

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

Original Application No.: 129/2025 (WZ)

**The Colva Civic and Consumer Forum** ... APPLICANT

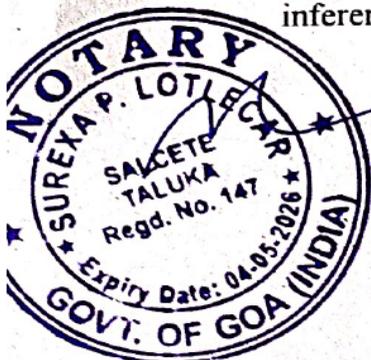
VERSUS

**Goa Coastal Zone Management Authority & Ors.** ... RESPONDENTS

**AFFIDAVIT-IN-REJOINDER ON BEHALF OF THE APPLICANT TO  
THE AFFIDAVIT-IN-REPLY FILED BY RESPONDENT NO. 3**

I, Mrs. Judith Almeida, President of the Applicant Forum, do hereby solemnly affirm and state as under:

1. I say I am the President of the Applicant forum and I am duly conversant with the facts and record of the present proceedings. I am competent to swear this Affidavit-in-Rejoinder.
  
2. I say the present rejoinder is filed to deal with and specifically traverse the contentions, denials, and preliminary objections raised by Respondent No. 3 ("R-3") in his Affidavit-in-Reply. Save and except what is expressly admitted herein, each and every statement, allegation, insinuation, and inference in the Reply is denied as false, misleading, and contrary to the



*JM*

record.

3. I say that the Reply is a classic attempt to (i) divert this Hon'ble Tribunal from the core environmental illegality pleaded in the OA, namely, the grant of a fresh permission dated 30.06.2025 despite the admitted history of violations and despite non-compliance with mandatory restoration obligations, and (ii) convert a matter of strict public law/environmental governance into a personal grievance narrative. The Reply is argumentative, suppresses material context, and proceeds on selective reading of documents.

4. I say the central issue is not R-3's rhetoric of "harassment", but the failure of Respondent No. 1 (GCZMA) and the continuing environmental harm/risk arising from permitting new structures/activities in an ecologically sensitive CRZ setting, when (a) the site had been subjected to demolition directions and restoration directions, and (b) the authorities' own inspection/minutes, as pleaded, demonstrate non-application of mind to the restoration aspect.
5. With reference to para 1 of the Reply, I say that the statements therein are formal and are matters of record. To the extent R-3 asserts any deemed admission for want of "specific traverse", I state that the Applicant has

JA

pleaded full facts in the OA, and the present rejoinder specifically traverses each material allegation. There is no question of deemed admissions in a matter where the record speaks through statutory orders, inspection reports, and minutes, and where this Hon'ble Tribunal adjudicates on environmental legality, not private pleadings technicalities.

6. With reference to para 2 of the Reply, I say that R-3's attempt to reserve a "detailed reply" is wholly irrelevant at this stage because he has, in fact, filed a detailed Reply raising preliminary objections and factual assertions. In any event, such reservation cannot dilute the Applicant's right to seek effective adjudication and interim protection whenever the Tribunal considers it necessary to prevent environmental harm.
7. With reference to para 3 of the Reply, I categorically deny that the OA is an abuse of process or that the Applicant is acting for extraneous reasons. The Applicant is a registered civic body with an established record of environmental advocacy, and has approached this Hon'ble Tribunal on a clear statutory cause: the grant of a CRZ-related permission dated 30.06.2025 in circumstances pleaded as illegal, arbitrary, and contrary to prior binding directions.



8. I say that the "livelihood" narrative is a red herring. Environmental compliance is not optional or negotiable based on commercial convenience. It is precisely because R-3 has previously been found to have illegal structures (as borne out by the prior proceedings/orders pleaded in the OA) that Respondent No. 1 (GCZMA) was bound to exercise heightened caution, insist on verified compliance/restoration, and ensure strict adherence to CRZ norms before granting any fresh permission.

9. I say that the Reply conspicuously avoids the Applicant's principal grievance: the impugned permission was processed and granted in a manner that sidestepped the restoration obligation and treated prior demolition alone as "compliance", despite the record pleaded showing the site condition remained disturbed and restoration remained unaddressed.

10. With reference to para 4 of the Reply, I deny that the fulcrum of the OA is "completely fallacious". I say the Applicant has pleaded, with reference to the authorities' own record, that the GCZMA's order dated 03.07.2019 directed demolition and restoration to original condition; that subsequent inspections recorded demolition but did not establish verified restoration; and that the impugned permission was granted without proper consideration of these crucial aspects.



11.I say that R-3's sweeping assertion that the 03.07.2019 order is "duly complied" and "verified" is unsupported, self-serving, and contrary to the very case pleaded by the Applicant on the basis of subsequent inspections/minutes. The Reply attempts to convert a contested factual issue (whether restoration was done, and whether it was verified on ground) into a concluded assumption. This is impermissible.

12.I say that the Reply also attempts to create a false binary: either "CZMP shows no dunes" or "no restoration obligation exists". This is legally and factually untenable. The issue is the ecological character of the site and the restoration obligation imposed by the competent authority, and the further question whether Respondent No. 1 (GCZMA) verified such restoration before granting fresh permission.

13.With reference to para 5 of the Reply, I say that even if the CZMP is a relevant planning instrument, it does not operate as a magic wand to nullify ground realities, negate GCZMA's own earlier directions, or excuse non-application of mind. The OA pleads that the site is within CRZ-III/NDZ and contains primary sand dune formation / sand-dune ecology; and that multiple inspection reports/minutes and the surrounding circumstances require Respondent No. 1 (GCZMA) to act on the side of precaution and



ecological protection.



14. Without prejudice to the above, I say that GCZMA's own official record, including the minutes/record placed before the 279th meeting of GCZMA, shows that on the Betalbatim beach stretch, the expert members of GCZMA, on ground truthing, found a substantial extent of unidentified sand dunes, quantified at approximately 67,347 sq. m. Therefore, even if Respondent No. 3 asserts that his plot is not identified as a sand dune in the CZMP, such an argument is neither conclusive nor decisive, and the subject site is very likely to fall within or be associated with such unidentified sand dune extents recorded by GCZMA itself on ground verification. A relevant extract of the minutes of the 279th meeting of the GCZMA is annexed and marked hereto as **Annexure A1.**

15. I say that R-3's attempt to treat the CZMP as "final and conclusive" to shut out scrutiny is contrary to the precautionary principle and contrary to environmental decision-making which demands site-specific evaluation and verified compliance, particularly where the site has a recorded history of violations and demolition orders.

16. With reference to para 6 of the Reply, I deny the sweeping assertion that experts "clearly confirmed" there are no sand dunes, especially when the



Applicant's case is that the very inspection/minutes relied upon by Respondent No. 1 (GCZMA) and pleaded in the OA do not meaningfully address restoration status and do not reflect proper consideration of the Applicant's objections.

17. I say that what matters is not cherry-picked phrases, but whether Respondent No. 1 (GCZMA) discharged its duty to (i) assess ecological sensitivity, (ii) insist upon restoration to original condition where earlier directed, and (iii) ensure that fresh permission does not worsen a damaged ecosystem. The Applicant's pleadings demonstrate that this duty was breached.

18. In this context, I say that the impugned permission has been granted for erection of a restaurant having total built-up area of 340.84 sq. m., purportedly using wooden bio-fencing with natural biodegradable material; however, Respondent No. 1 (GCZMA) has also permitted the use of GI pipes and mild steel framed structures as structural framework/support, which is legally impermissible to be trivialised as "temporary" merely by label, and is liable to be tested in substance for permanency and impact.

*JA*

19. I say that the Hon'ble National Green Tribunal, Western Zone, in the *Alchemist* judgment, has held that the Tribunal must gather the intention and the nature/material of construction to determine whether it is permanent or temporary, and further held that the kind of material allowed to be used (including steel/prefabricated material) tends to indicate permanency, while only purely temporary and seasonal structures are permissible under "CRZ of Goa". Therefore, where Respondent No. 1 (GCZMA) has permitted GI pipes/mild steel framing for a restaurant of substantial built-up area, the permission becomes legally vulnerable because it permits a framework indicative of permanence in substance. Judgement of this Hon'ble Court dt. 05.09.2023 in Appeal no. 22/2022 and Appeal no. 23/2022 is annexed and marked hereto as **Annexure A2**.

