BEFORE THE NATIONAL GREEN TRIBUNAL

(WESTERN ZONE) BENCH, PUNE

APPEAL NO.18 OF 2014

CORAM:

HON'BLE SHRI JUSTICE V.R. KINGAONKAR
(Judicial Member)
HON'BLE DR. AJAY A.DESHPANDE
(Expert Member)

In the matter of:

1. **MRS. MARIE CHRISTINE PERDRIAU,**
   Major of age, Occ: Business.
   R/o H.No.511,Murrod vaddo,
   Candolim, Badez Goa,
   Managing Dirctor or
   Flying Maya Guest House Ltd.,

2. **FLYING MAYA GUEST HOUSE LTD.,**
   Registered under the Indian Companies Act, 1956,
   (With Registration No. U51102G2005PTC004117 (CIN).
   Having office at
   H.No.511, Murrod vaddo,
   Candolim, Bardez Goa.

.....**APPELLANTS**

VERSUS

1. **GOA COASTAL ZONE MANAGEMENT AUTHORITY,**

Through Member Secretary,
Having office at C/o Department of Science, Technology and Environment (Govt. of Goa), 3rd Floor, Dempo Towers, Patto-Panaji-Goa-403 001.

2. **M/S SHAM HOTELS PVT. LTD.**
Through Director Mr. Nitin Chhatwal,
Plot No.2, New India Co-op Society,
E.W. Road No.2 – JVPD Scheme
Juhu, Mumbai-400 049.

.....**RESPONDENTS**

Counsel for Applicant (s):

Mr. Asim Sarode a/w Mr Pratap Vitankar Adv, Alka Babaladi, A. Agni.

Counsel for Respondent (s):

F.M.Mesquita a/w Mr. Arjun Shetye Sub Registrar for Respondent Nos.1 to 4,8,9,11,12.

Mr. T.N.Subramaniam Sr.Advocate, a/w Shivam Desai for Respondent No.5.

Mr. Jitendra P. Supekar for Respondent Nos.6,7.

Date: MAY 29TH, 2015.

J U D G M E N T

1. Appellants, named above, impugn orders dated April 25th, 2014 and May 28th, 2014, passed by Respondent No.1-GCZMA, in the matter of their complaint for demolition of structure of M/s Sham Hotels Pvt. Ltd., filed against Respondent No.2. By the impugned Orders, GCZMA decided to drop the

proceedings initiated against Respondent No.2, with directions only to remove compound wall, and tiles laid around the house, within fifteen (15) days of issuance of directions. Thus, the main complaint of Appellants that entire construction of house property standing on the land Survey No.139/1(Part) of village Calangut, Bardez Taluka, is illegal, inasmuch as it has been constructed in breach of the CRZ Notification, 1991 and as such, liable to be dismantled, came to be dismissed. Both the Appellants are, therefore, aggrieved by dismissal of the complaint in respect of it or part, though only as fractional relief was granted, which according to them is inadequate and is of cosmetic nature.

2. This appears to be third round of litigation between the parties. A civil suit bearing Spl. Civil Suit No.07 of 2007-A was filed before the Civil Judge, Senior Division, by one E.M.Sham in his capacity as representative of Respondent No.2, against present Appellants. It appears from nature of that litigation, the subject matter therein was an access, which was being allegedly denied, but for use of which the property of Respondent No.2, could have been allegedly landlocked. Second round of litigation was by way of Writ Petition filed before the Hon'ble High Court

of Bombay at Goa, vide Writ Petition No.872 of 2012. The grievances ventilated by present Appellants were of identical in nature in the said Writ Petition. They allege that structure of hotel constructed by Respondent No.2, over property bearing land Survey No.139/1(Part) of village Candolim, is illegal due to violation of CRZ Notification, 1991. It appears that the Hon'ble High Court of Bombay at Goa, directed Respondent No.1 to consider the complaint filed by Appellants and decide the same after providing due opportunity to the parties and pass necessary order on merits, within period of three (3) months thereafter. This order was passed by the Hon'ble High Court of Bombay on 2.12.2013. Subsequently, in view of the Apex Court's Judgment in the case of "***Bhopal Gas Peedith Mahila Udyog Sangathan v/s Union of India" (2012) 8 SCC 326,*** the Hon'ble High Court of Bombay at Goa was pleased to transfer the Writ Petition No.872 of 2012, to this Tribunal by its order dated December 2nd, 2013, Hon'ble High Court of Bombay at Goa.

