

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE, AT PUNE

L.A. NO. 80 OF 2024

IN

APPEAL NO. 28 OF 2024 (WZ)



IN THE MATTER OF:

JAMES BARRETO

... APPELLANT

VERSUS

GOA COASTAL ZONE

MANAGEMENT AUTHORITY

& OTHERS

...RESPONDENTS

ADDITIONAL AFFIDAVIT ON BEHALF OF

RESPONDENT NO. 1

GOA COASTAL ZONE MANAGEMENT AUTHORITY

I, Johnson Bedy Fernandes, adult, being the Member Secretary, Goa Coastal Zone Management Authority, having my office at: 4th Floor, Dempo Towers, Patto, Panaji, Goa, do hereby solemnly affirm and state as under:

1. I am the Member Secretary of the Respondent No. 1 Goa Coastal Zone Management Authority (hereinafter referred to as **GCZMA**) in the above-captioned Appeal. I am well-conversant with the facts and circumstances from which the present Appeal arises and am, as such, capable of affirming the present Affidavit.
2. I say that nothing in the present Affidavit may be deemed to be any admission of any content of the above-captioned Appeal filed by the Appellant, unless the same is categorically admitted herein. I further submit that nothing in the above-captioned Appeal may be deemed to have been admitted for want of specific denials.
3. The answering Respondent has filed an Affidavit-in-Reply to oppose the captioned I.A. seeking for stay.
4. I say that the **subject matter of the case is that:**
5. The Goa Coastal Zone Management Authority had received a proposal for temporary Structure for restaurant on the 25/04/2023 by the Appellant James barreto. The Site was inspected by the Expert Member on the 25/05/2023.



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6. In the mean while the Complainant Maria Augusta Francisco Fernandes approached the Hon'ble High Court in Writ Petition No 2580 of 2023 (filing No.) regarding unauthorized construction on the bank of the river Sal in Cavelossim Village of Salcete Taluka in the property bearing Sy No. 106/3(Part) of village Cavelossim Salcete Goa.
7. That as per the Order of the Hon'ble High Court dated 08/11/2023; it is noted that several villagers had filed complaints dated 12/06/2023, 17/06/2023 and 03/07/2023 stating therein that the project proponent Mr James Barreto has started construction work in the property bearing Sy No. 106/3(Part) of village Cavelossim Salcete Goa. Subsequently, as per the Order of the Hon'ble High Court vide order dated 08/11/2023; the project proponent undertook to demolish all the illegal construction erected on site as the same was without any approval from any competent Authority. (Order of the Hon'ble High Court dated 08/11/2023 is marked as "Annexure I")



8. That the Authority through its team conducted site inspection on 11/12/2023; and it was noted that the site was cleared.

9. That as per order dated 08/11/2023 of the Hon'ble High Court in Writ Petition no 2580 of 2023 the Hon'ble Court directed that environmental compensation be levied on the project proponent The Authority noted that the Respondent has not complied with the directions of this Authority. Taking the view that the Appellate Court in various cases has directed the Authority to issue directions to recover Environmental Compensation for the damage caused towards the environmental degradation. The Authority carried out a study on "Environmental Compensation for Coastal Damage through Total Ecosystem Service Values" and thereafter derived a formula to calculate the Environmental Compensation which reads as under:

"Rs.2590/- per sq. mts x no of years x Area in sqmts = Total Environmental Compensation"

The Authority when applying the formulae calculates as
under:





Details of the number of Years: The date of the first complaint dated 12/06/2023 so, till 11th December 2023; it completes 07 months

This Formulae was made applicable to this matter after taking into consideration that the Respondent has carried out the violations in the NDZ area thereby destroying the ecology and biodiversity of the area hence the Authority resolved to calculate the environmental compensation for the violation carried out by using the formulae “Rs.2590/- per sq. mts x no of years x Area insq.mts = Total Environmental Compensation” which works out to $2590 \times 0.7 \times 1186 =$ Rs. 21,50,218/- (Rupees Twenty One Lakhs Fifty Thousand Two hundred Eighteen only).

10. That the Authority issued a Notice of Compliance dated 16/01/2024 to the Applicant (the notice marked as Annexure C in the petition file by Applicant) wherein in the notice the Applicant was put to notice to make payment to the tune of Rs. 21,50,218/- (Rupees Twenty One Lakhs Fifty Thousand Two hundred Eighteen only).

