

BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT

PUNE

IA NO. 181 OF 2022

IN

APPEAL NO. 42 OF 2022

585 - 181

585 - 181

585 - 181



(Under Section 18(1) read with Sections 14 and 20 of the National Green Tribunal Act, 2010)

Jose Fernandes and Anr.

)... Appellants

Versus

218 - 418

Goa Coastal Zone Management
Authority and Ors.

)... Respondents

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The index is filed on the 4th day of January 2023 at Goa

Through

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RONITA BHATTACHARYA
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**BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT
PUNE**

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(Under Section 18(1) read with Sections 14 and 20 of the National Green
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)...Appellants

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**Goa Coastal Zone Management
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)

)...Respondents



AFFIDAVIT IN REJOINER

1. I, Jose Fernandes, residing at H. No. 23, Tamborim, Cavelossim, Salcete, Goa, the Appellant herein, do hereby state on solemn affirmation:
2. I have received (1) Interim Application No 181 of 2022 on behalf of the Respondent No. 2 and Respondent No. 3 seeking dismissal of the captioned Appeal on the ground of maintainability, and (2) Affidavit in Reply on behalf of the Respondent No. 2 and 3 dated

Jose Fernandes

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24.11.2022, which was served on my advocate on 06.12.2022, and am conversant with the contents of the said Affidavits. Thus, I am competent to depose by way of the present affidavit on behalf of the Appellants in the said matter.

3. At the outset, I deny each and every averment, contention, allegation and/or submission made by the Respondent in the said Affidavits in Reply. I say nothing should be deemed to have been admitted by me for lack of specific denial unless the same is specifically admitted by me hereinafter.

4. That the present Affidavit is being filed as a joint response/Rejoinder to the Interim Application of the Respondent No. 2 and 3 and the in Reply filed by the Respondent No. 2 and Respondent no. 3.



ISSUE ON MAINTAINABILITY RAISED IN INTERIM APPLICATION NO. 181/2022

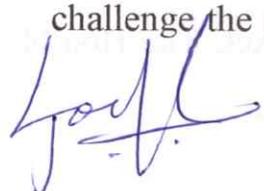
5. I say that the Respondent No. 2 and 3 have belatedly raised an issue on maintainability by filing IA 181/2022. I say that the Respondent No. 2 and 3 had previously filed an affidavit in the

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present matter dated 19.10.2022, but had not raised the contentions pertaining to maintainability raised in IA No. 181/2022. Notwithstanding the impropriety in the manner in which the present IA 181/2022 was filed, or how it was served at the last moment on the Appellants and the judgments relied upon during the course of the hearing on 23.11.2022 were not shared in advance, I say the following in response to the averments raised in IA 181/2022.

a. The impugned order/direction of the Respondent GCZMA has been correctly challenged under Section 16(g) of the NGT Act, 2010 under the present appeal.

b. In a similar matter, OA No. 75/2019 where proceedings initiated under Section 5 of the Environment protection Act read with sub-rule (3)(a) of Rule 4 of the Environment (Protection) Rules, 1986 read with power vested with the GCZMA vide Order S.O 3324(E) dated 26.10.2017 issued by the MoEFCC, were **discharged** by the GCZMA against a private person and their property, this Hon'ble Tribunal noted that the Applicant in question had wrongly sought to challenge the order/direction of the GCZMA discharging



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proceedings Section 5 of the Environment protection Act read with sub-rule (3)(a) of Rule 4 of the Environment (Protection) Rules, 1986 read with power vested with the GCZMA vide Order S.O 3324(E) dated 26.10.2017 through an Original Application filed under Sections 14 and 15 of the NGT Act, 2010. While dismissing the Original Application filed by the Applicant in question, the Hon'ble NGT categorically held,

"The impugned proceedings of the Respondent No.2 dated 27.05.2019 came to be passed in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 read with Sub-Rule (3) (a) of Rule 4 of the Environment (Protection) Rules 1986 and therefore, it is deemed to be a direction issued under Section 16 (g) of the National Green Tribunal Act, 2010."

As such it is evident that as recently as September 2021, this Hon'ble Tribunal passed a reasoned, cogent order holding that directions of the GCZMA discharging proceedings (issued under Section 5 of the EPA Act read with rule 4 of the EPA Rules) previously initiated by it would amount to be a "direction" under Section 16(g) of the National Green Tribunal Act. The Hon'ble Tribunal

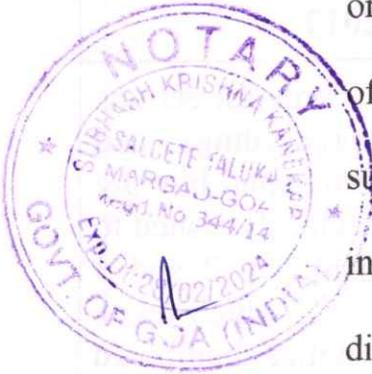


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further held that the said order/direction of the GCZMA should have been challenged under Section 16(g) of the NGT Act. A copy of the order of this Hon'ble Tribunal in OA 75/2019 dated 14.09.2021 has been annexed hereto and marked as **Annexure A-1**.

- c. The Appellants humbly submit that the Appellants are bound by the said order of this Hon'ble Tribunal in OA 75/2019 dated 14.09.2021, and the present Appellants have no option but to challenge the impugned order/directions of the Hon'ble NGT under Section 16(g) of the NGT Act, 2010. I say the GCZMA had not suggested in the said OA 75/2019, neither has it submitted in the present matter, that directions of the GCZMA discharging proceedings (issued under Section 5 of the EPA Act read with rule 4 of the EPA Rules) previously initiated by it would not amount to "directions" under Section 16(g) of the NGT Act, 2010.

- d. I further say that the order of this Hon'ble Tribunal in Appeal No. 03/2017 in the matter of *Austin Francis D'Souza v Secretary, MoEFCC* dated 21.11.2017 does not



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apply to the present case, and can be distinguished from the present Appeal on both law and facts on the following grounds which have been tabulated below:

Appeal No. 03/2017 in the matter of Austin Francis D'Souza v Secretary, MoEFCC	Present Appeal No. 42/2022 against impugned order/directions issued under
1. Impugned order was issued under by the MoEFCC under Section 5 of the Environment protection Act read with sub-rule (3)(a) of Rule 4 of the Environment (Protection) Rules, 1986	1. Directions were issued by the GCZMA in exercise of its powers under Section 5 of the Environment protection Act read with sub-rule (3)(a) of Rule 4 of the Environment (Protection) Rules, 1986 read with power vested GCZMA vide MoEFCC order 3975(E) dated 31/10/2019
2. Impugned order withdrew proposed directions/show cause notice of the MoEFCC issued to the recipient	2. Impugned order/directions discharged proceedings and effectively terminated binding directions previously issued to the Respondent No. 2 and 3 dated 20.01.2022 which was a show-cause notice combined with a mandatory stop work order , and did not constitute "proposed directions."
	3. In issuing the impugned order/directions, the GCZMA was exercising powers delegated to it by the MoEFCC under Section 3(3) of the EPA Act, 1986 along with those referenced in "Supreme Court" orders



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e. I say that it is noteworthy that the impugned order has been issued by the GCZMA not only under Section 5 of the Environment Protection Act read with sub-rule (3)(a) of Rule 4 of the Environment (Protection) Rules, 1986, but is also issued in exercise of the power vested in the GCZMA vide MoEFCC order 3975(E) dated 31/10/2019. It is submitted that a plain reading of Section 5 of the Environment Protection Act, 1986 only empowers the Central Government to issue directions under Section 5 of



the Environment Protection Act. Even Rule 4 of the Environment (Protection) Rules, 1986, lays out the procedure for the Central Government to issue directions under Section 5 of the Environment Protection Act, 1986.

f. However, bodies such as the GCZMA are vested with the power to issue directions under Section 5 of the Environment Protection Act, 1986 because the authority to issue such directions has been vested in them by the MoEFCC under Section 3(3) of the Environment

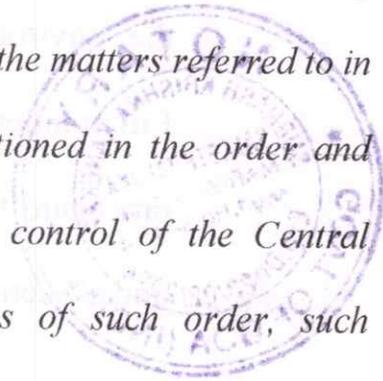
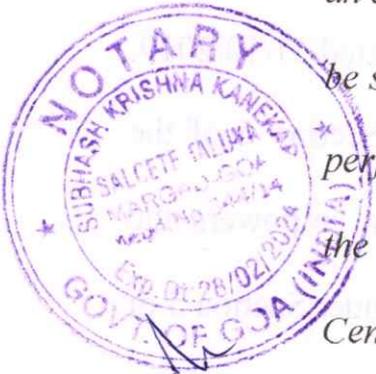
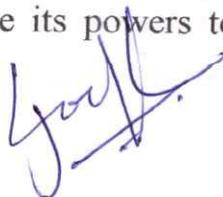
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Protection Act, 1986. Section 3(3) of the Environment Protection Act, 1986 reads as follows: -

“(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.”

- i. As such it is evident that the Central Government can delegate its powers to issue directions under



Section 5 of the Environment Protection Act, 1986 to any authority constituted by it by notifying the vesting of such powers in the Official Gazette. Accordingly, the MoEFCC has from time to time constituted the Respondent GCZMA vide a notification in the official Gazette, and has vested appropriate powers with the GCZMA such that it can issue directions under Section 5 of the EPA Act, 1986 it "*shall be responsible for enforcing and monitoring the provisions*" of the CRZ Notification, 2011 vide S.O 3975(E) dated 31.10.2019. I say that the said order of the MoEFCC which was notified in the Official Gazette further vests in the GCZMA, the following amongst other powers,

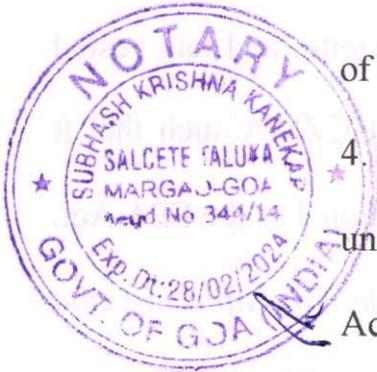


1. The power to inquire into cases of alleged violation of the provisions of the Environment Protection Act, 1986 or the rules made thereunder; and review the cases involving violations or contraventions of the provisions of the said Act and the rules made thereunder;

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2. The power to inquire or review cases of violations or contraventions of the said notification suo-moto, or on the basis of a complaint made by any individual or body or organisation;
3. The authority to file complaints under Section 19 of the Environment Protection Act, 1986
4. The Power to take such action as maybe required under Section 10 of the Environment Protection Act, 1986 to verify the facts of the cases before it.