3. In the meanwhile, direction was given to decide the complaint of the Appellants afresh after giving due opportunity to both the parties. The GCZMA was directed to carry out inspection of the site. Respondent

No.1 Goa Coastal Zone Management Authority (GCZMA), carried out site inspection in presence of representatives of the authority on April, 11th, 2014. Respondent No.1 –GCZMA gave opportunity to contesting parties to file their pleadings and documents. The parties were called for personal hearing on April 25th, 2014, by Respondent No.1-GCZMA. Consequent upon hearing the parties and concluding the process of decision making, Respondent No.1 GCZMA held that most of the construction standing on land Survey No.139/1 (part) and claimed by Respondent No.2 is legal, proper and in keeping with CRZ Notification. Only a part to the extent of corner of compound wall and certain tiles laid down around the house were illegally constructed and as such, direction was given to remove them within period of fifteen (15) days, after passing of the impugned orders.

4. Being dissatisfied with the aforesaid order, both Appellants have preferred the instant Appeal. They allege that impugned order as far as its basic legality such as non-application of mind to the admission of Mr. E.M.Sham in pleadings of previous suit bearing Spl. C.S.No.07 of 2007-A. They would submit that in the complaint itself, said E.M.Sham claimed to be

representative of Respondent No.2, which fact was never denied till date, though the latter categorically admitted that there existed no house property or structure on the land Survey No.139/1 (part), and that only Coconut trees were planted on that land. They also pointed out that Respondent No.2, failed to produce any evidence as regards construction permission, which could prove existence of previous construction before the CRZ Notification, nor their record to show that permission was obtained by him to carry out repairs/renovations of so called structures. They further allege that permissions issued by Respondent No.2, for repairs and renovations of "existing house" are based on false information, because there was no structure on the property bearing Survey No.139/1(part) and no verification in this context was done by the authority. They pointed out that the title (ownership) document of Respondent No.2, sale-deed dated December 12th, 1990, also does not mention existence of any structure on the said land. They deny that though Respondent No.1 could have verified true facts from the record and same were within its knowledge, yet, because of earlier permission was granted for renovations/repairs of so called structure in favour of Respondent No.2,

erroneous, palpably and illegal, impugned decision is rendered by Respondent No.1. Hence, they sought to set aside impugned decision by allowing the Appeal.

5. Respondent No.2, resisted above, by filing elaborate pleadings on various grounds. Some other Respondents also joined him as interested parties, being partners/directors of Respondent No.2. It is not necessary to refer to the pleadings of each of them in order to avoid repetitions. According to them, the Appeal is barred by limitation, inasmuch as the original complaint was filed by Appellant in the year 2011 and permission for renovations/repairs had been granted by GCZMA in 2009. Thus, first 'cause of action' arose in 2009, when such permission was granted which Appellants could have challenged within period of thirty (30) days. However, failure of Appellants to challenge such permission granted by GCZMA, within prescribed period as provided under Section 16 of the NGT Act, 2010, is not permissible and would not save limitation provided under the special statute, i.e. the NGT Act, 2010. Besides technical defence of limitation, they would submit that they were granted permission by the Town and Country Planning Department (TCPD) and the Village Panchayat to construct the house property and hotel.