The Authority further clarified that the number of years / days is calculated till 11/12/2023; and if the Appellant i.e the MR JAMES BARRETO wishes to dispute the environmental compensation amount then the Number of years / days will increase till the time the final order on the disputed compensation is sorted out.



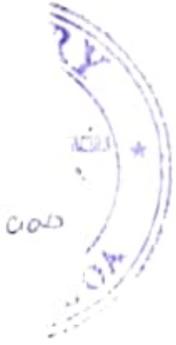
11. That the Appellant before the Authority filed his reply stating that there was no damage caused to the Environment as the structure erected was removed. The Respondent denies that

J ~~no~~ environmental degradation was done by the Appellant.

12. The matter was placed for hearing in various GCZMA Meetings and the Appellant remained present before the Authority and presented his case after which the Authority heard the Appellant and passed the Direction under section 5 of the EPA dated 08/03/2024 which is under challenge.

13. That with regards to para 1 & para 2 of the stay application offers no comments as it is part of the order.

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14. That with regards to para 3 of the stay application offers no comments as it is part of the order.

15. That with regards to para 4 of the stay application states that the stay is unwarranted as the Order of GCZMA dated 08/03/2024 (Annexure A of the Petition) passed by the GCZMA clearly states that, *“the Authority states that the number of years / days is calculated till 11/12/2023; if the Respondents i.e the MR JAMES BARRETO wishes to dispute the environmental compensation amount then the Number of years / days will increase till the time the final order on the disputed compensation is sorted out thereby varying the final amount due offers no comments as it is part of the order”*.

(as mentioned on 2nd last page of the order 08/03/2024).

The Respondent states that the Appellant will have to pay the additional amount as mentioned in the Order.

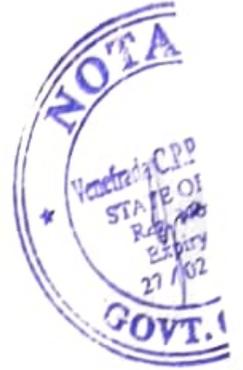
16. That with regards to para 5 of the stay application the Respondent states that the Appellant has cause grave damage to the Environment and moreover, as per order dated 08/11/2023 of the Hon'ble High Court in Writ Petition no 2580 of 2023 the Hon'ble Court directed that environmental

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compensation be levied on the project proponent i.e the Appellant, hence the same was levied after giving the Appellant a hearing in the matter.

17. The Authority in its 385th GCZMA Meeting held on 13/02/2024 had observed as under:, “ the proceeding is that, “*The Authority perused the representation made by the Respondent whereby he is disputing the Environmental Compensation levied upon him which is totalling to Rs. 21,50,218/- (Rupees Twenty One Lakhs Fifty Thousand Two hundred Eighteen only). It is the contention of Respondent that he had erected the offending structure only on an area of 197 sq mts. But the Environmental Compensation has been levied for an area of 1186 sq mts. which is the total area of plot bearing Survey No. 106/3 part of Village Cavelossim. He hence prayed that the decision taken by Authority may be reviewed and that the formula applied for levying environmental compensation be limited to only 197 sq mts.*

The Hon'ble High Court in the matter has vide order dated 12/02/2024 has recorded that the computation and recovery of



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the environmental costs will be disposed of by 29/02/2024. Hence the Authority proceeds to decide as under",

"The Authority in the first place has taken into consideration the total area of 1186 sq mts. on account of the fact that the offender has not limited his illegal construction only to the extent of 197 sq mts. but has also constructed a illegal compound wall around the property without obtaining permission from any competent Authority and the compound wall was demolished and the area of illegal construction was restore upon the directions of the Hon'ble High Court and hence the entire property has been taken in to consideration to determine the Environmental Compensation. A similar view was also taken by this Authority in the matter of M/s Shrem Resorts Pvt Ltd., (Now Zon Hotels) in the 301st GCZMA Meeting.