20. With reference to para 7 of the Reply, I deny that any restoration obligation is a "nullity" or "impossible". I say that (a) the competent authority did direct restoration to original condition in the earlier proceedings as pleaded, (b) restoration/rehabilitation of degraded coastal ecology is a well-recognized environmental remedial measure, and (c) R-3 cannot be permitted to invoke a self-created theory of "impossibility" to evade compliance and then demand fresh permissions on the same site.



21. I say that the maxim *lex non cogit ad impossibilia* cannot be abused to defeat environmental protection. The correct inquiry is whether R-3 carried out good-faith, scientifically appropriate restoration/rehabilitation measures and whether Respondent No. 1 (GCZMA) verified the same before granting new permission. The OA pleads the contrary, and R-3's Reply does not cure that defect.

22. With reference to para 8 of the Reply, I say that the Reply selectively relies on earlier proceedings to argue "no dunes were recorded", while ignoring that the site was held to fall in CRZ and illegal structures were directed to be removed, and further ignoring that Respondent No. 1 (GCZMA)'s obligation is continuing, particularly when fresh proposals are brought for the same site.

23. I say that the Applicant's case is not premised solely on one committee report but on the cumulative record pleaded, including the fact that demolition was directed and undertaken, and the continuing failure to ensure ecological restoration before allowing renewed commercial use / construction.

24. With reference to para 9 of the Reply, I deny that the OA is liable to be dismissed for suppression. The Applicant has clearly stated, and it is



recorded in the order dt. 10.11.2025, as argued by the Applicant, that the prior Appeal was disclosed. R-3 is attempting to mischaracterize procedural history into a weapon of technical dismissal.



25. With reference to para 10 of the Reply, I deny that the OA is barred by limitation. I say that the OA challenges the impugned permission dated 30.06.2025, and the cause of action for the OA arises from the grant of such permission and the Applicant's knowledge/receipt thereof, as pleaded.

26. With reference to para 11 of the Reply, I deny that the OA is not maintainable. The OA raises a substantial question relating to the environment arising out of implementation of environmental statutes and CRZ regulatory regime, and challenges a permission granted by Respondent No. 1 (GCZMA) in circumstances pleaded to be contrary to CRZ norms, contrary to GCZMA's duties, and contrary to precautionary governance.

27. With reference to para 12 of the Reply and the factual table set out thereafter, I deny the narrative that R-3 had a lawful pre-CRZ structure entitling him to continue commercial activity. I say that even assuming some past existence of a structure (which is denied), that does not confer



any perpetual right to erect new structures/operate afresh in a prohibited zone, particularly when the present permission concerns a restaurant/structure and related framework within a CRZ restricted belt.



28. I say that, additionally and without prejudice, the impugned permission granted by Respondent No. 1 (GCZMA) is ex facie contrary to the CRZ Notification, 2011, because the site, on the Applicant's pleaded case and record, is a sand/mud flat and falls within the protected coastal belt, attracting CRZ-I(A) (ecologically sensitive areas/features) and also falling within CRZ-III (A) where the area up to 200 metres from the High Tide Line (HTL) is a No Development Zone (NDZ). Under the CRZ Notification, 2011, no construction is permitted within the NDZ except for limited repairs/reconstruction of existing authorised structures and other strictly enumerated permissible activities; therefore, no construction of a new restaurant/structure as permitted by GCZMA can lawfully be carried out within such NDZ, more particularly where the site is between 0 to 100 metres from HTL as pleaded by the Applicant.

29. I say that once the above CRZ prohibitions apply, the impugned permission dated 30.06.2025 granted by Respondent No. 1 (GCZMA) stands vitiated as being contrary to the CRZ Notification, 2011 and liable to be interdicted. I further say that the *Alchemist* judgment itself recognises and applies the

JA

“CRZ of Goa” framework limiting permissible structures to purely temporary and seasonal structures, and treats the use of steel/prefabricated type framework as indicative of permanency, thereby reinforcing the Applicant’s case that GCZMA’s permission here is not only environmentally unsafe but also legally unsustainable.



30. With reference to para 13 of the Reply (and the ensuing para-wise reply beginning paras 14 onwards), I say that R-3’s “matter of record / put to strict proof” style denials are evasive. The Applicant reiterates and re-affirms each averment in the OA, including the pleadings on (i) CRZ classification and NDZ restrictions, (ii) history of illegality and demolition directions, (iii) binding nature of earlier orders, (iv) lack of verified restoration and Respondent No. 1 (GCZMA)’s failure to apply mind, and (v) arbitrariness in granting the impugned permission without addressing the Applicant’s objections.

31. I say that while, at the stage of admission, the Applicant did not press for interim reliefs since there were no ongoing construction activities then apparent on site, as on 06.03.2026, construction activities have commenced at the said site despite the pendency of an appeal, thereby aggravating the environmental harm/risk and demonstrating the urgency for protective directions, including restraint against any further construction/erection and

*MA*

for strict compliance verification by Respondent No. 1 (GCZMA).



32. Specifically, and without prejudice to the generality of the above, to the extent R-3 alleges that the Applicant is “harassing” him by raising environmental concerns, the same is denied; environmental enforcement cannot be painted as harassment merely because it impacts a commercial operator. To the extent R-3 alleges that there is “no NDZ / no dunes”, the Applicant states that Respondent No. 1 (GCZMA)’s decision-making must be tested against the full record and ground reality, and the Applicant’s case is that GCZMA failed to do so. To the extent R-3 alleges “full compliance”, the Applicant states that demolition is not synonymous with ecological restoration to original condition; and that the impugned permission could not have been granted without verified compliance with all prior directions and without protecting the sensitive coastal ecology.

33. I say that the Reply does not answer the OA’s core legal grounds, including: precautionary principle, failure of due application of mind, arbitrariness, abdication of statutory duty, and failure to meaningfully consider the Applicant’s objection before granting the impugned permission.

*MA*

34. I say that where an area is ecologically sensitive and subject to CRZ restrictions, and where the site bears a recorded history of illegal structures and demolition directions, Respondent No. 1 (GCZMA) must ensure strict compliance and verified restoration/rehabilitation before permitting any fresh structure/commercial activity. The Reply's entire posture is to normalize a "compliance-by-assertion" standard, which is impermissible.

35. In light of the above, I respectfully pray that this Hon'ble Tribunal may be pleased to take this Affidavit-in-Rejoinder on record; reject the preliminary objections of Respondent No. 3; and proceed to adjudicate the OA on merits and grant appropriate reliefs as prayed therein, in the interest of environmental protection and rule of law.

36. I say that the contents of this affidavit-in-rejoinder are true and to the best of my knowledge and nothing material has been concealed therein.

Solemnly affirmed at MARGAO, Goa,  
on this 10<sup>th</sup> day of MARCH, 2026

*[Signature]*  
DEPONENT  
REGD. NO. 268/2009/GOA  
COMMERCIAL & CONSUMER FORUM

NOTARY  
SUREXA P. LOTLECAR  
SALCETE TALUKA  
REGD. NO. 147  
GOVT. OF GOA (INDIA)

Solemnly affirmed before me by  
Mrs. Judith Almeida  
who is identified by

to whom I personally know  
Reg. No. 2605/2026  
Date 10/03/2026

*[Signature]*  
SUREXA P. LOTLECAR  
NOTARY MARGAO  
SALCETE TALUKA  
STATE OF GOA (INDIA)

NOTARIAL  
SUREXA P. LOTLECAR  
SALCETE TALUKA  
REGD. NO. 147  
GOVT. OF GOA (INDIA)  
Date: 04-05-2026  
NOTARIAL  
NOTARIAL  
NOTARIAL  
NOTARIAL  
NOTARIAL  
NOTARIAL

04-05-2026  
GOA (INDIA)

**MINUTES OF THE 279<sup>th</sup> MEETING OF THE GOA COASTAL ZONE MANAGEMENT AUTHORITY (GCZMA) HELD ON 10/12/2021 & 14/12/2021 AT 3:30 P.M. IN THE CONFERENCE HALL, 4<sup>th</sup> FLOOR, DEMPO TOWER, PANAJI – GOA.**

