

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WZ), SITTING AT PUNE**

Appeal No.: /2022

Mr. Perry Fernandes

..... Appellant

AND

Goa Coastal Zone Management

Authority & Ors.

..... Respondents

AFFIDAVIT -IN- REJOINDER

I, Mr. Perry Fernandes, 43 years of age, son of Filomeno D. Fernandes, r/o H. No. 448, Mobor, Cavelossim, Salcete – Goa, the Appellant, do hereby on solemn affirmation state and submit as under:-

1. I have got, read and understood the contents of the affidavit in reply dated 21/11/2022 filed by the Respondent No.1 and the affidavit in reply dated 19/11/2022 filed by the Respondent No.5. I say that the said Respondent Nos. 1 and 5 have made statements which require rebuttal and therefore I crave leave to file the present affidavit in rejoinder.
2. I reiterate, reaffirm and maintain whatever is stated in the memo of appeal, application for interim relief and the replies filed by me before the Respondent No. 1 in proceedings bearing Case No.

Perry

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GCZMA/H.CM/WPNO108/2021/20-21/13 and deny whatever contrary and / or inconsistent to the case set up by me.

Dealing with the affidavit in reply dated 21/11/2022 filed by the Respondent No.1.

3. With reference to the contents of paras 3, 4, 5, 6 and 7 of the affidavit in reply dated 22/11/2022, I maintain that the impugned order is illegal and perverse for the reason and the grounds raised in the memo of appeal. The statement that there is illegal construction of RCC Frame with plinth height of 0.50 mts. is denied in the manner pleaded. It is denied that my structure is illegal. I say that I have given the details with regards to my structure being in existence in paras 8, 12 and 15 of the memo of appeal and I crave leave to reiterate the said contents. I say that the said structure is in existence since prior to the year 1970 and therefore would be protected. It is denied that the Appellant has not produced any documents showing the existence of the said structure prior to 1991. It is denied that the said structure is illegal. I say that the said structure being in existence prior to the year 1991, the contentions of the Respondent No.1 in para 5 are disputed. I say that the Respondent No. 1 has not considered the case set up by the Appellant as also the documents referred / relied by me and therefore have



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erroneously held the said structure to be illegal. I reiterate that the said structure is in existence much prior to the 19/02/1991. The contentions of the Respondent No. 1 with reference to the CRZ Notification 2011, the same are disputed. I crave leave to rely on the true and proper interpretation of the provisions of CRZ Notification. I submit that the said structure being in existence prior to the years 1991, the contentions of the Respondent No. 1 would not be attracted and / or applicable. It is denied that the illegal construction has taken place in the year 2017. I say that it was my case before the Respondent No. 1 and also before this Hon'ble Authority that there was a bar and restaurant in the said structure which had the permission from the Excise Department as also from the Panchayat. I say that the permissions issued by the Village Panchayat of Cavelosim are at page 69 and 70 of the paperbook whereas a challan issued by the Excise Department to my father Filomeno D. Fernandes is at page 72 of the paperbook. I say that the existence of the said structure is also evident from demand and collection register maintained by the Village Panchayat of Cavelosim for the year 1969 - 70 is at page 55 to 58 of the paperbook. I say that the existence of the said structure bearing house no. 448 would be further evident from the plan of the premises which was produced before the excise department at the time of

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 applying for the permission for sale of IMFL and CL for consumption of restaurant premises at house no. 448.

Annexed hereto and marked as **Annexure A** is the copy of the Plan of the said structure produced before the Excise Department, copy of which is obtained under Right to Information Act from the Excise Department. Alongwith the same plan, I crave leave to produce a legible copy.

In view of the above, I deny the contention of the Respondent No. 1 that the said structure bearing house no. 448 is illegal as alleged or otherwise. I submit that the existence of the said structure cannot be disputed. I submit that the contention of the Respondent No. 1 with regards to the entries in the Form I & XIV are misconceived.

