

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPEAL No. 22/2015 (WZ)
(M.A.No.62/2015)**

CORAM:

**Hon'ble Mr. Justice V.R. Kingaonkar
(Judicial Member)**
**Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N:

Mr. Filomeno Vincente Gregorio,
Tomaturgo Rodrigues,
s/o. Late Andre Santana Rodrigues,
Aged 60 Yrs. Unmarried,
R/o. H.No.259, Francis Costa Vaddo,
Utorda, Salcete-Goa.

....Appellant

A N D

1. State of Goa,
Through : Chief Secretary,
Office at Secretariate, Porvorim,
Bardez-Goa-403 521

2. Goa Coastal Zone Management Authority,
Through : Member Secretary,
Authority, Office at Saligao,
Bardez, Goa- 403 001

...Respondents

Counsel for Appellant :

Mr. Suhesh M. Walawaikar, Adv.

Mr. P.V. Shinde, Adv.

Counsel for Respondent No. 1 & 2:

Mrs.Fawia M. Mesquita, Adv.

Counsel for Respondent No.14 :

Mr. T.N. Subramanium, Adv.

Mr. Saket Mone Adv. And

Mr. Vishesh Kelve, Adv.

Date: January 15th, 2016

JUDGMENT

1. This is an Appeal filed under Section 16(g) of the National Green Tribunal Act, 2010 against the order of demolition of the structures of the Appellant issued under section 5 of the Environment (Protection) Act, 1986, by the Goa Coastal Management Authority (GCZMA) vide communication dated 8th May 2015. The subject matter has a chequered legal history and has reached National Green Tribunal for the third time.

2. The Appellant claims to be a Member of fishermen family who has been traditionally doing fishing. The Appellant claims to be the owner, in exclusive possession of the property bearing survey No.53/6 of Utorda village, admeasuring 5050 sq. mtrs. This property has residential structure which includes toilet, bathroom and storeroom which are claimed to be existed over since 1960 or

thereabout. The GCZMA authorities issued show-cause notice dated June 17th, 2011, against the Appellant where he was called upon to remove alleged encroachment in Utorda beach approximately 1500 sq. mtr. area. The Appellant produced voluminous documentary evidence in response to the said show cause notice to claim that the structures existing are of Appellant's own land survey No.53/6 and the same is not the subject of order of demolition dated 23rd August 2012 which was passed consequent upon the said show cause notice. This demolition order dated 23rd August 2012 was challenged before the National Green Tribunal which was disposed of with by NGT Order dated 13th March 2013 in Appeal No.59/2012 in following terms :

"We have heard Learned Counsel for the parties. In pursuance to order dated 14th February, 2013 of this Tribunal, site inspection was carried out by the Inspector of Survey and Land Records, Margao-Goa.

The Survey map is placed on record along with Report of the Inspector of Survey and Land Records, Margao-Goa.

Perusal of the said survey map indicates that on Plot No. IV there are two (2) shacks and a part of the bar counter. The said construction is seaward of the High Tide Line as shown in the map.

The show cause notice shows that the Appellant was called upon to explain about the illegal structure of approximately 1500 sq. mtr. on the Government property. The show cause notice did not indicate particulars of the other structures with reference to High Tide Line and illegality thereof.

Considering the above admitted fact situation, the Learned Counsel for the parties have arrived at agreement for disposal of the present appeal on following terms :

1. *The Appellant shall remove the two (2) shacks and part of the bar counter shown in the map submitted by the Inspector of Survey and Land Records, Margao Goa situated on Plot No. IV, within a period of three (3) weeks at his own cost. In case, the same is not removed by the Appellant within the given period, the Respondent shall demolish the same immediately without any notice.*
2. *The Appellant is at liberty to file an Application for necessary permission and in no case it shall be granted within the area of Arabian Sea or in any manner which will cause encroachment on the Government land.*
3. *The Respondent is at liberty to take appropriate proceedings in so far as the other structures are concerned which allegedly fall within the No Development Zone.*
4. *The parties to bear their own costs.*

The Appeal is accordingly disposed of as per above agreed terms.”

