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BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN  
ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. 08/2024

(Under Section 14 r/w Section 18 of the National Green Tribunal At, 2010)

IN THE MATTER OF :

Johnny Fernandes & Anr

... Applicants

Versus

GCZMA & Ors..

..... Respondents



**AFFIDAVIT IN REJOINDER ON BEHALF OF THE**

**RESPONDENT NO 3**

1. I, Jose Oliviera, residing at H. No. 232, Firgume Bhat, Vaddy, Mercos-Goa, 403006, the Respondent No. 3 herein, do hereby state on solemn affirmation:

A handwritten signature in blue ink, appearing to be "Jose Oliviera", located at the bottom right of the page.

2. I say that I was one of the Original Complainants in the proceedings before the Respondent GCZMA in relation to the illegal construction of the Applicants in the lands bearing survey nos 275/1-A, 275/1-B & 275/1-C of Morombi-o-Grande. I say that I have subsequently been arraigned as Respondent in each of the rounds of litigation initiated by the Applicants while trying to challenge or evade the directions of the Respondent GCZMA for the demolition of its structures. I have received a copy of the amended Original Application No 08/2024 on 29.02.2024 and am conversant with the contents of the said Application. Thus, I am competent to depose by way of the present affidavit on behalf of the Respondent No. 3 in the said matter.



3. At the outset, I deny each and every averment, contention, allegation and/or submission made by the Applicants. 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.

**EGREGIOUS FORUM SHOPPING ON THE PART OF THE  
APPLICANTS**

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4. At the very outset, I say the present Application is an unconscionable and egregious attempt of forum shopping, and the present Application deserves to be dismissed with exemplary costs.
5. I say that the present Application constitutes the 6th legal proceedings initiated by the Applicants in order to evade the demolition of their illegal structures constructed on CRZ lands constituting mangroves, khazan land, mangrove buffer and protected CRZ Land in the village of Morombi-o-Grande, Tiswadi, Goa
6. I say that annexed hereto and marked as **Annexure A -1** is a brief timeline of events surrounding the present dispute. In summation I say that the Respondent GCZMA has issued directions for the demolition of the illegally constructed structures by the Applicants on the lands bearing nos 275/1-A, 275/1-B & 275/1-C of Morombi-o-Grande, which attained finality after being upheld by this Hon'ble Tribunal and the Apex Court.
7. I say that the Applicants have not produced any new documents or averments beyond those raised in their previous rounds of litigation,



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particularly before this Hon'ble Tribunal and the Hon'ble Bombay High Court.

8. I say that the Hon'ble Bombay High Court, in its judgment in Writ Petition (filing) No 2698/2023 summarised the averments of the Applicants as follows:

*"After dismissal of the appeal before the Supreme Court, the petitioners filed an application dated 20.03.2023 before the respondent no.2, under the Right to Information Act, 2005, seeking information as to the status of their objections dated 05.03.2021 raised to the draft CZMP Plan under Notification dated 01.05.2020. In response, the petitioners claimed that they received a reply dated 21.04.2022, whereto report was annexed in which it was stated and recommended that with respect to land under Survey No.275 shown as mangrove, in khazan land, since the mangroves are located within the khazan land, the Buffer Zone marked around the land in the NCSCM Plan be Removed."* [Para 3(i) of the judgment of the Hon'ble Bombay High Court at Page 85 of the Paper Book]

*"It was further contended by the petitioners that the comments/suggestions in this report stated that the property was beyond 200mts from the bank of the river and does not attract CRZ,*



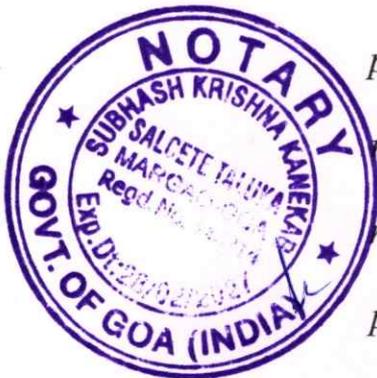
and as such should be excluded from the mangrove Buffer Zone. The petitioners further alleged that the remarks from the Mangrove Committee on this report state that on comparison of maps prepared by NCSCM it is observed that with respect to Survey No.275, since the mangrove and located within the khazan land it is recommended that the buffer zone marked around the same in the NCSCM Plan be removed.