4. With reference to the contents of para 8 of the affidavit in reply dated 22/11/2022, I say that the complaint filed by the Respondent No. 5 are frivolous, baseless and devoid of merits. I say that the Respondent No. 5 has no locus to maintain the said complaint. I say that the Respondent no.5 has filed complaint with malafide intentions and for extraneous reasons. The contents of the complaint dated 20/01/2021 and email dated 22/01/2021 are denied. The so called description of the structure as referred to by the Respondent No. 5 is disputed.



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Without prejudice, I submit that contents of the complaint of Respondent No. 5 would indicate that the existence of the said structure, though I do not agree with the alleged dimensions referred by the Respondent No.5.

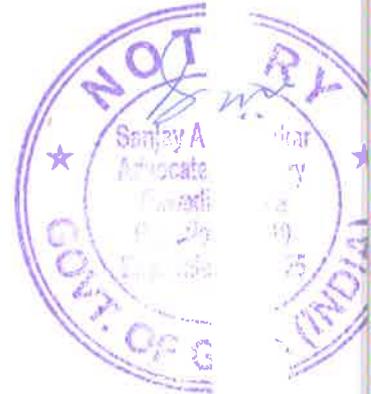
5. With reference to the contents of para 9 of the affidavit in reply dated 22/11/2022, I say that the subject matter of the order/s issued by the Village Panchayat of Cavelossim are subject matter of the Panchayat Appeal filed by me before the Additional Director of Panchayat which appeal is pending. I say that the Additional Director of Panchayat was pleased to grant interim relief vide order dated 18/04/2022 in Case No. ADP/II/PA No. 76/2022.
6. With reference to the contents of para 13 of the affidavit in reply dated 22/11/2022, I say that the documents produced by me before the Respondent No.1 are neither dealt with nor considered in the impugned order. I say that the documents referred to in para 13 would clearly indicate the existence of the said structure prior to 1991. It is denied that the documents produced by me did not prove the existence of the said structure. I say that the reasons and / or the contentions of the Respondent No. 1 in the said para with regards to the documents relied by me are misconceived and at any rate as an afterthought, as such denied. It is denied that the

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structure in question was under construction and was a new structure.

7. With reference to the contents of para 15 of the affidavit in reply dated 22/11/2022, I say that the site inspection report dated 08/03/2021 does not indicate the factual position at loco. I dispute the site inspection report 08/03/2021. The inspection report dated 08/03/2021 does not depict the factual position at loco. The contention of the expert members of the said structure being new illegal structure is denied. It is denied that there are two distinct structures as alleged by the Respondent No. 1. The contentions of the Respondent No. 5 in his written submissions dated 22/06/2021 as referred to by the Respondent No.1 are denied and disputed. I submit that the written submissions dated 22/06/2021 are devoid of merits.
8. With reference to the contents of para 18 of the affidavit in reply dated 22/11/2022, I say that though the Respondent No. 1 has made reference to my contention in reply dated 24/06/2021, the impugned order does not indicate the same having being dealt and considered in accordance with law.
9. With reference to the contents of para 20 of the affidavit in reply dated 22/11/2022, I say that the claim that the said structure is a new structure and the same being illegal is denied. The plan forwarded



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by the DSLR and the inspection report dated 16/08/2021 are disputed.

10. With reference to the contents of para 21 of the affidavit in reply dated 22/11/2022, I say that the reference and or reliance placed by the Respondent No. 1 on the corrigendum dated 16/11/2021 is misplaced. At any rate, I was not heard and / or notified prior to the issuance of the said corrigendum. It is denied that the structure in question is a new structure.

11. The contention of the Respondent No. 1 in para 22 in the respectful submissions of the Appellant, the same would be de hors the records. I deny that the Inspection Report and the plan submitted by the Respondent No.5 would support the contention of the Respondent No.1 or for that matter the Respondent No.5.

12. With reference to the contents of para 24 of the affidavit in reply dated 22/11/2022 are denied.

13. With reference to the contents of para 25 of the affidavit in reply dated 22/11/2022, I submit that the conclusions of the DLC are untenable in law. The recommendation made by the DLC vide its report dated 18/11/2021 are untenable and without any basis.

