

**BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNAL (WESTERN ZONE BENCH) AT PUNE**

Appeal No. 26/2019 (WZ)



In the matter of:

Sagardeep Sirsaikar

.....Appellant

V/s

Goa Coastal Zone Management Authority

and others

.....Respondents

**AFFIDAVIT- IN -REPLY ON BEHALF OF GOA
COASTAL ZONE MANAGEMENT AUTHORITY
(RESPONDENT NO. 1)**

MAY IT PLEASE YOUR LORDSHIPS:

I, Mr. Johnson Bedy Fernandes, Son of Germano Herculano Fernandes, aged about 44 years, Indian National, resident of Curchorem - South Goa, the Member Secretary, Goa Coastal Zone Management Authority (GCZMA), the Respondent No. 1 herein most respectfully state and submit as under: -

1. I say that I am presently the Member Secretary, Goa Coastal Zone Management Authority (GCZMA), the Respondent No. 1 herein. I say that I am authorized to file the present Affidavit.

2. I say that I have perused a copy of the captioned Appeal filed by the Appellant; and have read and understood the contents thereof.

3. I say that the present Appeal challenges the Communication bearing No. GCZMA / ILLE - COMPL/ 14-15/159/2039 dated 01/02/2019 discharging the proceedings in respect of structure belonging to M/s Mabarest Hotels Pvt Ltd.. (hereinafter referred to as the '**Impugned Order**' for the sake of brevity).

4. I say that the Appeal is untenable on facts and in law. I say that the Appellant is misleading this Hon'ble Tribunal. Before dealing with the contents of the Appeal Memo and the facts in the matter, the Respondent No. 1 raises the following preliminary objections -

A. That the present Appeal is not maintainable under the provisions of the National Green Tribunal Act, 2010 (herein after referred to as the '**NGT Act**'). I say that any Appeal to this Hon'ble Tribunal would if at all lie under Section 16 of the NGT Act, and more specifically, against any Order or Directions enlisted therein. I submit that in terms of Section 16(g) an Appeal would only lie against Directions issued under Section 5 of the Environment (Protection) Act, 1986.

B. I say that admittedly in the present case, the Impugned Order dated 01.02.2019 dropping proceedings against the Respondent Nos. 6/7



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does not come within the ambit of Section 16(g) of the NGT Act.

C. I say that the Appeal is abusing the process of this Hon'ble Tribunal by invoking its jurisdiction to moonlight as a fact finding Authority, when in fact, the fact finding Authority, i.e., the GCZMA has conducted extensive hearings, surveys and inspections in the matter, dealt with each and every permission and documents before dropping the proceedings. I say that details pertaining to this are laid down in paragraphs 12-17 below.

D. Without prejudice, I say and submit that Appellant is not a "person aggrieved" within the definition of Section 16 of the NGT Act, 2010, neither was the Appellant who is otherwise a chronic litigant a participant in proceedings bearing Appeal No. 62/2016-M/s Mabarest Hotels Pvt. Ltd v. GCZMA & ors and OA 164/2016 : Goa Paryavaran Sanvrakshan Sangharsh Samittee v. Nyex Club and ors. which were long pending before this Hon'ble Tribunal dealing with the structures in question.

E. Such other and further grounds.

5. Before dealing with the contents of the Appeal, the Respondent No. 1 places the following facts on record which are relevant for the purpose of deciding the present Appeal.

6. I say that the GCZMA was in receipt of a report dated 16/04/2014 from the Deputy Collector &



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S.D.O of Bardez alleging illegal conversion of use of land by Respondent No. 7 in the property bearing Sy.Nos.212/5,6 and 7 of Village Anjuna, Bardez-Goa (hereinafter referred to as the 'said property'). The report stated that a stop work order was issued to Respondent No. 7 and further directed the Mamlatdar of Bardez Taluka to carry out inquiry in the matter who thereafter submitted its report stating that the total area of construction is 458.00 sq.mts.; the said construction is used for commercial purpose and the same falls within 100 mts from the HTL.

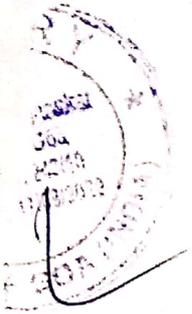


7. That pursuant to this, 2 Expert Members (Dr. Antonio Mascarenhas and Mr. Nitin Sawant) were appointed by the GCZMA to inspect the said property and report the CRZ violations. I say that the expert Members submitted their report to this Office and the GCZMA issued a Show Cause Notice cum Stop Work Order bearing No. GCZMA/ILLE-COMPL/14-15/159/1593 dated 25/11/2014 to the Respondent No. 7.