The Authority has to have a consistent view and cannot be swayed away with the petition moved by the Respondent and hence rejects the plea made by the Respondent and the Respondent shall deposit the penalty of Rs.21,50,218/- (Rupees Twenty One Lakhs Fifty Thousand Two hundred Eighteen only); within a period of 10 days from the receipt of the directions,

[Signature]
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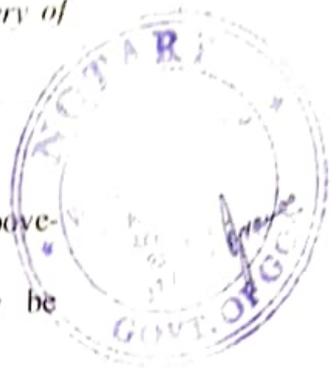
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failing which coercive steps will be undertaken for recovery of the said penalty even amounting to attaching of the property.

18. In light of the aforesaid, it is submitted that the above-captioned I.A. filed by the Appellant may kindly be dismissed with costs.



[Signature]
DEPONENT

VERIFICATION

I, the abovenamed Deponent, do hereby state on solemn oath and affirmation that the facts stated hereinabove in this Counter Affidavit are true and correct to the best of knowledge, information and belief, and nothing has been concealed.

Verified at Panaji on this 08th day of August, 2024.

Solemnly affirmed before me
Johnson Bedy Fernandes
Who is identified before me by

At Panjim - Goa

Sr. No. 113/08/2024
Date. 08/08/2024

[Signature]
Venefrada C.P.P.B Gracias
Advocate & Notary Goa State

[Signature]
DEPONENT



908-WP 2580-23 (F)

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IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 2580 OF 2023 (Filing No.)**

MARIA AUGUSTA
FRANCISCO FERNANDES ... Petitioner

Versus

STATE OF GOA THROUGH
CHIEF SECRETARY AND 2 ORS. ... Respondents

Mr Athnain Naik and Ms Krupa Naik, Advocates for the Petitioner.

Mr D. Pangam, Advocate General with Ms Akshata Bhat, Additional
Government Advocate for Respondent Nos.1 and 3.

Mr R. Menezes and Mr A. Kudtarkar, Advocates for Respondent No.2.

Mr B. Rodrigues, Advocate for Respondent Nos.4 and 5.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ**

DATED : 8th NOVEMBER 2023

P.C.

1. Heard Mr Athnain Naik, learned counsel for the Petitioner. Mr D. Pangam, learned Advocate General appears along with Ms A. Bhat, learned Additional Government Advocate for Respondent Nos. 1 and 3. Mr R. Menezes appears for Respondent No.2 and Mr B. Rodrigues appears for Respondent Nos.4 and 5.
2. Rule. The rule is made returnable immediately at the request and with the consent of the learned counsel for the parties.

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3. The Petitioner complains that Respondent Nos. 4 and 5, without obtaining any permission either from the GCZMA or the Panchayat have put up an unauthorized construction on the bank of river Sal. The photographs of this construction are placed on record at Annexure A Colly from pages 23 to 27.
4. Mr A. Naik pointed out that the Petitioner and several villagers have filed complaints dated 12.06.2023, 17.06.2023, and 03.07.2023 soon after this unauthorized construction commenced right on the bank of river Sal in an area which is directly affected by the CRZ Notification. Based on the Petitioner's complaints, the Panchayat of Cavelessim issued a stop work order dated 23.06.2023.
5. Mr B. Rodrigues states that no sooner the stop work order was received, Respondent Nos.4 and 5 stopped the construction work.
6. On 18.07.2023, even the Deputy Director of Panchayats wrote to the Block Development Officer to take action based on the Petitioner's complaints. On 28.07.2023, the Petitioner filed yet another complaint. On 28.08.2023, the Block Development Officer required the Petitioner to submit the address of the party who was carrying out illegal construction.
7. From the correspondence between the Deputy Director of Panchayats and the Block Development Officer, it is apparent that both were reluctant to take action on the serious complaints made by the

Petitioner and both were only interested in passing a buck to each other. In all such matters, due to such approach of the statutory authorities, the parties continue with wholly unauthorized constructions and thereafter raise a plea of *fait accompli*. If the Panchayats, Deputy Directors of Panchayats, and the BDOs act promptly and stop illegal constructions soon after they receive complaints, this menace of the mushrooming of illegal constructions could at least be contained, if not altogether eliminated. But simply writing letters to each other and doing nothing to enforce the directions is only encouraging this menace.