They would submit that construction of hotel has not caused any loss to ecology and environment. They contended that reliance on the statement made by the representative of Respondent No.2, in Spl. Civil Suit No.07 of 2007-A, at para-9, is being misconceived by Appellants. It is stated that such erroneous pleadings can always be corrected by filing amendment Application and Respondent No.2 could not be put to prejudice on account of any erroneous statement which was made by way of such pleadings, which is pending under correction. The permission to renovations/repairs was granted by GCZMA after due verification of the fact that prior existence of house property before 1991, was shown on record and on due verification. It is stated that in pursuance to the impugned order, compound wall has been demolished and tiles which were fixed around the house have been removed. This compliance has been reported to Respondent No.1 (GCZMA). They would submit that the Deputy Collector gave a report dated 3.11.2010, that repairs and renovations to the existing structure in land Survey No.139/1 (part), of village Candolim, is carried out after obtaining approval from the competent authority, including CRZ, GCZMA and the Village Panchayt. They pointed out that vide letter

dated 24th January, 2007, the Village Panchayat of Candolim granted permission for repairs and renovations of said structure. On these premises, Respondent No.2 and concerned partners/owners thereof sought dismissal of the Appeal.

6. In the context of instant Appeal, important question to be determined is as to

i) Whether the impugned orders passed by Respondent No.1 (GCZMA), are legal, proper and correct?

Another question which will have to be determined is:

ii) If the orders are found to be improper and illegal then what consequences ought to follow in the circumstances of the present case?

7. At the outset, we make it clear that there is no grain of merit in technical objection raised by Respondent No.2, as regards bar of limitation. The contention of Respondent No.2, is that so called repairs and renovations work was completed by 2009. The NGT Act, 2010, came into force w.e.f from 2nd June, 2010. The Writ Petition No.872 of 2012, was entertained by the Hon'ble High Court of Bombay at Goa and thereafter the complaint was directed to be

enquired and decided by the GCZMA. The impugned order was passed as a result of such direction given by the Hon'ble High Court. In the meanwhile, the Writ Petition came to be transferred to the NGT (WZ) Bench Pune. The Apex Court in case of "***Bhopal Gas Peedith Mahila Udyog Sangathan v/s Union of India" (2012) 8 SCC 326,*** held that in such a case limitation would continue to run from the date of transfer of Writ Petition. For the purpose of Appeal, the first 'cause of action' arose when by order dated April 25th, 2014, the impugned decision was rendered by Respondent No.1-GCZMA. The date on which said decision was communicated to Appellants will trigger 'cause of action'. Perusal of record shows that from date of such communication the Appeal is filed within period of thirty (30) days and, therefore, it is within limitation under section 16 of the NGT Act, 2010.

8. Upon hearing learned Counsel for the parties and ongoing through the entire record, certain factual matrix is abundantly clear. Respondent No.2 purchased the property bearing Survey No.139/1 (part), by virtue of conveyance-deed dated December 12th, 1980 (Exh.HI). This deed of conveyance executed in 1980, is annexed with two (2) schedules of the property, which are the subject matter of sale. Close

scrutiny of the said deed of conveyance would show that the land Survey No.139/1(part), then was not shown to bear any construction thereupon, nor transfer of such construction in favour of Respondent No.2, is categorically mentioned in the deed of conveyance. This property Survey No.139/1(part), is described in First-Schedule of the conveyance deed and is indicated by boundaries. On the western side of said property, it is clearly shown that the property is abutting 'high-sea'. Needless to say, the land Survey No.139/1(part), of Candolim village is within CRZ-I and there existed no house-property nor any part thereof when the conveyance was effected in favour of Respondent No.2, or previous owner. In Second-Schedule of the conveyance –deed, the property is described as pieces and parcels of land, but towards eastern side of that property residential house of vendor's is shown. In other words, that eastern side house is not the subject matter of present dispute. On northern side of the property under conveyance, the land Survey No.140, is shown as abutting land. If these descriptions are considered along with authentic map placed on record, (Ex-F), it can be gathered that there was no existing house property over survey No.139/1(part), when Respondent No.2, got the

property transferred in his favour from the previous owner.

