 wherein they had stated that the department had issued notices and the letter dated 7th October, 2011 even directed prohibition of shacks at the turtle nesting sites, amongst other prohibitions in the CRZ. It was also stated in para 23 of that application that various resorts, clubs, hotels and persons had committed breach of the Notification. Amongst others, the Blue Waves Club was also inspected and the proceedings against them had been initiated. Vide order of the Tribunal dated 16th May, 2013, the said respondent was directed to issue notices to all the

concerned parties who had violated the terms of construction in the CRZ. Vide order dated 12th August, 2013 passed in that case, the Authority was directed to pass orders after hearing the parties to whom the notices have been issued in accordance with law. Liberty was also granted to authorities to conduct inspections along with the officers of Wild Life Department on premises of such noticees and to submit a complete and comprehensive report before the Tribunal. In the order dated 11th September, 2013 passed in that case, it was brought to the notice of the Tribunal that there are serious violations of the CRZ Regulations. The Counsel appearing for the Authority had informed that they had issued notices to such parties and a period of three month was prayed for to complete the proceedings and pass appropriate orders against the Noticees who were found in flagrant violation of the CRZ Regulations. In the order dated 11th October, 2013, it was brought to the notice of the Tribunal that the authority had granted hearing to the Noticees and would be passing final orders shortly. Thus, authorities were directed to complete proceedings before them expeditiously. The Learned Counsel appearing for the authority informed on 24th March, 2014 that demolition or other appropriate orders in respect of the offending constructions on 'No Development Zone' of CRZ have been passed. The Tribunal, thus, directed the copies of the orders be served within one week from that date and that demolition was not to be effected for a period of two weeks thereafter. After the expiry of that period, the authority was at liberty to demolish the constructions subject to such orders as may

be passed by the Court or any Competent Forum or authority. With this order, Original Application No. 49 of 2013 stood disposed of as liberty was granted to the parties to challenge those orders in accordance with law. Liberty was also granted to the applicant to revive the application if the need so arises.

3. It is necessary to notice here that in furtherance to the orders passed by the Tribunal from time to time during the pendency of the earlier petition, the officers conducted an inspection on 24th August, 2013. On the basis of this inspection on 18th September, 2013, a notice was issued to M/s Blue Wave (Morjim Beach), Morjim, stating that during the inspection following violations were noticed:

- 1) "Total violation of CRZ by the massive structure observed. There has been a further extension on the side of the structure.
- 2) Destruction or sanddunes was observed.
- 3) The waves heat the border of Grand structure implying the whole massive concrete structure 'Gplus1' with 21plus4 huge concrete pillar lies within the intertidal zone.
- 4) Work under progress.
- 5) The whole structure lies in the NDZ.
- 6) Neighbouring sanddunes have been destroyed.
- 7) All construction materials surrounding the whole area have destroyed the natural habitats of marine flora and fauna.
- 8) Whole boundary was covered with tarpaulin to hide work in progress.
- 9) The Blue Wave (Morjim Beach) is located in close proximity (between 1 to 2 km) of the turtle nesting site of Morjim beach. Disturbance like loud music, illumination, pollutants like plastic, glass bottles, soft drink cans etc., may deter the entry of turtle on the beach."

4. With reference to the above violations, M/s Blue Waves Club was called upon to submit all documents and make their submissions on 5th October, 2013 at 10:00 AM. It was stated in the said notice that if they failed to appear and comply with the

directions, the authority would be compelled to take action in accordance with law. The inspecting team in the inspection note prepared on 24th August, 2013 made the following observations while also taking the photographs of the construction work at the site:

“Total violation of CRZ Massive structure previously inspected by the u/s on 11th February, 2013. There has been a further extension on the side, destruction of sand dunes the waves hit the border of grand structure implying the whole massive concrete structure “Gplus1” with 21plus4 huge concrete pillars lies within the intertidal zone. Work under progress.

The whole structure lies in the NDZ photos attached. Neighbouring sand dunes destroyed. All construction material surrounds the whole area destroying the natural habitats of marine flora and fauna. Whole boundary covered with tarpaulin to hide work in progress.

