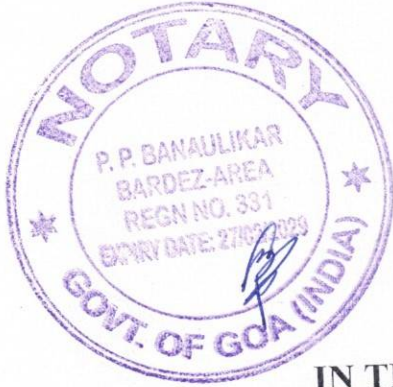


**BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNAL WESTERN ZONE BENCH AT PUNE**

**(Under Section 18 (1) read with section 16 of the National
Green Tribunal Act, 2010)**



(Appeal No. 142 of 2024)

IN THE MATTER OF:

MR. LLOYD ST. JUDE JOACHIM

FERNANDES.....APPELLANT

Versus

GOA COASTAL MANAGEMENT AUTHORITY

and Ors

... RESPONDENTS

**AFFIDAVIT IN REJOINDER ON BEHALF OF
APPELLANT TO THE AFFIDAVIT IN
REPLY DATED 29.05.2024 OF RESPONDENT**

NO.1

A handwritten signature in blue ink, appearing to be 'Himal', written over the text 'NO.1'.

MAY IT PLEASE YOUR LORDSHIPS:

I, Lloyd St. Jude Joachim Fernandes, aged about 65 years, son of Late Albert Fernandes, Indian Citizen, residing at TivaiVaddo Calangute Bardez Goa, the Appellant do hereby on solemn affirmation state and submit as under:

1. I state that I am the Appellant abovementioned and authorised to file the present Affidavit in Rejoinder. I state that I am filing the affidavit in rejoinder pursuant to the Reply Affidavit In Reply dated 29.05.2024 filed by the Respondent no.1 in the aforementioned matter. I state and reiterate whatever has been stated in the aforesaid appeal. I state that the content of the Affidavit in Reply of the Respondent which are not specifically dealt with may not be construed to be admitted by the Appellant.

2. I state that with respect to para 1,2,3,4,5,6,7,8,9,10 &11 of the Affidavit in Reply on behalf of the Respondent no.1, the content of the same are denied to the extent the same are contrary to whatever has been stated herein above.



Lloyd St. Jude Joachim Fernandes

3. I state that with respect to para 12& 13 of the Affidavit in Reply on behalf of the Respondent no.1 the content of the same are denied to the extent the same are contrary to whatever has been stated herein above. I state that references to the approved revision of plans were pending before Respondent no.1 before Respondent no.3 filing its complaint.



4. I state that with respect to para 14,15& 16 of the Affidavit in Reply on behalf of the Respondent no.1 the content of the same are denied to the extent the same are contrary to whatever has been stated herein above. I state that as per the plan, the Appellant was permitted to erect 10 cottages however the Appellant have erected only 8 cottages, without exceeding the permissible FAR as per CRZ law. I state that as regards the height of each cottage is concerned wherein the inspection report observes that the height of the structure is 4.5 mtr instead of permissible 3 mtrs, the same is incorrect. The Appellant state and reiterate that the Respondent no.1 has miscalculated the height of the structure as at the time of inspection what was calculated was height of the Structure from the center ignoring the height of the wall

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which includes sloppy roof in terms of the drawing submitted. The Appellant states that the height of the wall of the structure is 3 mtrs as approved by the Respondent no.1. Therefore, in view of the miscalculation observed in the report, there is no discrepancy as regards the erecting of cottages and violation of Height of cottages. It is denied that there is any first floor erected by the Appellant. The Appellant have erected the temporary structure as per the permission issued by the Respondent no.1. It is denied that on site the Appellant has constructed the plinth of the structure using ceramic tiles supported on mild steel frame work and concrete foundation and on the metal base having concrete foundation. I state that the there is no mention in the inspection report regarding any use of the Cement or concrete material for erecting of Cottages/huts and to verify the same this Hon'ble tribunal may appoint commissioner to that effect. I state that there is no cement used by the Appellant and Appellant has used only fiber board's (which are environmental friendly). I state that the Fiber board is fixed on the frame which is not attached to the land and is only placed on the sand and can be dismantled at any point of time. I state that the Appellant have already



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submitted Application for revision of plan to the Respondent no.1 which is still pending adjudication, and in absence of considering the revised plan any observation made by the Respondent no.1 is irrational and premature. I state that the Law on the point is that if there are approved plans by the authorities and any deviation from the plan merely on that basis the structure cannot be directed to be demolished if it falls within the permissible limit and regularization is permissible. In terms of the Goa building development regulations the deviations are permissible to the extent it is permissible and can be regularized. In the instant case the total area utilized by the Appellant is concerned is less than what was approved by the GCZMA. I state that considering this the Appellant has already filed an application for regularization as it was thus incumbent upon the GCZMA to first consider the application for regularization and only thereafter the order of demolition could have been issued. Therefore, the impugned order gets vitiated only on this count alone.



