



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

APPEAL NO. 54/2025(WZ)

Hype Guest House Unit IV

...Appellant

Versus

Goa Coastal Zone

Management Authority

& Ors

...Respondents

AFFIDAVIT-IN-REPLY ON BEHALF OF GCZMA

RESPONDENT NO 1

I, Shri Sachin Desai, major of age, holding the post of Member Secretary, Goa Coastal Zone Management Authority ("GCZMA") i.e., Respondent No 1 herein, having office at 4th Floor, Dempo Towers, Patto, Panaji, Goa, do hereby make solemn affirmation and state as under:-

1. I say that I am holding the post of Member Secretary, GCZMA. I say that I am filing the present affidavit based on the records available with my office and that I am competent to depose in this case.

2. I say that I am filing the present Affidavit-in-Reply for the purpose of opposing the relief as claimed in the Appeal. Nothing in the aforementioned Appeal filed by the Appellant may be deemed

to have been admitted for mere want of specific denial. Nothing may be deemed to have been admitted for want of *traverse seriatim*. I crave leave of this Hon'ble Tribunal to file an additional detailed Affidavit, if found necessary.

3. I say that the present appeal challenges the Order dated 21.01.2025 ("**Impugned Order**") passed by the Answering Respondent ordering demolition of structures located in property bearing Survey Number 63/69 of village Arambol, Taluka Pernem disposing of the Show Cause Notice dated 09.02.2024.

4. I say that the Show Cause Notice pertained to structures located in property bearing Survey Number 63/69 of village Arambol, Taluka Pernem.

5. I say that the answering respondent had issued show cause notice dated 09/02/2024 to the present Appellant. The Appellant in his reply claimed that the said structures existed prior to 1991.

Annexed hereto reply filed by the Appellant before the Answering Respondent as "**Annexure A**".

6. I say that the answering Respondent after carefully considering the reply filed by the present Appellant along with the documents and has passed detailed and reasoned order.





7. I say that the answering respondent has granted fair notice and chance of personal hearing in the matter before passing the impugned order. I deny that the answering respondent has violated principles of Natural justice.

8. I say that the Appellant was furnished all the documents referred to in the show cause notice and thereafter proceeded in the matter resulting in impugned order.

9. I say that the Appellant has miserably failed to produce the documents to justify the constructions done at loco at the stage of hearing before the Answering Respondent.

10. I say that the Appellant has challenged the order of demolition issued by the Answering Respondent on the ground that the structures were in existence prior to 1991 i.e. prior to coming into force of the CRZ Notifications. I say that Appellant has failed to prove the existence of the said structures as pre-1991.

11. I say that the Appellants are not entitled to raise any other further grounds, and the present appeal is liable to be dismissed.

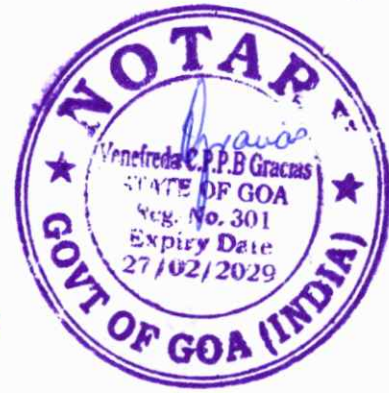
12. I say that what has been stated in Paras 1 to 11 are true to my own knowledge and/or are based on documents/records available with the Respondent and the contents of the same are true and correct and nothing material has been concealed herein.

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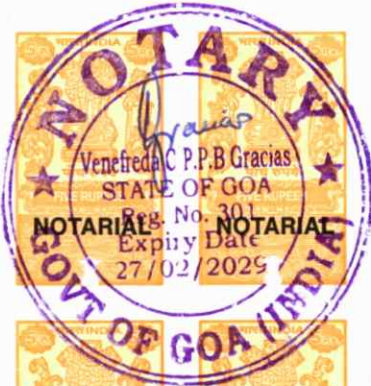
Solemnly Affirm on Oath

Place: Panaji

Date: 02/07/2025



DEPONENT



Solemnly affirmed before me

Sachin Desai

Who is identified before me by

_____ At Panaji n. Goa

Sr. No. 76/07/2025

Date. 02/07/2025

Gracias
Venefrada C.P.P.B Gracias
Advocate & Notary Goa State

From,
MR. FRANCIS FERNANDES,
R/o Girkarwada, Arambol,
Pernem- Goa

Date: [REDACTED]

To,
GOA COASTAL ZONE MANAGEMENT AUTHORITY,
4th Floor, Dempo Towers,
Patto, Panaji Goa.