The Blue Wave (Morjim Beach) is located in close proximity (between 1 to 2 km) of the turtle nesting site of Morjim Beach. Disturbance like loud music, illumination, pollutants like plastic, glass bottles, soft drinks cans etc. may deter the entry of turtles on the beach.”

5. On the basis of the above inspection and records available with the Authority, the Show Cause Notice dated 18th September, 2013 was issued to M/s. Blue Wave Club, whereafter the order dated 15th November, 2013 was passed. In the order, it was noticed that massive structure was being raised by M/s. Blue Wave, which was noticed even during the inspection dated 11th February, 2013. It was also stated that there has been a further extension on the side, destruction of sand dunes and a huge structure was being raised with 21 + 4 huge concrete pillars, which were constructed in the intertidal zone and work was under progress.

6. As per the order, photographs of the violations were shown to Mrs. Libertina Fernandes who had submitted that she has not destroyed the sand dunes but she had raised the permanent structure and even pillars were constructed. According to her, the building was constructed around 1986-87 and she had obtained the permission from the village Panchayat to do so. She produced the copy of the Village Panchayat permission for Restaurant and Cold Drink House dated 31st March, 1987, Occupancy Certificate, receipt of the house tax which was in the name of Mrs. Madhuri Bhanudas Korgaonkar, the original owner, from whom she had taken the property on rent. She stated that she does not have the approved plans for the said structure and had filed a written reply.

7. As already noticed the authority vide its order dated 15th November, 2013 found no merits in the submissions made by her and passed the order directing demolition of the structures. Aggrieved from the said order, she has preferred the present appeal before the Tribunal. In order to understand the stand of the appellant clearly and comprehensively, we may also notice the averments made by Mrs. Libertina Fernandes in the reply she submitted on 5th October, 2013 to the Show Cause Notice dated 18th September, 2013. Therein she had averred that the inspection dated 24th August, 2013 was not conducted in her presence and was carried out behind her back. The inspection does not reflect correct factual scenario at the site. The inspection of 11th February, 2013 was also conducted behind her back. According to her, Mrs. Madhuri Bhanudas Korgaonkar was the owner of survey no. 181/6

of Morjim village and she was running the business of Restaurant-cum Cold Drink House under the name and style of “M/s. Blue Waves”. Besides furnishing, the above referred documents she stated that the structures in question were in existence prior to 19th February, 1991, the date of the Notification. In this reply, she also referred to the proceedings before the High Court of Bombay at Goa in writ petition no. 2 of 2006. The High Court of Bombay at Goa passed different orders relating to illegal structures, including the above, in a *suo moto* writ petition. In all of them, directions were issued to prevent illegal, unauthorised construction in the CRZ areas and to protect beaches. The authority issued a Show Cause Notice dated 8th April, 2013 to the appellant stating that in terms of the inspection carried out by the Members of the authority on 11th February, 2013, illegal and impermissible construction had been carried out on the premises consisting of ground floor measuring about 16.60m x 32.5m with further structure of 17.10m x 32.60m with 25 concrete pillars supporting the main structure on the ground floor, 17m x 32.5m on the first floor and a separate counter on outer side of the ground floor measuring about 6.20m x 5.07m. There was provision for air conditioning on the first floor. Structure consisted of solid concrete pillar having height of more than 9 metres. There was destruction of sand dunes, the beaches have been flattened and compound wall surrounded the property constructed illegally. The “re-construction / construction / repair / renovation” between 200m to 500m of the HTL from sea and 100m from rivers, require prior approval of the authority under the

Notification of 2011 which had not been obtained. It was proposed in the Show Cause Notice that the appellant was required to file a response and even appear for personal hearing on 25th April, 2013.

