

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

APPEAL NO. 57/2025(WZ)

Felix Fernandes

...Applicant

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 23.01.2025 (“**Impugned Order**”) passed by the Answering Respondent ordering demolition of structures located in property bearing Survey Number 63/58, 63/59 and 63/60 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 63/58, 63/59 and 63/60 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 the 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.

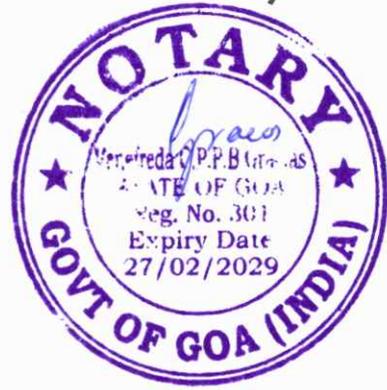
12. I say that what has been stated in Paras 1 to 11 are true to my own knowledge and/or are based on documents/records available with the Respondent and the contents of the same are true and correct and nothing material has been concealed herein.



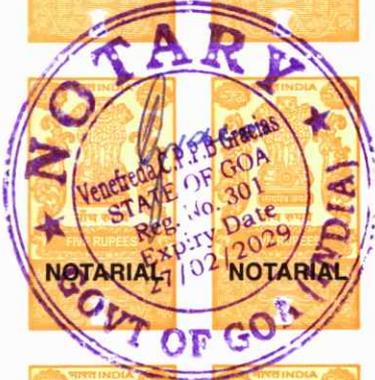
Solemnly Affirm on Oath

Place: Panaji

Date: 2/7/25



[Signature]
DEPONENT



Solemnly affirmed before me

Sachin Desai

Who is identified before me by

_____ At Panjim - Goa

Sr. No. 74/07/2025

Date. 02/07/2025

[Signature]
Venefrada C.P.P.B Gracias
Advocate & Notary Goa State

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

Date:

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.724/2023/23-24/06/3829.

SUB: Reply to the ShowCause 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 structure which are 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. The structure there being legal and existing prior to 1991 belonging to local coastal community and is reflecting in the survey plan prepared by DSLR.

3. The Respondent states that the said structure along Survey No. 63/60, 63, 59 and 63/58 of the village of Arambol have existed

since time immemorial. The Respondents state that since the said structure was put to use on a 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 inter alia 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. 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.
8. The Respondent states that the said structure is used by their forefathers for residential purpose in the property bearing SurveyNo. 63/60, 63, 59 and 63/58of 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.

VIOLATION OF PRINCIPLES OF NATURAL JUSTICE AND FAIR

PLAY

9. 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.
10. 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.

11. 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. Henceat this very initial step there is complete violation of *Principles of Natural justice and fair play*.
12. 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.
13. 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.

14. 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)”

15. 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.

16. 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.

17. 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

18. 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*.

19. 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.

20. 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.

21. 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 prayed that the structures belonging to the

undersigned are pre-existing are pre 1991 structures and consequently the question of samebeing in contravention of CRZnotification does not even arise. In such circumstance it is humbly prayed that the present Show cause notice be discharged.

Yours faithfully,



FELIX FERNANDES Adv. for Respondent
under instructions



172
 Government of Goa
 Directorate of Settlement and Land records
 Survey Plan
 Taluka / Village Name : PERNEM / Arambol