9. Perusal of order dated 5th September, 2015, shows that proposed repairs and renovations of existing house No.139/1 (part), was approved by GCZMA. The permission to structure standing over land Survey No.139/1(part) could be granted in respect of proposal of repairs/renovations only and only when there existed such structure prior to the CRZ Notification, 1991. Respondent No.1, was, therefore, required to thoroughly throw light on basis of available material whether existence of such structure was, in fact, shown by Respondent No.2, and that its vendors corroborated said fact by any kind of evidence. Respondent No.2, failed to place on record water consumption/payment bills. He, however, filed copies of house tax receipts for the year 2009-10. He did not produce survey-plan. These documents were filed on 4.4.2014, when GCZMA called upon Respondent No.2, to file documents as per order dated 27.2.2013. It appears that the Village Panchayat, Candolim also granted such permission dated 24.1.2007, and so also, the office of Deputy Collector, Mapusa, granted such permission dated 3.11.2010.

10. By communication dated 3.11.2010, the Deputy Collector, Mapusa, informed GCZMA, that the survey-plan in respect of property bearing Survey No.139/1(part) of village Candolim, and that indicated the structure was repaired/renovated on the existing plinth without existing same and changing its dimensions by obtaining permission from CRZ, from Town and County Planning department, as well as permission from the Village Panchayat, Candolim. The communication dated 3.11.2010, however, reveals that approval by TCPD, Mapusa- Goa, was granted vide communication No.DB/20876/MAP/Db/1986, dated 21.8.2006 and by permission of the Village Panchayat dated 24.1.2007. One cannot oblivious of the fact that both so called approvals/permissions are subsequent to the deed of conveyance dated December 12th, 1980. It follows, therefore, that such permissions were obtained by Respondent No.2 and not by his vendors.

11. In view of intention of CRZ Notification, 1991, which is analyzed and duly explained by the Hon'ble High Court of Bombay in case of ***Goa Foundation v. The Panchayat of Candolim and Panchayat of Calangute*** (W.P. No.422 of 1998-1999). The legal position is very clear. The permission in NDZ area for

repairs and renovations could be granted only in respect of 'residential houses' which were being used by the traditional inhabitants and not for commercial purposes. There existed no house property where the Restaurant –hotel and other structures are now standing.

12. Undisputedly, the land in question is within CRZ-III area (NDZ). Sub-clause (ii) of CRZ Notification Clause (iii) (a) read as follows:

(iii) Setting up and expansion of fish processing units including warehousing except hatchery and natural fish drying in permitted areas:

(a) required for setting up, construction or modernization or expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, bridges, sea link, road on stilts, and such as meantfor defence and security purpose and for other facilities that are essential for activities permissible under the notification.

13. A plain reading of aforesaid provisions in the CRZ Notification, makes it abundantly clear that repairs or reconstruction could be permitted only and only to the extent of existing plinth area and to the extent of "permissible activities" under the Notification, including facilities essential for activities. Sub-clause, in any manner, does not permit repairs or reconstruction over so called plinth area for using the

construction to undertake activities which are not permissible under the CRZ Notification. The construction of hotel is not 'essential activity' and, therefore, would call outset the sub-clause (ii) of the CRZ Notification. In our opinion, construction carried out by the Respondent No.2, is totally illegal and the impugned order passed by GCZMA is without application of mind. The impugned orderis cryptic, non-speaking and improper. Needless to say, the impugned order is liable to be quashed and set aside.

14. The relevant observations of the Hon'ble High Court, may be reproduced as follows:

> "The clause (iii) thereof refers to "construction/reconstruction of dwelling units between 200 and 500 metres of the HTL". In other words, while the clause (iii) specifically refers to the development of an area lying between 200 and 500 metres of HTL exclusively for construction or reconstruction of the dwelling units, the open plots in such area are allowed to be utilized for construction of the hotels in terms of the clause (ii) thereof. The expression "construction /reconstruction of dwelling" in clause (iii) further refers to "within the ambit of traditional rights and customary uses such as existing fishing village and gaothans". It is settled principle of law of

interpretation that no word in a statutory provision including the one in the subordinate legislation can be presumed to be redundant or unintentional. Reference to the “traditional rights” and “customary uses” while regulating construction activities of dwelling units in the coastal area is neither unintentional nor insignificant but evidently it discloses the intention of the framers of the law that the construction activities of dwelling units have to be “within the ambit of traditional rights and customary uses” prevalent and practiced in the concerned locality i.e. coastal area. Obviously, it will relate to the persons engaged in traditional occupation in such locality in the coastal area which would include fishing, toddy tapping, plantation etc. otherwise the framers of the law would not have occasion to restrict the activity of construction of dwelling unit “within the ambit of traditional rights and customary uses”. The said expression essentially discloses that the law makers have considered the importance and necessity of and have, therefore, granted recognition to the activities of the nature of traditional occupation in such coastal area and that has been described as the ambit of extent to which the construction activities can be permitted to have the dwelling units in the said area”.