8. The appellant had filed reply to the show cause notice taking the plea that the authority had no power to issue the said show cause notice. Further, it was stated therein that the Inspection Report had been prepared at their back, copy had not been provided to them and that the structures were 40 to 50 years old and in any case were in existence since 1986-1987. They relied upon the certificate issued by the Village Panchayat. The appellant had also filed the four documents copy of which is now annexed to the appeal filed by the appellant. It is also averred by the appellant that in pursuance of the order passed by the High Court of Bombay at Goa, the Village Panchayat of Morjim had conducted investigation and since no violation was found, the Village Panchayat had not taken any action against the appellant. This according to the appellant, thus, shows that the Show Cause Notice issued to the appellant was without any foundation. It is interesting to note here that none of the allegations made in the reply to the Show Cause Notice were specifically denied.

In the reply, it was also stated that the appellant had not carried out any reconstruction, repairs or alterations of the structures, which existed since 1987. According to her on account of monsoon season, the appellant covered the Restaurant with tarpaulin sheet so as to protect the property. She denied that she had destroyed any natural habitats of marine flora and fauna. It

was also averred that M/s. Blue Waves was located in close proximity of the turtle nesting site of Morjim beach. In light of the above, let us now proceed to examine the merit of the contentions raised by the appellant.

9. It also deserves to be noticed here that in reply to an earlier Show Cause Notice dated 8th April, 2013, the appellant had submitted a reply on 25th April, 2013 wherein the appellant had not specifically denied, the existence of various new concrete constructions consisting of Ground Floor plus one first floor and construction in the outer areas for air conditioning plant on the first floor and other significant allegations made in the order. The appellant had also not produced any other relevant records or documents except the four documents afore-stated. The reliance placed by the appellant upon the judgment of the Supreme Court in the case of *Gulf Goans Hotels Co. Ltd. & Anr v. Union of India & Ors* in Civil Appeal No. 3434-35 of 2001 is entirely misplaced. The facts of that case were entirely different and distinguishable. In that case, the construction had been raised after obtaining the approval and sanction from the Competent Authority and as a matter of fact, it was found that the construction had been completed prior to 19th February, 1991, the Coastal Regulation Zone Notification. The orders passed for demolitions were set aside. The existence of guidelines even if under the provisions of the Act of 1986 unless issued, notified and published in accordance with the legislative mandate contained in Sections 3 and 5 of the Act of 1986, would be inconsequential in law. It would only be done subsequent to

coming into force of the Notification of 19th February, 1991. In the present case the constructions have been raised subsequent to coming into force of the Notification of 1991. Three inspection reports have shown that large scale unauthorised and illegal construction without permission and sanction of any Competent Authority within the CRZ had been carried out. The Notification dated 19th February, 1991 issued by the Ministry of Environment, Forests & Climate Change (for short 'MoEF&CC'), clearly stipulates the areas that will be declared as 'prohibitory' or 'regulatory zones'. Development activity in the coastal stretch within 500 metres of the High Tide Line onward has been classified into four distinct categories, namely: Category I (CRZ-I), Category II (CRZ-II), Category III (CRZ-III) and Category IV (CRZ-IV). In CRZ-I no new construction shall be permitted except the project indicated therein, which, would also require the approval of the concerned authority. In CRZ-II & III the building of specific construction could be permitted only with the consent of the said authority and in accordance with the provisions of the said Notification. Admittedly, the appellant had neither complied with nor got any sanction or permission from any authority including the effective authority at any point of time.

Contentions:

- a. Is the Impugned order in violation of principles of natural justice and if so, what is its effect?

10. Mr. Desai, Ld. Senior Counsel for the appellant contended that non-furnishing of the inspection reports dated 11th February, 2013 and 24th August, 2013 and not permitting an advocate to appear on

behalf of the appellant before the authority, in its meeting dated 5th October, 2013 is clearly a violation of principle of natural justice and on that short ground the impugned order is liable to be set aside. In support of his contention, he had relied upon a judgment of 5 member bench of this Tribunal in the case of *M/s. Sesa Goa Limited and Anr v. State of Goa & Ors*, (2013) All India NGT Reporter (1) PB 55.

It was further contended on behalf of the appellant that the impugned order does not record appropriate reasons which would provide clarity to minimize the chances of arbitrariness and reflect proper application of mind. Even for this reason, the impugned order is liable to be set aside. The reliance in support thereof is placed upon the judgment of the Supreme Court in the case of *S.N. Mukherjee v. Union of India* (1990) 4 SCC 594.