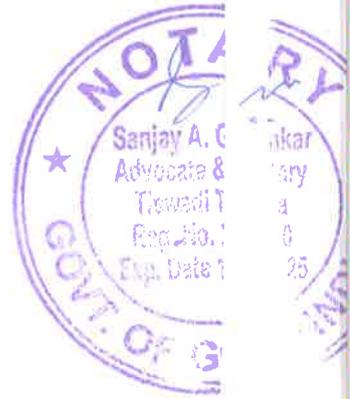
14. With reference to the contents of para 26 of the affidavit in reply dated 22/11/2022, I submit that there is no admission in the manner sought to be contended by the



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Respondent No.1. I say that the memo of appeal and more particularly paras 8 and 12 indicate my case. it is denied that the Appellant has carried out new construction as alleged.

15. With reference to the contents of para 27 of the affidavit in reply dated 22/11/2022, I submit that the impugned order for the reasons mentioned and the grounds raised in the memo of appeal is illegal and liable to be quashed. I submit that the Respondent No. 1 has failed to consider my case, as also the documents relief by me and on an erroneous conclusion has ordered demolition of my existing structure.
16. With reference to the contents of para 28 of the affidavit in reply dated 22/11/2022, I submit that an attempt was made by the Respondent No. 1 to defeat my rights including the right to appeal before this Hon'ble Tribunal by issuing the Order dated 09/03/2022.
17. With reference to the contents of paras 29 and 30 of the affidavit in reply dated 22/11/2022, I say that the reasons given by the Respondent No.1 for dismissing my review are illegal and perverse.
18. With reference to the contents of paras 31, 32, 33 and 34 of the affidavit in reply dated 22/11/2022, I submit that the subject matter of the impugned order is pending adjudication before this Hon'ble Tribunal in a statutory appeal filed by me.



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19. With reference to the contents of para 37 of the affidavit in reply dated 22/11/2022 are denied. I submit that the impugned order is liable to be quashed and set aside for the reason submitted in the memo of appeal.

20. With reference to the contents of para 41 of the affidavit in reply dated 22/11/2022 are denied. I say that the ISLR Plan is disputed. The ISLR plan does not depict the factual situated at loco. It is denied that the old structure appearing in the old cadastral plan is distinct from the new construction / structure. The contention that the sketch attached to the inspection report dated 02/03/2021 inadvertently mentioned H. No. 448. The recommendations of DLC in its report dated 18/11/2021 are illegal and perverse.

21. The contentions of the Respondent No. 1 in para 42 of the reply dated 22/11/2022 are denied. I maintain that the Respondent No.1 has failed to consider my case and the documents produced by me from its proper prospective and therefore have erroneously and illegally ordered demolition of a legal and existing structure. The impugned order is therefore liable to be set aside and the appeal allowed.

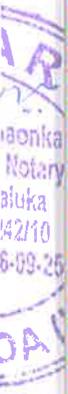
Dealing with the affidavit-in-reply dated 19/11/2022 filed by Respondent No. 5

22. The contentions of the Respondent No. 5 in para 4 of the Reply dated 19/11/2022 are denied. The allegations



and / or the claims made by the Respondent No.5 in the reply dated 19/11/2022 and the document at Annexure A Colly are denied and disputed.

23. The contentions of the Respondent No. 5 in para 5 of the Reply dated 19/11/2022 are denied. The allegations and / or the claims made by the Respondent No.5 in the reply dated 19/11/2022 and the document at Annexure B Colly are denied and disputed.
24. The contentions of the Respondent No. 5 in para 6 of the Reply dated 19/11/2022 are denied. The claims made by the Respondent No.5 in the reply dated 19/11/2022 are denied in the manner pleaded. The contents of complaint dated 01/02/2021 are disputed.
25. The contentions of the Respondent No. 5 in para 7 of the Reply dated 19/11/2022 with reference to the alleged illegal work are denied. It is denied that despite the directions issued by the Hon'ble High Court, the Appellant carried out further illegal works in violation of the CRZ Regulations. The contents of complaint dated 28/02/2022 are denied.
26. With reference to the contentions of Respondent No. 5 in para 11 of the reply dated 19/11/2022 with respect to the dimensions and / or nature of construction, the same are denied in the manner pleaded. The photographs referred by the Respondent No.5 are disputed.