8. Hereafter the Deputy Director of Panchayats and the Block Development Officer must treat the complaints about illegal constructions, particularly in eco-sensitive zones affected by CRZ Notification with all seriousness they deserve. If on account of bureaucratic delay on the part of the Deputy Director of Panchayats and the Block Development Officer, the constructions come up in spite of repeated complaints, the Director of Panchayats or the respective disciplinary authorities must initiate proceedings against the Deputy Directors and the Block Development Officers for dereliction of their duties. In the present case, if these authorities had acted swiftly, the illegal construction in the eco-sensitive zone would not have come up to the extent it has.

9. On 19.10.2023 the Petitioner complained to the Panchayat that despite the stop work order, the 4th and 5th Respondents were continuing with the work. Mr A. Naik submitted that because the

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Panchayat was also not taking any further action in this matter, this petition had to be instituted.

10. Initially, Mr B. Rodrigues, learned counsel for Respondent Nos.4 and 5 stated that the Respondents he represents have permission dated 04.11.2023 from the GCZMA. The learned Advocate General appearing for the GCZMA stated that no such permission has been granted to the 4th and 5th Respondents. The learned Advocate General further stated that looking at the photographs in Annexure A, there is no question of granting any permission to Respondent Nos.4 and 5 to put up such permanent structures involving cement, concrete, and even some foundations right on the river bank. Thus, the statement made before us by Mr Rodrigues, no doubt on instructions, was far from accurate.

11. Mr Rodrigues now says that he has instructions to say that some permission was kept ready on 04.11.2023, but the competent Authority did not sign the same. As long as permissions are not signed and communicated, they can hardly be regarded as permissions. Be that as it may, the 4th and 5th Respondents admitted to have started the construction work in April 2023. This means that the construction works were started almost six months before the so-called unsigned permission dated 04.11.2023 was allegedly kept ready. This is wholly inappropriate and calls for stern action. The learned Advocate General has categorically stated that no such permission is issued and in any case,

no such permission to put up a structure of the kind indicated in the photographs at Annexure A could be issued by the GCZMA.

12. Mr Rodrigues stated that the 4th and 5th Respondents applied for permission to the GCZMA on 25.04.2023 and no sooner, such permission was applied for, the 4th and 5th Respondents completed the construction works as seen in the photographs at Annexure A. He submitted that the GCZMA's officials inspected the site on 25.05.2023 and payments to obtain a license were made on 30.10.2023. Mr Rodrigues places before us a site inspection report (proposal), which according to him bears the signature of the Member Secretary of GCZMA. He submitted that this site inspection report shows that the structure is "temporary".

13. We have perused the application dated 25.04.2023 and the site inspection report produced by Mr Rodrigues. If the GCZMA's officials inspected the site on 25.05.2023, then we are quite surprised as to how they did not see the wholly unauthorized construction put up by the 4th and 5th Respondents, who were possibly super confident of obtaining approval from the GCZMA. Mr Rodrigues stated that the construction was put up no sooner than the application dated 25.04.2023 was made by the 4th and 5th Respondents. This means that this unauthorized construction was very much at the site when the GCZMA's officials inspected the site on 25.05.2023. On seeing such a structure which constitutes a gross breach of the CRZ Notification, the GCZMA's officials should have immediately sprung into action for the removal of

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this illegal structure instead of further processing the 4th and 5th Respondents' application.

14. Accordingly, we direct the Member Secretary of the GCZMA to produce files concerning the application made by the 4th and 5th Respondents and the details of the site inspection report and the persons who actually carried out such site inspection. The Member Secretary must also state on affidavit whether putting up of such construction in eco-sensitive areas affected by the CRZ Notification is acceptable to the GCZMA and its officials even before any permissions are granted by the GCZMA regarding the same. Such an affidavit must be filed by 28.11.2023.

15. Faced with all this, Mr Rodrigues, based upon the instructions from Respondent Nos.4 and 5 states that the illegal structure will be demolished within two weeks and the property will be restored to its original condition. The fourth Respondent is present in the Court. Accordingly, the statement made by Mr Rodrigues is accepted as an undertaking on behalf of the fourth and the fifth Respondents to this Court and these Respondents will have to comply with this undertaking. The demolition and the restoration works will have to be carried out and completed by the fourth and fifth Respondents within two weeks and such demolition and restoration works will have to be monitored by the GCZMA.