K. It is thus the petitioners case as pleaded in the petition that since the said Committee report, which was available to the respondent no.2 prior to passing its order dated 07.03.2022, non-consideration of such report which enures in favour of the petitioners, amounts to a fraudulent act by the respondent no.2, vitiating its entire decision dated 27.03.2022. The petitioners therefore claim a declaration from this Court that the order dated 07.03.2022 and all subsequent corrigenda issued thereto are a product of suppression and fraud and are thus void ab Initio” **Para 3(j) of the judgment of the Hon’ble Bombay High Court at Page 86 of the Paper Book**

9. “Primarily, it is the submission of the petitioners that non-disclosure and the non-consideration of the Report dated 07.10.2021 Mangrove Committee and National Centre of Sustainable Coastal Management (NCSCM) annexed to the RTI



reply dated 21.04.2023, amounts to fraud played by the respondent no.2 on the petitioners, vitiating the entire decision-making process in passing the order dated 07.03.2022, which ultimately came to the confirmed by the Hon'ble Supreme Court. It is further the submission of learned Senior Counsel for the petitioners that had this Report been disclosed to the petitioners prior to the passing of the impugned order, they would have had the opportunity of bringing to the notice of respondent no.2 at its hearing, the fact that the area in question, was neither a mangrove nor was it within the setback for mangroves, under the CZMP 2011; it was further contended that the Mangrove Committee having recommended that the concerned property being khazan land, be kept out of the purview of the mangrove area in the draft CZMP 2019, such recommendations ought to have been considered by the respondent no.2, as the question and whether the NDZ at all covered the property under the CRZ 2011 Notification, was an issue that went to the root of the jurisdiction of the authority" [Para 5 of the judgment of the Hon'ble Bombay High Court at page 86-87 of the paperbook]



10. It is therefore evident that the documents and submissions raised in the present proceedings are identical to the ones raised before the

Hon'ble Bombay High Court and all pertain to documents obtained by the Applicants vide an RTI application dated 28.03.2023. The said documents are evidently:

a. RTI reply dated 21.04.2023 including

i. The Action Taken Report of the "Mangrove Committee"

b. RTI reply dated 06.06.2023 including

i. Minutes of the meeting of the Respondent GCZMA on 15.07.2021

ii. Letter of the Respondent GCZMA dated 14.07.2022 seeking approval of the CZMP maps of Goa

iii. 314th meeting of the GCZMA wherein the CZMP maps of 2011 were approved on 06.09.2022

iv. The recommendations of the Technical Scrutiny Committee of the NCSCM on 4.12.2021 regarding the preparation of the CZMP maps under the 2019 CRZ Notification.

v. 44th meeting of the NCZMA on 22.02.2022

c. Documents obtained during the hearing of Writ Petition (filing) No 2698/2023



1. I say it is evident that there is no new cause of action or averments arising from the said documents that the Applicants have made in the present Application that have not been previously considered and decisively adjudicated by the relevant courts, particularly this Hon'ble Tribunal and the Hon'ble Bombay High Court.

11. While addressing the said documents, and the averments of the Applicants, the Hon'ble Bombay High Court held,

*"In any event, if one peruses the Report in question, the same would not be relevant for the decision on the matter since it only contains recommendations to a draft CZMP 2019, which is yet to be notified.*

*Thus, the authority could, in any event, not have considered the content of the Report, suggestions or recommendations made therein or any surveys conducted by NCSCM for preparation of the new draft CZMP 2019."* [Para 10 of the judgment of the Hon'ble

**Bombay High Court at page 90 of the Paperbook]**

*"The pleadings in paragraphs 35 to 38 of the Petition only allege the content of the Report and the recommendations contained therein to the draft CZMP of 2019. The contents of paragraph 46 allege that respondent no.2 deliberately and intentionally concealed the facts stated in the Report, and without disclosing its content after receiving the same, proceeded to pass the impugned*



*directions. One fails to see how, even if the respondent no.2 proceeded to pass its order which was ultimately upheld by the Hon'ble Supreme Court, without making reference to the said Report, would be an act which constitutes an act of fraud."*