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27. The contents of para 13 of the reply dated 19/11/2022 are denied. I have produced documents showing the existence of my structure.

28. With reference to the contentions of Respondent No. 5 in para 15 of the reply dated 19/11/2022, the plan dated 26/08/2021 prepared by the ISLR is disputed as the same does not show the factual situation at loco. Without prejudice it is submitted the said plan shows 3 structures in the property bearing Survey No. 97/2 whereas factually there are only 2 structures in property bearing Survey No. 97/2. In other words, I say that the said structures bearing house no. 448 is not shown properly in the ISLR Plan.

29. With reference to the contentions of Respondent No. 5 in para 21 of the reply dated 19/11/2022, it is denied that the review was filed to mislead the authority and / or false statements are made in the review application. I say that the review application is erroneously dismissed.

30. With reference to the contentions of Respondent No. 5 in para 22 and 23 of the reply dated 19/11/2022 are denied. I say that the Respondent No. 5 has set up a false case to cause prejudice to me.

31. Nothing may be deemed to be admitted for want of specific denials.

32. I say that i have made out a case to seek indulgence of this Hon'ble Tribunal and therefore, entitled to the reliefs as prayed for.



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33. I say that the contents of paras 1 to 12, 13pt, 14, 15pt, 16, 17pt, 20 to 28, 29pt, 30 and 31 are true to my personal knowledge and the contents of paras 13pt, 15pt, 17pt, 18, 19, 29pt and 32 are legal submissions which I believe to be true.

Solemnly affirmed at Panaji –Goa

On this 5th day of December 2022.