A copy of S.O 3975(E) dated 31.10.2019 has been annexed hereto and marked as **Annexure A -2**. I say that it is evident that the Respondent GCZMA was well within its powers under S.O 3975(E) dated 31.10.2019 to issue the show cause notice-cum-stop work order as a final binding directions on the Respondent No. 2 and 3, and did not have to issue "proposed directions", as there is no requirement of "proposed directions" being issued under S.O 3975(E) dated 31.10.2019.

g. I further say there is no provision under Section 3(3) of the EPA Act, 1986, the EPA rules, 1986, CRZ Notification

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2011 or S.O 3975(E) dated 31.10.2019 that the provisions of the EPA Rules 1986 apply mutatis mutandis to directions issued by the Respondent GCZMA or any directions issued under Section 5 of the EPA Act, 1986, by any Coastal Zone Management Authority.

h. As *arguendo*, I say that any shortfall or defect in the manner in which the GCZMA issued directions under Section 5 of the Environment Protection Act, 1986 cannot be attributed to the Appellants, neither can the Appellants be prejudiced by the said potential defect/shortfall, if any, made by the Respondent GCZMA.



RESPONSE TO AFFIDAVIT OR RESPONDENT NO 2 AND 3

6. I deny the averment raised by the Respondents No. 2 and 3 at paragraph 5 of its affidavit that the Appellants do not have locus to file the present Appeal. I say that the Appellants were the original complainants who triggered the entire proceedings

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before the GCZMA which resulted in the show-cause notice cum stop-work order dated 20.01.2022. The complaints of the Appellant No. 1 have been annexed to the present Appeal at page 66 and 73. Further, at para 3 of the Appeal it has been clearly stated that the Appellants are local villagers of Cavelossim village who are concerned with the preservation of low-lying areas in order to avoid flooding in the area. The Appellants had also previously filed OA 28/2021 regarding the destruction of sand-dunes at Cavelossim. Further the Respondents have not raised any dispute/avertment about the locus of the Appellants during the proceedings before the GCZMA, and therefore by virtue of the principle of estoppel are barred from raising such an averment before this Hon'ble Tribunal. Lastly it is settled that it is settled law that the term "any person aggrieved by" as referenced throughout the NGT Act, 2010 means that Any person may raise environmental dispute irrespective of his being personally affected due to the act of wrongdoer/polluter or violator of environmental Law/Norms. I therefore say that the Appellants have the locus to file the present Appeal.



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7. I say that I categorically deny the contents of para 6 of the Affidavit where the Respondent No. 2 and 3 have claimed that the Appeal is not maintainable and the Appellants have failed to make out a case on merits against the impugned order.

8. I say that at para 7 of its Affidavit, the Respondent No. 2 and 3 has misleadingly asserted that on account of the fact that it has obtained various clearances, no directions can be passed against the Respondents estopping them from constructing their residential premises.

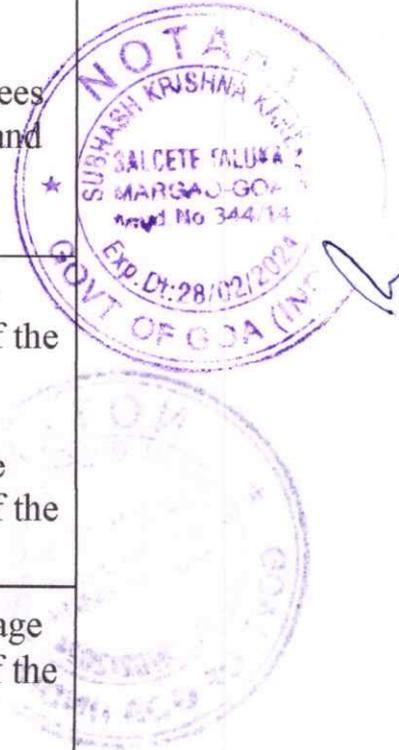


a. I say that for ease of reference, the Appellants have tabulated the clearances referred to by the Respondent No. 2 and 3 and the specific conditions within each of the said clearances which mention that low-lying areas cannot be filled.

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SR NO	CLEARANCE	RESTRICTION ON FILLING LOW-LYING AREAS
1	Conversion Sanad issued by the Collector, South Goa District for the use of agricultural land for residential purpose 22.11.2019	Condition No. 11, 17 and 18 at page 708 of the Reply of the Respondent Condition No. 14 stipulated the need to obtain permission for cutting trees. [rice cultivation and present of 12 jungle trees recorded at page 706 and 707 of the Affidavit respectively.]
2	Technical Clearance Order dated 21.08.2020 issued by Senior Town Planner	Condition no. 11 page 713 of the Affidavit of the Respondent Condition No, 25 page 714 of the Affidavit of the Respondent
3	Construction License issued by Village Panchayat 09.02.2021	Condition No 21 on page 716 of the Affidavit of the Respondent Condition No. 33 on page 717 of the Affidavit of the Respondent
4	Technical Clearance Order dated 10.06.2021 issued by Senior Town Planner	Condition no. 5 and 11 page 719 of the Affidavit of the Respondent



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5	Construction License issued by Village Panchayat dated 24.08.2021	Condition No. 13 and 21 on page 725 of the Affidavit of the Respondent Condition No 33 on page 726 of the Affidavit of the Respondent
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b. I say that a perusal of the clearances above make it evident that none of the authorities above condones the filling of/construction upon low lying lands or cutting of mangroves and trees. Interestingly, the Respondent No. 2 and 3 has stayed completely silent on the issue of the Forest Panchnama dated 09.12.2019 recording the cutting of 26 mangroves [annexed at page 62 of the Appeal] and the Show-cause notice cum stop-work order dated 8.12.2021 issued by the Deputy Collector South Goa District for violation of Section 17A of the Town and Country Planning Act, 1974 [annexed at page 64 of the Appeal]

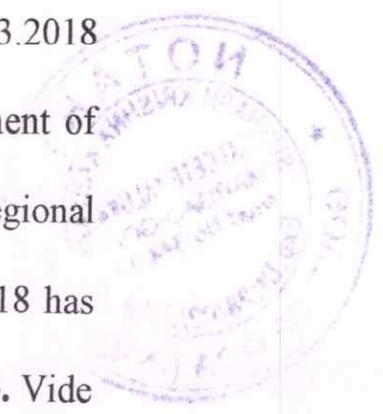
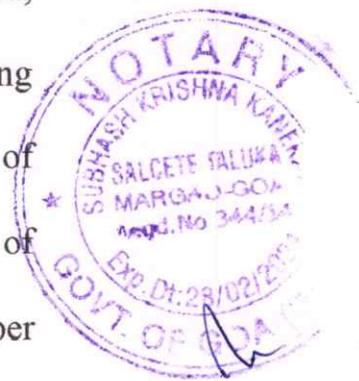


c. The Appellants further wish to bring to the attention of this Hon'ble Tribunal that the official position of the

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Government of Goa is that all of its demarcation of land in “settlement zone” or “developable land” in the Regional Plan made under the Town and Country Planning Act, 1964 would not permit construction work on “low-lying paddy field, water body, khazan land, flood prone area, land having slopes more than 25%, forest land including private forest land, land falling under the buffer zone of Wild Life Sanctuaries (without the prior permission of Forest Department) and No Development Zone as per CRZ Notification (without prior permission of the GCZMA). This is evident from the order dated 28.03.2018 wherein the Town and Country Planning Department of the Government of Goa brought into effect the Regional Plan of 2021. A copy of the order dated 28.03.2018 has been annexed hereto and marked as **Annexure A - 3**. Vide an order dated 26.02.2019 in PIL No. 45/2018, the Hon’ble High Court of Goa recorded the commitment of the Town and Country Planning Department to ensure the provisions of the order dated 26.02.2019 be complied with. A copy of the order dated 26.02.2019 of the Hon’ble High Court is annexed at page 136 of the appeal.



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d. I therefore say the issue of filling of low-lying areas by the Respondent No. 2 and 3 is an egregious breach of not only the CRZ Notification and Section 17A of the Town and Country Planning Act, but also of various orders of the Government of Goa for the preservation of such ecologically fragile low-lying areas. I say that the Respondents may choose to repeat *ad nauseam* that they have a few clearances for the construction of their house, but they do not have any clearance that permits them to fill low-lying areas such as khazan lands, neither could they have legally felled the mangroves in the region.



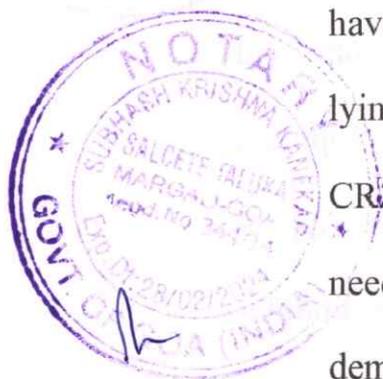
9. With regards to the contents of paragraph 8 of the Affidavit of the Respondents, I say that the statements at paragraph 8 and its sub-paragraphs are mainly facts already brought on record by the Appellants that do not warrant a response, and I say that I only wish to make the following statements with regards to the averments at para 8. I say that the Respondent no.2 and 3 at para 8.2 have acknowledged that on 21.01.2022, the GCZMA issued a show-cause notice **cum stop-work order** to Respondent no. 2

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Hon'ble Tribunal, notwithstanding the fact that such averments are untenable in law and devoid of merit.

10. With regards to the contents of Para 9(A) of the Affidavit, at the cost of being repetitive, I say that the Respondent does not have all requisite clearances needed to construct their proposed residential premises on the construction site. I say that the Respondent No. 2 and 3 do not have CRZ Clearance, nor do they have clearances permitting them to fill and construct upon low-lying areas as prohibited under 17A of the TCP Act. I say that the CRZ Notification of 1991 did not mention khazan lands, or the need to demarcate them, hence the CZMP maps of 1996 do not demarcate khazans. However, the CRZ Notification of 2011 does recognise Khazan lands and requires them to be demarcated CZMP maps and then preserved accordingly. In fact, it is incumbent upon the GCZMA to prepare khazan management plans under the CRZ Notification 2011. I say that it is incumbent upon the GCZMA to have prepared CZMP maps within 2 years of the CRZ Notification 2011 coming into effect. However, the GCZMA failed to prepare the said maps within a two-year period. It is submitted that the Respondent No. 2 and 3 cannot



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rely on the failure of the GCZMA to fulfil its obligations under the CRZ Notification to destroy ecologically fragile lands and the Appellants and general public of the region cannot be prejudiced due to the negligence/failure of the GCZMA. At any rate, I say that the CZMP maps under the 2011 Notification have been finalised in September 2022.