3. Subsequently, the GCZMA issued another show cause notice dated 8th April 2013 to the Appellant in respect of illegal construction of structures in property bearing survey No.53/6 at village Utorda. The said notice was challenged by the Appellant before the National Green Tribunal in Application No.102/2014 which was disposed of by the Tribunal vide order dated 6th January 2015 which is reproduced below :

“Heard learned Counsel for the parties.

Learned Advocate for the Respondent No.3, has filed the reply affidavit.

It is pertinent to note that the Respondent No.3, had filed an Appeal bearing Appeal No.74 of 2014, before NGT (WZ) Bench Pune, which was decided on 26th October, 2013.

Mr. Walwaikar, learned Counsel appearing for the Respondent No.3, states that he received Show-cause Notice issued by the Respondent No.2. If reply affidavit is not filed by the Respondent No.3, to the Show-cause Notice of the Respondent No.2, then it shall be filed within two (2) weeks and GCZMA (Respondent No.2), shall expeditiously decide the issue, particularly, as to whether the structures in question, are within CRZ-I, and are legal or illegal, in accordance with the CRZ Notification, 1991 or 2011, whatsoever it may be.

GCZMA, is directed to hear the Respondent No.3, and take final decision by passing speaking order. Learned Advocate appearing for the Respondent No.2, shall inform GCZMA, as to what is expected from GCZMA while passing “speaking order” i.e. inclusion of appreciation of evidence/documents regarding all reasons in support of findings, giving of specific findings based on evidence and final analysis of the entire record while decision making and outcome of application of mind, which shall be reflected in the final order. We expect that mere minutes of GCZMA, will not suffice the purpose in passing of such speaking order and it will be a practice hereinafter.

The Respondent No.3, has placed on record the reply affidavit along with the documents’

4. The present Appeal originates from the order of GCZMA dated May 8th 2015 which is issued in compliance with the Tribunal’s directions dated January 6th, 2015.

5. We have deliberately dealt on the earlier case record to set out the conspectus of the controversy involved in the

present Appeal. Though, it is well settled legal proposition that the Appeal proceedings are required to be adjudicated on the litmus test of whether the impugned order suffers from any illegality, impropriety or irregularities, which makes it liable to be quashed. The Appellant has filed voluminous documents to buttress his claim that the structures, alleged to be illegal, are existing pre-1991 and relies on the various sale-deeds which have certain references qua the alleged structures. The Appellant has also filed written synopsis. Brief submissions of the Appellant are summarised hereinunder :

6. The Appellant states that the GCZMA issued a show cause notice as early as February 23rd, 2007 raising question of legality of structures in question. He claims that subsequently, after filing the reply, no action was initiated or taken by the GCZMA, inferring that the proceedings were dropped in favour of the Appellant after holding the due inquiry. The counsel for Appellant strenuously argued that the Director of Panchyat in Panchyat Appeal No.111(A)/2009, by order dated February 3rd, 2010, clearly recorded the admitted facts of the GCZMA's clear acceptance of the structures in question being in existence prior to 1991. The show cause notice of July 23rd, 2007 was in relation with filling of a paddy field by putting rubble stones construction of structures over an