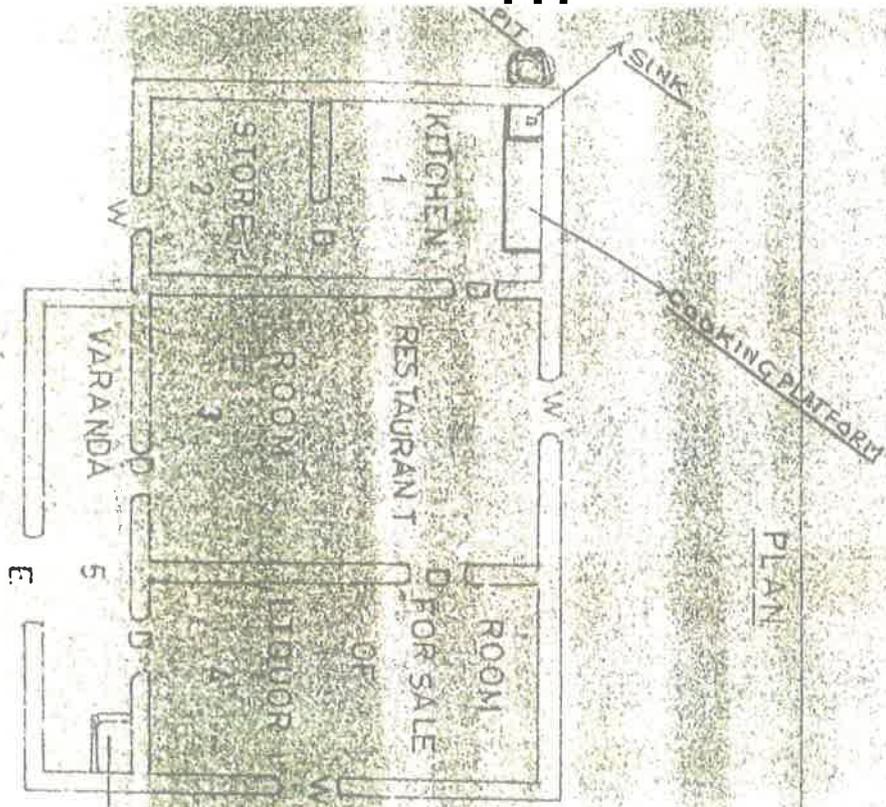
Deponent



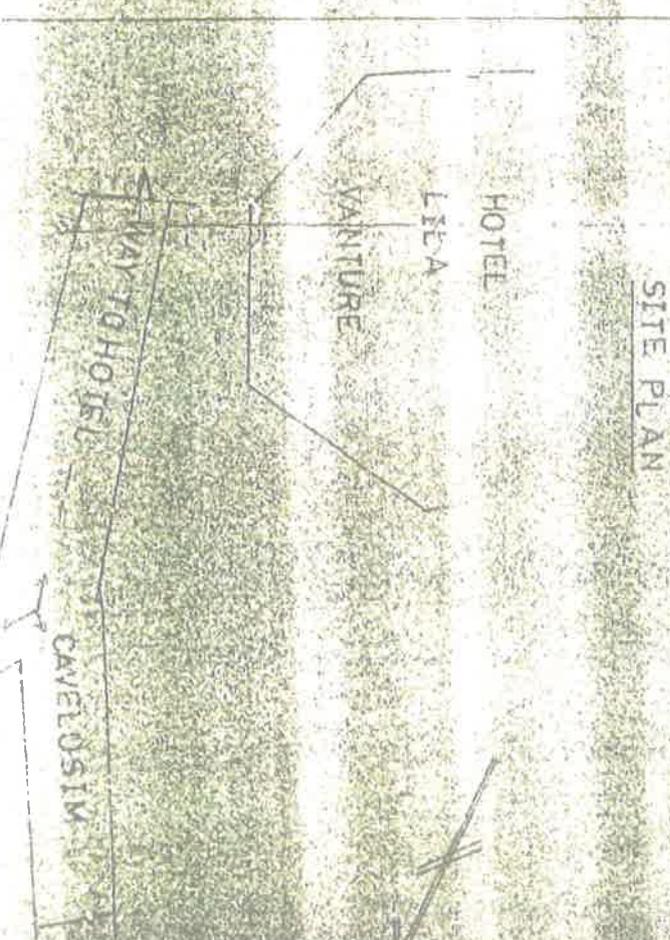
Solemnly affirmed and verified before me by Mr. Pessy Fernandes
S/O Filomeno D. Fernandes
who is identified on the basis of Aadhaar card no
7306 2954 6764
Reg. No. 2028/2022
Date 05-12-2022

SANJAY A. GAONKAR
Advocate & Notary
Tiswadi Taluka
Panaji-Goa.
Reg. No. 242/10

PLAN AND SITE PLAN OF THE EXACT LOCATION OF THE PROPOSED PREMISES FOR SALE OF I.M.F.L. AND C.L. FOR CONSUMPTION ON THE RESTAURANT PREMISES AT H.NO. 448, PLOT NO. 10, NOBOR-CAVELOSIM, SALCETE TALUKA, GOA STATE, BY SHRI ELOMENO DRUSTIN FERNANDES.



- 1 - 10.50 sq.mts
- 2 - 7.50 sq.mts
- 3 - 24.50 sq.mts
- 4 - 18 sq.mts
- 5 - 7 sq.mts
- TOTAL - 67 sq.mts