The <sup>th</sup> meeting of the Goa Coastal Zone Management Authority (GCZMA) was held under the Chairmanship of the Secretary (Environment), on 10/12/2021 and 14/12/2021 at 3:30 p.m. in the conference hall, 4<sup>TH</sup> floor, Dempo Tower, Panaji – Goa

**The following members were present for the Meeting on 14/12/2021:**

- Secretary (Environment) / Chairman (GCZMA).
- Representative on behalf of Principal Chief Conservator of Forests, Panaji, Goa.
- Representative on behalf of Director, Department of Tourism, Panaji, Goa.
  - Representative on behalf of Chief Engineer, (WRD), Alto-Porvorim.
  - Representative on behalf of Principal Chief Engineer, (PWD), Panaji.
  - Representative on behalf of the Director, Directorate of Panchayats, Panaji.
  - Representative on behalf of the Director, Directorate of Industries, Trade & Commerce, Panaji, Goa.
- Shri. Savio Joaquim Filipe Correia, Expert Member (GCZMA).
- Shri. Flaviano Miranda, Expert Member (GCZMA).
- Shri. Sujeet Kumar Dongre, Expert Member (GCZMA).
- Shri. Mahesh Patil, Expert Member (GCZMA).
- Dr. Prabhakar Shirodkar, Expert Member Mangroves Committee.
- Dr. N.P.S Varde, Expert Member Mangroves Committee.
- Dr. Vinod Dhargalkar, Expert Member Mangroves Committee.
- Member Secretary (GCZMA).

**ITEM NO: 1**

**ITEM NO: 1.1**

**Recommendation of the Authority on the report submitted by the expert members on the objections and suggestions in respect of the demarcation of HTL and Sand dunes**

The GCZMA had received objections regarding demarcation of HTL and Sand dunes in the Draft CZMP for Goa as per the provision of the CRZ Notification,2011.

The said objections and suggestions were examined by the expert members of the GCZMA and report of their observations was submitted to the Authority on ..... The cop of the said report is annexed herewith as 'Annexure A'

The said report of the expert members along with one of the objection received in March,2021 by email including shape files was forwarded to the NCSCM .

During the meeting held with the Technical Committee of the NCSCM on 4<sup>th</sup> December,2021 the NCSCM sought the recommendation of the GCZMA to the report submitted by the expert members.

The GCZMA has also received two objections with regard to the ground truthing carried out by expert members and the same are annexed herewith as "Annexure B" for reference.

The NCSCM has also prepared a report on sand dunes which was prepared upon the directions of the Hon'ble NGT and the copy of the said report is annexed herewith as Annexure C

Similarly NCSCM has prepared a report on sand dunes for the whole country in the year 2018-19 and the copy of the said report is annexed herewith as Annexure D

**A.Methodology adopted by expert members of the Authority**

A. Tools Used.

1. QGIS. 2. Google Earth.

B. Procedure followed for preparation of report.

1. The sand dunes shown in draft CZMP report were extracted from the PDF file and superimposed onto Google maps hybrid layer. Georeferencing of

draft maps was done manually using georeferencing tools with roads and other geographic features being reference points. The projection used was WGS84/UTM 84 43N (EPSG: 32643), same as that used by NCSCM for preparation of the draft CZMP.

2. The suggestions for sand dunes by village panchayats were received on pdf format while those of Goa Foundation were received in shapefile format which were added as a layer (Sand Dune Layer). The areas that appeared to be sand dunes as per criteria established by NCSCM9 were plotted as polygons in the Sand Dune Layer over the satellite maps using the survey numbers as reference.

3. The GIS coordinates collected by the two Committees were plotted on the base maps as reference points for verification of the dune elevation and extents. Photographs and descriptions noted by the 9 Note 8. 16 Committee was also used as reference for modifying/confirming the extents/shape of the dune wherever such observations were made.

4. Google Earth. The accuracy of elevation data from GE is better along roadways compared to other elevation data sources in the conterminous USA, with MAE, RMSE, and GE roadway elevation error standard deviation of 1.32m, 2.27m and 2.27m respectively;10

5. Based on Committee's observations, polygons of non-existent dunes were deleted. Polygons were plotted with a spatial distance of around 10-50 metres. Higher spatial resolution polygons could not be plotted due to time constraints and lack of high-resolution satellite images or DEMs.

6. Polygons representing contiguous dunes across two villages were split into two polygons along the boundary of the village.

7. The area and coordinates (of centroid of the sand dune polygon) of each polygon were derived using the GIS software.

8. One report using Google Earth as base maps was generated for our reference only.

9. The final sand dunes report would be prepared and submitted after consultation with NCSCM experts. However, the mudflats report is annexed

hereto. In addition, soft copy of this report in PDF and mudflats report in gpkg format are also generated and submitted

Subsequently, the sand dunes has been finalised. Total sand dune area along the Goa coast is 3.07 sq km out of which maximum sand dune is observed along the South Goa coast which is 2.40 sq km and North Goa having 0.67 sqkm.

### **B. Methodology prepare by NCSCM**

In the present study, Geo-coded Landsat TM images with 30m spatial resolution during 2010 to 2011 were downloaded from the USGS website (<http://edcsns17.cr.usgs.gov/EarthExplorer/>). The individual band with Geo-TIFF (Geographic Tagged image file format) of Landsat TM was stacked and converted into image format using Erdas 10.1 image processing software with Universal Transverse Mercator (UTM) projection system and the World Geodetic System (WGS 84 43 N) coordinate system. Subsequently, images were mosaicked and clipped for the study area. The images are subjected to enhancements to improve the interpretability of the image. Some of the enhancement techniques adopted in the present study included contrast stretching, digital filtering and edge enhancement. In standard false colour composite multispectral Landsat TM images, sand dunes appear in white or red tone depending on the vegetation presence, smooth texture, transverse and parallel to the coast. They are generally located landward side of the sandy beach. Thus, it is easy to identify and delineate sand dune on multispectral images. Hence, the satellite images after due processing as described above was interpreted using visual interpreted techniques for preparation of coastal sand dune map using Arc Map 10 software.

The delineated sand dunes map has been overlaid on the ortho aerial photograph with spatial resolution of 10cm and refined the spatial extent of the sand dune. These ortho aerial photographs were taken during 2011 to 2012 and are available at Survey of India (SOI), Bangalore. Further, the accuracy of delineated sand dunes maps has been improved through Photogrammetric techniques over the ortho aerial photographs using Image Station Stereo Display (ISSD) software. The following criteria were used for delineating sand dunes from aerial photos: (a) shape of the dune (b) height of

the dune (c) orientation of the dune (d) form of the dune crests & (e) vegetation cover. A detailed ground investigation was also carried out for the entire study area using the instruments such as GPS and Disto Meter during October 2016 to verify the spatial extent and the present scenario of sand dunes. Subsequently, the map has been edited and finalised. SOI topographical maps, and various published reports were used for references. A flow chart of the entire process is given in Fig.

### **C SAND DUNES AS PER CZMP 1996**

According to CRZ Notification 1996 the Sand dunes area/villages identified are as follows:

#### **Pernem Taluka**

- i. Tiracol Fort area is classified as CRZ-I and settlement area is classified as CRZ-III.
- ii. The whole stretch of Querim is classified as CRZ-I because of outstanding natural beauty and sand dune area except settlement area which is classified as CRZ-III.

#### **Bardez Taluka**

- i. In Anjuna village, chapora Fort is classified as CRZ-I and rest of the area is classified as CRZ-III.
- ii. Calangute area is classified as CRZ-III except sand dunes which is classified as CRZ-I.
- iii. Candolim is classified as CRZ-III except sand dunes and forts which are classified as CRZ-I.

#### **Tiswadi Taluka**

- i. Dona Pava is classified as CRZ-I being a fort area.

#### **Mormugoa Taluka**

- i. Dabolim, Chicalim, Chicolna, Issorcim and Sancoale areas are classified as CRZ-III.
- ii. Pale and Velsao areas are classified as CRZ-III. Cansaulim and Arossim are classified as CRZ-III except sand dunes which are classified as CRZ-I.

**Salcete Taluka**

i. The entire village falling in Salcete Taluka namely, Utorda, Majorda, Gonsua, Betalbatim, Colva, Sernabatim, Benaulim, Varca and Cavelossim are classified as CRZ-III except sand dunes which are classified as CRZ-I.

