

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE, AT PUNE

APPEAL NO. 19 OF 2024 (WZ)

IN THE MATTER OF:

ARAMBOL BEACH PLAZA RESORT ... APPELLANT

VERSUS

GOA COASTAL ZONE

MANAGEMENT AUTHORITY

& OTHERS

...RESPONDENTS

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-

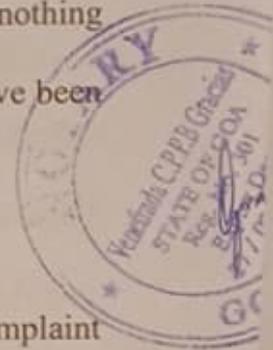
conversant with the facts and circumstances from which the present Appeal arises and am, as such, capable of affirming the present Affidavit.

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.

Brief Facts of the Case:

The office of the Respondent No. 1 received a complaint from from Dema C Sawant, r/o 6A/S4, Model Legacy, Taligaon, Panaji stating therein that "Arambol Plaza Beach Resort" has carried out constructions of cottages and RCC Building; in Sy. No.72/6 at Arambol Village, Pernem, Goa. The office of the Respondent No. 1 forwarded the complaint to the District Level Committee on the 11/02/2019.

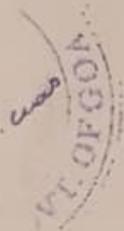
The office of the Respondent No.1 issued a Show Cause notice on the Appellant hotel Arambol Plaza bearing No. GCZMA/N/Ille-Compl/18-19/141/1461 dated 29/11/2021 to which the present Appellants filed their reply to the Show



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Cause Notice along with documents. The matter was placed in various meeting of the GCZMA and finally in the matter was decided in the 364th GCZMA Meeting thereby giving a reasoned decision after considering all the documents and written arguments. *(The Respondent seeks to rely on the order of demolition which is already placed on record by the Appellants)*

3. The Respondent No. 1 states that with regards to para 1,2,3 and 4 of the petition we seek to offer no comments as it is a matter of record and the same do not need further comment of the present Respondent.
4. The Respondent No.1 states that with regards to para 5 of the petition it is true that the complaint forms the basis to issue the Show Cause Notice.
5. The Respondent No1 states that with regards to para 6 and para 7 it is a matter of record and is also stated in the Order of Demolition. The Respondent states that the Authority issued a Show Cause notice to the Respondent hotel Arambol Plaza bearing No. GCZMA/N/Ille-Compl/18-19/141/1461 dated 29/11/2021 to which the Respondent filed his reply to the Show Cause Notice along with

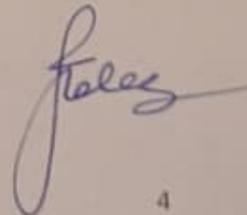


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documents. The Respondent No 1 also stated that the Regularization application has been filed by the Appellant on the 16/02/2022 which is after issuance of the show cause notice. Keeping in mind that the application for regularization is filed after the SCN has been issued and the structure being used for commercial purpose there is no provisions for regularization of an illegal structure as per the CRZ Notification 2011.

6. The Respondent No. 1 states that para 7 and para 8 of the petition are a matter of record and the same do not need further comment from the present Respondent No.1.
7. The Respondent No. 1 states that para 9 and para 10 of the petition is a matter of record and the same has been discussed and decided in the 317th GCZMA Meeting and is reproduced

[AND WHEREAS, the matter was placed in the 317th GCZMA Meeting held on 28/07/2022; "the Authority perused the replies of the Complainant and the Respondent and noted the preliminary objections raised by the Adv for the Respondent with regards to



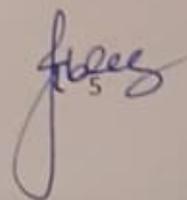
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(i) That since the Complainant had withdrawn the Complaint based on which the Show Cause Notice is issued; the Authority cannot proceed with the Show Cause Notice.

The Authority with regards to the 1st issue, had perused the records present in the file and observed that the Complainant had filed a Complaint before the Authority, based on which a Show Cause Notice was issued.

The Authority noted that in the initial reply filed by the Respondent, the Respondent had neither produced a copy of this letter nor taken a stand with reference of this letter and on the other hand the Respondent had sought for regularization, as the structure on site is a construction whose legality is under question and the use is for commercial purpose.