REF: Show Cause Notice dated 09.02.2024 bearing Ref. No.
GCZMA/H.C.M./WP.724/2023/23-24/06/3814.

SUB: Reply to the Show Cause Notice dated 09.02.2024.

Respected Sir/Madam,

The undersigned is in receipt of above referred show cause notice dated 09.02.2024 and respect to which the undersigned states as under:

1. That, this Hon'ble Authority issued a Show cause Notice to the undersigned on 09.02.2024 wherein your good office had called upon the undersigned to show cause as to why direction to demolish the offending structures and to restore the land to its original condition should not be issued against the undersigned.

STRUCTURES IN EXISTENCE PRIOR TO CRZ NOTIFICATION

2. The undersigned states that the structures mentioned in the show cause notice is a structure which is in existence much prior to coming into force of CRZ notification and consequently the question of the same being in violation of CRZ notification does not even arise. The Respondent states that the undersigned and his family has been traditionally residing along coast of village Arambol. It is stated that the undersigned's ancestors are residing in the coastal area since more than 50 years which clearly establishes the fact that the structures are in existence much prior to the coming into force of CRZ notification 1991 and therefore it is denied that there is any kind of illegal construction carried out by the undersigned. It is stated that the said property is in possession and enjoyment of the Respondent since the time of their ancestors and now with the undersigned who is using the same. The said structure had been issued permission for erection of Building vide permission dated 06.07.1979 and consequently

an occupancy certificate dated 30.10.1980 and is registered with the Village Panchayat of Arambol for the purpose of tax and initially allotted house No. 383 C and now changed to house No. 45. Copy of the construction permission, occupancy certificate and house tax receipt are annexed hereto and marked as **Annexure A.**

3. The Respondent states that the said structure along Survey No. 63/69 of the village of Arambol have existed since time immemorial. The Respondent states that since the said structure was put to use on daily basis the same were repaired and maintained by the forefathers of the undersigned. The Respondent states that he has not carried out any new or fresh construction to the *existing structures*.

4. The Respondent states that Special CRZ Norms for State of Goa provides for reconstruction, repair works of structures of local community shall be permissible in CRZ. The undersigned is covered under meaning of local community under CRZ Notification 2011.

5. The Respondent states that the scheme of the CRZ Notification

2011 interalia provides:- *“Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government, with a view to ensure livelihood security to the fisher communities and other local communities, living in the coastal areas, to conserve and protect coastal stretches, its unique environment and its marine area and to promote development through sustainable manner based on scientific principles taking into account the dangers of natural hazards in the coastal areas, sea level rise due to global warming, does hereby, declare the coastal stretches of the country...”*

6. The Respondent states that it is clear that protection of structures of the local community and livelihood security is to fisher and local community in sustainable manner is one such objective in scheme of CRZ Notification 2011.

7. Further, it is stated that the father/father-in-law/uncle of the Respondent Shri. Fransico Fernandes has been issued

certificate No. 12747/5657 dated 15.08.1960, for the purpose of carrying out fishing business at Arambol. The Respondent also is the member of Goenchea Ramponkarancho Ekvot which has issued certificate confirming that the respondent belongs to Fisherman Community. Copy of certificate dated 15.08.1960 and certificate dated 28.04.2010, is annexed hereto and marked as **Annexure B.**

8. From the perusal of the aforesaid documents, it is clear that the structures of the undersigned are clearly legal structures as the same are prior to 1991 and hence do not fall within the ambit of the CRZ notifications. It is further reiterated that the structures in contention also do not fall within the NDZ of the CRZ and to that extent the allegations made in the Show cause Notice are factually incorrect and on these grounds alone the proceedings initiated pursuant to the Show cause notice are liable to be discharged.