11. The Ld. Counsel appearing for the authority vehemently contended that the requisite documents had been furnished to the appellant. Complete facts were stated along with the violations committed by the appellant who had raised unauthorized construction in the CRZ of the Notification of 1991. The appellant was given fair opportunity to be heard. Furthermore, the appellant filed a detailed reply to the Show Cause Notice and it was only after hearing the appellant that the authority passed the impugned order dated 15th November, 2013 in accordance with law.

12. As far as the first limb of the above submissions on behalf of the appellant with regard to the principles of natural justice is concerned, it is not necessary for us to examine the same in detail.

It is for the reason that the Ld. Counsel appearing for the appellant submitted that the appellant is not willing to submit to the jurisdiction of re-hearing the matter before the authority as he has got no faith in the said authority. The said authority is acting arbitrarily and with the biased mind against the appellant and as such they would not get justice before the authority. Mr. Desai, the Ld. Senior Counsel further contended that he would prefer the matter to be decided by the Tribunal itself. Resultantly, we do not consider it necessary to deal with contention of violation of principles of natural justice.

We have granted sufficient opportunity to the appellant to file all documents in her possession and power and have heard the appellant at great length in relation to all the issues arising for consideration of the Tribunal in the present case.

13. As far as the second limb of the submission of the appellant is concerned, we are not quite in agreement with the appellant. The impugned order dated 15th November, 2013 has recorded the reasons for issuing the directions contained in that order. It is not an order which suffers from the infirmity of non-application of mind or which does not state any reason, whatsoever, for passing the impugned order. Insufficiency of reasons can hardly be a ground for a Tribunal to interfere in the order passed by the authority. Extent of reasoning is a subjective consideration. The authority in its wisdom has recorded reasons for passing the impugned order which may be insufficient in view of the appellant. To our mind the

order is clear and ex-facie not arbitrary thus, satisfying the test laid down by the Supreme Court in the case of *S.N. Mukherjee* (supra).

14. The above contention of the appellant, even if taken on its face value, would lose its significance and content as we hereafter are going to deal with all the contentions raised by the appellant and the authorities, particularly in view of the stand taken by the appellant that she would prefer consideration of contentions by the Tribunal rather than re-adjudicate the matter before the respondent-authority on remand. Thus, we would prefer to accept the alternative suggested by the appellant and proceed to deal with the merits or otherwise of the contentions raised.

Discussion : On documents placed by the parties on record and the status of the structure on site

15. Under this head we would comprehensively deal with the contentions above advanced on behalf of the appellant. Undisputedly, facts are that the Tribunal is concerned with the structure existing on survey no. 181/6 of Morjim village raised by the appellant who is carrying on the business of running a Restaurant cum Cold Drink House on the said property under the name and style of M/s. Blue Wave. According to the appellant, she had entered into an arrangement for that purpose with Mrs. Madhuri Bhanudas Korgaonkar. The structure is stated to be in existence since 1986-87 and in any case prior to the issuance of the Notification dated 19th February, 1991. She has produced on record House and Light Tax receipts for 1982-83 to 1986-87 in respect of House No. 126. The permission to run Restaurant-cum-

Cold Drink House in the property in question has been placed on record. Further, the permission to erect/reconstruct was given by the Village Panchayat of Morjim on 30th September, 1986 while the occupancy certificate was issued on 31st March, 1987. These permissions were granted by the Gram Panchayat of Village Morjim on the application dated 20th September, 1986 by Mrs. Madhuri Bhanudas Korgaonkar. The permission refers to the premise no. 126 situated in survey no. 181/6. The permission was valid forever, till the Restaurant cum Cold Drink House is in working condition and functioning thereon. Occupancy Certificate dated 31st March, 1987 in relation to the same premise was issued in the name of Mrs. Madhuri Bhanudas Korgaonkar, who was stated to be in possession. It may be noticed here that both these documents are not in the name of the appellant. The appellant, for reasons best known to her, has failed to produce on record any written documents creating her interest in the property in question. May be, if the documents of arrangement etc. were produced, it would show the extent of construction that existed in the year 1986-87. As a normal conduct, the appellant was expected to produce this document for which the Tribunal, in any case, cannot draw any reference in favour to the appellant. The appellant, Mrs. Madhuri Bhanudas Korgaonkar has not opted to take any proceedings against the authority for passing the impugned order. In fact, she has not even appeared before the authority or submitted any document in that behalf. In light of the fact that the appellant has not produced even a single document showing any interest in the