11. I deny the averments of the Respondent No. 2 and 3 that it is settled law and no more *res integra* that draft CZMP maps and satellite imagery cannot be used to disallow development projects. I say that in its judgment dated 06.09.2022 in Appeal 15/2022, this Hon'ble Tribunal was pleased to rely on google-earth imagery and documentary evidence such as the draft CZMP plans to direct the demolition of unauthorised structures located in mangrove forests. A copy of the said judgment of the Hon'ble NGT has been annexed hereto and marked as **Annexure A-4**. I say that the said judgment of this Hon'ble Tribunal was later upheld by the Hon'ble Supreme Court vide its order dated 07.11.2022. A copy of the order of the Hon'ble Supreme Court dated 07.11.2022 has been annexed hereto and marked as **Annexure A-5**. I also repeat and reiterate my position that even

the draft CZMP Map made under the 2011 notification inaccurately covers the entirety of the land owned by the Respondent No. 2 and 3 as khazan lands. I further deny the statement of the Respondent No. 2 and 3 that a substantial amount of construction of the proposed residential premises is completed, and submit that even if the entire proposed residential premise is constructed, this Hon'ble Tribunal has the jurisdiction to direct that the said structure be demolished. Lastly, I say that if the argument of the Respondent is accepted that since the 1996 CZMP does not have khazan land demarcated, it would be acceptable to reclaim and construct upon khazan lands, it would result in all provisions and protections guaranteed under the CRZ Notification of 2011 to khazan lands in Goa becoming redundant, since the GCZMA has only been able to prepare CZMP maps 11 years after the CRZ Notification 2011 was brought into effect and the 1991 CRZ Notification did not mandate protection of khazan lands. I deny that the GCZMA has arrived at its decision in the impugned order/directions after due deliberation and following proper procedure. I say that the impugned order/directions reveal a complete non-application of mind and dereliction of duty on the part of the Respondent GCZMA. I further repeat and reiterate



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13. Accordingly, I say that the prayers sought by the Appellants in Appeal 42/2022 deserve to be allowed and made absolute.

h Solemnly Affirmed at Margao, Goa)
Dated this 4th Day of January 2023)
Deponent
Jose Fernandes



Identified by me

RONITA BHATTACHARYA

Advocate for the Appellant

BEFORE ME



Solemnly affirmed before me by
Shri/Smt. Jose Fernandes
Who is identified to me by Code
Shri/Smt. 77990565 h767
Who is personally known to me
this 4th day of Jan. 2023
Reg. No. 18/2023

Subhash
04/01/2023
SUBHASH KRISHNA KANEKAR
NOTARY
SALCETE TALUKA
STATE OF GOA (INDIA)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

(By Video Conferencing)

Original Application No. 75/2019 (WZ)

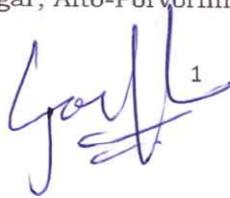
IN THE MATTER OF:

1. **Mr. Kashinath Jairam Shetye,**
Having Residence at A-102, Raj Excellency,
Ribandar, Goa.
2. **Dr. Ketan Govekar**
Having Residence at 3rd Floor, Wadji Building,
St. Inez, Panjim, Goa-403001
3. **Mukundraj Mudras,**
Having Residence at Building 6 C-9,
Kenkre Estate, Cabesa,
St. Cruz, Tiswadi, Goa.
4. **Desmond Alvares,**
Having Residence at H.No. 470 Doxxier,
Assagao, Bardez, Goa.
5. **Narendra Chodankar,**
Having Residence at H.No.1281, St. Estevam,
Tonca, Tiswadi, Goa.
6. **Arturo D'Souza**
Having Residence at H.No.351, Ruzai Wado,
St. Cruz, Tiswadi, Goa.
7. **Inacio Domnic Pereira**
Having Residence at H.No. 836,
St. Agostniha, Marrod,
St. Cruz, Tiswadi, Goa.
8. **Ramchandra Manjrekar,**
Having Residence at H.No. 452,
Usgao, Tisk, Ponda, Goa.

.....Applicant(s)

Versus

1. **State of Goa**
Through Chief Secretary,
Secretariat Panaji,
Goa-403521.
2. **Goa Coastal Zone Management Authority,**
1st Floor, Pt. Deendayal Upadhyay Bhavan,
Pundalik Nagar, Alto-Porvorim
Goa-403521


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1-A ANEXORÉ

3. **Antonio Fernades,**
r/o H.No. 6-A, Dandi Agassaim,
Tiswadi-Goa-403204

.....Respondent(s)

Counsel for the Applicant(s):

Mr. Kashinath J. Shetye, First Applicant-in-person

Counsel for the Respondent(s):

Mrs. Fawia Mesquita, Advocate for R-1&2

Mr. Gauravvardhan A.S. Nadkarni, Advocate for R-3



PRESENT:

Hon'ble Mr. Justice M. Sathyanarayanan (Judicial Member)

Hon'ble Dr. Arun Kumar Verma (Expert Member)

Orders Reserved on: 31.08.2021
Pronounced on: 14.09.2021

ORDER

1. The first Original Applicant who is a seasoned litigant along with seven others had filed this case/proceedings as an Appeal under Section 14 and 15 of the National Green Tribunal Act, 2010 (in short NGT Act). The Appeal memorandum is dated 09.09.2019 and it was filed on 18.09.2019.
2. The Registry of this Tribunal has numbered this case, as Original Application No. 75/2019(WZ).
3. The Original Applicants make a challenge to the impugned order dated 27.05.2019 passed by the Respondent No.2 in the form of discharge of proceedings in respect of the house in property bearing survey no. 115/1-F of Goa Velha, Village, Tiswadi -Goa, owned by Respondent No.3
4. The Respondent No.2 on an earlier occasion has issued a direction under Section 5 of the Environment (Protection) Act, 1986 read with Rule of the Environment (Protection) Rules, 1986 vide proceedings dated

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25.07.2018, by calling upon the Respondent No.3 to demolish the super structure put up on the said survey number and restore the land to it's original condition within 15 days from the date of receipt of the order and other consequential directions.

5. The Respondent No.3 filed Writ Petition No. 817/2018 on the file of Hon'ble High Court of Bombay at Goa by making a challenge to the above cited proceedings of the Respondent No.2 dated 25.07.2018.

6. The Goa Bench of Hon'ble High Court of Bombay vide final order dated 15.02.2019 passed in Writ Petition No. 817/2018, has partly allowed the Writ Petition and thereby setting aside the above cited impugned order of the Respondent No.2 dated 25.07.2018 with a direction directing the Respondent No.2 therein, who is also the Respondent No.2 herein to grant an opportunity of personal hearing to the Writ Petitioner-Respondent No.3 herein, and thereafter to decide the matter afresh on it's own merits and in accordance with the law, within a stipulated time.

7. The Respondent No.2 in compliance of the said order, has granted an opportunity of personal hearing to the Respondent No.3 as well as to the First Applicant herein and on going through the relevant records, has issued the impugned order dated 27.05.2019, by discharging the proceedings initiated against the above cited property of the Respondent No.3. It is relevant to extract the operative portion of the said impugned order which is as follows:-

"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 power vested with the GCZMA vide Order S.O. 3324 (E) dated 26/10/2016 issued by the Ministry of Environment & Forests, Government of India, the GCZMA hereby discharges

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the proceeding initiated against Mr. Anthony F. Fernandes, R/o House no.6,Dandi, Ilhas- Goa in respect of in property and structure located in Survey no115/1-F of Goa Velha, Tiswadi-Goa as decided by the authority in its 194th GCZMA meeting held on 15/03/2019 and case is disposed off accordingly"

8. The First Applicant who is appearing as party in person, sought to advance arguments on merits of the matter and however, it was strongly opposed by the Learned Standing Counsel appearing for the Respondent No.2 as well as the Learned Counsel appearing for the Respondent No.3, would submit that in terms of Section 16(G) of the National Green Tribunal Act, 2010, this Original Application ought to have been filed only as an Appeal and if it is so, the present Original Application is hopelessly barred by limitation and therefore, prays for dismissal of this Application with cost.

9. The First Applicant who is appearing as party in person would submit that in the light of Section 14(3) and Section 15 (3) of the National Green Tribunal Act, 2010, the present case is within the period of limitation and prays for disposal, on merits.

10. The Tribunal has carefully considered the arguments advanced by the First Applicant appearing as party in person and the Learned Standing Counsel appearing for the Respondent No.2 and Learned Counsel appearing for the Respondent No.3 and also perused the supporting materials.

11. It is very pertinent to point out at this juncture that the present case has been presented by way of an Appeal under Section 14 and 15 of the National Green Tribunal Act, 2010 and the Appeal memorandum is dated 09.09.2019.

12. The Applicants would plead that they have invoked Section 14 and 15 of the National Green Tribunal Act, 2010 by challenging the discharge

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of proceedings passed by the Respondent No.2 vide order dated 27.05.2019 and it is within six months and, therefore, it is within the period of limitation.

13. *Per contra*, the Learned Standing Counsel appearing for Respondent No.2 as well as the Learned Counsel appearing for the Respondent No.3 would submit that the impugned proceedings/order of the Respondent No.2 dated 27.05.2019, is passed under Section 5 of the Environment (Protection) Act, 1986 read with Sub-Rule (3) (a) of Rule 4 of the Environment (Protection) Rules, 1986 and in that event, present Original Application is hopelessly barred by limitation.

14. The sole issue arises for consideration whether this Original Application is barred by limitation?.

15. As already pointed out, the Respondent No.3 challenging the impugned direction dated 25.07.2018 issued by Respondent No.2 under Section 5 of the Environment (Protection) Act, 1986 read with Rule of the Environment (Protection) Rules, 1986 by ordering demolition of the super structure put up upon his property bearing survey no. 115/1-F of Goa Velha Village, Tiswadi, Goa, made a challenge to it by filing Writ Petition No. 817/2018 before the Goa Bench of Hon'ble High Court of Bombay and the Writ Petition was entertained and it was finally disposed of on 15.02.2019.

16. As per the final order, the Writ Petition was partly allowed and the impugned direction of the Respondent No.2 dated 25.07.2018 was set aside and the matter was once again remanded to them for afresh adjudication in accordance with the law after offering an opportunity of personal hearing to the Writ Petitioner-Respondent No.3 herein as well as to the Respondent No.3 namely Lourence Diogo Jose Rodrigues.



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17. The Respondent No.2 herein in compliance of the said order, has provided an opportunity of personal hearing to the Respondent No.3 as well as to the First Applicant and after going through the relevant records, has passed the impugned order/proceeding dated 27.05.2019 in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 read with Sub-Rule (3) (a) of Rule 4 of the Environment (Protection) Rules 1986, in an by which the said authority has discharged the proceedings initiated against the Respondent No.3.

18. The Learned Counsel appearing for Respondent No.2 would submit that immediately the said order was uploaded on the website and the First Applicant who has been heard personally, is also aware of the said order, and has filed the present proceedings only as an Appeal vide Appeal memorandum dated 09.09.2019 and it was filed before the Registry of this Tribunal on 18.09.2019 and in terms of Section 16 of the National Green Tribunal Act, 2010, the period of limitation of 30 days with a condonable limit of 60 days, the present Original Application is hopelessly barred by limitation.

19. The Tribunal after careful scrutiny and analysis of the materials placed and consideration of the rival arguments, is of the considered view that the present proceedings in the form of Original Application is barred by limitation for the following reasons:-

- (i) The impugned proceedings of the Respondent No.2 dated 27.05.2019 came to be passed in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 read with Sub-Rule (3) (a) of Rule 4 of the Environment (Protection) Rules 1986 and therefore, it is deemed to be a direction issued under Section 16 (g) of the National Green Tribunal Act, 2010.