9. The Respondent states that the said structure is used by their forefathers in the property bearing Survey No. 63/69 of the village of Arambol. Thus, the said structures subject matter of

the show cause notice under reply is entitled for protection under provisions of CRZ Notification 2011.

10. Further, in terms of Regulation 6 (d) of the CRZ 2011, dwelling units of the traditional coastal communities (especially) fisherfolk Tribals as were permissible under the provisions of the CRZ, notification 1991, but which have not obtained formal Approval from concerned authorities under the aforesaid notification shall be considered by the respective Union territories CZMAs and the dwelling Units shall be regularized subject to the conditions that the said dwelling units are not used for any commercial activity and that are not sold or transferred to non-traditional coastal Communities. It is therefore clear from the above provision that the undersigned is entitled for regularisation of his structures.

VIOLATION OF PRINCIPLES OF NATURAL JUSTICE AND FAIR PLAY

11. The Respondent states that as it can be borne out from the reading of the show cause notice that the Respondent is not

originally a party before the Hon'ble High Court of Bombay at Goa in proceedings pending before it therefore completely oblivious to such orders/proceedings pending before the Hon'ble High Court of Bombay at Goa.

12.The Respondent respectfully submit that the said show cause notice under reply is issued *erroneously and inadvertently* issued to me as my structure doesn't come within NDZ of CRZ and is existing prior to 1991 belonging to local coastal community. The show cause notice is thus bad in law and not maintainable.

13.Furthermore, the present show cause notice has been issued by the Authority without issuing/giving copy of any inspection report/ documents which this Authority may have considered before issuing the said notice. Hence at this very initial step there is complete violation of *Principles of Natural justice and fair play*.

14. The aforementioned act of your good office and the concerned authorities is in violation of principles of natural justice and fair play at hand as the same does not enable the undersigned to effectively reply to the above referred show cause notice. It is further stated that the aforementioned site inspection was conducted in the absence of the undersigned and that the undersigned was never provided with the aforementioned notice of inspection.

15. It is most respectfully submitted that by now it is settled position of law which mandates that each and every documents relied upon in the Show Cause Notice is required to be furnished to the other side. Non-furnishing of material/documents which forms the part of the Show Cause Notice clearly amounts to violation of principles of natural justice. The aforesaid position of law has been reiterated in catena of Judgments by the Hon'ble Supreme Court and by various High Courts.

16. Recently, the Hon'ble Supreme Court in *Deepak Ananda Patil v. State of Maharashtra & Ors.* 2023 SCC Online SC 34 has

clearly reiterated the aforesaid position. The relevant portion of the judgment is reproduced herein below for ready reference:

“17. It is a well-established principle of administrative law that an adjudicatory body cannot base its decision on any material unless the person against whom it is sought to be utilized has been apprised of it and given an opportunity to respond to it. Surveying the precedents extensively, MP Jain & SN Jain’s treatise on Principles of Administrative Law¹ notes that:

- i. *“If the adjudicatory body is going to rely on any material, evidence or document for its decision against a party, then the same must be brought to his notice and he be given an opportunity to rebut it or comment thereon. It is regarded as a fundamental principle of natural justice that no material ought to be relied on against a party without giving him an opportunity to respond to the same. The right of being heard may be of little value if the individual is kept in the dark as to the evidence against him and is not given an opportunity to deal with it. The right to know the material on which the Authority is going to base its decision is an element of the right to defend*

oneself. If without disclosing any evidence to the party, the Authority takes it into its consideration, and decides the matter against the party, then the decision is vitiated for it amounts to denial of a real and effective opportunity to the party to meet the case against him. The principle can be seen operating in several judicial pronouncements where non-disclosure of materials to the affected party has been held fatal to the validity of the hearing proceedings."

(emphasis supplied)"

17. It is stated that non furnishing of the documents/material which forms part of the Show cause notice amounts to violation of principles of natural justice and fair play as the same impaired the undersigned from filing a detailed and effective reply to the show cause notice issued. In the above conspectus this the proceedings initiated against the undersigned pursuant to the show cause notice are liable to be discharged.