Akshay

Annexed hereto as "Annexure-A" is the copy of the Application for Revision plan dated 21/04/2023 alongwith the Plans

5. I state that with respect to para 17 of the Affidavit in Reply the content of the same are denied to the extent the same are contrary to whatever has been stated herein above. I state that the Appellant have submitted the revision of plans on 21/04/2023 and the impugned order is passed on 12/04/2024 (almost after a period of one year after submission of revision of plans and well before the issuance of Show cause notice), the Respondent no.1 was never precluded from considering the revision of plans. It is pertinent to mention that the revision of plan was after the inspection was carried out, ie. 03.03.2023 and well before issuance of Show cause notice dated 06.06.2023, Therefore it was imperative on the Respondent no.1, that the revision of plans should have been considered before issuing the impugned order herein.

6. I state that with respect to para 18 of the Affidavit in Reply the content of the same are denied to the extent the same are contrary to whatever has been stated herein above. I state that the electricity panel area is only 3.41 sqmtrs and not a




permanent structure and does not exceeds the permissible FAR as approved and permitted by the Respondent no.1. More importantly the Appellant have asked for revision of plan wherein the permission for revision of plans were sought for. It is respectfully submitted that the erection of temporary structure like Electric panel is permissible activity, if it is within the permissible FAR.



7. I state that with respect to para 19 of the Affidavit in Reply the content of the same are denied to the extent the same are contrary to whatever has been stated herein above. It is denied that the Authority noted that with regards to the Restaurant/Shack; the Appellant had extended the Restaurant/Shack beyond the permissible limits and it had also noted that the Appellant has increased the height of the shack of the permitted 4.5 sq mtrs to approximately 6.50 Sq mtrs. It is denied that the Appellant had also exceeded the area of the Restaurant. It is stated that there is no touching the roofing of the structure to the compound wall. It is submitted that the bison board is also temporary material and eco-friendly in nature which can be removed or dismantled easily at any point of time. I state that the entire material used by the Appellant is

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permissible material in terms of beach caring capacity report. Indeed the inspection report clearly states that the structures are temporary structures. Further, the inspection report states that the Appellant has erected less cottages the what was approved and the area covered is less then what was permitted by GCZMA.

8. I state that with respect to para 20 of the Affidavit in Reply the content of the same are denied to the extent the same are contrary to whatever has been stated herein above. I state that structure mentioned in s.no.4 & 5 in the table of the inspection report, are temporary structures and the same are totally within permissible FAR available to the Appellant, and the Appellant has also submitted revised plan to that effect, which is pending consideration before the Respondent no.1. Nevertheless, the security cabin is already removed by the Appellant and which can be verified by the Respondent no.1.

Annexed hereto as Annexure B are the copies of Photographs of removed security cabin

9. I state that with respect to para 21 of the Affidavit in Reply the content of the same are denied to the extent the same are contrary to whatever has been stated herein above. I state

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that as stated in the Appeal the Swimming pool was assembled by Temporary material, which has also been removed by the Appellant, which can be verified by the Respondent no.1. It is pertinent to mention that the Swimming pool was also part of the revision of plans submitted in April 2023 and which is pending consideration of Respondent no.1.



I state that as far as Landscaping and water fountain is concerned the same cannot be countenanced towards calculating FAR. Nevertheless, the water fountain is also removed by the Appellant.

Annexed hereto as Annexure C Colly are the copies of Photographs of dismantled Swimming pool & removal of water fountain.

10. I state that with respect to para 22 of the Affidavit in Reply the content of the same are denied. I state that from the perusal of the Show cause notice it is evident that the same has been issued based on the complaint from the Respondent no.3.

11. I state that with respect to para 23,24 of the Affidavit in Reply the content of the same are denied to the extent the same are contrary to whatever has been stated herein above.

12. I state that with respect to para 25 of the Affidavit in Reply the content of the same are denied in view of whatever has been stated in Appeal memo and in the present Rejoinder. The Respondent no.1 failed to consider that the Appellant have not exceeded permissible FAR under the CRZ notification and more particularly in view of the fact that the revision of plans was pending with the Respondent no.1 for more than one year before issuance of impugned order. I state that the inspection report states and refers that all are temporary structures and the Respondent no.1 have brought nothing on record to state or counter the inspection report.

13. I state that with respect to para 26 of the Affidavit in Reply the content of the same are denied to the extent the same are contrary to whatever has been stated herein above. I state that the as stated in reply dated 18/04/2023 the Appellant has submitted the revision of plans, which was not considered by the Respondent no.1. Ignoring the same the Respondent no.1 has issued the impugned demolition order in arbitrary and irrational manner due to which great prejudice is caused to the Appellant.



14. I state that with respect to para 27 of the Affidavit in Reply the content of the same are denied.

15. I state that with respect to para 28 of the Affidavit in Reply the content of the same are denied. I state and reiterate as stated in para 28 of the Appeal memo that the total area of the Plot of the Appellant is 4700 sqmtrs, and as per the CRZ notification the permissible FAR is 33% of the area, which is 1551 sqmtrs of the plot area and the Appellant have consumed/utilized only 1530 sqmtrs, therefore the Appellant have not exhausted the permissible FAR, which is not even considered by the Respondent no.1. Hence the impugned order is bad in law.