Nevertheless, the Authority has the powers to take suo moto cognisance of the illegalities carried out in its jurisdiction and conduct inquiries as it pertains to environmental issues which further concerns the destruction of the Environment at large. The Authority noted that the assistance was sought from the Complainants as far as identification of the illegalities were

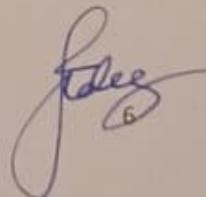
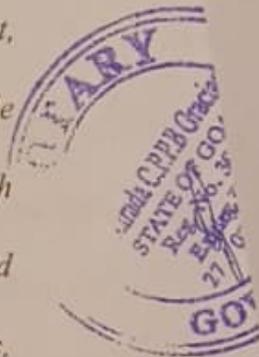

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concerned and then subsequently, proceed based on the documentary evidence produced by the violators so as to come to a logical conclusion in deciding the legality of the Structure.

Further inquiry was conducted by the DLC North through TLC Pernem who had conducted inspection and submitted the report of violation and hence on this count also the Authority has power to act and decode the case of violation.....

NOW THEREFORE, the GCZMA in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 (Central Act 29 of 1986) read with sub-rule (3) (a) of Rule 4 of the Environment (Protection) Rules 1986, and read with powers vested with the GCZMA vide Order S.O. 3975 (E) dated 31/10/2019 issued by the Ministry of Environment & Forests, Government of India, hereby directs the Respondent to prove that the illegalities as mentioned in the Show Cause Notice dated 29/11/21 and file the appropriate reply so as to proceed with regards to the blatant violations in this matter..]

This interim order has been relied upon by the Appellant and marked as Annexure A6 of the petition.

8. The Respondent No.1 states that the contents of para 11 of the petition are denied and the Appellant is trying to seek lame excuse to quash the order. The main point of consideration is the environmental damage caused and whether the Appellants have taken permission to erect the structure which is operated as a commercial establishment with or without permission. The Respondent No.1 has given a reasoned order based on the documents placed on record by the Appellant and has also considered the Regularization application and in the order has also stated that the regularization application is dismissed.
9. The Respondent No.1 states that the para 12 A and 12 B of the petition the Respondent No.1 states that via the Interim order dated 01/08/2022 and as stated in the preceding para 7 of this reply the Authority has decide to proceed with the matter as the Authority has the powers to take suo moto cognisance of the illegalities carried out in its jurisdiction and conduct inquiries as it pertains to environmental issues which further concerns the destruction of the Environment at large. The Authority noted that the assistance was sought from the Complainants as far as identification of the



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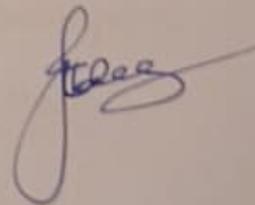
illegalities were concerned and then subsequently, proceed based on the documentary evidence produced by the violators so as to come to a logical conclusion in deciding the legality of the Structure. Further the Authority also directed an inquiry to be conducted by the DLC North through Taluka Level Committee, Pernem who had conducted inspection and submitted the report of violation and hence on this count also the Authority has power to act and decode the case of violation. Finally the Authority directed the Appellant to prove that the illegalities as mentioned in the Show Cause Notice dated 29/11/21 and file the appropriate reply so as to proceed with regards to the blatant violations in this matter..

10. The Respondent states that the contents of para 12(C) are denied as false and trying to evade demolition. The Respondent No.1 draws the attention to the order dated 01/08/2022 wherein the Authority via its interim order had decided this issue and arrived at a decision to direct the Appellant to prove that the illegalities as mentioned in the Show Cause Notice dated 29/11/21 and file the appropriate reply so as to proceed with regards to the blatant violations



in this matter. Now the point that needs to be prove is that the structure is legally constructed with valid permissions or otherwise. The Appellant has failed to produce any documentary evidence to prove the legality and as such the Authority arrived at a conclusion as reiterated in the Order of demolition dated 16/01/2024. Which is marked as A-1 Colly to the petition.