property, does create doubts on the bona fides of the appellant and her right to raise the present issues before the Tribunal.

16. Let us now examine the contentions of the alleged permission for erection/re-erection of the structure by the Village Panchayat, Morjim in the year 1986-87. This permission has been issued under Section 83 of the Goa, Daman and Diu Village Panchayats (Regulation of Buildings) Rules, 1971 (Amendment Act of 1969), which was issued again in favour of Mrs. Madhuri Bhanudas Korgaonkar. This permission was issued for reconstruction of existing Restaurant premises bearing no. 126 in survey no. 181/6. It will be relevant to reproduce this document as it is heavily relied upon by the appellant and it shall have to be minutely examined by the Tribunal:

“Ref No. VPM/MBK/126 Permit No. 108/86-87 Year 1986-87.

Read:-1) The Goa Daman and Diu Village Panchayat (regulation of building) rules, 1971 Rule 3(2)(b), permission for construction of Katcha House at the Estimated cost of Rs. 10,000/- (Rupees Ten Thousand only).

2) The Goa Government grant of loan for houses under the paying guest scheme and small hotel establishment rule, 1978.

PERMISSION FOR THE ELECTION-ERECTION OF BUILDING

Permission under Sec. 83 of the Goa, Daman and Diu, Village Panchayats Regulation (Amendment) Act, 1969 is hereby granted to Smt. MADHURI BHANUDAS KORGAONKAR, resident of Gawadewada, Morjim, for the re-erection of building, so described below in the locality of NIRAKAR in ward Gawadewada of Morjim, as per specification shown, in the attached plan, with following conditions.

DESCRIPTION OF RE-CONSTRUCTION

Reconstruction of existing Restaurant premises bearing No. 126 situated at Gawadewada, Morji, in the property known as NIRAKAR, surveyed under No. 181/6.

CONDITIONS

1. Repair should be within plinth level without changing original structures.
2. Proper set back as shown in the plan are to be maintained.
3. Traditional Access should be maintained.
4. There is excess road to the party concerned.
5. This Gram Panchayat reserve the right to revoke an permit issued by this Gram Panchayat if any irregularities are found, such as false statement misrepresentation of any material passed, approved or shown in the application on which the permit was based.

This permission shall be valid for ever till the construction work started and completed thereon from the date of issue of this permission. He has paid the respective fees to the tune of Rs. 500/- (Rs. Five hundred only) by receipt no. 048 dtd. 30.09.1986.

This carries the embossed seal of this Panchayat office of the Village Panchayat of Morjim on 30.09.1986.

Date: 30.09.1986

Sd/-
Sarpanch
V.P. Morjim
Pernem-Goa”

17. A bare reading of the above shows that the reconstruction shall be permitted as per the plan attached and subject to the conditions afore stated. In condition no. 2, it had been specifically noticed that proper set back as shown in the plan and the Traditional Access had to be maintained. Though this permission dated 30th September, 1986 has been produced on record but the plan attached to it had not been produced for reasons best known