18. In terms of procedure laid down by the Hon'ble National Green Tribunal in the case of Sesa Goa Limited Vs. State of Goa, 2013 SCC OnLine NGT 27 (at para 46 & 47) (the same being reproduced in the preliminary reply dated 18.03.2024) the procedure laid down in the aforementioned judgement by the Hon'ble NGT has not been adhered to. It is reiterated that the said procedure was laid down by the Hon'ble Tribunal on account of the fact that CRZ notification does not provide for any specific procedure to be followed by the Authority whilst proceeding with SHOW CAUSE NOTICE and therefore in order to have uniform procedure which is in consonance with the principles of natural justice the Hon'ble National Green Tribunal laid down the said procedure.

19. It is most respectfully submitted that the present proceedings and the inquiry conducted by your good office and by the concerned authorities was to be conducted adhering to the guidelines laid down by the Hon'ble Tribunal and that the same have not been followed and hence present proceedings cannot be proceeded any further and are to be discharged on this

ground alone, as following of the procedure laid down by the Hon'ble tribunal is mandatory in nature.

VALIDITY OF INSPECTION

20. It is reiterated that the undersigned was not provided with the copy of the notice issued by the concerned authority before conducting site inspection and that the said inspection was conducted in the absence of the undersigned. It is reiterated that the report of the said inspection which was conducted in the absence of the undersigned cannot be relied upon as the same does not depict the factual position at *loco*.
21. It is stated that the purported inspection carried out in the property of the undersigned and in the absence of the undersigned, purportedly mentioning that the structure of the undersigned are illegal is nullity in eyes of law in as much as the notice was never issued to the undersigned and the inspection report has not been furnished till date. It is further stated that the inspection report prepared cannot be relied upon

as the same has been prepared in violation of principles of natural justice and fair play.

22. In as much as the structures of the undersigned are concerned the same are completely legal and that the same have been in existence prior to 1991.

23. The Respondent craves leave to file additional reply if any in view of the above and once the inspection report is provided. The Respondent also requests this Hon'ble Authority to kindly grant me personal hearing in the present case so to enable him explain the case/facts in the correct perspective.

In the light of facts and circumstances mentioned hereinabove, it is most humbly stated that the structure belonging to the undersigned is pre-existing and prior to year 1991 and consequently the question of same being in contravention of CRZ notification does not even arise. In such circumstance it is humbly prayed that the present Show cause notice be discharged.

YOURS FAITHFULLY,



FRANCIS FERNANDES

Adv. for Respondent
under instruction.

H-NO. 45 GITHARWADA

FORM No.4

[See rule 13 and rule 20 (iv)]

RECEIPT

H.T.
L.T.Receipt Book No. 292Receipt No. 062The village Panchayat ArambolReceived with thanks from FRANCIS PERMANDESRupees FOURTY FIVE ONLY.on account of H.T. 15-16 40:00L.T. 15-16 5:0045:00Date 28-04-2015

Ref. to cash entry Book

Page No.

Rs. 45:00

Signature and Official Seal of

V. S. ARAMBOL
PERNEM - GOA

168

**VILLAGE PANCHAYAT ARAMBOL**

Taluka : Pernem - Goa. Pin.-403 424 Ph.: 2242966

**ग्राम पंचायत हरंबल**

ता. पेडणे - गोवा. ४०३.४२४ फोन: २२४२९६६

Ref. No. : VPA/ PER/2007-2008/ 657

Date : 04/11/2007

CERTIFICATE

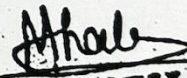
This is to certify that as per record mentioned by this panchayat (Demand and Collection register) the house bearing old house No.383 C and New house No.45 is register in the name of Shri, Francis Fernandes.

Further to certify that the old house No.383 C and New house No. 45 is one and Same house and Same is registered in the V.P. record since 188-89 to till date.