15. The Hon'ble High Court summarized findings and gave directions in paragraph 32 as follows:

(A) To conduct survey and inquiry as regards the number of dwelling units and all other structures and constructions which were existing in the CRZ-III zone in Goa, village or town wise as on 19th February,1991 and increase in number thereof thereafter, date-wise.

(B) To identify on the basis of permission granted for construction of the dwelling units which are in excess of double the units with regard to those which were existing on 19th February, 1991.

(C) To identify all types of structures and constructions made in CRZ-III zone, except the dwelling units, after 19th February, 1991 in the locality comprised of the dwelling units and to take action against the same for their demolition in accordance with the provisions of law.

(D) To identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilization thereof before they are being allowed to be utilized for such construction activities.

(E) Till the until the survey and inquiry is completed, as directed above, no new licence for any type of construction in CRZ-III zone shall be issued or granted, and no new structure of whatsoever nature shall be allowed to be constructed in CRZ-III zone, except repairs and renovation of the existing houses which shall be subject to the appropriate order on completion and result of the survey and

inquiry to be held as directed above and this should be specifically stated in the licences to be granted for the purpose of repairs and/or renovation of the existing houses.

(F) The Respondent No.2 to conduct inquiry and fix responsibility for the violation of the CRZ notification in relation to clause-III of CRZ-III zone and to take appropriate action against the persons responsible for such violation of the provisions of the Environmental Protection Act and the said notification in relation to the CRZ-III zone.

(G) All these directions stated above are in relation to the CRZ-III zone in Goa in terms of the said notification.

(H) The survey and the inquiry should be conducted as expeditiously as possible and should be concluded preferably within a period of six months, and in any case, by 30th May,200, and report in that regard should be placed before this Court in the first week after the Summer vacation of 2007, for necessary further order,,

(I) Meanwhile, on conclusion of the survey and the inquiry, necessary action should proceed against the offending structures and report in that regard also should be placed along with the above referred report.

(J) The respondent Nos. 3 and 4 shall ensure prompt compliance of the directions given in this judgment and shall be responsible for submitting the report required to be submitted as stated above.

(K) All the records relating to the survey and the inquiry should be made available to the public available to the public and in that regard a web-site should be opened and the entire material

should be displayed on the web-site. The respondent No.3 should ensure due compliance of this direction by 10th June2007.

(L) The respondent nos. 1 and 3 shall pay costs of Rs,10,000/- in each of the petitions to the petitioners.

(M) Report to be received from the respondents should be placed before this Court in the third week of June, 2007.

(N) Rule is made absolute in above terms.

16. From the directions of the Hon'ble High Court, it is explicit that unless survey and enquiry is completed the authority could not have given licence for any type of construction in CRZ-III, area, except for the purpose of renovations of existing houses. Moreover, identification of all types of structures and constructions made in CRZ-III area in respect dwelling units, constructed after 1991 actions were directed to be taken. Third and most important observation noted by the Hon'ble High Court is that the construction work in CRZ-III area specifically were referable only to dwelling units "within impact of traditional rights and customary uses, such as existing fishing villages and Gaothans". Thus, it was not permissible for renovations or repairing the house and utilize it for commercial purposes, especially to establish a Restaurant and Hotel.