16. The GCZMA's officials should remain present at the site on 09.11.2023 at 11.00 a.m. because Mr Rodrigues states that Respondent Nos.4 and 5 will commence the work of demolition tomorrow itself.

The GCZMA must determine the environmental costs involved and recover the same from Respondent Nos.4 and 5. The 4th and 5th Respondents and the GCZMA must file a compliance report in this Court along with photographs by 28.11.2023.

17. Mr Rodrigues submits that once the demolition and restoration are complete and the environmental costs are paid to the GCZMA, liberty should be granted to Respondent Nos.4 and 5 to apply for fresh permission to put up the purely temporary structure and not a kind structure that is seen in the photographs at Annexure A. If the demolition and restoration are indeed completed within 15 days as undertaken and if the environmental costs are also paid by Respondent Nos. 4 and 5, then Respondent Nos. 4 and 5 will have the liberty to apply to the GCZMA for fresh permission to put up only temporary structure.

18. The GCZMA should consider whether such an application can be allowed in terms of law and thereafter, take a decision on such an application. However, the GCZMA must ensure that the unauthorized construction put up by Respondent Nos.4 and 5 in the highly eco-sensitive zone affected by CRZ Notification is demolished, the property is restored and even the environmental costs are paid before any decision is taken on the fresh application.

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19. We have recorded the learned Advocate General's statement that no permissions have been issued or would be issued to Respondent Nos.4 and 5 based on their pending application. We appreciate this stance because the parties cannot apply and proceed with the construction even before the permissions are granted on the basis that such permission would be granted. There are cases where permission to put up temporary structures is applied but permanent cement, concrete, and steel structures are put up, often without any permission or in breach of the permission conditions. In any case, as urged by the learned Advocate General, there is no question of GCZMA granting such permission to put up the permanent structure with cement, concrete, and steel on the river bank as have been unauthorizedly put up by Respondent Nos.4 and 5.

20. Stand over to 29.11.2023 to consider compliance reports and GCZMA affidavit. All concerned to act on an authenticated copy of this order.

BHARAT P. DESHPANDE, J

M. S. SONAK, J

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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.2580/2023 (F)

MARIA AUGUSTA FRANCISCO
FERNANDES ... PETITIONER

Versus

STATE OF GOA THROUGH CHIEF
SECRETARY & 2 ORS. ... RESPONDENTS

Mr Abhijit Gosavi with Ms Krupa Naik, Advocates for the Petitioner.
Mr D. Pangam, Advocate General with Ms A. Bhat, Additional
Government Advocate for GCZMA and the State.
Mr Ryan Menezes, Advocate for Respondent No.2.
Ms A. Fernandes, Advocate for Respondent Nos.4 and 5.

**CORAM: M. S. SONAK &
VALMIKI MENEZES, JJ.**

DATE: 19th MARCH 2024

P.C.:

1. Heard Mr Abhijit Gosavi for the petitioner, Mr D. Pangam, learned Advocate General who appears along with Ms A. Bhat, AGA for the Goa Coastal Zone Management Authority (GCZMA) and the State, Mr Ryan Menezes for respondent no.2 and Ms A. Fernandes for respondent nos.4 and 5.
2. Learned AG refers to the compliance report dated 15.03.2024 on behalf of the GCZMA. He submits that directions have been issued under Section 5 of the Environment (Protection) Act, 1986 for recovery of an amount of ₹21,50,218/- from the fourth respondent.

3. Learned AG states that if this order is not complied with by the fourth respondent or if there is no interim or final order obtained in the meanwhile, these directions dated 08.03.2024 will be executed and the amount of ₹21,50,218/- will be recovered.
4. Mr Gosavi, learned counsel for the original petitioner confirms that the offending structure has already been demolished and the GCZMA has filed a compliance report on 12.02.2024 in this regard.
5. Now that the offending structure has been demolished and the GCZMA has also made an order for recovery of the environmental costs, we close these proceedings. Even otherwise, this petition had already been disposed by our order dated 29.11.2023.

VALMIKI MENEZES, J.

M. S. SONAK, J.

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