16. I state that with respect to para 29& 30 of the Affidavit in Reply the content of the same are denied.

17. I state that with respect to para 31,32&33 of the Affidavit in Reply the content of the same are denied to the extent the same are contrary to whatever has been stated herein above. It is denied that there is any violation of plans by the Appellants.

18. I state that with respect to para 34,35 & 36 of the Affidavit in Reply the content of the same are denied to the

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extent the same are contrary to whatever has been stated herein above.

19. In view of above conspectus, the Appellant respectfully states and submit that the Impugned direction dated 12.04.2024 issued by the Respondent no.1 may be quashed and set aside.

20. I state that whatever has been stated herein above, is true to my own knowledge and based on the documents with the Appellant; and the contents of the same which I believe to be true and correct and some are based on the Legal submission which I believe to be true and correct.

Solemnly affirmed at Panaji, Goa

on this 11th day of February, 2025.

[Handwritten Signature]

DEPONENT

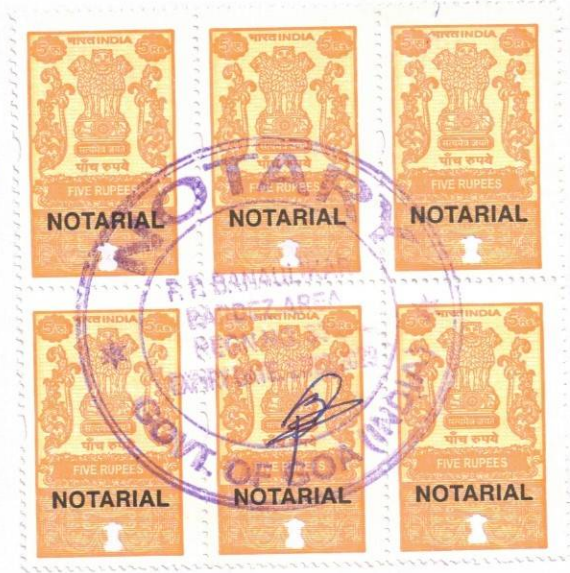
Identified by me:

MDL No GA0320100100986

Solemnly affirmed & Verified before me by
Lloyd Jude Jochem Fernandes
Who is identified before me by
M. D. L

Who is known to me personally
Regn. No. *479* Dtd. *11/02/2025*

[Handwritten Signature]
Pandurang P. Banaulikar
Notary for Bardez Area
State of Goa-India



Projects/Constructions/Repairs in CRZ

From: (Name and full postal address of the owner)

Mr Lyod St. Jude Joachim Fernandes,
158/1, Sub-D No. 1, Calangute, GoaTo,
The Member Secretary,
Goa Coastal Zone Management Authority,
Dempo Tower, 3rd Floor,
Patto, Panaji-Goa.D/o Member Secretary *21/04/23*
Goa Coastal Zone Management Authority
C/o Department of Environment & Climate Change
Dempo Tower 4th Floor,
Patto Plaza Panjim-Goa. 403001Subject: Revised Plans Showing beach shack wooden cottages for tourist
Season on Plot Bearing S.No. 158 Sub-D No. 1, Situated at Calangute Vill
Sir. Bardez Taluka - Goa.I intend to carry out the under-mentioned development in the plot of land under Survey
no. 158/1 (Chalta No. _____ P.T. Sheet No. _____) of Calangute Village Town,
Bardez Taluka, in accordance with the Coastal Regulation Zone (CRZ) Notification dated
19th February 1991 and 6th January 2011 as amended subsequently.

(Please give particulars of the proposed development)

I am enclosing herewith the following documents.

1. Ownership documents.
2. Form I & XIV.
3. Certified copy of Survey Plan issued by Directorate of Settlements & Land Records
(Showing 200 meter to 500 meter line (compulsory))
4. Site Plan showing the existing and proposed developments (duly coloured as per colour
code) countersigned by the Owner and Architect/Engineer/Town Planner registered with
their respective associations.
5. One copy of the detailed plans of the proposed developments countersigned by the
Owner and Architect/Engineer/Town Planner registered with their respective
associations.
6. Contour Plan of the plot with 50 cm. Counter interval (Not applicable in case of re-
construction and repair)
7. CRZ Clearances questionnaire duly completed (Form "A")
8. Environmental Impact Assessment (EIA) Report (Not applicable for compound walls, re-
construction, repair and single dwelling units).
9. Existing and proposed vegetation plan (Not applicable for compound walls, re-
construction and repair).
10. Photographs of the property from all sides showing the existing landscape, structure etc
11. This NOC will be issued subsequent to the payment of fees by the applicant of
Rs. _____/- vide D.D. No. _____ dated _____ In favour of
Goa Coastal Zone Management Authority, payable at Panjim.

I request that the clearance for the proposed development in the CRZ may be
accorded.

Date: 21/04/2023

[Signature]

Signature of the Owner



Picture after Removing of Swimming Pool



Picture after Removing of Security Room



Picture after Removing of Water Fall