The Expert Members report inter alia stated that a huge structure under construction was noticed right along the HTL from the base to the top of the cliff at Anjuna. The structure is about three storeys in height is presently being operated as a bar/night club; the same illegal structure was ordered to be demolished by the Hon'ble High Court of Bombay at Goa in 2006. That the issue was also reported in detail by the weekly 'The Goan' on 18 January 2014. A question therefore

was raised as to how can a building that was demolished on the orders of the High Court be reconstructed and used for commercial purposes in the NDZ.

8. I say that in the meanwhile, the GCZMA was also in receipt of a complaint from one Caitano Mendonca, R/o Aradi, Parra, Bardez-Goa informing about CRZ violations by GTDC (Respondent No. 6) in the said properties.
9. I say that in the 115th meeting of the GCZMA held on 04/05/2015, the GCZMA decided to issue a demolition Order to the Respondent No. 7 which was issued on 30/10/2015. I say that thereafter a Communication bearing No. GCZMA/ Ille-Compl/ 14-15/159/1219 dated 19/08/2016 was issued to M/s. Mabarest Hotels Pvt. Ltd. also directing the concerned authorities to carry out the demolition. The said Order of demolition was challenged by the Respondent No. 7 before this Hon'ble Tribunal by filing Appeal No. 62/2016.
10. I say that in the meanwhile, an Application dated 14/02/2017 for Recall/Review of Order dated 30/10/2015 was received from the Goa Tourism Development Corporation Ltd. (Respondent No. 6) informing that the properties bearing Sy. Nos. 212/5, 6 and 7 of Village Anjuna, Bardez - Goa belong to GTDC so also all the structures in that property belong to them and the restaurants structure in the



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aforementioned survey nos. were given on long term lease to M/s. Mabarest Hotels Pvt. Ltd. thus requesting for review of the Order dated 30/10/2015 issued to M/s. Mabarest Hotels Pvt. Ltd. and also requesting to hear the parties in the matter.

11. Accordingly, in the 151st and 155th GCZMA meetings dated 15/06/2017 and 08/08/2017 respectively, the GCZMA decided that in interest of natural justice the GTDC who happens to be the owner of the structure in question has to be heard before passing any Orders.
12. I say that in the 156th GCZMA meeting held on 22/08/2017 wherein the matter was placed for grant of personal hearing in the matter and all concerned were heard, including the Appellant herein, the Respondents Nos. 6 and 7. The GCZMA directed the GTDC to submit all the plans. The GTDC submitted two plans from the Directorate of Survey and Land records along with the permissions from the GCZMA vide Communications dated 07/12/2017 and 29/11/2018.
13. I further say that in it's discussion in the 189th GCZMA meeting held on 04/12/2018 it was decided as follows: "The Authority took note of DSLR report and letter from the applicant dated 05/12/2018 regarding rectification of boundaries superimposition of physical surveyed data in said survey nos. In view of the compliance report filed respondent, authority



decided to conduct a joint mapping of structures as on today vis-a-vis approved plan by officials of Town & Country Planning (TCP), Expert Members (GCZMA) and OSD(GCZMA)".

14. Thereafter a site inspection was carried out by Expert Members (GCZMA) and submitted the report. The said report of Expert Members of GCZMA interalia noted that all corrections to the boundary has been done. The extra/illegal structures have been removed. Hence the Respondent Nos. 6 and 7 have complied with the observations of DSLR on map.

15. That in the GCZMA meeting held on 04/1/2019 after detailed discussion and due deliberation it was decided as follows: "The Authority noted that the respondent had submitted a letter dated 5/12/2018 stating that miss match of certain structures in certain places had been rectified and brought up in conjunction with approved boundaries marked by DSLR in its plan. The Authority observed that the site in question was inspected by Expert Members who have observed demolition of certain structures i.e retaining wall and associated structures on Northern side between contour 32 to 50 and legal boundary is maintained. Further middle portion of stilt level, two rooms between contours 40 to 44 of the DSLR plan have been removed. Further the toilet block between contour 41 to 44 on southern side has been demolished. Further corrections are done to the



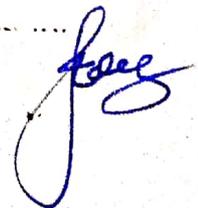
boundary on the North-east side between contours 48 to 50.