to the present appellant. It is difficult for the Tribunal to accept that document relating to 1986-87 is available with the appellant but the material part of the same document, which would be the very foundation of her claim before the Competent Authority and the Tribunal is not available. The Supreme Court has consistently taken the view that if party in possession of best evidence, which would throw light on the issue of controversy withholds it, then the Court ought to draw an adverse inference against him, notwithstanding that the onus of proof does not lie on him. The Court also held that a sound practice for those desiring to rely upon a certain set of facts, to withhold from the Court the best evidence which is in their possession that would throw light on the matters in issue can hardly be permitted to rely upon abstract doctrine of onus or proof. The Court has gone to the extent that it was not called upon to produce the said evidence (i.e. the scope and interpretation) given by the Supreme Court to the provisions of Section 114(G) of the Evidence Act in the case of *Gopal Krishna v. Mohd. Haji Latif*, AIR 1968 SC 1413, *Raghavamma v. Chenchamma*, AIR 1964 SC 136, *M/s. Bharat Heavy Electrical Ltd. v. State of U.P. and Ors*, AIR 2003 SC 3024, *Musauddin Ahmed v. State of Assam*, AIR 2010 SC 3813 and *Khatri Hotels Pvt. Ltd. and Anr. v. Union of India and Anr.*, (2011) 9 SCC 126. We have to draw adverse inference against the appellant for withholding the material document (plan attached) in relation to the entire building as well as the setback, as stated in the said permission. It is a stated proposition of law that if a party withholds a document and/or fails

to produce the same without any plausible explanation, which is or ought to be in its possession, the Court shall draw adverse inference against such a party.

18. Furthermore, in terms of Rule 32(b) of the Rules and as also noticed in the opening part, the permission could be granted for construction, only for kacha house to the appellant, the estimated cost of which would be Rs 10,000. This heading of the above document demolishes the entire case of the appellant as the construction under the existing area being raised is a concrete construction based on pillars, which aspect we shall shortly discuss in detail.

19. At this stage, it will be useful to discuss some provisions of the Rules of 1971. Under Rule 3, from the date of coming into force of these rules, no change in the use of land or its development or subdivision of plot or layout of Private Street shall be made except with the written permission of the Panchayat under whose jurisdiction the area falls. Application has to be filed, which has to be examined, enquired and verified as per the rules. Under Rule 3(2)(b)(i), cost of construction should not exceed Rs. 20,000/-. The area covered should not exceed 60% of the total area of the plot. Village Panchayat should verify the ownership of the plot before granting the permission. No permission shall be granted for kacha construction within a radius of 100 metres from the beach of tourist importance. The Panchayat can grant permission under Rule 3(2)(b) for construction of kacha house in the Panchayat area without approval of the Technical Officer. Clause 3 to 6 of the form

prescribed for seeking permission to construct/reconstruct in the area of the Village Gram Panchayat requires the applicant to submit complete details specified therein. It also requires that the application be accompanied by a site plan in the scale of 1/500, clearly stating the boundaries of the site; existing, complete or incomplete structures over and under the site and even the project beyond the site. The building drawing and plans have to be signed by the owner along with architect/engineer registered with the PWD, Government of Goa, Daman and Diu. The applicant has to provide plans of floors, sectional drawings and even the surrounding buildings in outline within the distance of 25 metres from the boundary of the site. It is difficult for the Tribunal to accept that none of these documents are not available with the Government Departments, Gram Panchayats, the engineer/architect and even to the appellant or the person through whom he claims interest in the property.

20. Occupancy Certificate in terms of Rule 10 can be issued only when all the requirements prescribed under the Rules are satisfied. In light of the above, the appellant ought to have produced the plans. The appellant has failed to produce any record before the Tribunal to show that the cost of construction is Rs. 10,000/- or Rs. 20,000/-, as the case may be, and that it is not within 100 meters of the beach. On the contrary, the inspection reports as well as the Show Cause Notice, specifically notices and deals with such violations. The appellant has failed to demonstrate that the

construction being raised or as has already been raised is kacha as per the rules.

21. The last document placed by the appellant on record is the receipt no. 019 dated 30th September, 1986 for a sum of Rs. 30/- on account of Light Tax for the year 1982-83 to 1986-87 and this receipt is also in the name of Mrs. Madhuri Bhanudas Korgaonkar. Similarly, a receipt of Rs. 80/- for the House Tax for the same period in the name of the same person has been placed on record. Both these receipts refer to House No. 126, they being in the name of Mrs. Madhuri Bhanudas Korgaonkar do not advance the case of the appellant any further.