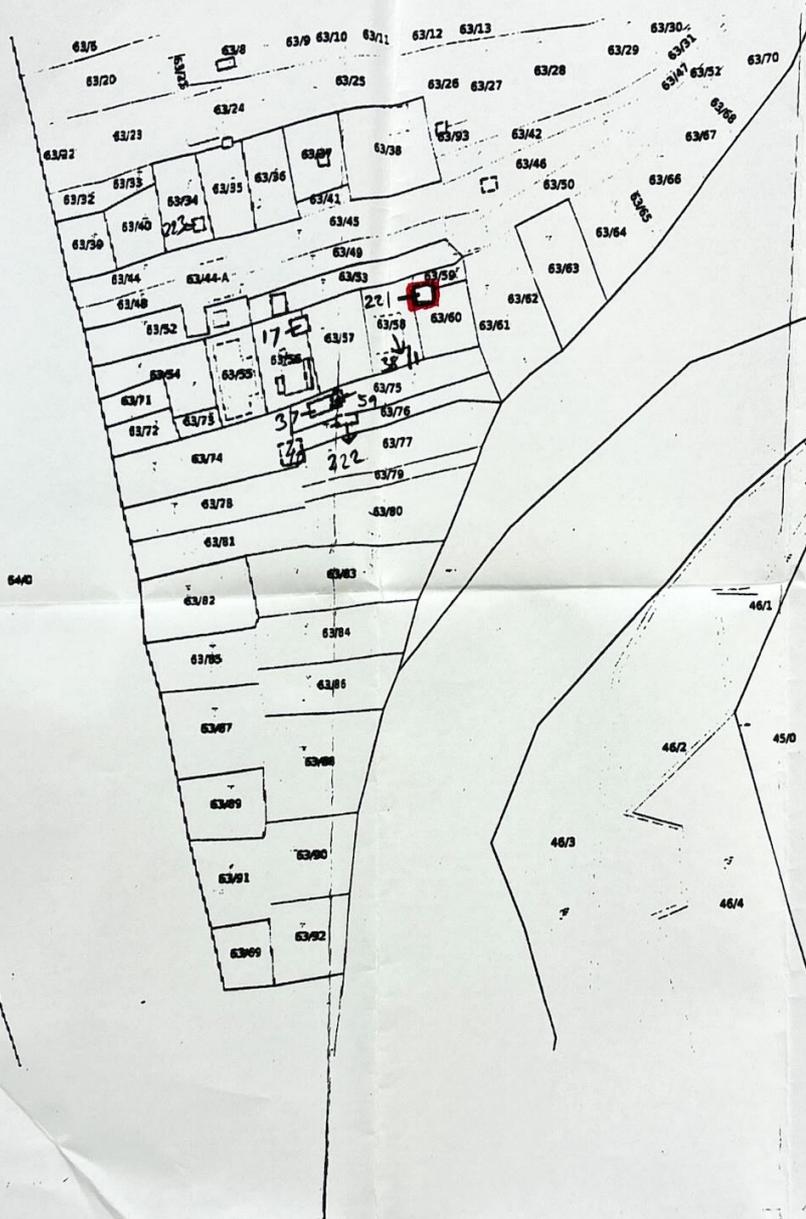
Survey / Subdiv No. :

63/34,63/35,63/36,63/37,63/38,63/39,63/40,63/52,63/53,63/54,63/55,63/56,63/57,63/58,63/59,63/60,63/63,63/69,63/71,63/72,63/73,63/74,63/75,63/76,63/82,63/89

Ref. No. :24-830



Scale 1:1000



Decreto-Lei n.º 23.764, de 13 de Abril de 1934

CAPITANIA DOS PORTOS
DO ESTADO DA INDIA

EQUIPAGEM

Cédulas de Inscrição Marítima

N.º 12747/5657

Nome Francisco Fernandes

de Trambol

CAPITANIA DOS PORTOS DO ESTADO DA INDIA
 Livro de Inscrição n.º Inscricão Maritima

Nome *Francisco Fernandes*
 Filho de *Bernardo Fernandes*
 e de *Isabelastica Fernandes*
 Natural da freguesia de *Pitambol*
 Concelho de *Pernambuco*
 Distrito de *Linha*
 Nasceu em *15* de *Junho* de 19.....
 Ocupação antes de inscricao *pesceiro*

Documentos apresentados para a inscricao
 *Cartão de idade e Guia n.º 364/1958. em*
 *propriedade sua aptidão física pelo D. A.*
 *de Pernambuco*

Capitania dos Portos, Lu
 O Capitão dos Portos,
[Signature]

EQUIPAOEM
 N.º *12.7.47/5657*
 A Folha n.º *1.2.3.4*

Sinais característicos

Altura *1,60*
 Barba *rapada*
 Cabelos *pretos*
 Cor *trigueira*
 Olhos *castanhos*



Francisco Fernandes

..... *15* de *Agosto* de 19.....

O Escrivão,

[Signature]

GOENCHEA RAMPONKARANCHO EKVOTT



(Ramponkars, Magkars, Cantaikars, Pagelkars.)

Regd. under Societies Act. 1860

Reg. No. RS. / 240 / 76

Head Office :

FABRICA BLDG.,

CANSAULIM P. O. 403 712

SALCETE - GOA

Affiliated to National Fish Workers Forum
New Delhi

Potr Ank.....

Date 28/4/10

TO WHOM IT MAY CONCERN

This is to certify that Shri / Smt. Avelino Fernandes
aged 34 years, son / daughter / wife of Shri. Pascoal Fernandes
residing at H. No. Girkar vaddo - Dando - Arambol - Goa
belongs to Other Backward Class i.e. FISHERMAN Community as notified by
the Govt. of Goa vide order No. 13/1/97. SWD dated 31/1/1917 published in
Official Gazette Series I No.44 in concurrence with Ministry of Welfare, Govt.
of India, Resolution No. 12011/44/96 - BCC dated 6/12/96

This certificate is issued at the request of Shri / Smt. Avelino Fernandes
in order to obtain caste certificate from Taluka Mamlatdar.

For Goenchea Ramponkarancho Ekvott



[Signature]
President/General Secretary