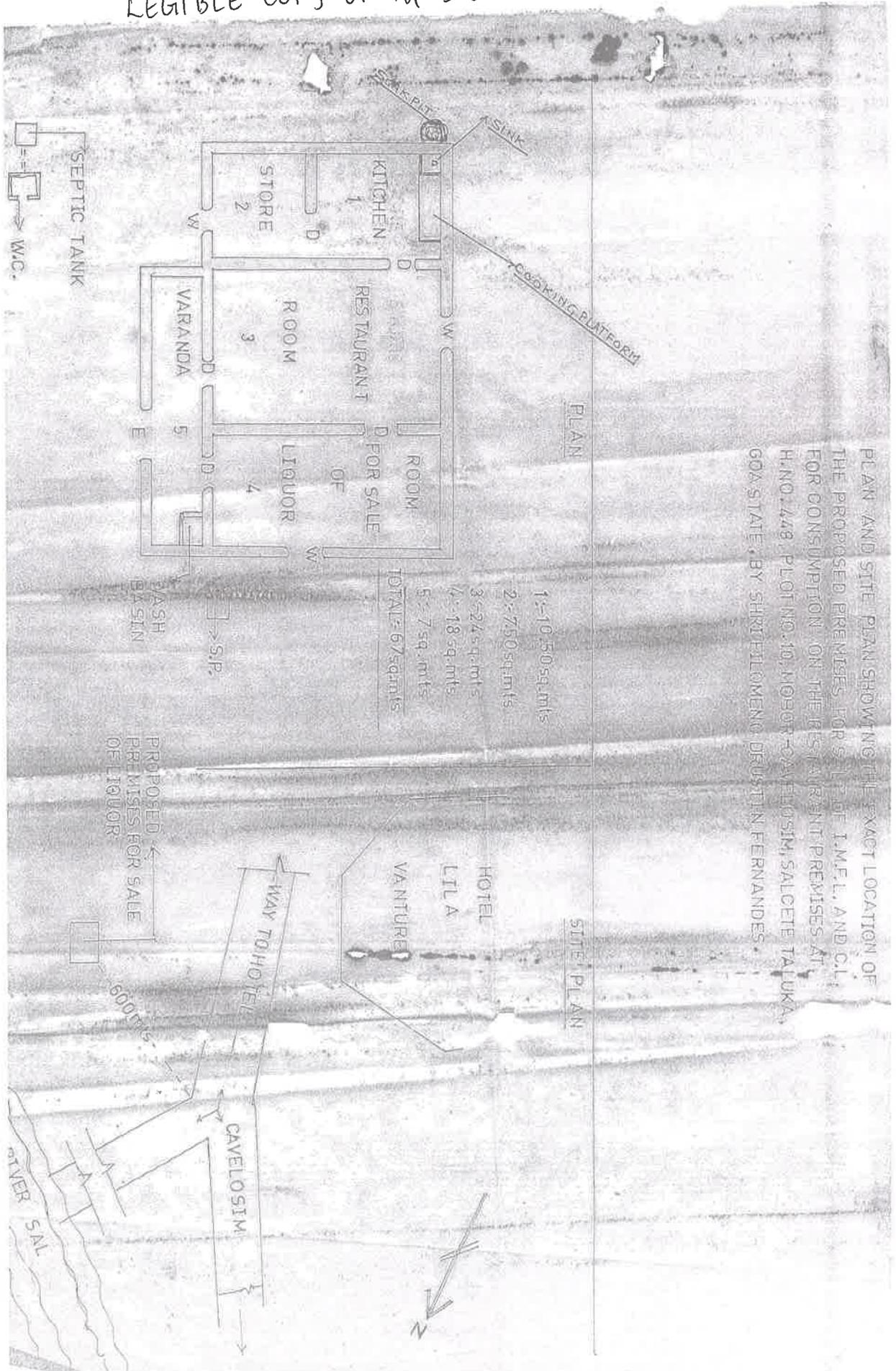
PROPOSED PREMISES FOR SALE OF LIQUOR

Public Information Officer
Excise Station,
Salcete Taluka

600mts.
RIVER SA

307V

LEGIBLE COPY OF PG. 306 AT ANNEXURE 'A'



PLAN AND SITE PLAN SHOWING THE EXACT LOCATION OF THE PROPOSED PREMISES FOR SALE OF I.M.F.L. AND O.L. FOR CONSUMPTION ON THE RESTAURANT PREMISES AT H.NO.448 PLOT NO.10, MOBOR-CAVELOSIM, SALCETE TALUKA, GOA STATE, BY SHRIHILMENA DRUSTIN FERNANDES.