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(ii) The said provision prescribes the limitation period of 30 days from the date on which the order or decision or direction is communicated to him to prefer an Appeal to the Tribunal with the proviso that the Tribunal, may, if it is satisfied that the Appellant was prevented by sufficient cause from filing the Appeal within the said period, allowing it to be filed under this Section within a further period of not exceeding 60 days.

20. Hence, the Applicants, had a time limit of 30 days + 60 days to file the present proceedings/case.

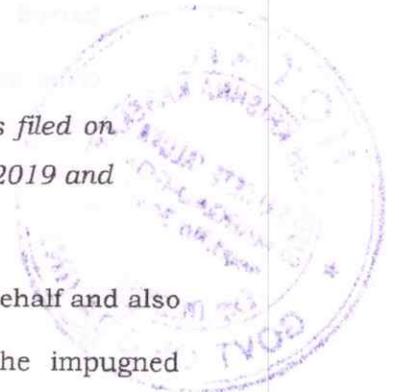
21. The Appeal memorandum was signed on 09.09.2019 and it was filed on 18.09.2019.

22. It is very pertinent to point out at this juncture, the First Applicant appeared along with the Respondent No.3, and as such he is aware of the proceedings. It is relevant to extract the paragraphs pertaining to limitation, which is as follows:-

"The Application under section 14 & 15 NGT Act is filed on discharge of proceedings by GCZMA passed 27.05.2019 and within six months and hence in limitation."

23. The First Applicant who is appearing for on his own behalf and also on behalf of other Applicants is very well aware of the impugned proceedings of the Respondent No.2 27.05.2019, and the period of 30 days + 60 days is calculated, the limitation period would have expired by the end of August, 2019. However, the Appeal memorandum dated on 09.09.2019, came to be filed before the Registry of this Tribunal only 18.09.2019 i.e. beyond the period of limitation prescribed under Section 16 of the National Green Tribunal Act, 2010.

24. It is a well settled question of law that when a Statute prescribes a particular period of limitation which is a self contained one, no



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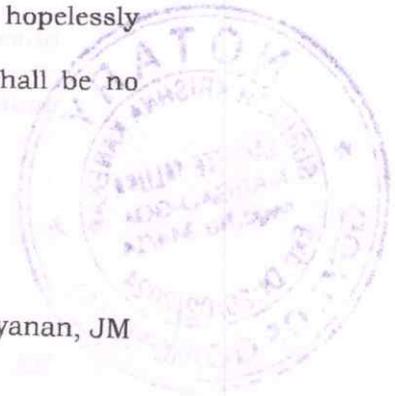
application/petition under Section 5 of the Limitation Act, 1963 is maintainable.

25. It is also a well settled question of law that when a statute prescribes a thing to be done in a particular manner which should be done only in that way and not in any other manner.

26. In the considered opinion of the Tribunal, the Original Application ought to have been filed only as an Appeal and in that event, it is hopelessly barred by limitation.

27. The relevant paragraph in the Appeal memorandum dealing with the limitation aspect, does not give any proper tenable or acceptable reasons.

28. In the result, the Original Application is dismissed, as not maintainable and even it is to be converted as Appeal and it is hopelessly barred by limitation. However, in the circumstances, there shall be no order as to costs.



M. Sathyanarayanan, JM

Dr. Arun Kumar Verma, EM

September 14th, 2021
Original Application No 75/2019(WZ)
JG

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OFFICIAL GAZETTE — GOVT. OF GOA

7TH JANUARY, 2021

SERIES II No. 41

Sl. No.	Members	Status
1	2	3
2.	Principal Chief Conservator of Forest, Department of Forest, Goa or his representative	Member, ex officio;
3.	The Director, Directorate of Panchayats or his representative	Member, ex officio;
4.	The Director, Directorate of Tourism or his representative	Member, ex officio;
5.	The Director, Directorate of Industries, Trade and Commerce or his representative	Member, ex officio;
6.	The Chief Engineer, Water Resources Department or his representative	Member, ex officio;
7.	Principal Chief Engineer, Public Works Department or his representative	Member, ex officio;";

(ii) against serial number 11, in column (2), for the words "Dr. Sujeetkumar Mariapa Dongre", the words "Shri Sujeetkumar Mariapa Dongre" shall be substituted.

(b) In paragraph 5, after Clause (viii), the following Clause shall be inserted, namely:—

"(ix) All Members shall normally remain present for the meetings Scheduled by the Authority for effective enforcement of the said Notification and in the event a Member is unable to be present, he or she may depute an official who is well conversant with the subject matter".

[F. No. 12-6/2005-IA-III (pt.)]
ARVIND KUMAR NAUTIYAL, Jr. Secy.

Note: The Principal order was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 1st November, 2019, vide number S.O. 3975 (E), dated the 31st October, 2019.

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

Order

New Delhi, the 31st October, 2019

S.O. 3975(E).— In exercise of the powers conferred by sub-sections (1) and (3) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986), (hereinafter referred to as the said Act), the Central Government hereby constitutes the Goa Coastal Zone Management Authority (hereinafter referred to as the Authority) consisting of the following persons, for a period of three years, with effect from the date of publication of this order in the Official Gazette, namely:—

Sl. No.	Members	Status
1	2	3
1.	Principal Secretary, Environment Department, Government of Goa	Chairman ex officio;
2.	Principal Chief Conservator of Forest, Department of Forest, Goa	Member, ex officio;
3.	The Director, Directorate of Panchayats	Member, ex officio;
4.	The Director, Directorate of Tourism	Member, ex officio;
5.	The Director, Directorate of Industries, Trade and Commerce	Member, ex officio;
6.	The Chief Engineer, Water Resources Department	Member, ex officio;
7.	Principal Chief Engineer, Public Works Department	Member, ex officio;
8.	Shri Savio Joaquim Filipe Correia, Newton Apartments-II Mangor Hill, Vasco-da-Gama	Member (Expert);
9.	Shri Flaviano Jose Miranda, Duncolim Seraulim, Salcete-Goa	Member (Expert);
10.	Shri Mahesh K. Patil, Vision Park CFF3, Tonca, Caranzalem, Panjim-Goa	Member (Expert);

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1	2	3
11.	Dr. Sujeetkumar Mariapa Dongre, Programme Co-ordinator, CEE Goa State, Porvorim-Goa	Member, (Expert);
12.	Shrirang V. Jambhale, Gram Vikas Kendra (NGO) Savoi-Verem, Goa	Member, Non-Governmental Organization;
13.	Director and ex officio Joint Secretary, Department of Environment, Goa	Member Secretary, ex officio.

2. The Authority shall have its headquarters at Porvorim, Goa.
3. The quorum for the meeting of the Authority shall be one-third of the total number of its Members.
4. A Member, other than an ex officio Member, shall be paid allowances as per the norms decided by the Central Government.
5. The Authority shall, for the purposes of protecting and improving the quality of the costal environment and preventing, abating and controlling environmental pollution in the Coastal Regulation Zone areas in the State of Goa, take the following measures, namely:-
 - (i) the Authority shall, after receiving the application for approval of project proposal, examine the same if it is in accordance with the approved Coastal Zone Management Plan and within the requirements of the Coastal Regulation Zone notification issued by the Government of India in the erstwhile Ministry of Environment and Forests and published vide number S.O.19(E), dated the 6th January, 2011 (hereinafter referred to as the said notification), and make recommendations for approval of such project to the concerned authority, as specified in the said notification, within a period of sixty days from the date of receipt of such application;
 - (ii) the Authority shall regulate all developmental activities in the Coastal Regulation Zone areas as specified in the said notification;
 - (iii) the Authority shall be responsible for enforcing and monitoring the provisions of the said notification;
 - (iv) the Authority shall examine the proposals received from the State Government for changes or modifications in the classification of Coastal Regulation Zone areas and in the Coastal Zone Management Plan and make specific recommendations thereon, to the National Coastal Zone Management Authority;
 - (v) the Authority shall inquire into cases of alleged violation of the provisions of the said Act or the rules made thereunder; and review the cases involving violations or contraventions of the provisions of the said Act and the rules made thereunder;
 - (vi) the Authority shall inquire or review cases of violations or contraventions of the said notification suo-moto, or on the basis of a complaint made by any individual or body or organisation;
 - (vii) the Authority is authorised to file complaints under Section 19 of the said Act;
 - (viii) the Authority shall take such action as may be required under Section 10 of the said Act, to verify the facts of the cases before it.
6. The Authority shall, for the purpose of maintaining transparency in its functioning, create a dedicated website and post the information relating to its functions, including the agenda in its meetings, minutes of the meetings, decisions taken in each meeting, recommendations for matters on violations and contravention of the said notification and actions taken on such violations and contraventions, court matters including the orders of the courts and the approved Coastal Zone Management Plan of the State Government.
7. The Authority shall furnish reports of its activities at least once in six months to the National Coastal Zone Management Authority.

[F. No. 12-6/2005-IA-III (pt)]
ARVIND KUMAR NAUTIYAL, Jt. Secy.

ANNEXURE A-3
ORDER

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Read:-1) Order no. 29/8/TCP/2012-13/RPG-21/Status/1803
dtd. 4/6/2012.

2) Order no. 29/8/TCP/2015/Gen/3982 dtd.
28/9/2015.

1. Whereas the Government vide Order dated 4/6/2012 read at preamble (1) above, had issued directions to withhold the Regional Plan-2021 and to use Regional Plan 2001 as reference plan for the purpose of determining the land use while using the policies of Regional Plan 2021 with respect to FAR, village status and height of building. As per the said Order, permissions can be granted in plots falling under developable zone as per both the Regional Plans i.e. Regional Plan 2001 as well as Regional Plan-2021.

2. And whereas, by Order dated 28/9/2015 read at preamble at sl. No. 2) above, the decision of Government was conveyed for relaxation of Order dated 4/6/2012 read at preamble sl. No. 1) above, for proposals cleared by Goa Investment Promotion and Facilitation Board. As per the said Order projects cleared by GIPFB can be issued permission, if the land under reference falls in settlement zone, industrial zones and Institutional zones as per Regional Plan 2021.

3. And whereas, it has been brought to the notice of the Government, that many applications for personal housing in lands classified as Settlement areas as per Regional Plan 2021 are pending for clearance as the land pertaining to the same are not classified under Settlement Zone in the Regional Plan 2001 and vice versa, due to the instructions contained in the Order dated 4/6/2012, and putting the public at large to hardship.

Information made available under
Right to Information Act 2005
Signed by M.S. Diana Tavaras
2022-05-20/18
PIO-6
Town and Country Planning Dept. (H.O.)
Panaji



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4. And whereas, there are cases of the nature that the properties zoned earlier under Industrial Zones in the Regional Plan for Goa 2001 have been shown under Settlement Zone as per Regional Plan for Goa 2021, in which case the owner of the land can neither get permission to develop industry nor develop the land for residential use as per the Order dated 04/06/2012. There are applications from institutions for setting up state of the art educational institutions and knowledge centres, pending for want of zoning clarity. Many tourism related projects are also awaiting nod which conforms to Regional Plan 2021.

