

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

APPEAL NO. 52 OF 2022 [WZ]

BETWEEN:

M/s. Colmar Beach ResortAPPELLANT

AND

The Goa Coastal Management
Authority and Anr.....RESPONDENTS



AFFIDAVIT IN REPLY OF THE RESPONDENT NO. 2

I, Judith Almeida, Indian national, President of the Respondent No. 2 organization in this Appeal, do hereby solemnly affirm and state as under:

1. I state that I am filing the present affidavit in Reply to the instant Appeal filed by M/s Colmar Beach Resort, bearing no. 52/2022 [WZ]. At the outset, I state that I am not replying to each and every statement and submission made in this Appeal, and nothing may be deemed to be admitted unless the same is specifically admitted herein but should be treated as though the same has been set out seriatim and denied and disputed specifically.

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2. Before the Answering Respondent deals with the merits of the Appeal, I state that this is one of the cases which came to be taken up by the G.C.Z.M.A. as a part of the proceedings in S.M.W.P. 02/2006 in the Hon'ble High Court of Bombay at Goa, wherein this Respondent is the Intervenor/Respondent No 30. The property of the Appellant Colmar Beach Resort was one of the many properties in the villages of Colva and Sernabatim listed as having illegal structures, Salcete, as per the 2006 Report of the DSLR.



3. With respect to the Contents of Para 3, it is factually incorrect for the Appellant to state that it acquired the entire Sy. No. 40/4, when it actually acquired only 1/4th of the property admeasuring approximately 4912 sq. mts. This fact, however, may not be germane for the determination of this Appeal, and is stated by the answering Respondent only to place the correct position on record.
4. With respect to the Contents of Para 4, I say that no specific comment is warranted from the Answering Respondent as the contents thereof are a matter of record in as far as repair of existing structures is concerned.
5. With respect to Paras 5 and 6, I say that no specific comment is warranted from the Answering Respondent as the contents thereof are a matter of record.
6. With respect to the contents of Paragraph 7, I state that the innocuous nature of the 'additional structures' portrayed by the Appellant needs to be clarified and nipped in the bud. In the preceding paragraph of the Appeal, i.e. Para, 6, the observations of the GCZMA quoted by the Appellant are that the 'additional structures' are those structures which are other than the approved structures with legal approval. In other words, the 'additional structures' are ones which

are not approved and do not have legal approval. The inference therefore sought to be conveyed by the Appellant that the 'additional structures' are not stated by the R. 1 as being illegal is therefore strongly refuted by the answering Respondent as being wholly incorrect, mischievous and contrary to records.



7. With respect to the contents of Paragraph 8, I state that the DSLR Mapping Plan and the Approved Plan produced by the Appellant were not the only documents considered by the Resp. No. 1 authority prior to passing the impugned order, which fact is reflected in the order itself.

8. With respect to the contents of Paragraph 9, it is vehemently denied that the Appellant was not supplied with copies of the DSLR Plans, and that the Appellant was deprived of dealing with the same and filing its say. The record reveals the following opportunities afforded to the Appellant as a part of the proceedings conducted by the GCZMA prior to the impugned order being passed:
 - a) *29th May 2019 - 202nd GCZMA Meeting* - The Appellant was heard at length by the GCZMA. Appellant filed an approved plan as well.

 - b) *1st August 2022* - Appellant receives notice for Personal Hearing, **along with copy of DSLR Map.**

 - c) *23rd August 2022* - Appellant files application with R. 1 seeking for time/adjournment

d) *25th August 2022 - 320th GCZMA Meeting - R. 1* authority accepts Appellants request for time, decides to grant time as last and final opportunity. Appellant directed to **file detailed reply with documents by 15.09.2022**. Matter adjourned to 21st Sept. 2022.

e) *21st Sept. 2022 - 323rd GCZMA Meeting - Appellant* once again asks for time. GCZMA refuses, owing to multiple opportunities given in the past and owing to HC Directions to complete exercise in timebound manner. GCZMA notes casual attitude and disinterest of Appellant in participating in proceedings.



9. From a perusal of the chronology of events as laid out above, it is clear that not only was the DSLR plan supplied to the Appellant, but also that the Appellant failed to file written submissions despite being granted time to do so; and then tried to extract another adjournment by adopting the tactic of changing its counsel, which subterfuge was dealt with by the GCZMA in rejecting the request for yet another adjournment sought by the Appellant.
10. In these circumstances, it is submitted that the failure of the Appellant to appear; argue and file submissions before the Resp. No. 1 authority despite having multiple opportunities to do so cannot now be weaponized by the Appellant and moulded into a purported violation of natural justice through legal verbiage. For these reasons, the impugned order of the R. 1 suffers no fault on account of violation of any principle of natural justice.
11. With respect to paragraphs 10 and 11, I say that no specific comment is warranted from the Answering Respondent as the contents thereof are a matter of record.