**Canacona Taluka**

i. The whole of Cola stretch is classified as CRZ-I except settlement area which is classified as CRZ-III.

ii. In Agonda, the entire Agonda village is classified as CRZ-I except built up areas which are classified as CRZ-III.

iii. Nagarcem area is classified as CRZ-I except settlement and built up areas which are classified as CRZ-III.

iv. In Loliem, the entire stretch is classified as CRZ-I except settlement and built up areas which are classified as CRZ-III.

D. As per clause 5 (ii) of the the CRZ Notification, 2011 the State Government/ Union territories should engage reputed and experienced scientific institutions or agencies including NCSCM for preparation of the CZMP's

The comparison of the sand dunes identified by NCSCM in their Draft CZMP report and maps and that as per the report of the expert members of the GCZMA in pursuance to the ground truthing exercise carried out in response to the objections and suggestions received is as follows:

District	Taluka	Village	GCZMA Expert Committee Dune Area <sup>12</sup>	NCSCM Draft CZMP Dune Area	Difference
		Querim	3236 15	214 16	302199
		Paliem	3248	0	3248

North Goa	Pernem	Morjim	3445 39	180 098	164441
		Mandrem	8719 0	558 22	31368
		Arambol	1434 60	617 24	81736
		Total	9020 52	319 060	582992
	Bardez	Anjuna	1921 2	418 3	15029
		Calangute	2372 76	496 82	187594
		Candolim	4403 33	879 49	352384
Total		6968 28	141 814	555014	
Tiswadi	Panaji	3426 82	111 87	331495	
	Total	3426 82	111 87	331495	
	Total	1941	472	146950	

		562	061	1	
South Goa	Morm ugao	Pale	1319 34	112 5	130809
		Arossim	2917 68	462 23	245545
		Velsão	2270 25	306 03	196422
		Cansauli m	1122 58	953 1	102727
		Total	7629 85	874 82	675503
	Salcete	Utorda	2181 96	406 91	177505
		Majorda	1071 24	377 60	69364
		Gonsua	9143 2	599 7	85435
		Betalbatim	2666 05	199 258	67347
		Colva	1358 01	641 07	71694
Sernabatim		3251 27	209 690	115437	
	Benaulim	3519	146	205046	

	15	869	
Varca	8056	480	324805
	26	821	
Cavelossim	2129	112	100314
	068	592	6
		2	
Total	4430	231	211977
	894	111	9
		5	
Canacona	Agonda	9118	0
			9118
	Nag orce mPa lole m	1536	0
		95	
			153695
	Poinguin im	1765	653
	09	04	
			111205
Loliem	6726	0	67261
	1		
Total	4065	653	341279
	83	04	
South Goa	5600	246	313686
	462	360	1
		1	
Total	7542	293	460636
	024	566	2
		2	

**Decision**

The Authority noted the recommendations of the expert members based on the ground truthing conducted with respect to the objections and suggestions received. The Authority also noted that NCSCM is one of the experienced Scientific Institution notified in the CRZ Notiifcation,2011 for preparation of the Coastal Zone Management Plan, hence NCSCM may consider the recommendation of the expert members and with their expert knowledge decide on the same while finalizing the Draft CZMP.

**ITEM NO: 1.2**

As per the objection received from Mr Sandeep N S Parkar (Submitted through Village Panchayat of Curti Khandepar of Ponda taluka – sr .no. 104), which says that to include Khandepar River in CRZ IV area.

Expert Member GCZMA inspected the site and report is as follows:

Site was inspected by Shri Shirang Jambhale and technical team in presence of objector. Based on earlier GCZMA and WRD inspection reports submitted by the objector, local inquiries with villagers and data recorded at site, the Committee recommends that CRZ line of Khandepar River be extended up to Murdi locality at 15°26'01.79"N 74°02'46.42"E, and the change be incorporated and mapped in CZMP.

Comments regarding the Water quality have been sought from the Water Resources Department and the same are attached herewith.

**Decision:**

The Water Resources Department is on record that the salinity level in the river near the bifurcation point is 4.48 i.e at lat 15° 26'51,46'' (N) and lon 74,02,2,00'E and the result is upstream of the river are lesser. The EIA report submitted to Authority for the proposed barrage also shows very less salinity. Hence the CRZ line can be demarked 100mts away towards the downstream from the bifurcation of the river.

The Authority noted the same and decided that the NCSCM should consider the WRD report while finalizing Draft CZMP,2011.

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

Appeal No. 22/2022(WZ)  
(I.A. No. 66/2022 & I.A. No. 69/2022)

**IN THE MATTER OF:**

**ALCHEMIST ASSET RECONSTRUCTION COMPANY LTD.**

Through Mr. Akshat Sharma  
A-270, 1<sup>st</sup> & 2<sup>nd</sup> floor,  
Defence Colony, New Delhi-110 024.

.....Appellant(s)

Versus

**1. GOA COASTAL ZONE MANAGEMENT AUTHORITY**

Through its Member Secretary,  
4<sup>th</sup> Floor, Dempo Towers, Patto,  
Panaji, Goa- 403001.

**2. M/S COSTEIRO AZUL RESORTS**

Through its partner Ms. Arati Menon,  
H. No. 398/H-1, Tambdem,  
Agonda, Canacona, Goa.

.....Respondent(s)

**WITH**

Appeal No. 23/2022(WZ)  
(I.A. No. 67/2022)

**ALCHEMIST ASSET RECONSTRUCTION COMPANY LTD.**

Through Mr. Akshat Sharma  
A-270, 1<sup>st</sup> & 2<sup>nd</sup> floor,  
Defence Colony, New Delhi-110 024.

.....Appellant(s)

Versus

**1. GOA COASTAL ZONE MANAGEMENT AUTHORITY**

Through its Member Secretary,  
4<sup>th</sup> Floor, Dempo Towers, Patto,  
Panaji, Goa - 403 001.

**2. M/S COSTEIRO AZUL RESORTS**

Through its partner Ms. Arati Menon,  
H. No. 398/H-1, Tambdem,  
Agonda, Canacona, Goa.

.....Respondent(s)

**Counsel for the Applicant(s):**

Appellant(s) : Mr. Nikhil Nayyar, Sr. Advocate along-with  
Mr. Karan Batura and Mr. Jayant Karn, Advocates

**Counsel for the Respondent(s):**

Respondent(s) : Mr. Abhay Anturkar, Advocate for R-1  
Mr. Shivan Desai and Mr. S. Swaminathan, Advocates  
for R-2

**PRESENT:**

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

---

**Reserved on : 23.08.2022**

**Pronounced on : 05.09.2022**

---

**JUDGMENT**

1. This appeal has been preferred against the order dated 09.05.2022 passed by the Respondent No. 1/GCZMA 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 read with power vested with the GCZMA/ Respondent No. 1 vide Order S.O. 3975 (E) dated 31.10.2019 issued by the Ministry of Environment, Forest and Climate Change, Government of India, rejecting the objections dated 19.04.2022 raised by the Appellant/complainant-Alchemist Asset Company Ltd. through Mr. Akshat Sharma regarding the structures in Survey No.101/1 (part) and Survey No. 101/3 (part) at Agonda Village, Canacona Taluka, Goa, being raised

by the Project Proponent/Respondent No. 2 (M/s. Costeiro Azul Resorts).

**2.** In the second Appeal No. 23/2022(WZ), the same Appellant has challenged the order dated 11.05.2022 passed by the Respondent No. 1/GCZMA, granting approval for erection of "7 Twin Cottages, 1 Restaurant, 1 Reception/lounge & Open Recreational Space" on total built up area of 636.99 sq. mtrs. made of wood and/or natural/biodegradable material only in the above mentioned survey numbers to be constructed by the Respondent No.2/Project Proponent.