"Information" made available under
 Right to Information Act 2005
 Downed to MS Diana Tavarres
 14-05-2018

PIO - 6
 Town and Country Planning Dept. (H.O.)
 Panaji

And whereas, the Government has recently brought about amendment to section 49(6) of the Act, thereby making it mandatory for registration of plots which are not as per the survey plan or plots which are not having approval from competent Authority, to obtain a No objection Certificate from Chief Town Planner(Planning). This was enacted primarily to control large scale unauthorized fragmentation of Orchard and agricultural lands which was taking place at brisk pace in the state. Government has observed that many unauthorized land developments have already taken place by way of registration of sale deeds for smaller plots and construction of pucca houses/buildings have sprung up in many plots. Some of them are within settlement areas, as per RPG 2021 and where as many such developments are in non settlement areas as per both the Regional Plans, It was found necessary, that whatever developments which have come up in settlement area of Regional Plan 2021, could be considered for regularization by following rules.



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6. Now therefore, in view of the aforesaid circumstances it has become necessary to issue fresh directions, in supersession to Orders dated 4/6/2012 and 28/9/2015, as under:

A. Development in land zoned under Settlement zones or Commercial Zones or Industrial zones or Institutional Zones as per Regional Plan -2021 to be permitted as per its merit for uses permitted in respective zone, by following transparent process as under:-

i) Applications as received by the Taluka Level offices of the Department to be scrutinized with respect to the following:-

- Report on settlement character of the land and surroundings.
- Access conditions.
- Nature of land as to whether sloping/low lying or having forest trees etc.
- Permissibility as per Goa Land Development and Building Construction Regulations.

ii) The release of land shall further be subjected to the following:-

- a) In case the area of land is more than 5000.0sq.mts, opinion of Forest Department and Agricultural Department shall be obtained.
- b) Areas such as low lying paddy field, water body, khazan land, flood prone area, land having slopes more than 25%, forest land including private forest land, land falling in the buffer zone of Wild Life Sanctuaries(without the prior permission of Forest Department) and No Development Zone as per CRZ notification(without prior permission of GCZMA) even if they fall in settlement or developable zone shall not be permitted.

B. Land falling under Settlement Zones as per Regional Plan 2021, but falling under Industrial Zones as per Regional Plan 2001(both developable zones) the lower use i.e. residential and allied uses permitted in Settlement zone could be considered. Applications for educational complexes institutes recognized by the Government could be considered on priority, in case the land under reference fall under Settlement Zone or Institutional Zone in the Regional Plan 2021.

"Information" made available under Right to Information Act 2005

Exeuted to Ms Diana Javarez

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Town and Country Planning Dept (H.O.)

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C. Cases of this nature considered by the Government as per the provisions of RPG-2021 and not in conformity with the RPG-2001 shall be notified to the public through Department's website. The Taluka level/District level offices shall maintain a register for recording such cases considered by the Government for ready reckoning for public scrutiny and for updation of Plans.

Information made available under
Right to Information Act 2005
Dated to Ms. Diana Tavares
Regd. No. 14.05-2018

PIO - 6
Town and Country Planning Dept. (H.O.)
Panaji

J.A.K.

(J. Ashok Kumar)
Secretary (TCP)

- To,
1. The Collector (North), Panaji - Goa.
 2. The Collector (South), Margao - Goa.
 3. The Senior Town Planner (North), TCP Dept., Mapusa - Goa.
 4. The Senior Town Planner (South), TCP Dept., Margao - Goa.
 5. All Branch Offices of TCP Dept.
 6. The Director of Village Panchayat, Panaji - Goa.
 7. The Director of Municipal Administration, Panaji - Goa.

Copy for information to:

1. The CSD to Hon'ble Chief Minister, Secretariat, Porvorim.
2. The CSD to Minister for TCP, Secretariat, Porvorim.
3. P.A. to Chief Secretary, Secretariat, Porvorim.
4. P.A. to Secretary (TCP), Secretariat, Porvorim.



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BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

(By Video Conferencing)

Appeal No. 15/2022 (WZ)

I.A. No. 45/2022(WZ)

IN THE MATTER OF:

1. **JOHNNY FERNANDES**
S/o Mario Fernandes, Indian National,
35 years of age,
R/o H.No. 246, Behind Shantaban
Housing Complex, Kumbharwada,
Vady, Mercedes Tiswadi — Goa 403006
2. **SHAINE FERNANDES**
s/o Mario Fernandes, Indian National,
34 years of age,
R/o H.No. 246, Behind Shantaban
Housing Complex, Kumbharwada,
Vady, Mercedes Tiswadi — Goa 403006

.....Appellant(s)

Versus

GOA COASTALZONE MANAGEMENT AUTHORITY,

Department of Science, Technology
and Environment (Govt. of Goa)
through the Member Secretary
Office at 4th Floor, Dempo Towers, Patto,
Panaji — Goa 403001

2. **VILLAGE PANCHAYAT OF MERCES**
Through the VP Secretary
Office at Merces,
Tiswadi — Goa 403006
3. **JOSE OLIVERIA,**
R/o H No. 232, Finguem Bhat,
Vaddy, Mercedes-Goa 40-3006
4. **SUDESH KALANGUTKAR**
C/o Merces Manch Welfare
Association, Near Merces Club
Merces, Tiswadi Goa-403006
5. **UMESH KUDNEKAR**
R/o Kumbharwada, Vaddy
Merces, Tiswadi-Goa 403006

.....Respondent(s)

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Counsel for Appellant(s):

Mr. Shivan Desai and Mr. S.S. Swaminathan, Advocates

Counsel for Respondent(s):

Mr. Annelise Fernades, Advocate for R-2
Ms. Caroline Collasso, Advocate for R-3
Mr. Abhijeet Prabhudesai, Advocate for R-4



PRESENT:

Hon'ble Mr. Justice Dinesh Kumar Singh (Judicial Member)
Hon'ble Dr. Vijay Kulkarni (Expert Member)

Judgment Reserved on: 26.08.2022
Pronounced on: 06.09.2022

JUDGMENT

1. The present Appeal has been filed by the Appellant under Section 16(g) of the National Green Tribunal Act, 2010 against the order dated 07.03.2022 passed by Member Secretary of Respondent No.1-Goa Coastal Zone Management Authority (GCZMA) directing the Appellants to demolish all the structures shown by the DSLR on survey plan in Survey Nos. 275/1, 275/1-A, 257/1-B, 275/1-C, 274/1 and 274/2 of village Morombi-O-Grande, Tiswadi — Goa, except Mundkarial dwelling House of Respondent admeasuring an area of 134 sq. mtrs., presently existing in Survey No.275/1-C in the said place and restore the land to its original condition within 30 days.

2. The facts in brief of this Appeal are as follow:-

- (i) That the Appellant No.1 is the owner and in possession of agricultural land bearing Survey No. 275/1-A of village Morombi-O-Grande, Tiswadi – Goa and the Appellant No. 2 is the owner and in possession of agricultural land bearing Survey No. 275/1-B of the same village. Both are co-owners

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and in possession of Mundkarial House bearing No. 246 along with surrounding area bearing Survey No. 275/1-C of the said village. These properties are agricultural lands/paddy fields which were originally surveyed under Survey No.275/1of the said village where a dwelling house bearing house no. 246 exists. The grandfather of the Appellants was cultivating the said properties for many years and was residing in the said dwelling house since, 1960. After his demise, the Appellants continued to cultivate the said properties and continued to reside in the said house. Therefore, the said land came to be governed under the Goa Agricultural Tenancy Act, 1964 and the dwelling house came to be protected under Goa Mundkar (Protection from Eviction) Act, 1975.

(ii) Somewhere around 1980s, the father of the Appellants constructed two (2) additional structures for the purpose of storage of agricultural produce and implements and the said structures came to be registered in the name of the Bhatkar of the property since the father of the Appellant was not formally declared as a tenant. On 17.12.1996, the Panchayat issued no objection certificate (NOC) for starting a poultry farm in the said structures.

(iii) Vide Judgment/Order dated 12.04.2006 passed by the Mamlatdar of Tiswadi, the father of the Appellants was declared an 'Agricultural Tenant' of the said properties for the purpose of inheriting the rights from late Maloji Kalal i.e. the grandfather of the Appellants. Pursuant to the said declaration, the father of the Appellants sought to purchase the said properties, an application for which was allowed vide judgment/order dated 20.07.2006 by the Mamlatdar.



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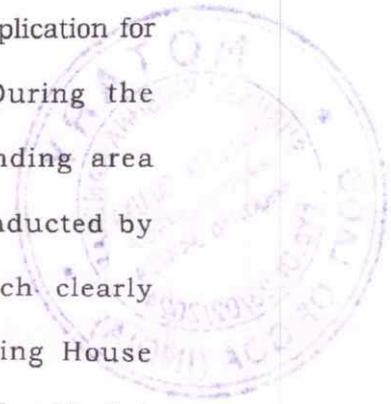
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(iv) It is further submitted that since the land admeasuring 435 sq.mtrs. was acquired by the Government for water pipeline and another piece of land admeasuring 440 sq. mtrs. was governed under the Mundkarial Laws, the father of the Appellants sought correction of the areas mentioned in the purchase certificate. Pursuant to which, Corrigendum dated 04.01.2007 was issued, rectifying the mistake and issuing fresh Certificate of Purchase.

(v) Vide Judgment/Order dated 17.10.2006, the Mamlatdar of Tiswadi declared the father of the Appellants to be 'Mundkar' of the dwelling house bearing no. 246. In pursuance of the said declaration, the father of the Appellants sought to purchase the said Mundkarial House along with the surrounding area.

(vi) Vide Judgment /Order dated 21.02.2007, the Application for purchase was allowed by the Mamlatdar. During the purchase of the house along with surrounding area admeasuring 440 sq.mtrs, a survey was conducted by Mamlatdar and a plan was prepared which clearly shows the existence of the structures bearing House Nos. 257/1 and 246/1 in addition to the Mundkarial House bearing house No. 246. Thereafter, said property was partitioned and came to be re-surveyed under Survey Nos. 275/1-A, 275/1-B and 275/1-C.



(vii) Thereafter, in the year 2018, pursuant to a complaint made by Respondent Nos. 2 to 5, the Appellant received a personal hearing notice from the Authority/Respondent No.1 on 14.08.2018 and time was sought by the Appellant to file reply and the

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matter was fixed for hearing on 28.08.2018. On the said date, the meeting of GCZMA was cancelled and thereafter, the Appellants were shocked to receive the demolition order dated 20.09.2018 issued on the basis of decision taken by Respondent No.1 on 31.08.2018. The entire exercise adopted by Respondent No. 1 is without giving any effective hearing to the Appellants, hence, it is in violation of Principles of 'Natural Justice'.