22. Another aspect which creates serious doubt in the case of the appellant is as to why the appellant has not produced any document, whatsoever, in relation to the property in question, construction or any other matter connected thereto for the entire property subsequent to 1986-87. No explanation, whatsoever, has been rendered on record for such non-production. The Gram Panchayat, Morjim filed an affidavit through its Secretary before the Tribunal and according to this Affidavit the construction license/permission register and the construction license files from the year 1962 – 1989 were not available and the Gram Panchayat have passed a resolution dated 15th September, 2014, that is, during the pendency of this appeal and had forwarded a copy of the resolution to the Director, Panchayats Goa. The Gram Panchayat had conducted the inspection of “Blue Waves” and found construction of one ground floor plus one platform attached to it

and the building occupied 551.80 sq. metres, while platform occupied 536.30 sq. metres approximately in survey No. 181/6, Morjim. According to this inspection report, the material used was Cement Stones, Cement Sand, Steel, G.I. Channels, RCC Pillars & Slab and the roof was of RCC Slabs. It was also stated in this affidavit that since 1989-90 till date the Panchayat had not issued any construction/reconstruction permission/license to the appellant in relation to survey no. 181/6 of village Morjim. With an intention to note the status of this property after 1986-87 the Tribunal vide its order dated 18th November, 2014 had directed the Gram Panchayat to produce the records after 1989-90 up to date, particularly, in regard to Register of House Tax etc. The original records were produced and examined by the Tribunal. The Demand and Collection Register for 1985-86 to 1987-88 does not reflect any payment by the appellant or even by Mrs. Madhuri Bhanudas Korgaonkar. The Register for House Tax and Light Tax from 2001-03 again does not reflect any payment by the appellant. Mrs. Madhuri Bhanudas Korgaonkar has made a payment of Rs. 50/- for two years for house no. 773 on 17th February, 2004. From this Register it is also evident that the persons having properties of bigger dimensions and made of concrete are paying much higher property and light tax. For instance, Asmita A. Morajkar for house no. 607/B had paid Rs. 365/- per year as tax. If the construction as contented by the appellant was raised in the year 1986-87 then she would have to pay House and Light Tax for the subsequent years at a much higher rate and not at the rate of Rs. 30/-, which

she was paying prior thereto. As already noticed the appellant has not paid any property or light tax since 1986-87 as per records of the Panchayat and even the appellant did not produce any documents. Nor any person has any interest in the property in question. The appellant herself has also not produced any documents showing payment of any tax since that time (1986-87). This discussion now brings us to the nature of construction that existed in the year 1986-87 and as on the date of inspection by different authorities. Even if the case of the appellant is taken on its face value it declares that some construction existed on the site in question which, as alleged, was reconstructed in that year itself. The appellant has miserably failed to establish the status and kind of construction that existed in 1986-87. The appellant withheld the most material documents which in the normal course of business should have been in her power and possession. In accordance with the Rules of 1971 only a kacha house and the cost of construction of which was less than Rs. 10,000/- could have been constructed. Even if we give benefit of the alleged permission to reconstruct to the appellant still the consequences would not change to the advantage of the appellant. In the year 1986, the Panchayat could at best grant permission to a kacha house which existed prior thereto and also permission to use the said kacha house for Restaurant-cum-Cold Drink House etc. The huge concrete construction that exists on the site as of today can by no stretch of imagination be covered in the permission granted to the appellant in 1986.