**[Paragraph 15 of the judgment of the Hon'ble Bombay High Court at Page 94-95 ]**

*"16. Even otherwise, the content of the Report, in our opinion was really not relevant to the decision of the matter, for reasons referred to above; nevertheless, if the objections dated 05.03.2021 raised by the petitioners before respondent no.2 are perused, the petitioners have clearly raised grounds therein that the draft CZMP 2011 was arbitrary for reasons stated in paragraph 3 of the objections/reply, in which the petitioners have also specifically raised a plea that as per the CRZ Notification of 2019 (CZMP 2019) mangroves in private land would not require a Buffer Zone. All these objections, including the objection that the structures were not covered under CRZ Notification 2011 were considered by respondent no.2 whilst passing its order and were further considered by the NGT in paragraphs 15 to 19 of its judgment. These proceedings became final after the appeal of the petitioners was rejected by the Supreme Court.*



*Therefore, this appears obviously to be another attempt at stalling the demolition of the illegal structures by now alleging fraud, which, as we see, is an allegation which cannot be sustained based on the very pleadings in the petition.*” [Para 16 of the judgment of the Hon’ble Bombay High Court at Page 95]

12. The Hon’ble High Court was therefore pleased to dismiss the Petition filed by the Applicants by arriving at the following conclusions and issuing the directions cited below:

*“The Petitioner, apart from violating the no development zone in the CRZ, has put up this illegal construction most brazenly without obtaining any permissions from the planning or the local authorities.*

*No dispute was raised on this score.* [Para 17 of the judgment of the Hon’ble Bombay High Court at page 96]

*“Despite the demolition order attaining finality, the petitioners have failed to demolish and remove the offending structures and continue to use the same....*

24. Then came this present petition, which was filed on a crafty allegation of suppression of material and fraud alleged against



*respondent no.2, based upon which the interim order was taken during this Court vacation restraining the respondent no.2 from executing its order of demolition. From the conduct of the petitioners, it has become more than evident that since 2018, the petitioners continue to blatantly flout the law and use the illegal construction carried out by them for commercial purpose, for running activities which would obviously cause damage to the environment around them, which in this case might result in permanently damaging the existing mangrove forest.*

**[Para 23-24 of the judgment of the Hon'ble Bombay High Court at page 98 of the paperbook]**

13. I say that the malafide nature of the actions of the Applicants as they are trying to evade demolition of their structures at any cost has already been taken note of by the Hon'ble Bombay High Court, which has even imposed costs on the Applicants for their conduct. I say that it is irrefutable that the Applicants are responsible for constructing illegally upon khazan lands, mangrove area, and mangrove buffer zone and are now desperately attempting to adopt every dilatory tactic, including evidently engaging in forum shopping to avoid the necessary and inevitable action of demolishing their illegally constructed structures.



**PRAYERS FOR FINALISATION OF NEW CZMP OF 2019**

14. With regards to the averments and prayers seeking the updating of the CZMP Maps issued under the CRZ Notification of 2011 and the preparation of the CZMP maps under the CRZ Notification of 2019, I say that Clause 6.1 of the CRZ notification of 2019 requires the CZMP maps for coastal areas across the country to be revised as per the provisions of the 2019 Notification. Clause 6.1 further stipulates that It is noteworthy that as per Clause 6.1 of the CRZ Notification of 2019, until such time as fresh CZMPs are prepared and sanctioned under the 2019 notification, provisions of the 2019 notification shall not apply and the CZMP as per provisions of CRZ Notification, 2011 shall continue to be followed for appraisal and CRZ clearance to such projects.



15. I say that there is no question that the CRZ Notification of 2011 applies in relation to the illegal construction (and consequently also the directions for the demolition of the illegal constructions of the Applicants). There is no scope or basis in law in which the Applicants can claim prospective protection under the CRZ Notification of 2019 when it is not in force. I say that this Hon'ble Tribunal should not entertain the present Application, which

deserves to be dismissed *in limine* with strong strictures against the Applicants for wasting the precious judicial time of this Hon'ble Tribunal.

Solemnly Affirmed at Goa )

*[Handwritten signature]*

Dated this 11<sup>m</sup> Day of March 2024)

*[Handwritten signature]*  
Deponent

Identified by me

Ronita Bhattacharya

Advocate for the Respondent No 3



Solemnly affirmed before me by  
Shri/Smt. Jose oliveira  
Who is identified to me by vide  
P.A. ACDPD 0580 G  
Shri/Smt. \_\_\_\_\_  
Who is personally known to me  
this 11<sup>th</sup> day of March 2024  
Reg. No. 411/2024

*[Handwritten signature]*  
11/03/2024

SUBHASH KRISHNA KANEKAR  
NOTARY  
SALCETE TALUKA  
STATE OF GOA (INDIA)