(viii) Aggrieved by the said order, the Appellants approached the Hon'ble High Court by filing Writ Petition No. 1088/2018, wherein vide order dated 27.02.2019, the High Court partly allowed the petition and set aside the demolition order dated 20.09.2018 while permitting the Appellants to file reply and a direction was given to the Respondent No. 1 to consider the same and decide the matter. In pursuance to that, a reply was filed by the Appellants on 12.03.2019 disputing the jurisdiction of the Respondent No. 1 and placed on record the documents which established that the properties were agricultural fields and which did not fall in any way within the purview of CRZ Notification and that the Appellants were in possession of the said properties since the 1960s. Hence, they were to be governed by the Goa Agricultural Tenancy Act and Goa Mundkar Protection Act.

(ix) Further it is submitted that Respondent No.1 directed the Appellants to get a survey carried out through NCSCM at their own cost which was beyond the scope and power of Respondent No.1 and *de hors* the law.



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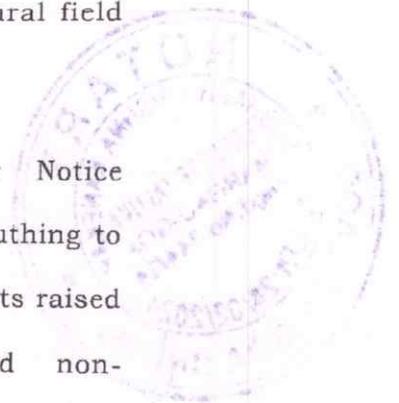
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The cost of the survey was estimated to be Rs. 3 lakh and hence, beyond the capacity of the Appellants to bear it. Therefore, Appellants did not carry out the said survey. Since the said order was not passed under Section 5 of the Environment (Protection) Act, 1986, the Appellant did not deem it necessary to challenge the same.

(x) Thereafter, the Respondent No.1 issued notice on 12.03.2020 for site inspection, to be conducted on 13.03.2020. The Expert Member unilaterally concluded that the site in question was adjoining mangrove habitat and hence, it attracted provisions of CRZ Notification. The said Expert Member did not take into consideration the larger property, of which the said properties formed a part, which was agricultural field and was not subject to CRZ provisions.



(xi) Thereafter, the Respondent issued another Notice on 11.06.2020 for site inspection and ground truthing to which vide reply dated 15.06.2020, the Appellants raised objections, disputing the jurisdiction and non-compliance of the procedure by the Respondent No. 1.



(xii) Further, it is submitted that the Appellants raised objections to the draft Coastal Zone Management Plan (CZMP) vide letter dated 05.03.2021 stating that the said properties and the surrounding areas were agricultural lands which were more than 200 mts away from the water body and that due to dysfunctional sluice gate, there was ingress of water in some portions of the surrounding areas which led to

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the growth of mangroves and it had happened only after year 2010.

(xiii) Further it was stated that the said properties were not in the list of properties mentioned as CRZ/ESA as per the 1996 CZMP, hence, the same were beyond the purview of CRZ Notifications.

(xiv) Further, it is submitted that vide letter dated 08.10.2021 issued by the Panchayat of Mercas, Appellants were informed about the site inspection and ground truthing to be conducted on 09.10.2021, in pursuance of the directions of Respondent No. 1 but the same has not been conducted specifically for the purpose of determining the validity and applicability of the draft CZMP which has caused prejudice to the Appellants. The Respondent No.1 has placed excessive reliance on draft CZMP which does not have any legal sanctity, in absence of any loco- demarcation of mangroves habitats or its buffer zone. The exercise of jurisdiction by Respondent No.1 is a material of irregularity and the draft CZMP, till date has not been finalized. Hence, they cannot be made basis to issue direction under Section 5 of the Environment (Protection) Act, 1986. The impugned order is passed on complete misconception of the CRZ Notification. Hence, the Appeal should be allowed.



3. The stand taken by Respondent No.1-GCZMA in its Affidavit dated 19.07.2022 is as follows:-

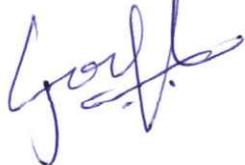
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(I) That the area is ecologically sensitive and hence the Appellants have acted in an imprudent and reckless manner to construct a dwelling house and two additional structures for storing agricultural produce and implements on the afore-mentioned land.

(II) The Appellants failed to appear in personal hearing on 31.07.2018. Therefore, final opportunity was given to the Appellants to appear on 14.08.2018, on which date, the Appellants were present in person along with Respondent Nos. 2 to 5 and also along with representative from the Village Panchayat. The Advocate representing Village Panchayat submitted that there was no permission issued to the Appellants for the said constructions. Thereafter, the Appellants sought time to file submissions. Hence, the Appellants were directed to make submissions on 28.08.2018 but they did not submit any reply.

(III) Thereafter, matter was placed for hearing on 31.08.2018 and after taking into consideration the submissions made by the parties and the inspection report, it was clearly established that there is land reclamation and destruction of mangroves done by the Appellants within the NDZ of Chimbhel Creek. The Poultry, Slaughter House and Chawl etc. constructed in Surveys Nos. in 275/I, 275/1-A, 275/1-B and 275/1-C are within the NDZ area. Hence, impugned demolition order was issued. Therefore, it cannot be said that the opportunity of hearing was not given and the Principle of Natural Justice has been violated.



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(IV) Further, it is submitted that Respondent No.1 directed the DSLR to conduct a survey of the afore-said land and superimpose the DSLR plans on draft CZMP, 2011 and accordingly after having done so it was concluded that the said structures fell within the mangrove and 50 meters mangrove buffer which attract the CRZ Notification.

(V) Further, it is submitted that Section 3 of Environment (Protection) Act, 1986 provides power to Central government to take measures to protect and improve the environment. The Central Government constituted the GCZMA/Respondent No.1 in exercise of the powers conferred under sub-sections (1) and (3) of section 3 of the Environment (Protection) Act, 1986 which has power to issue direction under Section 5 of the Environment (Protection) Act, 1986 in writing to any person, officer or any authority who shall be bound to comply with such directions. Therefore, to say that Respondent No.1 does not have power is erroneous interpretation of law by the Appellants.



(VI) It is further submitted that the Expert Member Committee concluded that the site was adjoining mangrove habitat and hence attracted CRZ provisions. The Expert Member Committee conducted the survey in a diligent manner wherein it was observed that the structure erected on the property in issue is being used as a store house to keep construction material and to accommodate workers and the area in question is situated adjoining a mangrove habitat indicating tidal influence. Hence, CRZ provisions

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would be attracted. Hence, it is stated that the Appeal should be dismissed with cost.

4. The stand taken by Respondent No.3- Mr. Jose Oliveira in its Affidavit dated 08.06.2022 is as follows:-

(A) The GCZMA has carried out the site inspection on 20.11.2017 which contained following details:-

“

(a) The site is an agricultural land lying along the bank of the tidally influenced backwater of Mandovi River at Morombi—o-Grande.

(b) The site was earlier a paddy field.

(c) The backwaters of Chimbhel creek at Merces ends at the boundary of the said agricultural land and the backwater area has flourishing mangroves all over.

(d) No permanent building/structure existed on the plot on or prior to 1991.

(e) All these structures are constructed within 50 mts from the bank of backwater.

(f) The survey map of the years 1974, 1977,1978 obtained from the DSLR indicates that the Chimbhel Creek in its last leg has given rise to a backwater behind Shantabhan Housing Complex at Morombi-o-Grande in Merces much prior to 1991, with thick Mangroves covering over 1000 sq. Mts of area.

(g) All the constructions done are well within the NDZ area.”

(B) Further it is submitted that report of the GSPCB dated 26.04.2017 holds as follows:

“The site is located in close proximity to mangroves. River Mandovi is at a distance of 1.6 Km from the site and a rivulet of the Mandovi river is adjacent to the site.”

At Point No. 20 of the GSPCB report, it clearly states:



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"Disposal Method: Into Septic tank as informed, however many outlets from the residential quarters provided for the labourers seen draining into the creek."

This GSPCB report also states at Page 6 that the solid dry waste is burned within the plot premises and the wet waste is dumped behind the residential shed near the mangroves. It further states that unhygienic conditions are maintained where the premises are given on rent.

(C) The Coastal Zone Management Plans (CZMP 2011) for the State of Goa were completed in the meanwhile and the plans clearly indicates that the land bearing Sy Nos. 275/1-A, 275/1-B & 275/1-C, Morombi-o—Grande village is within the mangrove buffer zone and therefore within CRZ-1 area.



(D) It is seen from the google earth image attached that the subject paddy fields bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village, have been filled and built upon by the Appellants, close to the creek of Mandovi and are within khazan lands.

(E) The Tenants Association of Moromobi-o-Grande khazan lands has a list of its members under Form-III. This list includes an entry at sl. no 192 which reads:-

"Sl No —192; Name of the member — Piedade D'Souza; Name of the field —Adverice Querchoaco; Total area held by the member - 7645" This is the description of the same land which now bears sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village, as is confirmed on page 43 of the Appellant's own memo of Appeal, where it is stated that the Appellants' father was the tenant of this khazan paddy field named "ADVERICO DE QUERCHOACO". It is verified that there is no other field with this name, or any similar name, in the

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village of Morombi-o-Grande. Therefore, clear that the land bearing sy. Nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village is a part of the Morombi-o-Grande village khazan lands (sic).”

(F) The google earth image of 2003 shows that this land was paddy fields in 2003, in contiguity with, and, of the same nature as, the adjoining low-lying paddy fields. These are the paddy fields that are described as marginal to the creek of Mandovi River and are clearly a part of the 320 Hectares extent of the Moromobi-o-Grande khazan lands. The google earth image of 2005 clearly shows saline water ingress inside sy no. 275/1, Moromobi-o-Grande village, proving irrefutably that the land bearing sy no. 275/1, Moromobi-o-Grande village is a part of the khazan land. The google earth image of 2022 shows the presence of mangroves on 3 sides of the land bearing sy no. 275/1, Moromobi-o-Grande village, confirming that the subject land is also a part of the khazan lands.

(G) Photographs of the present status of the surrounding lands show that the land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village has been filled up with mud while the adjoining lands are overgrown with mangroves. It is obvious that if the land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village was not filled up, it would remain influenced by tidal waters and would be having growth of mangroves. The land bearing sy nos 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village is therefore irrefutably within the Moromobi-o-Grande khazans.



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(H) Para 7, (i), A of the CRZ Notification 2011 classifies CRZ-I areas and sub-para (a) includes mangroves under CRZ-I. It states,

"Mangroves, in case mangrove area is more than 1000 sq mts, a buffer of 50 meters along the mangroves shall be provided;"

The Notification further states under "Annexure I Guidelines for preparation of Coastal Zone Management Plans", para I, D, II,

3. *Buffer zone along mangrove areas of more than 1000sq mts shall be stipulated with a different colour distinguishing from the mangrove area.*

4. *The buffer zone shall also be classified as CRZ-1 area".*

(I) The photographs annexed as Annexure K show that the land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village is in the midst of dense mangroves and is fully within the 50 m mangrove buffer zone.