**3.** Since both the appeals are relating to the same survey numbers, these appeals are being taken up together.

**4.** The Appellant company is an Asset Re-construction Company which had acquired the debts from the original lenders of a company called 'Dugal Projects Development Company Pvt. Ltd.', (DPDCL) with whom are all the parcels of land aggregating 3,58,814 sq. mtrs. At Village Agonda, Canacona, Goa. The land in question on which the hotel project had to be set up, was purchased by the DPDCL in its name and it was leased to SIMA Hotels and Resorts Ltd. (SHRL) vide a lease deed dated 25.11.1987. The said land owned by DPDCL, was mortgaged by it to the lenders along-with depositing original title deeds with the lenders. The said land owned by DPDCL and mortgaged to the lenders (Appellant herein) admeasured 3,58,814 sq. mtrs. which included survey numbers in question i.e. Survey No. 101/1 and Survey No. 103/1 of the Village Agonda ('Proposed Resort

Land'). The said property i.e. Survey Nos. 101/1 and 101/3 have many co-owners as the land has not been demarcated, therefore, no co-owner is entitled to claim any specific area of land under the said survey numbers. The Appellant is the sole secured financial creditor of SHRL and DPDCL, having exclusive charge on the entire assets/properties owned by the said company including the said survey numbers in question.

5. The Appellant subsequently came to know that Respondent No. 2/Project Proponent had filed before the Respondent No. 1/GCZMA, an application dated 28.09.2017, seeking CRZ clearance for setting up temporary structures and restaurants in the "Proposed Resort Land", whereon Respondent No. 1 vide its letter dated 12.02.2018 informed the Respondent No.2 about the pre-existence of temporary structures and restaurants in the said land which had been constructed without permission and directed the Respondent No. 2 to demolish/dismantle the same by 28.02.2018. The final demolition of the said illegal structures by Respondent No. 2 was finally done in January/February, 2022. In the meanwhile, the litigation was going on with respect to the said property in respect of its title in various forums. We are not referring to the pleadings relating to the said litigation as the same is not of any significance for the purposes of the jurisdiction of this Tribunal as the title to the land in question, does not fall in the domain of this Tribunal.

6. It is further submitted that the Appellant noticed that right after the carrying out of demolition of the previous illegal structures on

the land in question, the Respondent No. 2/PP illegally began work of reconstruction almost immediately, as construction material and steel fabrication works were found lying on the said land. This work was being done without any permission, in contempt of the orders of the Hon'ble High Court of Bombay at Goa which compelled the Appellant to file a Contempt Petition No. 976 of 2022 on 26.04.2022. On the said contempt petition, notice was issued to the Contemnor i.e. the Managing Partner of the Respondent No. 2 and the Contemnor was directed to stay the construction activities. The Hon'ble High Court had also directed Respondent No. 1 to take action in accordance with law if they found any such activity contrary to law.

7. It is further submitted that in the matter of grant of permission to Respondent No. 2 along with the application for intervention filed by the Appellant, was heard by the Respondent No. 1 on 28.04.2022 and on the same day, the Appellant also made a complaint against the Respondent No. 2 before the Respondent No. 1, bringing to their notice that the new illegal construction was being carried out by the Respondent No. 2. It was contended by the Respondent No. 1 that as per the Respondent No 1's own site inspection report dated 11.11.2021, the "Proposed Resort Land" illegally occupied by the Respondent No. 2, fell within 200 mtrs. of HTL, hence, no permission of construction could be granted, it being No Development Zone (NDZ). It was also contended by him that the said

survey numbers are just few meters away from the designated turtle nesting sites which is an Ecologically Sensitive Area.

**8.** It was further contended that a report titled “carrying capacity of beaches for providing shacks and other temporary seasonal structures in private areas” prepared by the National Centre for Sustainable Coastal Management (NCSCM), MoEF&CC, submitted to the Government of Goa, recommended that for Agonda beach, "no additional shacks, huts/Tents/cottages should be considered as this is a designated turtle nesting site" Even as per the draft CZMP for the coastal zone of Village of Agonda, the "Proposed Resort Land" is shown in the NDZ area, abutting turtle nesting sites, right in front of the "Proposed Resort Land". But in the meeting held on 05.05.2022, Respondent No. 1 decided to reject the intervention application of the Appellant and granted the permission as applied for by the Respondent No. 2.

**9.** It is further submitted that the said grant of permission would lead to serious environmental degradation. The Respondent No. 2 even before passing the impugned order, began construction of permanent nature using metal fabrication in the "Proposed Resort Land", just 2 days after the Respondent No. 2 demolished and cleared debris of the earlier illegal construction erected by them.

**10.** It is further submitted that the proposed resort falls in No Development Zone (NDZ) and as per Para 8(III)A(ii) of the CRZ Notification, 2011, no construction can be permitted within NDZ except for repairs or reconstruction of existing authorized structure

not exceeding existing Floor Space Index, existing plinth area and existing density for permissible activities under the notification including facilities essential for activities.

11. It is further stated that the Respondent No. 1 failed to take into consideration that in this very matter for the same Respondent No. 2 for the same site, the Hon'ble High Court vide order dated 01.03.2022 in WP No. 184 of 2021 had expressed serious concerns about environmental degradation and categorically held as under:

***"3. The photographs indicate that debris and construction material is still at the site. This has to be cleared forthwith, because, all concerned must remember that this is an ecologically sensitive area where such construction should not have even come up in the first place. The entire process to put up such construction and thereafter demolishing them is itself a serious concern of environmental degradation."***

12. It is further mentioned that it is shocking to note that the Respondent No. 1 has observed in impugned order that "mere alleged fabrication work of metal as alleged in the complaint dated 28.04.2022 cannot be considered as a construction activity" and "that placing base frames on ground does not constitute violation of CRZ Notification". The Respondent No. 1 seems to be completely oblivious of the fact that the said area abuts an Ecologically Sensitive Area, being a designated turtle nesting site. Hence, it is prayed that the impugned order dated 09.05.2022 be set aside.

13. Pleadings in the Appeal No. 23/2022 (WZ) are identical in nature. Hence, they are not being reproduced here to avoid repetition. But only this much is being mentioned that prayer is

made in this appeal to set aside the impugned order dated 09.05.2022 regarding which reference has already been made above.

**Affidavit dated 19.07.2022 on behalf of Respondent No. 1/GCZMA**

14. The stand of Respondent No. 1/GCZMA is that the disputes as set out in the appeal between the Appellant and the Respondent No. 2 are raised before the Hon'ble Supreme Court of India, National Company Law Tribunal and the National Company Law Appellate Tribunal, arising out of the title to the land containing Survey numbers in question. Such civil and commercial disputes fall beyond the jurisdiction and mandate of the Respondent No. 1. The answering Respondent submitted that an application dated 16.03.2022 was received from the representative of the Respondent No. 2 in respect of the proposed temporary cottages, restaurant and allied structures for tourism purpose in survey numbers in question with supporting documents which are mentioned in para 5 of the counter affidavit from a to h. Pursuant to the said application, the Expert Member of the Authority inspected the property on 23.03.2022 and vide report of the same date, recommended the proposal. Some additional details requested by the Expert Member were also furnished by the Respondent No. 2. Reference is made to the order of Hon'ble High Court of Bombay at Goa dated 23.03.2022 in Writ Petition No. 13 of 2021 wherein following was observed:

***"7. The learned Advocate General states that normally issues of title etc. are usually quite irrelevant before the GCZMA. In any case and without any prejudice, the GCZMA will inform the petitioners about the receipt of***

**any application from respondent No. 2 seeking approvals, permissions, etc.**

**8. According to us, it will be quite premature at this stage itself to hold that the petitioners have some kind of an unqualified right to appear before the GCZMA and to oppose any applications that may be made in the future by respondent no. 2. Ultimately, it will be for the petitioners to apply before the GCZMA seeking intervention and such application if made, will be disposed of by the GCZMA in accord with law and on its own merits. At this stage, it will not be appropriate for us to make any further observations on this issue.**

**11. The limited statement made by the learned Advocate General is accepted and the GCZMA will have to act based upon the same.**

**12. Leave is granted to withdraw this petition with liberty as prayed for. This petition is disposed of as withdrawn. All contentions of all parties are kept open as clarified above.” [Emphasis supplied]**