area of about 75 sq. mtr. Learned counsel for Appellant raised issue of estoppel and res-judicata in view of finality of the show cause notice of 2007, in as much as, GCZMA has not issued any final direction in terms of Rule No.4 of Environment (Protection) Rules, 1986 which gives maximum 45 days to the authorities for taking action after filing objections. He also states that authorities are not expected to conduct repeated inquiries and particularly in view of the judicial finding by the Directorate of Panchyat, GCZMA authorities are expected to respect such judicial finding, unless the order is stayed or varied by the Competent Authority/Court. He also stated that another allegation of GCZMA is that there is no permission obtained from any authorities for alleged structures and submits that the structures are existing prior to 1960 and the village Panchyat was established in 1972. He further states that the CRZ Notification of 1991 mandates that the existence of the structure prior to 1991 is suffice to comply the CRZ Notification and the authorities cannot insist on permission or authorisation for such structures. He submits that such a stand of GCZMA cannot sustain considering the various historical monuments and ancient structures along the coast where GCZMA cannot expect the permission or authorisation from the contemporary authorities. He further states that the DSLR survey of 1972 clearly

indicated that the land survey No.53/6 does not belong to the Government and is owned by the Appellant. Further the survey also clearly records that non cultivable area is 500 sq.mtr. which is more or less equal to the area of construction and Pakka platform. He further submits that on finding such discrepancy, the Appellant has filed Civil Suit in the competent Court to rectifiable such error and with a prayer to show existing structure on the survey plan. He submits that this suit is pending and without awaiting judgment of the learned Court, the GCZMA cannot conclude that the structures are post-1991. He further claims that the another issue of commercial use of the structure is outside the domain of GCZMA and in case the competent Authorities find any illegality, they may take independent action against such commercial use of the structures and he further submits that however, alleged structures cannot be just stamped as new i.e. post-1991 only due to commercial use of the structures. He further submits that the commercial activities in any case are not banned as per Rule 6-D of CRZ Notification wherein the allied activities have been referred which may include hotel, restaurant, bar etc. He also pleaded that the Appellant's brother is an active member of NGO which has filed several petitions and GCZMA has received certain strictures from the Courts and authorities and therefore, the action of GCZMA is malafide

and vindictive taking revengeful action against the Appellant.

7. The GCZMA has not filed any affidavit but has relied on the official documents inasmuch as the Appeal proceedings are restricted to illegality, impropriety and irregularity. The learned Advocate for GCZMA states that after the first round of litigation with respect to its order dated August 23rd, 2012, GCZMA had issued show cause notice dated April 8th, 2013 based on the complaint received as well as the findings of the DSLR survey which was carried as per directions of the National Green Tribunal earlier. The Appellant has filed a detailed reply to show cause notice pursuant to the order dated January 6th, 2015 passed in Application No.102/2014. The GCZMA authority has considered the defence raised by the Appellant in the reply and also gave hearing to the Appellant through his Advocate during the 114th meeting of GCZMA held on April 16th, 2015. We have perused the minutes of GCZMA which are on record and the decision of authority which is reproduced below :

Decision : *The Authority heard the oral submissions made by the Ld. Adv. Walwaikar at length. The Authority also noted the fact that Ld. Adv. Walwaikar preferred not to file any written submission and any documents during the hearing. The Authority also perused the documents annexed to reply dated 15-1-2015 filed by Filomena Vincente Gregorio Rodrigues as well as documents available on office records. The issue before the Authority is whether the structures under reference was existing*

prior to year 1991 and or if any permissions are also obtained by any person in respect of the said structures from any authorities as well as from the GCZMA under the CRZ Notification 1881/2011 etc. The Authority noted that there are no documentary evidence on record to prove that the structures under reference are approved/permitted by any authority. Further the authority also noted that there is no documentary evidence to prove that the GCZMA earlier has dropped the proceedings initiated against these structures. Further, the Authority observed that the alleged violator Mr. Filomena Vincente Gregorio Rodrigues is relying mostly on deed on conveyances/sale deed executed from time and again and stated that these structures are existing since long. The Authority also noted that the Tax Receipt since 1994 do not corroborate with the exact structures under the reference. The Authority also observed that the judgment order of Additional Director of Panchyat dated 3-2-2010 do not specifically prove that the structures are legal and authorized. The Authority also noted that inspite the structures being Commercial in nature are not being specifically depicted in the deed of conveyances/sale deed, if at all the same were existing since long.