(J) A marked up google earth image of 2022 showing the mangrove patch adjoining sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village, its area calculations and its 50 m buffer zone.

(K) It can be seen from the image attached as Annexure M that the entire land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village is within the 50 m buffer zone of the mangrove patch having an area of over 3,49,000 sq. mtrs.

(L) The amendment of the CRZ Notification, 2011 dated 01.05.2020, which is annexed as pages 101 and 102 by the Appellants to this Appeal, was in response to the unanimous request from Goan population and Government to demarcate the HTL for khazan lands at the bunds and sluice gates and for demarcation of mangroves that have grown in the paddy fields due to saline water ingress in khazan paddy fields as CRZ-IA. This amendment to the Notification not only



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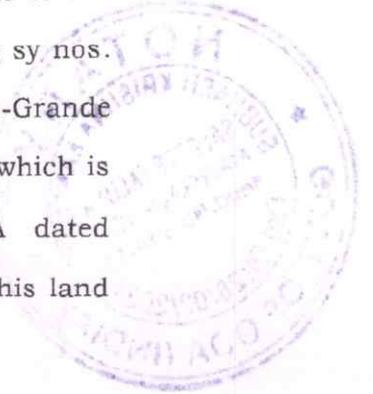
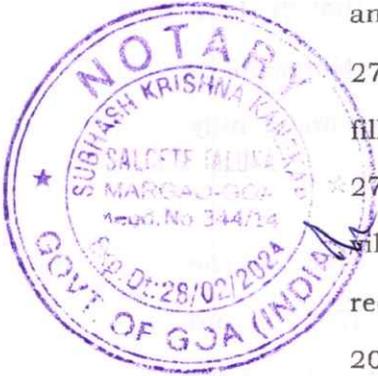
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strengthens protection given to the mangroves and khazan fields in sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village and adjoining khazan fields, but also explains how the mangroves have grown in these khazan fields due to saline water ingress.

- (M) The Draft CZMP 2011 prepared by NCSCM and submitted for final approval to the Ministry of Environment, Forests & Climate Change by Government of Goa shows that the land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village is within mangrove buffer zone. It also shows khazan fields adjoining the eastern, western and northern boundaries of sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village. However, due to the filling of the khazan lands within the land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village after felling of the mangroves in this land, which is recorded in the inspection report of GCZMA dated 20.11.2017, NCSCM has failed to recognize that this land is khazan land.

- (N) The Appellants reference to CRZ Notification 2019 is irrelevant since this Notification is not in force for the State of Goa and the CRZ Notification 2011 is applicable to Goa presently.

- (O) The Appeal admits under para 20, "... there was ingress of water in some portions of the surrounding areas which led to the growth of mangroves ...", implying that the Appellants have admitted that the land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village is adjoining mangroves and is therefore within mangrove buffer zone.



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(P) The inspection report of GCZMA expert members dated 20.11.2017 and annexed hereto as Annexure A states in its Conclusions and Recommendations, paras iii), iv) and vi),

"iii) Since the entire backwater area starting from the western boundary of the plot [Sy. No. 275] with thick Mangroves all over is existing much prior to 1991, the CRZ Regulation of 1991 becomes applicable.

iv) As the existing thick Mangroves are more than 1000 sq. m in area, a setback of 50 m becomes applicable from the Mangroves to the plot area towards the landward side within which no activity is permissible.

vi) The constructions done of poultry, slaughter house, big house, toilets, chawl, etc are all falling within the 50 m set back/NDZ area and are not permissible."

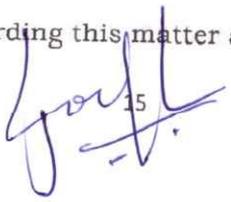
It has thus been concluded by Expert Members of GCZMA based on site inspection that the subject land is within Mangrove buffer zone.

(Q) The inspection report of GCZMA expert members dated 20.11.2017 and annexed hereto as Annexure A states in its Conclusions and Recommendations, para ii), b),

"The Mangroves have been cut for making area available for reclamation, which is also without obtaining any permission from the Forest Department."

This confirms that the land bearing sy nos 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village is within Mangrove area and that mangroves have been cut to allow reclamation of the CRZ-I area.

(R) The Minutes of the GCZMA 171st Meeting held on 10.4.2018, under case 2.3, records the decision of the GCZMA regarding this matter as,



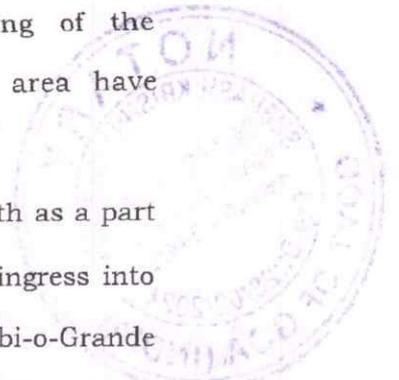


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"The Authority after perusing the site inspection report by the Expert Member and noted that violators have also cut many mangrove trees within the area without obtaining any permission from the concerned authority after detailed discussion and deliberation decided to issued demolition order to the Mr. Johny Fernandes and Mr. Shane Fernandes having property bearing Sy. nos., 275/1, 275/1-B, 275/1-C, 274/1 and 274/2 of village Morombi-O-Grande, Tiswadi within CRZ area." (emphasis provided).

This also confirms that the land bearing sy. nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village is within Mangrove area and that the felling of the mangroves and reclamation of the CRZ-I area have changed the nature of this land.

(S) The google earth image of 2005, annexed herewith as a part of Annexure J, clearly shows that saline water ingress into sy. nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village had already taken place by 2005. Growth of mangroves in such conditions is quick and certain, since mangrove seeds abound in these saline waters and take root within no time. It is therefore certain that sy nos 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village would have been covered with mangrove growth within a year or two. The next google earth image available is only five years later dated 2010, which shows that filling of the land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village had started and also shows that mangroves were existing on the northern, eastern and western sides of the said land before the filling. Hence the google earth images also confirm that the filling done in or before 2010 could also have taken place only by cutting mangroves within sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village.



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(T) The google earth image of 2003, also annexed herewith as a part of Annexure J, reveals that the nature of the land bearing sy nos 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village is identical to the adjoining paddy fields. Hence, if the Appellants had not felled mangroves and filled the low-lying khazan lands bearing sy nos 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village, this land would have also been covered densely with mangroves like the lands on the three sides of this land.

(U) The inspection report of GCZMA dated 20.11.2017 states under "Conclusions and Recommendations", para 1),

"The site where the filling is done for reclamation of the area for construction is within NDZ of the backwater of Chimbel Creek." (emphasis provided).



This conclusion of the GCZMA Expert Members clearly confirms that the land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village has been filled for reclamation of the khazans and construction of structures. It also confirms that the area is within NDZ of Chimbel Creek.

(V) The inspection report of GCZMA dated 20.11.2017 states under "Conclusions and Recommendations", para ii), a),

The filling of the tenanted agricultural land of the Comunidade of Merces is done without its permission." (emphasis provided).

This conclusion of the GCZMA Expert Members again confirms that the khazan land bearing sy. nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o- Grande village has been filled in violation of the CRZ Notification 2011.

(W) The inspection report of GCZMA dated 20.11.2017 states under "Conclusions and Recommendations", para ix),

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"Similarly, the mud filling done for reclamation of the area is also not permissible within the NDZ/agricultural area."(emphasis provided).

This conclusion of the GCZMA Expert Members also confirms that the khazan land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village has been filled with mud for reclamation in violation of the CRZ Notification, 2011.

- (X) Comparison of the google earth images of 2003 and 2005 with the google earth image of 2010 shows that filling of the land bearing sy. nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village started around 2010.



- (Y) The photographs of the land bearing sy. nos. 275/1-A, 275/1-B and 275/1C, Morombi-o-Grande village also reveal that it has been filled with mud for illegal reclamation and subsequent construction of illegal structures. The photographs show that the land is now much higher than surrounding paddy fields, revealing that this land is filled up and reclaimed.

- (Z) The land records for the land bearing sy. nos. 275/1-A, 275/1-B and 275/1C, Morombi-o-Grande village show that 7,869 sq metres out of 7,988 sq metres of the land are for rice cultivation. The present nature of the surface is hard, red lateritic mud, which cannot be suitable for rice cultivation. The land is also now much higher than surrounding paddy fields. It is obvious therefore that low lying khazan fields in sy. nos. 275/1A, 275/1-B and 275/1-C, Morombi-o-Grande village, which were used for paddy cultivation, have been filled with red mud in violation of the CRZ Notification 2011.

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(AA) The earliest google earth image available of 2003 shows only one small structure existing within sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village. Subsequent google earth images of 2010 and 2022 show that numerous constructions have been carried out within sy nos 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village since 2003 in a phased manner. No permissions are obtained under the CRZ Notification 1991 or 2011 for any of the structures.

(BB) The DSLR plan annexed shows that all the structures within sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village are new structures or temporary sheds. This plan gives conclusive evidence that all the structures within sy nos. 275/1-A, 275/1B and 275/1-C, Morombi-o-Grande village are in gross violation of the CRZ Notification 2011.



(CC) The inspection report of GCZMA dated 20.11.2017 states under "Conclusions and Recommendations", para ii),d),

"The constructions of poultry shed, slaughter house, the big house, toilets, chawl, etc are all done without obtaining permissions from GCZM and other authorities."

This proves that no permissions are obtained from GCZMA for the structures within sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o- Grande village and that they are therefore in violation of CRZ Notification 2011.

(DD) The inspection report of GCZMA dated 20.11.2017 states under "Conclusions and Recommendations", para viii),

"As per CRZ Regulation, the construction is permissible within the NDZ area if it is done only on the existing plinth of the old structure, however no such structure existed on the plot prior to 1991."

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This proves that no permissions can be granted by GCZMA for the structures within sy nos 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village and that they are therefore in violation of CRZ Notification 2011.

(EE) The inspection report of GCZMA dated 20.11.2017 states under "Conclusions and Recommendations", para xii),

"As the violator has not obtained any permission, neither from the Comunidade of Merces nor from the Village Panchayat, Merces and most importantly from GCZMA, all the erected structures become illegal structures and cannot be permitted to exist at the said area."



This proves that no permissions are obtained from GCZMA for any of the structures within sy nos 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village and that they are therefore in violation of CRZ Notification 2011.

(FF) The google earth images, photographs and inspection reports relied upon clearly show that filling has been carried out in land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village after 2005. Section 17-A of the Town & Country Planning Act, 1974 states that no filling of low-lying land can be carried out without prior permissions from the Chief Town Planner. However, no such permissions are obtained.

(GG) The construction of a chawl for a large number of migrant workers, numerous toilets, other residential and commercial structures on this land imply that the use of the land bearing sy nos 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village has been changed from paddy cultivation to residential and commercial non-agricultural use. Sections 31 to 33 of the Goa Land Revenue Code, 1968 require prior permission from the District Collector for any change in land use. However, no

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such permissions are obtained under sections 31 to 33 of the Goa Land Revenue Code, 1968.