23. Inspection report and records that were available with the authority that had passed the impugned order and other records and reports that are now available with the Tribunal, can be appropriately referred to at this stage. In terms of the affidavit filed on behalf of the Gram Panchayat, Village Morjim, the Panchayat had conducted inspection of the premises/the site of Blue Waves Club and had found reconstruction of the building consisting of Ground Floor plus one huge platform measuring 536.30 sq. mtrs and the building structure was 551.80 sq metres with RCC Pillars & Slab construction. Cement Stones & sand, Steel and G.I. Channels had been used for the construction purpose. The Panchayat had not granted any permission to the appellant of Blue Waves Club to raise any construction/reconstruction since 1989-90 in survey no. 181/6, Village Morjim. In furtherance to the order of the Tribunal a joint team of the authority and the Wild Life Officers had visited the premise for inspection on 24th August, 2013. It had noticed construction of massive structure & destruction of sand dunes due to same. Ground Floor plus one first floor were being raised. Huge concrete pillars 21 + 4 were within intertidal zone. The whole structure was in the 'No Development Zone', whole boundary was covered with tarpaulin to hide work in progress. It was located in close proximity of the Turtle Nesting Site of Morjim beach. Disturbance like loud music, illumination, pollutants like plastic, glass bottles, soft drink cans etc. were found upon the beach. This premise was earlier inspected by the officials of CRZ on 11th February, 2013 who had noticed fresh construction.

24. Along with inspection report the joint inspection team constituted by the Tribunal had filed number of photographs of the site in question. These photographs had been taken in furtherance to the order of the Tribunal dated 17th July, 2014. The affidavit dated 24th July, 2014 was filed by the Member Secretary of the authority stating that the property has been constructed recently and the photographs of the pillars which have been referred in para 5 of the earlier affidavit filed by the authority were also taken and are annexed to this affidavit. These photographs clearly show massive concrete construction with huge platform. These are annexed as Annexure 14 to 23 to this affidavit. These photographs clearly show large number of pillars constructed of cement and steel and large scale of iron being used for raising other pillars, roofs etc. Some part of the property has been covered by polythene. These photographs were taken on 11th February, 2013 and clearly show unfinished recent construction. The extent of construction raised and as demonstrated by these photographs can only be made by spending crores of rupees and not Rs. 10,000/- or Rs. 20,000/-. Though, no specific details have been furnished by the authorities about the exact amount of money that would have been spent for raising such huge construction, but, after perusing the inspection reports and the photographs filed by the parties including the appellant, it can safely be concluded that huge money has been spent on such construction, which is of iron and concrete. Taking the bare minimum cost of Rs 1200/- per sq ft, the constructed area in terms of the inspection reports which provide exact measurement

is, 1680.894 sq mtr equivalent thereof in sq ft would be 18093 sq ft multiplied by Rs. 1,200/- per sq ft the total cost of the existing structure comes to approximately Rs. 2,17,11,600/-. This undoubtedly demonstrates that the appellant has not approached the Tribunal with clean hands and has failed to disclose complete and correct facts. To refute these photographs, affidavits and inspection reports, all that the appellant had stated was that these photographs were not of her property and the inspection was conducted behind her back. The appellant has not placed on record any documentary evidence including drawings, proposed plans, plans permission from the technical officer to raise concrete construction and even the photographs which would have shown whether the building is still under construction or not. The appellant of course, has merely denied the recent photographs placed by the Authority on record. There is no effort on the part of the appellant even to remotely prove that such huge concrete construction existed in time earlier to 2013-2014 much less prior to the date of Notification i.e. 19th February, 1991. On the one hand, the appellant has miserably failed to discharge the onus placed on her to show that the construction, as it exists today, was in existence in 1986-87 and was with the permission of the concerned Panchayat or other Authority and on the other, the appellant has not approached the Tribunal with clean hands and has failed to disclose the complete and correct facts.

25. For the reasons afore-recorded, which are different to the reasons stated in the impugned order, we find no infirmity in the

order of the Authority dated 15th November, 2013. Further, it is directed that the respondent Authority and all other concerned Authorities shall take all appropriate steps to demolish the entire new structure, whether finished or under construction, forthwith. Thus, the present appeal is dismissed. However, we leave the parties to bear their own costs.

M.A. 1098 of 2013

This application has been rendered infructuous in view of the fact that the main application stands dismissed. Accordingly, M.A. No. 1098 of 2013 is also disposed of while leaving the parties to bear their own costs.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

Dr. D.K. Agrawal
Expert Member

Prof. A.R. Yousuf
Expert Member

New Delhi

13th January, 2015