After detailed discussion and deliberation, the Authority asked the Member Secretary, GCZMA to further examine all the documents available on records and to place the facts before the Authority to decide final course of action in the next meeting. The Authority also decided to request the Hon'ble NGT, Pune to grant further time of 8 weeks to take and communicable final decision in the matter".

8. Subsequently, the GCZMA considered the matter on May 4th, 2015 in its 115th Meeting wherein the Report of the Member Secretary was considered by the Authority. The learned counsel for the GCZMA submits that the Member Secretary examined the entire documents which were presented before the authority for its due consideration. It

is observed from the report of Member Secretary of GCZMA presented to GCZMA, that :-

- a.** Declaration of handing over possession and agreement of parties dated January 12th, 1972 : GCZMA is of the view that only possession is given and the said document is just a declaration and not a deed of sale/conveyance. No sketch is attached though it is mentioned that two (2) rooms of an area of 270 mtrs. and cement floor with an area of 220 mtr. to dry fish constructed as per the plan in the portion of the land having 5050 sq.mtr. area. GCZMA states that as per the DSLR plan of 2013, there are additional structures or some new structures or new structures or new constructions.
- b.** Though the GCZMA refers to the sale-deeds of 1996 and subsequent periods, GCZMA is of the view that these sale-deeds do not mention anything about the structures but do refer to the plan/sketch annexed which is reported to the same as earlier sale-deeds.
- c.** The house tax receipt of 1994 onwards were considered by the GCZMA with a note that the tax receipts are from 1994 onwards which itself shows that none of the structures were in existence prior to 1991.
- d.** The judgment of Director of Panchyat dated February 3rd, 2010 also does not prove the existence of the structure prior to 1991.
- e.** The form-I and XIV of survey No.53/6 having entries which only have presumptory value in the eye of Law and the said document does not prove any existence of any structures.

9. The final findings of the GCZMA as per minutes of 115th meeting are reproduced as under :

Findings in brief :

1. All the documents referred to or relied upon by Mr. Filomeno Vincente Gregorio Tomaturgo Rodrigues do not indicate the existence of the structures under reference prior to 1991, infact none of these documents corroborate so.
2. It is crystal clear that Mr. Filomeno Vincente Gregorio Tomaturgo Rodrigues has not obtained any permission under CRZ Notification 1991/2011.
3. It is pertinent to note that although the structure under reference are commercial structures, surprisingly the same are not depicted in any of these documents and the party has not submitted any document like permissions/N.O.C./Licences obtained from various other authorities for the purpose.

10. Based on such findings the GCZMA has come to the conclusion that the alleged structures are constructed after year 1991 and are not of pre-1991 period. Further, the said structures are admittedly being used for commercial purpose which is not permissible in view of the provisions of CRZ Notification 1991 and therefore, the demolition order was issued against the alleged structures by the impugned order.

11. We have gone through the huge compilation of the documents produced by the Appellant and perused the

proceedings of the GCZMA. One important aspect, we note, is that the GCZMA in the instant case have elaborately dealt on the subject matter, both in its agenda items, as well as the minutes before issuing the final speaking order. Notwithstanding that, we could not locate any specific comparison made by the GCZMA either structure-wise or plinth-wise of the alleged structures, as observed over the period under litigation, particularly 2007, 2011, 2012, 2013 and 2015, when certain notices have been issued. This is important inasmuch as the 115th GCZMA meeting indicates that there are seven (7) structures like massage parlour, two (2) sheds, bars/restaurants, bar counter, two (2) toilets, red-oxide cement floor and generator room. It is not clear as how much area is covered by these structures in terms of plinth, in view of claims of the Appellant that 270 sq.mtr. rooms and 200 sq. mtr. of cemented floor were existing prior to 1991. We have noticed that the declaration of handing over of possession and agreement of charges dated January 12th, 1972 does mention the existence of two (2) rooms of an area of 270 sq.mtr. and cement floor of area of 220 sq.mtrs. The subsequent sale deeds, as per GCZMAs own observation, do not mention anything about the structures but do refer to the plan/sketch annexed which is reported to be the same as earlier sale-deeds. We do not find any reason for not accepting these documents as