(HH) As admitted by the Appellants, they have purchased the land bearing sy nos 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village by claiming tenancy under the Goa, Daman and Diu Agricultural Tenancy Act, 1964. However, the Goa Land Use Regulation Act, 1991 completely prohibits any non-agricultural use of such lands. Therefore, no permissions can be granted by the authorities for any constructions on this land for residential or commercial use, or for change in use of this land.



(II) The construction of any structure requires prior Construction License from the Village Panchayat. No such permissions have been obtained.

5. The stand of Respondent No.4 is the same as that of the stand of Respondent No.3. Therefore, it would be futile to reproduce the pleadings.

6. Heard the arguments of all the parties.

7. The Learned Counsel for the Appellants mainly confined their argument to the point that the demolition order by the Respondent No.1/GCZMA of the properties detailed in the impugned order i.e. Surveys Nos. 275/1, 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village only relate to the Appellants and not the other survey nos. i.e.274/1 and 274/2 and that these survey numbers which belonged to them are not covered under CRZ Notification because as per Sub-Clause A(a) of Clause (i)-CRZ-I of Regulation 7 of the CRZ Notification, 2011 the following CRZ area shall be classified as follows:-

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"7. Classification of the CRZ – For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as follows, namely:-



(i) CRZ-I,-

A. The areas that are ecologically sensitive and the geomorphological features which play a role in the maintaining the integrity of the coast,-

(a) Mangroves, in case mangrove area is more than 1000 sq mts, a buffer of 50meters along the mangroves shall be provided;"

8. The ecological sensitive area must contain mangrove area of more than 1000 sq. mtrs. and a buffer of 50 mtrs. along with mangroves while in the case in hand there is no evidence led from the side of the Respondents to show that the constructions which are ordered to be demolished were covered under mangrove as there was no mangrove area more than 1000 sq. mtrs. Hence, the Respondent No.1 did not have any jurisdiction to treat the property in question to be covered under CRZ Notification and accordingly, demolition order is an illegal order which needs to be set aside.

9. Further, he has drawn our attention to the documents at page nos. 43 to 53 of the paper book which is order issued by Mamlatdar of Tiswadi Taluka , Panaji, Goa wherein application of the father of the Appellants dated 31.05.2006 for purchase of paddy field has been allowed which bears survey no. 275/1 of Village Morombi-o-Grande.

10. He has also drawn our attention to page no. 54 of the paper book which is Form No. III-A, purchase certificate in the name of Mario Fernades Alias (father of the Appellants) and the description of the property bears survey no. 275/1. Then, he drew our attention to page no.66 of the paper book which is certificate of purchase of house no. 246 by father of the Appellants situated in survey no.275/1 and to

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page no. 68 of the paper book which is the order passed by the Deputy Collector & Sub-Divisional Officer, Panaji, Goa which shows newly partitioned portion which bears Sub-Division No.1-A, 1-B of survey no. 275 of Village Morombi-O-Grande in Tiswadi Taluka.

11. Then, he has drawn attention to the order of Hon'ble High Court passed in Writ Petition No. 1088/2018 at page nos.72 to 75 of the paper book wherein the Petitioner/Appellant No.1 had assailed the show cause notice issued to him pertaining to property bearing survey no. 275/1, 275/1-A, 275/1B and 2751-C of Morombi-O-Grande, Merces and the impugned order was set aside on the ground that opportunity of hearing to the Petitioner/Appellant was not given. There was no merit touched in this case by the Hon'ble High Court. Thereafter, he has drawn our attention to page nos. 94 to 95 of the paper book which is inspection report of the impugned survey numbers which is conducted by Member Secretary of GCZMA on 17.03.2020 and specifically pointed out in this that at clause of E of the observations and recommendations it simply mentions that the site in question is situated adjoining to a mangrove habitat. This indicates there is a tidal influences, hence, attract CRZ Provisions. But, it is argued that it no where mentions that mangrove was more than 1000 sq. mtrs. as that was the condition precedent to consider the said area to be covered under ecologically sensitive area as per Regulation 7 of CRZ Notification, 2011 (cited above).

12. Then, he has drawn our attention to page nos.103 to 105 of the paper book which is an application by the Appellants before the Authority /GCZMA wherein objections were raised to the effect that the mangrove appears to have come up recently somewhere after 2010 in the neighboring paddy fields because sluice gate/bund was not maintained in proper condition by the authorities which allowed ingress of saline water. Till 2003, there was no mangrove around their



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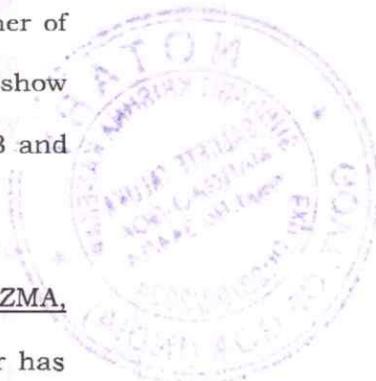
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property or adjacent to various housing complexes which are constructed after 1991 and that as per CRZ Notification 2019, the mangrove in private land will not require a buffer zone but all these objections were not considered by the authority and demolition order was passed arbitrarily.

13. Further, he has drawn our attention to page nos. 38 to 40 of the paper book pertaining to survey no. 275/1-A wherein occupant's name is Johny Fernades who is Appellant No.1; on survey no. 275/1-B, the name of the occupant is recorded as Shaine Fernades who is Appellant No. 2 and in survey no. 275/1-C the name of the father of the Appellants is recorded as Applicant and argued that this show that the entire property bearing survey nos. 275/1-A, 275/1-B and 275/1-C were belonging to the Appellants and their family.

14. From the side of Learned Counsel for Respondent No.1/GCZMA, it is vehemently argued that the area in which demolition order has been passed lies under dense mangrove which is evident from the google image which is annexed at page no. 264 of the paper book and therefore, the same would be covered under CRZ Notification and would be governed by Regulation No. 7-(i)-CRZ-1)-A(a). It is evident that the said constructions have been raised by the Appellants without any permission from the authorities concerned and that no such construction was permissible in that area, hence, they there have been rightly directed to be demolished.

15. We have gone through the impugned order wherein it is recorded by the Authority/GCZMA that the Appellants nowhere denied the existence of structures in survey nos.275/1, 275/1-A, 275-B and 275/1-C which are also marked by DSLR and the same have been shown/superimposed on survey plan in its site inspection and by doing ground truthing, it is observed that property in question is



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situated adjoining to mangrove habitat which indicates tidal influence and hence, CRZ-2011 provisions would be attracted. It is also evident from DSLR and Expert Member's Report that there exist structures on the said survey numbers and so far as their legality is concerned, the Appellants have not produced any such document before it to establish them to be legal rather they defended the said structures only on the ground that they are not covered under CRZ Notification, 2011. At this, the Authority had directed the Respondents to get an exercise of demarcation of CRZ line and ecologically sensitive area done in all the survey numbers owned by him from NCSCM but the Respondents failed to do so. In this regard, during argument, the Learned Counsel for the Appellants stated that it was a very expensive affair as they would have paid expenditure of approximately Rs.3 Lakh and therefore, the Authority was indiscreet in thrusting such cost upon the Appellants to bear, although, it was the job of the Authority to get such a survey conducted.



16. Further, it is mentioned in the impugned order that the Authority directed DSLR to conduct site inspection and superimpose all structures on survey plan in order to ascertain new and old structures erected in the said survey numbers, which direction was carried out by DSLR in site inspection on 10.02.2021 and showed factual position of the land and demarcated new structures on the survey plan.

17. The Appellants did not produce any documents which could prove that the new structures were constructed prior to 1991 nor any permission was produced by them for the said constructions which are reflected in the site plan prepared by DSLR. Therefore, it was clear that all the structures located in the said survey numbers were illegal and unauthorized.

A handwritten signature in blue ink, appearing to be "G. J. A.", located at the bottom of the page.

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18. Further, it is mentioned in this order that the Authority superimposed the said DSLR Plan on the draft CZMP, 2011 and it concluded that the structures totally fall within mangroves and 50 mtrs. mangrove buffer which attracts CRZ provision and, therefore, this property fell in CRZ and the Authority has full jurisdiction. Because of this only, impugned order has been passed, directing demolition of the said structures having been found to be illegal.

19. After going through the entire order, we find that all the documentary evidences which were led by the Appellants were considered appropriately by the Authority and with the assistance of the two site inspections, it was established by them beyond doubt that the structures which are ordered to be demolished did fall in the CRZ area, which also finds support from the google earth image annexed at page no. 267 of the paper book wherein the disputed structures are shown to be located very clearly amid the dense mangrove.

20. Therefore, we do not find any force in the arguments made by the Learned Counsel for the Appellants rather we find force in the argument of Learned Counsel for the Respondent No.1 as well as the other Respondents.

21. We are of the view that impugned order does not suffer from any illegality/infirmity; the same deserves to be upheld and is accordingly upheld. This Appeal stands dismissed. There shall be no order as to cost.

22. The pending I.A. is also stands disposed of.



Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

September 06, 2022
Appeal No. 15/2022 (WZ)
I.A. No. 45/2022(WZ)
JG



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ANNEXURE A-5

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ITEM NO.29

COURT NO.7

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 7310/2022

JOHNNY FERNANDES & ANR.

Appellant(s)

VERSUS

GOA COASTALZONE MANAGEMENT AUTHORITY & ORS.

Respondent(s)

(IA No.155381/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT and IA No.155380/2022-STAY APPLICATION and IA
No.156148/2022-PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 07-11-2022 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE AJAY RASTOGI
HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Appellant(s) Ms. Shivaa Desai, Adv.
Mr. Aniroodh S. Desai, Adv.
Mr. Vibhuti Sushant Gupta, Adv.
Mr. Narender Kumar Verma, AOR

For Respondent(s) Ms. Ronita Bhattacharya Bector, Adv.
Ms. Nupur Kumar, AOR
Ms. Priyansha Sharma, Adv.
Ms. Muskan Surana, Adv.



UPON hearing the counsel the Court made the following
O R D E R

The civil appeal is dismissed in terms of the signed order.

Pending application(s), if any, stands disposed of
accordingly.

(MONIKA DEY)
COURT MASTER (NSH)

(ASHWANI KUMAR)
ASTT. REGISTRAR-cum-PS

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S). 7310/2022

JOHNNY FERNANDES & ANR.

APPELLANT(S)

VERSUS

**GOA COASTALZONE MANAGEMENT
AUTHORITY & ORS.**

RESPONDENT(S)

ORDER

Heard learned counsel for the appellants.

We do not find any reason to interfere in the judgment impugned dated 06.09.2022 passed by the National Green Tribunal, Western Zone Bench, Pune in appeal No. 15 of 2022 (WZ). The appeal is accordingly dismissed.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(C.T. RAVIKUMAR)

Signature Not Verified

NEW DELHI

NOVEMBER 07, 2022.