12. With respect to the contents of Paragraph 12, the answering Respondent hereby deals with each of the grounds raised by the Appellant as follows:

Ground A). I submit that there is no vagueness or ambiguity in the impugned order, and it is passed in accordance with law.

Ground B). The fact that the structures identified as A to G are visible in the approved plan are of no help to the Appellant. The approved plan clearly shows 3 separate 'Existing Structures', apart from the structures 'A' to 'G', which are not marked as 'existing structures'. The Appellant has failed to produce on record any CRZ approval and approved plan in respect of the 'A' to 'G' structures.

Ground C). The statement so made by the Appellant is contrary to record, and the Appellant was given a copy of the plans long before the hearings of the Resp. No. 1 authority. No violation of natural justice has occurred in the passing of the impugned order.

Ground D). The fact that the impugned order makes no reference to supply of plans does not change the factual position that the plans were duly supplied to the Appellant. The observation that the Appellant did not give clarity about the additional structures is not erroneous but factual – as the Appellant failed to present his



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case and file written submissions despite having opportunities to do so.

Ground E). The impugned order directs for the demolition of the structures 'A' to 'G' only, and not the other structures on the Appellants property. The impugned order suffers from no vagueness or ambiguity.



Ground F). The Appellant failed to produce any submissions or documents before the Authority, therefore it is unclear as to how the Appellant expected the R. 1 to consider other material, apart from what was already on record before it.

Ground G). The impugned order and the decision making behind it was taken with more than sufficient quorum, and the decision making/order cannot be faulted on this count.

Ground H). The Appellant failed to produce any submissions or documents before the Authority. In any event, the documents on record show that no approvals were obtained in as far as the offending 'A' to 'G' structures are concerned.

Ground I). The answering Respondent reiterates that the R. 1 authority considered all relevant documents produced before it with due notice

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and opportunities to the Appellant, and that the impugned order does not warrant interference by this Hon'ble Tribunal either on account of violation of natural justice or on merits.

Ground J). The Appellant appears to be misinterpreting the impugned order, which clearly orders for the demolition of only structures 'A' to 'G' found to be put up without approval, and not the other structures on the Appellants property. This ground is therefore misconceived.



13. In conclusion, I submit that after due consideration of all the submissions and documents before it, the R. 1 authority has rightly come to the conclusion that the Appellant has failed to prove the existence of the additional structures 'A' to 'G' on the subject property 40/4 (part) of Colva village, prior to 1991, or that the said structures were put up after receiving specific CRZ approval, and accordingly the impugned order came to be passed by the Resp. No. 1.
14. For all these Reasons, the answering Respondent submits that there has been no violation of the principles of natural justice in the decision-making process of the Resp. No. 1 authority; and that the impugned order is firmly founded on approved plans and official records.
15. No benefit can accrue to the Appellant on account of its own irresponsibility and casualness in failing to file submissions and documents despite being called upon to do so by the Resp. No. 1 authority, and this Appeal ought to be dismissed by this Hon'ble Tribunal with costs.
16. I state that the contents of paragraphs 1(p), 2(p), 3(p), 4, 5, 6(p), 7(p), 8(p), 9(p), 11, 12(p), and 13(p) are correct and

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true to my own knowledge and official documents/records, and that the contents of paras 1(p), 2(p), 3(p), 6(p), 7(p), 8(p), 9(p), 10, 12(p), 13(p), 14, and 15 are submissions made on legal advice which I believe to be true. No part of it is false and nothing material has been concealed therefrom.



Solemnly affirmed at Margao – Goa,
This the 31st day of March 2023.



DEPONENT

VERIFICATION

I, Judith Almeida, Indian national, President of the Respondent No. 2 abovenamed, hereby verify that the contents of paras 1 - 16 of my above affidavit are true to my knowledge and belief, and that no part of it is false and nothing material has been concealed therefrom.

Verified on the 31st day of March, 2023,
at Margao , Goa



DEPONENT



Solemnly affirmed before me by
Judith Almeida
Who is identified to me by
EPIC No. KNX3050465
to whom I personally know on
this 31 day of March, 2023

Reg No 5655/2023

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SAVITA G. KURTÄRKER
NOTARY
MARGAO-GOA