15. Thereafter, the GCZMA received a letter dated 18.04.2022 from the Appellant, requesting for intervention and in terms of the statement made by the Learned Advocate General before the Hon'ble High Court, the GCZMA issued notice of personal hearing dated 21.04.2022 to the Appellant. Pursuant to the complaint dated 28.04.2022, another site inspection dated 29.04.2022 was conducted by the Expert Member of GCZMA who concluded that there was no construction activity on the site of the property and Respondent No. 2 also filed an affidavit dated 28.04.2022 before the GCZMA along with photographs of the site in question to show that no construction had been undertaken without GCZMA's permission. The Appellant neither in oral nor in written submission has referred to contravention of any provisions related to the statutes or the CRZ Notification, rather the emphasis was laid by him upon the civil and commercial disputes which are pending between the Appellants and

the Respondent No. 2 before different judicial forums and hence GCZMA concluded that it had no jurisdiction to adjudicate upon the issues other than the environmental matters and accordingly, granted NOC to the Respondent No. 2, in terms of its application. The contention of the Appellant that the Respondent No. 2's property fell within 200 meters of HTL hence, no permission of construction could be granted, is in ignorance of the relevant statutory provisions and judicial pronouncements. The CRZ Notification *interalia* provides that in CRZ-III area, an area up-to 200 meters from the HTL on the landward side in case of seafront is to be earmarked as "No Development Zone (NDZ)", no construction is permitted within NDZ except for such construction activity which is categorically permitted under Regulation 8(i)(III)(A) of the CRZ Notification. The CRZ Notification has specific provisions for the State of Goa, the relevant extract of the Regulation 8(i)(V)(3) is as under:

***"3. CRZ of Goa.-***

***In view of the peculiar circumstances of the State Goa including past history and other developments, the specific activities shall be regulated and various measures shall be undertaken as follows:-***

...

***(iii) purely temporary and seasonal structures customarily put up between the months of September to May:***

***(iiia) such structures shall not be removed and dismantled during the month of June to August:***

***Provided that the facilities available in these structures remain non-operational during the month of June to August.***

....

***(vii) the beaches such as Mandrem, Morjim, Galgiba and Agonda has been designated as turtle nesting sites and protected under the Wildlife Protection Act, 1972 and these areas shall be surveyed and management plan prepared for protection of these turtle nesting sites;***

***(viii) no developmental activities shall be permitted in the turtle breeding areas referred to in subparagraph (vii)."***

**16.** It is further submitted that having regard to the Regulation 8(V)(3)(iii) and (iiia), temporary structures are permitted as a special case in the CRZ areas of the State of Goa. That issue also came up for consideration before this Tribunal in *Aleixo Arnolfo Pereira v. State of Goa and Ors.* Where-in *vide* judgment dated 17.12.2014, the GCZMA was directed to carry out a study to assess the carrying capacity of different beaches in the State of Goa, for providing such shacks and other temporary structures, in environmentally sustainable manner to protect the coastal environment which was based on the 'precautionary principle'. Accordingly, the GCZMA assigned the task to the National Centre for Sustainable Coastal Management (NCSCM), research institute under the Ministry of Environment, Forest and Climate Change (MoEF&CC), Government of India which carried out the said assessment and submitted its report.

**17.** The temporary structures are permitted on the beach stretches and the private properties, adjoining such public beaches, falling within CRZ areas including the "No Development Zone". The above mentioned Beach Carrying Capacity Report categorizes the CRZ area wherein temporary shacks are permitted into two –

***“(i) Area 1: Beach stretches where the State Government (through the Department of Tourism) allots shacks on the beach. This area includes ecologically sensitive areas like turtle nesting sites.***

***(ii) Area 2: Private areas adjacent to the beach stretches (between the HTL and seaward survey boundary) that are utilized for erection of shacks and other temporary structures like huts, cottages and tents. This area is the “No Development Zone” as contemplated by the CRZ Notification.”***

**18.** The Agonda beach (falling within Area 1) has been designated as a turtle nesting site and no shacks or beach beds on the beach stretches of Agonda are allotted. Pertinently, the property in question falls in Area 2, where the GCZMA is authorized to grant permission for erection of temporary shacks and structures subject to the guidelines laid down in the Beach Carrying Capacity Report and the judgments and orders of the Hon’ble Bombay High Court at Goa as well as of this Tribunal for Village Agonda. According to the Draft Coastal Zone Management Plan Map for Village Agonda, property clearly falls in the “No Development Zone” of CRZ-III area and not on the turtle nesting site. Accordingly, the impugned order does indicate that impugned permission dated 11.05.2022 was granted considering all the relevant facts and the appeal should be dismissed.

**Affidavit-in-reply dated 12.07.2022 of Respondent No. 2.**

**19.** It is submitted that in the affidavit dated 12.07.2022, the order passed by the Respondent No. 1 dated 09.05.2022 and permission dated 11.05.2022 are stated to be consistent with law and it is vehemently stated that there is no violation of CRZ Notification made

by the Respondent No. 1 in passing the above mentioned orders. Rest of the pleadings are nothing but repetition as they pertain to the title of the land as well as litigation relating thereto which need not be mentioned here.

**Affidavit in rejoinder dated 21.07.2022 on behalf of the Appellant**

**20.** From the side of the appellant, rejoinder affidavit dated 21.07.2022 has been filed, reiterating the same version which was mentioned by him in earlier affidavit and rebutting the case of the Respondent Nos. 1 & 2 taken in defence. We are not reproducing the same in detail rather only relevant arguments made by the Learned Counsels for the Appellant as well as the Respondents, would be referred for the sake of brevity.

**21.** On the basis of pleadings, this Tribunal has to decide following points:

- (i) Whether the Survey No. 101/1 and Survey No. 101/3 at Agonda Village, Canacone Taluka, Goa fell in Eco-Sensitive Zone, covered under CRZ-I, CRZ-II or CRZ-III and whether the permission of any kind of construction can be granted over such property?
- (ii) Whether the structures, for construction of which the permission has been granted by the Respondent No. 1 to Respondent No. 2, would fall in the category of temporary and seasonal construction of structures and whether permission for

raising such kind of construction can be given by Respondent No. 1 in the area in question.

(iii) To what relief, the Appellant is entitled?

**22. Finding on Issue No. 1:** It has been argued by the Learned Counsel for the **Appellant** that the Respondent No. 1/GCZMA in its 193<sup>rd</sup> Meeting held on 21.02.2019 has opined as below:

***“Therefore, exercising the precautionary principle to conserve the unique ecology of beaches and also to prevent overcrowding of beach areas, Authority is of considered opinion that NO new applications for huts/shacks/tents/cottages in private properties/hotels along the beach area (0-200 mtrs. from HTL) is to be accepted and processed by GCZMA till the finalization of CZMP by the State Government.”***

**23.** Having pointed out above extract, it is argued by him that as per its own policy, the Respondent No. 1 should not have allowed any construction even of huts/shacks/tents/cottages within 0-200 mtrs. from HTL till the finalization of CZMP nor any application should have been entertained in that regard but they have violated this policy themselves by allowing the application of the Appellant for raising construction of the huts/restaurants etc. mentioned above.

**24.** He has also drawn attention to Annexure ‘C’ to the said report of 193<sup>rd</sup> Meeting of the GCZMA which is a photograph and indicated there-in the iron rods etc. stacked there and argued that the said area is very close i.e. within 200 meters from the HTL which falls in NDZ and it is also very close to turtle nesting site, hence no construction could be permitted and also emphasised that the said

area is within 200 mtrs. of HTL, as is admitted to the Authority/Respondent No. 1.

**25.** Then, he has drawn attention to the Beach Carrying Capacity report at page no. 489 of the paper book at internal page 63 wherein in respect of Agonda, recommendation is made that *“Rural, Medium intensive use, low-infrastructure area. No additional shacks, huts/Tents/cottages should be considered as this is a designated turtle nesting site.”*

**26.** Having cited the above reference of the Beach Carrying Capacity report, it is vehemently argued by the Learned Counsel that despite the above recommendation in the said report, the Respondent No. 1 went ahead with entertaining the application of the Respondent No. 2 for construction of “7 Twin Cottages, 1 Restaurant, 1 Reception/lounge & Open Recreational Space” and other structures which is a violation of the said recommendations.

**27.** Further, it is argued by him that by no stretch of imagination, can such a huge construction be treated to be of temporary nature.