*[Handwritten signature]*

**BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE  
BENCH, PUNE**

**ORIGINAL APPLICATION NO. 08/2024**

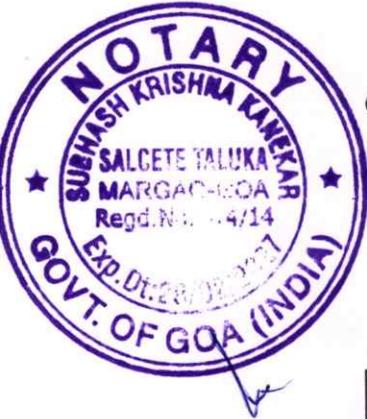
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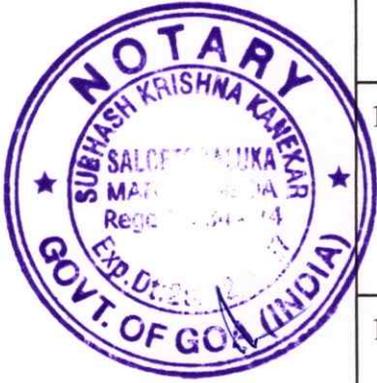
GCZMA & Ors.. ..... Respondents



**List of Dates**

Sr No	Date	Particular
1	2003	Google Earth Images clearly show that the subject lands are contiguous to and a part of the adjoining low-lying paddy fields, which are khazan lands. Only one small structure is seen in the google image, which was also constructed after 1991.
2	2005	Google Earth Images clearly shows that saline water had already entered into large parts of the subject khazan land by 2005 and mangroves have grown in the subject khazan land
3	12.04.2006	The father of Applicants, Mr Maruti Kalal, changes his name to Mario Fernandes, and is declared by the Mamlatdar of Tiswadi to be an "Agricultural Tenant" of the khazan fields bearing survey no 275/1, Morombi-O-Grande belonging to the Comunidade of Morombi-O-Grande
4	20.07.2006	The Mamlatdar of Tiswadi passes judgment and order

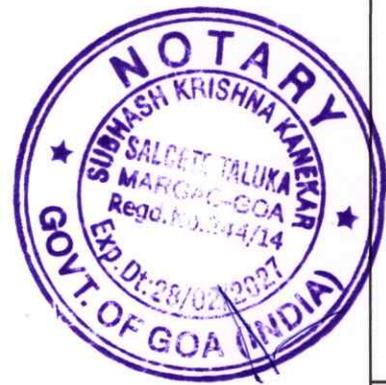
		allowing the application of Mr Maruti Kalal, also known as Mario Fernandes, for purchase of the khazan fields bearing survey no 275/1, Morombi-O-Grande as an agricultural tenant
5	17.10.2006	Judgment and Order of the Mamlatdar of Tiswadi declaring the father of the Applicants to be a "Mundkar" of the house bearing Sy No 246
6	04.01.2007	Corrigendum issued to correct the order of the Mamlatdar of Tiswadi
7	2006-2010	Large scale filling with hundreds of trucks of mud is carried out in 2006-2007 destroying the entire khazan lands. The Google Earth Image of 2010 show filling of the Khazan lands by the Applicants.
8	26.03.2017	Area adjustment and partition of Survey No. 275/1 to 275/1-A, 275/1-B and 275/1-C
9	31.07.2018	Personal Hearing was conducted by the Respondent GCZMA in response to complaints of Respondents No 3 to 5, at which time the Applicants did not appear before the GCZMA
10	14.08.2018	Final opportunity was granted for personal hearing, Applicants were present with Respondents Nos 3 to 5 and also with a representative from the Village Panchayat. Village Panchayat submitted that the structures were unauthorised and did not have necessary permissions
11	28.08.2018	Applicants were granted time to file their counter submissions till 28.08.2018 but failed to do so.
12	31.08.2018	The Respondent GCZMA, after considering the arguments of both parties and the site inspection report, decided that the structures were established on NDZ by the Applicants
13	20.09.2018	1st Demolition Order issued by Respondent GCZMA
14	27.02.2019	<b>Order of the Hon'ble Bombay High Court directing Respondent GCZMA to consider the representation of the Applicants and then decide whether to conduct demolition</b>
15	28.02.2019	The TCP Department issues a gazette notification reverting the zone of the land bearing sy nos 275/1-A, 275/1-B and 275/1-C to paddy fields zone, confirming that the existing structures are illegal and to be demolished, and that no structures can be constructed on these lands in the future.
16	12.03.2019	Representation/submission made by the Applicants to the Respondent GCZMA in defence of its unauthorised structures in CRZ Land
17	27.11.2019	Respondent No. 1 GCZMA directed the Applicants to carry out a survey through the NCSM, which the Applicants have