This certificate is issued at the request of Shri, Francis Fernands of Girkarwada Girkarwada Arambol, Pernem-Goa.,

Place:-Arambol

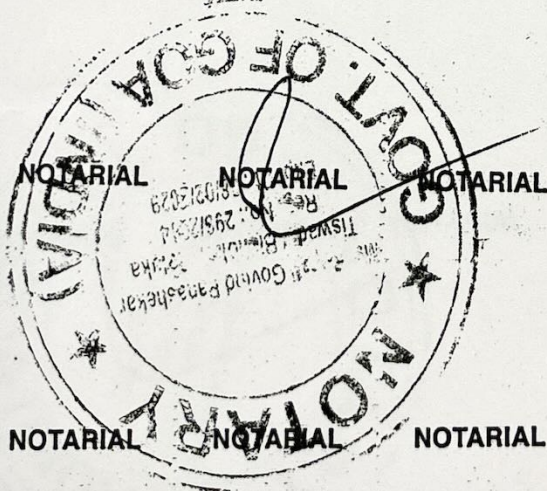
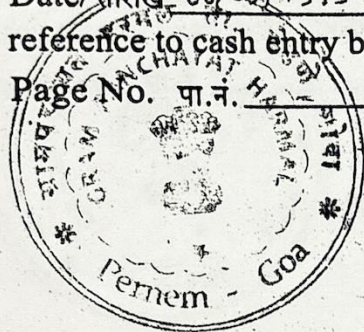
Date:-04/11/2007.


**SARPANCH
V. P. ARAMBOL
PERNEM - GOA**

पावती No. 639

पावती बुक नं.

पावती देणाऱ्या अधिकाऱ्याची सही आणि हुदा
Signature and Designation of Issuing Officer
सर्कटरी
ग्रा. प. हरमल



Adv. Rupali G. Panashekar
NOTARY

Bicholim Taluka State of Goa (India)

Notary Reg. No. 296/14

Reg.No.. 9743 / 2024

Dated: 29/2024.

TRUE COPY 170

Girgaonada.
H. No. 383(C)

फॉर्म नं. ४ Form No. 4

RECEIPT

पावती No.

040

Receipt Book No.

पावती बुक नं.

The V.P. Hermal

Received from Francis Bernard Fernandes

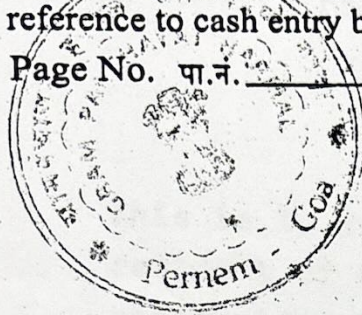
यांजकडून साभार पोहचले रुपये Repees light tax

on account of Repees one only (1/-) ज्या कारणासाठी

Date/ तारीख 6/9/1979 for year 1976-77, to 78-79

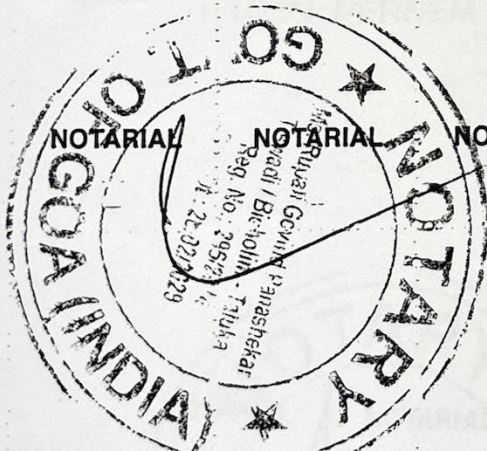
reference to cash entry book — जमेचा संदर्भ

Page No. पा.नं. —



K. S. Shinde

पावती देणाऱ्या अधिकाऱ्याची सही आणि हुद्दा
Signature and Designation of Issuing Officer



NOTARIAL NOTARIAL NOTARIAL

Rupal
Adv. Rupal G. Panashekar
NOTARY
Bicholim Taluka State of Goa (India)
Notary Reg. No. 296/14
Reg. No. 9742 / 2024
Dated : 2 / 9 / 2024



TRUE COPY

VILLAGE PANCHAYAT HARMAL

PERNEM - GOA

ग्रामपंचायत हरमल, पेडने-गोवा

Ref.No. VPH/PER/BBF/383(C)/79-80

Date:- 30/10/1980

OCCUPANCY CERTIFICATE

This is to certify that shri. FRANCIES BERNARD FERNANDES resident of Girkarwada, Harmal, Pedne, Goa, is having a residential House bearing no. '383(C)' situated at Girkar wada, Harmal, pedne, in the property known as " BAGDANDA" surveyed under No. 63 subdivision no. 69 in our panchayat jurisdiction.