**28.** Then, he has drew attention to page no. 599 of the paper book which contains the plan of construction which has been permitted to be raised by the Respondent No. 2 and specifically has drawn attention to the references made of pre-fabricated bio-digester units, steel section/girder/rafter etc. which all would be used for raising the construction in question and pointed out that the use of steel and material of that nature would indicate that the construction

which has been permitted to be done is of permanent nature and not temporary/seasonal nature, which is a violation of the CRZ Notification, 2011. Then, he drew attention to page 613 and 614 of the paper book which relates to the inspection report made by the GCZMA and drew attention to entry at serial no. 5 wherein in front of the entry, survey plan with superimposition of HTL 200-500 mtrs. line and the proposed structure in front of that, is mentioned, 'not enclosed' and at page no. 614 at sr. no. 2, it is recorded that 'DSLR plans showing HTL 200 mtrs. line and 500 mtrs. line to be submitted' and at the bottom of recommendation column, it is recommended that NOC for proposal is recommended subject to above compliances and Beach Carrying Capacity.

**29.** Having drawn attention to the above, it is argued that this NOC has been granted to them without enclosing the survey plan with superimposition of High Tide Line and the NOC was subject to the filing of the same along-with the Beach Carrying Capacity but all this has been violated.

**30.** He has drawn attention to the site inspection report at page no. 664 conducted in respect of the Agonda beach wherein following observation and conclusion is recorded;

**“Observation:**

***Fabricated base frames made of steel tubes with 8.00 m width and 6.40 m length consisting of 5 tubular members are found on site. These base frames, altogether seven in number, resembling the layout/pattern of twin-type cottages, are seen placed over the area of the demolished/dismantled plinth of the old cottages. These frames are not embedded into***

***the ground. In addition, some steel tribes, pipes etc. are seen kept on the ground of the site with welding units. No construction or any other activity was noted on the site at the time of inspection. Photographs taken during inspection are attached herewith, that would enable to visualise the site position.***

**Conclusion:**

***There was no construction activity going on at site at the time of inspection, and, in my considered opinion, the aforesaid activity (of placing of base frames on the ground) does not constitute violation of CRZ Notification. However, Authority may deliberate and decide on the matter.”***

**31.** Having pointed out above, it is vehemently argued that the said observation and conclusion clearly shows that the Respondent No. 1 has not considered the finding of fabricated frames made of steel tubes in the building unit to be objectionable as that would indicate the nature of construction to be of permanent kind and it has been wrongly held in conclusion that the same does not constitute the violation of NDZ Notification.

**32.** The Learned Counsel for the Appellant has further argued that it was the policy of the Respondent No. 1/Authority not to consider any application where there is litigation going on among the parties, which decision was taken in one of its meetings, but even there being such a policy, there being dispute of title existing between the parties, the Respondent No. 1 went ahead to grant permission to Respondent No. 2/PP to raise the construction on the disputed survey numbers.

**33.** Further, the Learned Senior Counsel for the Appellant has drawn attention to page no. 545 of the paper book which is part of the

Beach Carrying Capacity report in which Agonda turtle nesting site is shown located in whole of Survey No. 101 hence the same includes the present survey number in question.

**34.** In rebuttal, the Learned Counsel for the **Respondent No. 1** has drawn attention to page no. 416 of the 218<sup>th</sup> pertaining to Meeting of the Goa Coastal Zone Management Authority (GCZMA), wherein following is observed;

*“As regards the other request to modify Clause 25 of the Shack Policy to be read as “the beach shack shall be erected out of eco-friendly material like bamboos/wooden poles with thatched palm leaves/thatched bamboo mat roofing as far as possible. However, in case of paucity of wood the same may be erected out of the other modern materials like steel, synthetic, nylon fabric etc., for the purpose of framework due to unpredictable weather conditions”. This request for modification was approved by the Authority as the Beach Carrying Capacity report permits the use of such material and usage of the same would not be environmentally benign as it would also ensure stability of the shack and safety of the people who visit the same.”*

and having pointed it out, it is argued that even modern materials like steel, synthetic, nylon fabric etc. may be used for the purposes of framework due to unpredictable weather conditions and that the Beach Carrying Capacity report also permits the use of such material as the uses of the same would not be environmentally benign and it would also ensure the stability of the shack.

**35.** Then, he drew our attention to the Beach Carrying Capacity report at page no. 448, relevant para 1.3.10 which quoted herein below;

***“These are temporary structures built on surveyed plots for providing inexpensive accommodation to tourists. Huts are mainly made of bamboo poles with a thatched roof, similar to that of the shacks. Cottages are made up of wood and other temporary structural frameworks whereas tents are basically pitched out of cloth or canvas material and have basic amenities for tourists to stay. They are generally arranged in a linear pattern, with semi-open verandah in front with a sloped roof; stilt type of construction is also adopted in some places. The huts usually measure 3m by 4m. The height of the structure is restricted to 5.5m. The provision of toilets facilities for these huts can be common for a group or individual (attached) depending on the plot owner.”***

**36.** Having drawn attention to it, it is argued by him that it is this kind of huts which have been permitted to be constructed with the aid of bamboo poles and thatched wood which is permissible.

**37.** Then, he has drawn attention to page no. 500 of the report which deals with the type of material to be used which is as follows:

***“Shacks, huts, tents, cottages and huts/ tents/ cottages in private areas shall be erected using eco-friendly materials such as bamboos/wooden poles with thatched palm leaves/ thatched bamboo mat roofing as far as possible and for structural support wherever required GI-pipes / mild steel framed structures could be permitted. However, in case of paucity of wood the same may be erected out of the other modern materials such as synthetic, steel, nylon fabric etc. for the purpose of frame work due to unpredictable weather conditions. However the same shall not exceed 30% of the total material required. Use of concrete is banned. Grouting, plastering, laying of PCC/ RCC on the floor/ structure/ digging of soak pits/ digging and laying of pipes/ metal staircases grouted in cement etc. shall not be permitted as per the guidelines issued by the GCZMA.”***

**38.** Having pointed it out, it is argued by him that for structural support, the GI pipes/ mild steel framed structures are permitted to be used for raising the construction. Hence, it cannot be held that

the impugned permission is given for permanent structure rather the same would be treated to be of temporary nature.

**39.** The Leaned Counsel for the Respondent No. 1 has also drawn attention to the Notification of MoEF&CC dated 03.05.2017 which has brought amendment in the notification of 06.01.2011 (CRZ Notification, 2011).In clause 3 relating to CRZ Goa, following amendment has been inserted;

***(ii) in clause 3 relating to CRZ of Goa, after item (iii), the following item shall be inserted, namely:-***

***“(iiia) such structures shall not be removed and dismantled during the month of June to August:***

***Provided that the facilities available in these structures shall remain non-operational during the month of June to August”.***

**40.** This amendment has been pointed out by him in order to show that the permission which have been granted to raise the structures would though be treated to be temporary but they would not be ordered to be dismantled during the months of June and August under the above cited provision.

**41.** Most importantly, he has argued after drawing attention to page no.690 of the paper book, which is a draft CZMP, wherein Survey No. 101 is indicated, below which there are survey nos. 1 & 3 shown, to the right side of the said survey, is shown by green dotted line, 200 mtrs. CRZ line and hence, it is argued by him that this would fall in CRZ-III NDZ area and to the left of the said survey number, there is shown turtle nesting ground and argued that the same is far away from the said survey number. Therefore, it cannot

be said that the survey numbers in question are turtle nesting ground. Hence, the permission could have been granted for raising the construction in the said survey numbers.