11. The Respondent states that the contents of para 12(D) of the petition are denied as the Appellant were directed to produce documents to substantiate his claim to prove that the structure was prior to 1991 or not. Based on the documents produced by the Appellants the Authority has arrived at a conclusion and passed the demolition Order dated 16/01/2024. As the claims of the Appellants were that the structure should be regularized and he moved an Application to regularize the structure after the SCN was issued. Hence it is an admission made by the Appellant that he does not have any permission for the structure operating as a Hotel (Arambol Plaza Beach Resort) and hence he was seeking for regularization.



12. The Respondent states that the contents of para 12(E) and para 12 (H) of the petition are denied. The Respondent No.1 had considered the documents of the House tax receipt and have observed that the House tax receipt produced by the Appellants was a mere documents which did not prove the legality of the two structures as it did not contain the survey number nor did the Appellants produce any construction licence issued by the Village Panchayat nor approved plan to show that the structures were legal. The Respondent No.1 states that the very fact the Appellant moved the application to regularize the structure indicates that the structure is erected without any permission and this amounts to an admission on the part of the Appellant.
13. The Respondent states that the contents of para 12(F) of the petition are denied. The certificate issued again speaks of only the House Number but does not give any correspondence to the survey number in which the structure is located.
14. The Respondent states that the contents of para 12(G) of the petition are denied. The Respondent seeks to rely on the demolition order dated 16/01/2024. Moreover, the



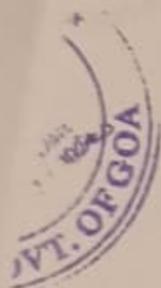
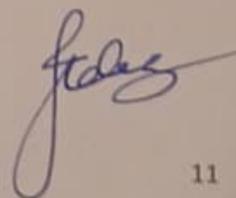
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illegalities were clearly mentioned in the Report prepared by the District level committee and the admission made by the Appellant clearly indicate that the structure is illegal and is being used for commercial purpose.

15. The Respondent states that the contents of para 12 (I) of the petition are denied. If one peruses the application filed by the Appellant it states, "*Regularization of existing structures on plot bearing Sy. No. 72/6 House No 505 and 91 situated at Arambol, Pernem Goa*" (Application is annexed at pg 41 of the paper book submitted by Appellant).

This indicates the structures sought for regularization is the same which is the subject matter of the demolition order.

16. The Respondent states that the contents of para 12(J) of the petition are denied.
17. The Respondent states that the contents of para 12(K) of the petition are denied. The stand now taken in this ground (K) by the Appellant is that only one structure bearing House no 91 is legal but in the preceding para in Ground (E) has stated that the House No 505 was later changed to house no 91. The Appellant is trying to confuse this Hon'ble Tribunal



by now stating that House No 505 was later changed to house no 91.

18. The Respondent states that the contents of para 12(L) of the petition are denied and offers no comments and reserves rights to reply accordingly if permitted by this Hon'ble Court.

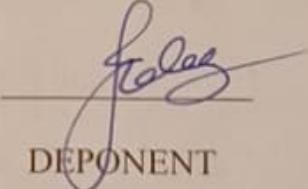
19. The Respondent No 1 relies on its demolition Order dated 16/01/2024.

20. The Grounds set out by the Appellants have to be dismissed for the reasons mentioned herein above in the reply and moreover on admission that the Appellants have erected the structures without any approved plans and moreover seeking regularization of the illegal structures erected in Sy No 72/6 of Arambol Village.

21. The contents mentioned herein above are based on records and the same are true and correct to the best of my knowledge.

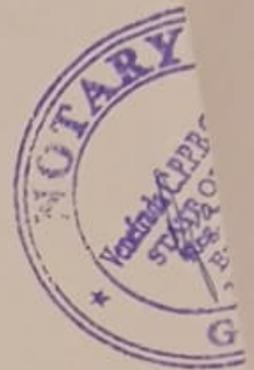
Panaji

01/07/2024



DEPONENT

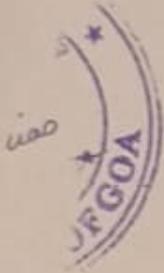
MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
PANAJI - GOA



VERIFICATION

I, the above named Deponent, do hereby state on solemn oath and affirmation that the facts stated herein above 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 01st day of July, 2024.



[Signature]
DEPONENT
MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
PANAJI - GOA

Executed before me
At Calangute Bardez - Goa
Reg. No. 101/07/2024/P
Dated: 01/07/2024

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