16. I say that as such the Authority resolved to accept the recommendations/observations made in the report submitted by Expert Members GCZMA to withdraw demolition order dated 30/10/2015 and Memorandum dated 19/08/2016 issued to M/s Mabarest Hotels Pvt. Ltd. (Nyex Club) in respect of demolition of the illegal construction of the structures carried out by him in the property bearing Sy. No. 212/5, 6 and 7 of Village Anjuna, Bardez-Goa".

17. I say that as seen above, the GCZMA has conducted several site inspections and carried out surveys before dropping the proceedings against the Respondent Nos. 6 and 7.

18. With respect to paragraphs 1 and 2 of the Appeal Memo, the same pertain to addresses for the purpose of service.

19. With respect to paragraphs 1 to 10 of the Appeal Memo, the same deal with facts pertaining to the property in question and the litigation history. I say that pursuant to the Order dated 14.12.2010 passed by the Hon'ble High Court of Bombay at Goa, the same was executed and the illegal erections without permissions were removed.



20. The contents of paragraphs 11 and 12 are a matter of record.

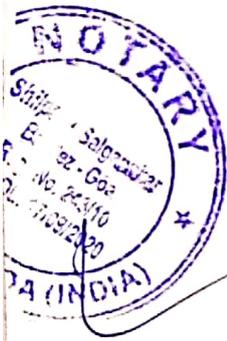
21. With respect to the contents of paragraphs 13 to 39 of the Appeal Memo, the same are facts pertaining to various complaints and proceedings before this Hon'ble Tribunal and other Authorities and warrant no comments.

22. With respect to the grounds 19.1 to 19.3, it is denied that the Appellant was not heard and/or that the principles of Natural justice were violated. I say that the appellant was heard at length by the authority and thereafter the authority verified the position at loco . The authority upon verification position at loco came discharged the respondent herein from the proceedings.

23. With respect to the ground 19.4, it is denied that the Impugned Order is vague and /or suffers from any infirmity . I say the Order is well reasoned. I say that all the maps have all details about the area etc.

24. With respect to the ground 19.5, it is denied that the GCZMA failed to consider the documents enlisted therein.

25. With respect to the ground 19.6, the Appellant would not come within the definition of affected party under Rule 4(3)(a) of the Environment (Protection) Rules and the Act. Hence the ground is baseless and frivolous



26. With respect to the ground 19.6, the powers of the GCZMA to review and recall its own Order are clearly spelt out in constitution and the issue is no longer Res Integra.

27. I state that in view of whatever is stated hereinabove, no relief whatsoever can be granted in favor of the Appellants and the matter may be dismissed.

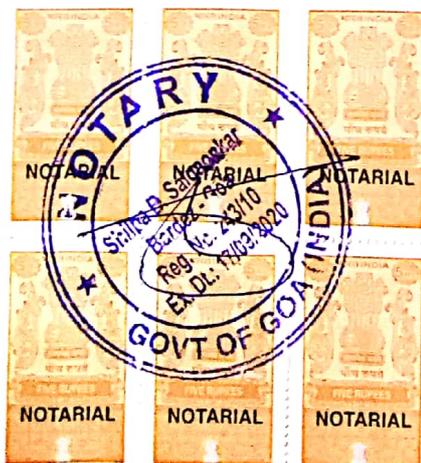
28. I state that whatever has been stated herein above is true to my own knowledge and based on the documents/records available with the office of this respondent to which I have access and the contents of the same which I believe to be true and correct.

Solemnly affirmed at Panaji - Goa

This 11th day of September 2020

PAN CARD N^o
AASPF3664N

[Signature]
11/9/2020
DEPONENT



SOLEMNLY AFFIRMED AND VERIFIED
BEFORE ME BY *[Signature]*
WHO IS IDENTIFIED BEFORE ME
BY *[Signature]* PAN - AASPF3664N
REGISTRATION NO. 2025/100 DATED 11/09/2020
LEGAL NO. _____

[Signature]
SHILPA B. SALGAONKAR
NOTARY AT BARDEZ - GOA
STATE OF GOA-INDIA
REG. NO. 243/10