**42.** The **Respondent No. 2/PP** has made the same arguments which were made by the Respondent No. 1 and justified the granting of permission to raise the construction and in addition to the arguments made by the Respondent No. 1, he has relied upon the Judgment of Hon'ble High Court of Bombay at Goa in *PIL Writ Petition No. 04 of 2018 (Goa Foundation v. Panchayat of Morjim)*- Decided on 17.09.2019. Relevant paragraph is quoted herein below;

**144. A perusal of the record further indicates that State of Goa under enabling powers conferred upon it under 1991 CRZ Notification prepared Goa CZMP thereby identifying and classifying various CRZ areas. The plot of the respondent no. 7 was classified in CRZ-III under the 1991 CRZ Notification read with the Goa CZMP AND RPG-2021. The said classification, in our view, by the State of Goa is binding on all the authorities. Under 2011 CRZ Notification with regard to CRZ of Goa, special provision is made. Regulation 8(V) 3(vii) clearly provides that management plan has to be prepared for protection of the turtle nesting sites at Mandrem, Morjim, Galgibag and Agonda. It is not in dispute that provisional turtle plan for Galgibag is already prepared. The said turtle plan for Galgibag provides for short term and long term recommendations for the conservation and protection of turtle nesting sites.**

**145. Regulation 8(V) 3(viii) clearly provides that no development activities shall be permitted in the said turtle nesting sites. The purpose of preparing Turtle Management Plan is that the turtle nesting sites are fully protected and remain undisturbed and accessible to turtles. Such sites area to be protected and remain undisturbed and accessible to turtles. Such sites area to be protected from intrusions and obstructions affecting turtle nesting. The respondent no. 7 does not fall in CRZ-I areas. Mr. Mehta, learned counsel for the respondent no. 7 is right in his**

***submission that by preparing a Turtle Management Plan for protection of the turtle nesting sites, the said plan cannot alter/amend/override/abrogate the provisions of the CRZ Notification or the CZMP.***

***146. A perusal of Regulation 8(V) 3(viii) clearly indicates that the said provision does not apply to the lands falling in CRZ-III areas. Under the said Regulation, development activities in CRZ-I areas and more particularly on turtle nesting sites are prohibited. The said turtle management plan is required to be prepared by the Forest Department under the Wildlife Protection Act, 1972. We have perused the report dated 26.09.2018. A perusal of the said affidavit clearly indicates that a new Goa Coastal Zone Management Plan is proposed to be prepared by the National Centre for Sustainable Coastal Zone Management, Chennai. A perusal of the said report indicates that the designated turtle nesting site is only the limited stretch of area of CRZ-IA at the mouth of the river. The draft map attached or order issued does not indicate this demarcation. We do not find any Notification or order issued by any of the authorities designating the entire Morjim beach as a turtle nesting site.***

**43.** We do not have any quarrel with the law which has been stated above and are of the opinion that the said Judgement would not help the case of the Respondent No. 2. As far as the raising construction on the impugned survey numbers is concerned, the same being located in NDZ area.

**44.** We would like to rely upon the Judgment laid down by the Hon'ble Apex Court in *Purushottam Das Bangur & Ors. Versus Dayanand Gupta in the case of Civil Appeal No. 7710 of 2012, decided on October 31, 2012 [(2012) 10 SCC 409]*, the relevant paragraph is quoted herein below:-

***“20. To sum up, no hard-and-fast rule can be prescribed for determining what is permanent or what is not. The use of the word “permanent” in Section 108(p) of the Transfer or Property Act, 1882 is meant to distinguish the structure from what is***

*temporary. The term "permanent" does not mean that the structure must last forever. A structure that lasts till the end of the tenancy can be treated as a permanent structure. The intention of the party putting up the structure is important for determining whether it is permanent or temporary. The nature and extent of the structure is similarly an important circumstance for deciding whether the structure is permanent or temporary within the meaning of Section 108(p) of the Act. Removability of the structure without causing any damage to the building is yet another test that can be applied while deciding the nature of the structure. So also the durability of the structure and the material used for erection of the same will be help in deciding whether the structure is permanent or temporary. Lastly, the purpose for which the structure is intended is also an important factor that cannot be ignored.*

*21. Applying the above tests to the instant case the structure was not a temporary structure by any means. The kitchen and the storage space forming part of the demised premises was meant to be used till the tenancy in favour of the respondent occupant subsisted. Removal of the roof and replacement thereof by a concrete slab was also meant to continue till the tenancy subsisted. The intention of the tenant while replacing the tin roof with concrete slab, obviously was not to make a temporary arrangement but to provide a permanent solution for the alleged failure of the landlord to repair the roof. The construction of the passage was also a permanent provision made by the tenant which too was intended to last till the subsistence of the lease. The concrete slab was a permanent feature of the demised premises and could not be easily removed without doing extensive damage to the remaining structure. Such being the position, the alteration made by the tenant fell within the mischief of Section 108(p) of the Transfer of Property Act and, therefore, constituted a ground for his eviction in terms of Section 13(1)(b) of the West Bengal Premises Tenancy Act, 1956.*

*22. We may at this stage refer to the decision of this Court in Ranju v Rekha Ghosh" where this Court found that cutting of a collapsible gate by 5/6" and replacing the same without the consent and permission of the landlord was tantamount to violation of Section 108(p) of the Transfer of Property Act read with Section 13(1)(b) of the West Bengal Premises Tenancy Act, 1956. It is thus immaterial whether the structure has resulted in creating additional usable space for the tenant who*

***carries out such alteration and additions. If addition of usable space was ever intended to be an essential requirement under Section 108(p) of the Act, Parliament could have easily provided so. Nothing of this sort has been done even in Section 13(1)(b) of the State Act which clearly shows that addition of space is not the test for determining whether the structure is permanent or temporary.***

**45.** It is apparent from the above that we should also gather intention of the Project Proponent who is going to raise construction, in order to reach the conclusion whether the construction is of permanent nature or temporary. Here in the present case, the intention of the Respondent No. 2 is to raise construction of a hotel consisting of 7 Twin Cottages, 1 Restaurant, 1 Reception/lounge & Open Recreational Space etc. which is a huge construction which also is not to be demolished for any duration. Therefore, intention would lead us to believe/conclude that the said construction was going to be of permanent nature.

**46.** On the basis of above rival submissions, we are of the view that in the present case, Regulation 8 of CRZ (V) sub clause (iii) would be applicable which provides as follows;

***“(iii) In CRZ-II areas-***

***The development or redevelopment shall continue to be undertaken in accordance with the norms laid down in the Town and Country Planning Regulations as they existed on the date of issue of the notification dated the 19<sup>th</sup> February, 1991, unless specified.***

.....

**3. CRZ of Goa.-**

***(iii) purely temporary and seasonal structures customarily put up between the months of September to May;”***

**47.** The above kind of temporary and seasonal structures only are permissible under CRZ of Goa and therefore, we are of the view that the kind of material which has been allowed to be used of steel and pre-fabricated material, would tend to indicate that the construction is of permanent nature. Moreover, it has also been pointed out by the Learned Counsel for the Respondent No. 1 that the same would not be removed/dismantled even for the months of June to August. Therefore, he did admit that they will be allowed to be continued. Therefore following precautionary principle, it would be appropriate for us to not allow this kind of construction to be raised in ecologically sensitive area which are very close to the place of a turtle nesting ground as is apparent from the evidence on record. The kind of construction which has been permitted, is very huge as is apparent from the plan approved by the Respondent No. 1. The plea taken by the Respondent No. 1 that it is within their jurisdiction to grant this kind of permission, we do not agree to the said argument because at the most, temporary structure which would have used only bamboo or wood for construction purposes, could have been allowed to be used. Even if some policy has been brought into force by the GCZMA, permitting use of steel or pre-fabricated material, the same does not appear to be sound policy, which would also need revision on the part of the GCZMA.

**48.** It would also require to be taken note of that the construction which have been permitted to be raised are on the same survey numbers which were earlier ordered to be demolished by the GCZMA

and that order when challenged, was finally upheld up to the level of Hon'ble High Court and it was only after the invention of the Hon'ble High Court, going to the extent of invoking contempt jurisdiction, that the said offending structures had to be removed/dismantled. It is very strange that GCZMA/Respondent No. 1 has permitted the constructions almost of the same kind to be raised on the same pieces of land. We hold that the permission for raising the impugned construction could not have been given, the same being NDZ. This issue is decided accordingly.

**49. Finding on Issue no. (ii) :** Consequently, we are of the view that the impugned construction which has been allowed, would not fall in the category of temporary construction, rather the same would fall in the category of permanent structure. We decide this issue no. (ii) accordingly.

**50. Finding on Issue no. (iii):** We are of the opinion that both the appeals deserve to be allowed and impugned orders dated 09.05.2022 and 11.05.2022 deserve to be set aside and are accordingly set aside. There shall be no order as to cost.

Dinesh Kumar Singh, JM

Dr.Vijay Kulkarni, EM

September 05, 2022  
 Appeal No. 22/2022(WZ)  
 (I.A. No. 66/2022 & I.A. No. 69/2022)  
**With**  
 Appeal No. 23/2022(WZ)  
 (I.A. No. 67/2022)  
 P.kr