		never done.
18	12.03.2020	On account of the failure of the Applicants to undertake a survey through the NCSM, Respondent GCZMA issued a notice for a survey to be undertaken of the said lands on 13.03.2020
19	11.06.2020	Respondent GCZMA further issued a second notice for ground truthing and site inspection
20	15.06.2020	Applicants opposed site inspection of the land through a written notice
21	05.03.2021	Applicants opposed draft CZMP maps by submitting written objections
22	08.10.2021	Village Panchayat issued written notice of survey scheduled for the next date
23		DSLRL plans show that all structures on the lands bearing 275/1-A, 275/1-B and 275/1-C are new structures
24		Draft Khazan Management Plan was issued by the Committee for Preparation of Khazan Land Management Plan published its report stating that Khazan lands are used mainly for Agriculture (rice, vegetables, coconut and banana cultivation)
25	08.02.2022	Hearing of the issue of the unauthorised constructions of the Applicants was conducted by the GCZMA at its 289th meeting
26	07.03.2022	<b>Second demolition order was passed by the Respondent GCZMA against the structures of the Applicants. The said order was received by the Applicants on 09.03.2022</b>
27	01.04.2022	Applicants filed Appeal No 15/2022 along with Interim Application for Stay 15/2022 before NGT, Western Zone Bench
28	19.07.2022	GCZMA filed its reply before the Hon'ble NGT
29	25.07.2022	Respondent No. 4 filed its reply before the Hon'ble NGT
30	03.08.2022	Rejoinder filed by the Applicants
31	06.09.2022	Judgment passed by the Hon'ble NGT upholding the directions of the Respondent GCZMA
32	06.09.2022	Draft CZMP maps were approved by the MoEFCC through the NCZMA
33	07.11.2022	The Applicants filed Civil Appeal bearing No.7310/2022 before the Supreme Court of India challenging the order of the Hon'ble NGT dated 06.09.2022. The said Civil Appeal was dismissed by the Hon'ble Supreme Court of India on



		07.11.2022
34	20.03.2023	The Applicants filed an application dated 20.03.2023 before the GCZMA, under the Right to Information Act, 2005, seeking information as to the status of their objections dated 05.03.2021 raised to the draft CZMP Plan under Notification dated 01.05.2020
35	21.04.2023	The RTI reply of the GCZMA allegedly contained an "Action Taken Report" report in which the following was allegedly recorded: <ol style="list-style-type: none"> <li>1) Recommendations that with respect to land under Survey No.275 shown as mangrove, in khazan land, since the mangroves are located within the khazan land, the Buffer Zone marked around the land in the NCSCM Plan be removed</li> <li>2) comments/suggestions in this report stated that the property was beyond 200mts from the bank of the river and does not attract CRZ, and as such should be excluded from the mangrove Buffer Zone</li> <li>3) remarks from the Mangrove Committee that on comparison of maps prepared by NCSCM it is observed that with respect to Survey No.275, since the mangrove are located within the khazan land it is recommended that the buffer zone marked around the same in the NCSCM Plan be removed.</li> </ol>
36	22.12.2023	<b>The Hon'ble Bombay High Court at Goa was pleased to dismiss Writ Petition (filing no) 2698 of 2023 wherein the Applicants had sought, once again, to challenge the directions of the Respondent GCZMA requiring the demolition of the structures of the Applicants, claiming that the comments/observations/recommendations of the "mangrove committee" and NCSM had not been considered by the Respondent GCZMA while issuing its directions</b>
37	19.01.2024	<b>The Hon'ble Supreme Court of India dismissed the SLP No. 1665/2024 filed by the Applicants to challenge the judgment of the Hon'ble Bombay High Court. An observation was made that the SLP was "not pressed" by the Applicants</b>
38	January 2024	<b>The Applicants filed the present Application, raising the same grounds and averments previously raised by them before the Respondent GCZMA, the Hon'ble NGT, the Hon'ble Bombay High Court and Hon'ble Supreme Court of India</b>



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