17. In our opinion, Respondent No.1 GCZMA failed to consider the record in its proper and perspective, did not apply its judicial mind and overlooked many important documents. The admission of representative of Respondent No.2 in previous suit bearing Spl. C.S.No. 07 of 2007-A, filed in the Court of Civil Judge, Senior Division-A, Mapusa, is as follows:

"The plaint-property (Survey NO.139) is an open land without any structure, but having Coconut trees. The said access is hereinafter referred is to as 'suit access and it is 3m or there about. The suit access is only access to the plaintiff's property and there is no access available, but for suit access the plaintiff's property is enclave property". Not only that in the entire pleadings of said Spl. Suit No.7 of 2007-A, representative of Respondent No.2 made no whisper about existence of any previous structure and permissions of repairs/renovations thereof. The omission made by representative of Respondent No.2, namely; E.M Sham s/o Mohasin Sham, cannot be lightly brushed aside. An admission made by him also cannot be overlooked only because subsequent amendment Application can be filed by him to amend the plaint. This is by hypothetical defence put forth by the Respondent No.2. It is well settled that admission

made by a party through pleadings cannot be allowed to be withdrawn unless it is proved to be outcome of fraud or any bonafide interpretation of document. Considering entire text of pleadings of the suit as well as deed of conveyance placed on record, said admission of representative of Respondent No.2, who filed that suit, does not fall within either categories and cannot be brushed aside in presenti.

18. Foregoing discussion reveals that the construction of Sham Resort- hotel Pvt. Ltd, (Respondent No.2), is carried out in blatant violation of CRZ Notification, 1991. There is no aspect from conclusion that the Member Secretary of GCZMA, who then was working as such and other authorities had knowingly or rather due to misleading by the Respondent No.2, granted permissions for renovations and repairs of so called structure, which in fact, never existed prior to 1991. It is but natural to say that the impugned order is illegal, improper and liable to be set aside. The question now is what shall be fall out of said findings. The Appellants are running same business under name and style "Maya Guest House Pvt. Ltd". There appears business rivalry between the Appellants and Respondent No.2. They are litigating since long. As stated before, this is a third round of litigation between

them. The structure of resort and hotel of Respondent No.2 is completed in 2009, which activity was challenged by the Appellants through the Writ Petition No.872 of 2012, filed in the Hon'ble High Court of Bombay at Goa. They made complaints to the Respondent No.1 on several occasions, but had not filed any suit nor filed Writ Petition within reasonable time. They could have sought prohibitory injunction when the construction activity was going on and could have restrained the Respondent No.2 from going ahead with illegal construction. We meant to say delay and latches on part of Appellants cannot be totally ignored. So also, the Village Panchayat Candolim, Deputy Collector, Mapusa, the director of TCPD, have added as party-Respondents, though they are concerned authorities being either the authorities who granted permissions or given reports in favour of Respondent No.2.

19. Nobody will deny that Respondent No.2 caused environmental degradation due to illegal construction of resort/hotel within CRZ area. At the same time, having regard to photographs, it is also clear that Respondent No.2, invested huge amount and Appellants have committed delay and latches in filing the Writ Petition. Under peculiar circumstances,

although, entire structure of hotel of Respondent No.2 is liable to be demolished, in ordinary course, due to illegality, inasmuch as it is violative of CRZ Notification. We deem it proper to set aside the impugned orders.

20. It remains to be seen whether due to allowing the Appeal, it is essentially required to direct demolition of the structure in dispute. We cannot be oblivious to the fact that there is business rivalry between the parties. The structure exists since years together. The Appellants also run a Guest House in the proximity. The delay and latches on part of the Appellants, the earlier civil litigations, writ petition and the background facts of the instant case, go to show that the Appellants are overzealous in demolition of the structure in question, than the cause of environment. Hence, we direct that:

a) The Respondent No.2, shall pay Rs.five (5) Crores to the State of Goa on account of the environmental degradation, within period of six (6) months which be deposited with the office of the Secretary Environment Department. The amount, if so deposited, shall be utilized for remediation of the degraded beaches/environment, afforestation and like activities.

b) If the above amount is not deposited in the given period of six months from today the structure in question standing on Survey No.139/1 (part) of Respondent No.2"s Hotel shall be demolished by the GCZMA, without any further orders.

c) If the amount is deposited as above then the construction in question be deemed as *fait accompli*.

d) The Appeal is accordingly disposed of. No costs.

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

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

Date: 29th MAY, 2015.

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