substantial evidence for accepting the existence of the said structures prior to 1991. We do find merit in submissions of the Appellant that structure is existing prior to formation of Panchyat which is claimed to be established after 1972, the permissions of Panchyat cannot be a criteria for justifying the existence of structures in the instant matter. We have also taken a judicial note of the fact that the show cause notice was earlier issued in 2007 and admittedly no final decision was communicated to Appellant or executed by GCZMA. Though the counsel for GCZMA submits that in the meeting dated June 19th, 2008 such a decision was duly taken by the authority but unfortunately the same was not communicated or executed. This matter becomes more serious in view of non-implementation of such a decision taken by the GCZMA on June 19th, 2008 but it is for the Chairperson of the GCZMA to conduct necessary inquiry of such a serious lapse and take suitable action as required in the matter. However, it can be seen from the show-cause notice that the notice is related to alleged illegal construction which is mentioned as 75 sq.mtr. which is different from the present show-cause notice subject matter, and the Appellant, therefore, cannot be allowed to take a plea that the present notice cannot be issued in view of dropping of proceedings in earlier show-cause notice/s.

12. We have also considered the submissions of the Appellant that the commercial activities are not within purview of the GCZMA, but in view of the specific provision of Rule 6(d) of the CRZ Notification 2011, we are not inclined to accept such submissions. The activities in the CRZ area are regulated by the GCZMA and therefore, it is necessary that such activities should be within the permissible activities or regulated activities as approved or agreed upon by the GCZMA.

13. Based on these observations, we are of the considered opinion that the structures referred in the declaration of handing over possession and agreement of charges dated January 12th, 1972 which consist (a) two rooms of an area of 270 mtr. and (b) cement floor with an area of 220 mtr. can be considered as “existing” prior to 1991.

14. Another important aspect of this Appeal is the procedure adopted by the GCZMA for the enforcement of the CRZ Notification. This Tribunal has in the past in matters like Alexo Pareira in Application No.03 of 2014 has issued elaborate directions for setting out the enforcement mechanism and dissemination of information in terms of CRZ Notification. It is necessary for the Chairperson of the GCZMA to set out enforcement mechanism on priority basis, including registration and investigations of the complaints, issuance of the show causes/directions,

personal hearing, final action taken on such notices besides monitoring compliances thereof, besides other operational domain of GCZMA including grant of NOC, permission, recommendation to SEIAA/MoEF so on and so forth. We are aware that this is essentially an administrative issue but the Tribunal is also entrusted with the jurisdiction related to implementation of the Schedule-I enactments and therefore, it is always prudent for the GCZMA authority to set out enforcement mechanism evolving the objective criteria and milestones, so as to avoid disputes related to inaction and improper actions by GCZMA. We, therefore, partly allow the Application and direct the Chairperson of GCZMA to set out the enforcement mechanism in terms of its mandate as the CRZ Notification 2011 within three (3) months covering various aspects of the CRZ Notification.

15. However, any modification, expansion or renovation in these structures be not allowed to be done in absence of GCZMA permission and the demolition order is now limited and operational to such expansion, modification or renovation carried out, over and above the structures referred in the document of January 12th, 1972. Secondly, the commercial activities at the said premises cannot be continued without permission of the GCZMA as per CRZ Notification 2011. In the absence of such permission, the

Appellant is directed to close down the commercial operations at the disputed structures forthwith.

15. With these directions, the Appeal alongwith Misc Application No.62/2015 are disposed of. No costs.

....., JM
(Justice V. R. Kingaonkar)

....., EM
(Dr. Ajay.A. Deshpande)

Date : January 15th, 2016

ajp

NGT