Further certifying that shri. FRANCIES B. FERNANDES IS Occupaying the said premises bearing no. 383(C) situated at Girkarwada, Harmal, pedne, Goa, from the Month of octomber 1980

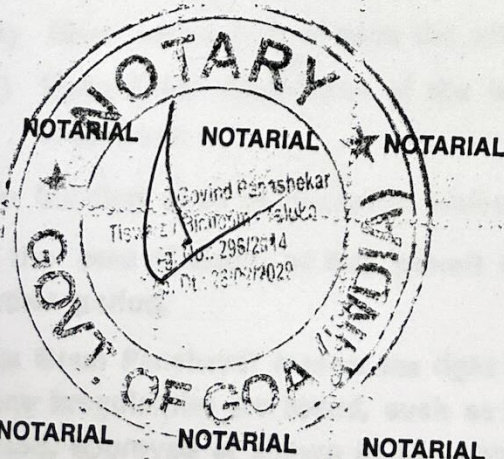
Given under the seal of village panchayat Harmal.

K.T. Shiroli
SECRETARY

VILLAGE PANCHAYAT
HARMAL PERNEM - GOA



G. P. P. P.
SARPANCH
VILLAGE PANCHAYAT
HARMAL PERNEM - GOA



Rupali
Adv. Rupali J. Panashakar
NOTARY
Bicholim Taluk, State of Goa (India)
Notary Reg. No. 296/14
Reg. No. 9748/2024
Dated: 27/8/2024



VILLAGE PANCHAYAT HARMAL

TRUE COPY

PENEM - GOA

ग्रामपंचायत हर्मल, पेडने - गोवा

Regd. No.

VPH/PER/FBF/383(C)/78-79

Permit No.

12

Year

Date:- 06/09/1979

Read : 1) The Goa Daman And Diu Village Panchayat (regulation of building) rule 1971. Rule 3(2)b. permission for the construction of Koocha House at the Estimated cost of Rs. 10,000/- (Rupees Ten Thousand only)

2) The Goa Government grant of loan for houses under the paying guest scheme and small hotel establishment rule 1978.

PERMISSION FOR THE ERECTION/RE-ERECTION OF BUILDING

Permission under Sec. 53 of the Goa, Daman and Diu, Village Panchayats Regulation (Amendment) Act. 1969 is hereby granted to Shri/Smt. FRANCIES

BERNARD FERNANDES

resident of

Girkarwada

for the ~~erection~~/re-erection of building, as described below in the locality of
" BAGDANDA " in ward Girkarwada of

Harmal as per specification shown, in the attached plan, with following conditions.

DESCRIPTION OF ~~ERECTION~~/RE-ERECTION

Reconstruction of Existing premises bearing no. 383(C), situated

at Girkarwada, Harmal, Pedne, Goa, in the property known as

" BAGDANDA " surveyed under No. 63 subdivision 69.

CONDITIONS

1. That the permit holder shall commence the work before the expiry one year, from the date of issue of this permit.
2. That the permit holder shall cause the Panchayat and the Technical Officer to be notified at the following stages of work progress.
 - a) Upon commencement of the work.
 - b) Upon completion of up to the plinth level and before erection of the foundation wall.
 - c) Upon Total completion of the work authorized by the building permit and before occupancy.
3. No building shall be occupied unless occupancy certificate is obtained.
4. In the case of expiry of this permit the permit holder may apply for the extension of further period.
5. This Gram Panchayat reserve the right to revoke any permit issued by this Gram Panchayat if any irregularities are found, such as false statement mis-representation of any material passed, approved or shown in the application on which the permit was based. Necessary fees for the said permission has been paid by Shri. Francies B. Fernandes, under receipt no. 38 of book no. 50, dated-- 06/09/1979.

Given under the embossed seal of Village panchayat Harmal.

H.T. Shewell
सेक्रेटरी
ग्रा. प. हर्मल

[Signature]
हर्मल
ग्रा.प.हर्मल