

BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCHAT PUNE

Case No.(APPEAL NO.49 OF 2022)

IN THE MATTER OF:

THE COLVA CIVIC

& CONSUMER FORUM, ..... APPELLANTS

VERSUS

GOA COASTAL ZONE MANAGEMENT AUTHORITY

AND ORS ..... RESPONDENTS

AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT

NO.3

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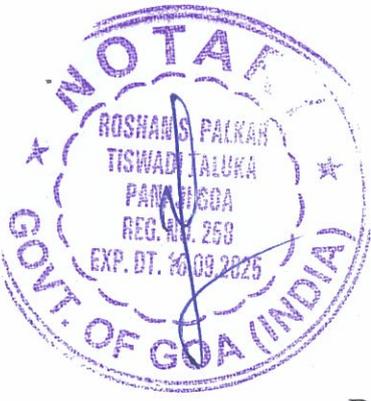


I, MR. YOGESH FATERPEKAR, son of Bhutto Faterpekar, aged 33 years, Resident of house no.380, Santa Cruz, Tiswadi, Goa, Village Panchayat Secretary of Colva by way of present affidavit, do hereby solemnly affirm and state as under:

1, I state that I am the present secretary, of the village Panchayat the Respondent no.3 herein and I am authorized to file the present; Affidavit in reply on behalf of the Respondent no.3 herein.

2. I state that I have read and understood the contents of the Appeal against order of Goa Coastal Management Authority and I am filing this Affidavit in reply in response to the said Appeal. I state that I am filing the present Affidavit in reply in order to oppose the grant of any relief(s) in favour of the Appellant. I state that the averments/contentions which have not been specifically dealt with and/or denied by me may not be taken as having been admitted by me.

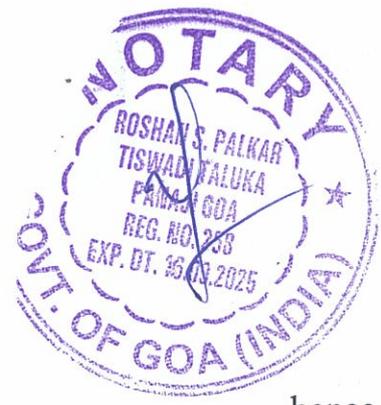
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Before advertng the merits of the matter I am raising preliminary objections for the maintainability of the present Appeal: -

- a. The present appeal is filed raising 'incorrect question related to shift of HTL' and not any substantial question related to environment'..
- b. The present Appeal is not maintainable at the behest of the Appellant who is not ipso facto person aggrieved in terms of NGT Act 2010 and hence the present Appeal has the behest of the Appellant may not be entertained.
- c. The Appellant through present Appeal is indirectly challenging the permission granted in favour of this Respondent by various authorities from the year 1995 and challenge to which is barred by limitation' and which otherwise the Appellant is precluded from challenging the same and

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hence the present Appeal may not be entertained by this Hon'ble Tribunal.

The limitation period for filing application u/s.14(3) is of six months, with grace period for condonation of delay of 60 days after that and prayers are beyond limitation

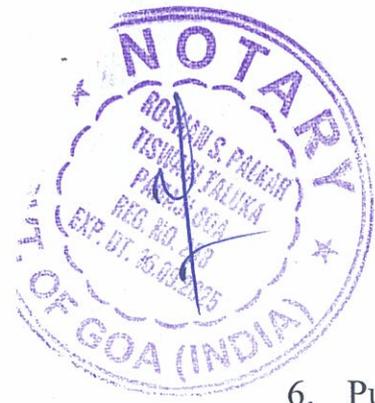
d. The present Appeal may not be entertained by this Hon'ble Tribunal on the facts that there is no reasons or pleading as to how and what is the challenge to any of the permissions granted by the respondent no.3 in favour of this Respondent. Therefore such prayer of seeking cancellation of all permission without challenging the specific permission is vague and bad in law.

**Brief facts pertaining to the subject matter of Appeal**

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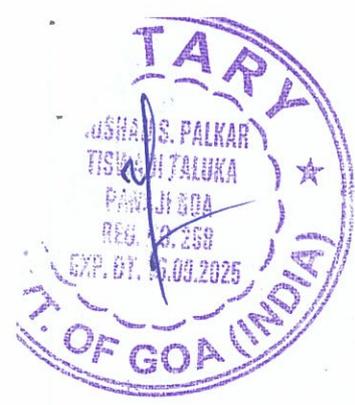
3. The present subject matter in the aforesaid appeal has arisen pursuant to the order dated 26/09/2007 passed by the Honble High Court of Bombay at Goa in Suo Moto Writ Petition 2/2006. It is respectfully submitted that the issue in SMWP 2/2006 was with regards to illegal construction on NDZ on Coastal belts of the State of Goa and pursuant to that the Hon'ble High Court has issued necessary directions to the Coastal Village Panchayats/ Municipalities to submit an action taken report. The Hon'ble High Court directed the authorities to take action against those structures which are in NDZ area and which are illegal in nature and the authorities were directed to take action against those structures. It is stated that the Hon'ble High Court of Bombay at Goa in SMWP 2/2006 have issued direction vide order dated 26/09/2007 whereby the direction was pertaining to and against the illegal structure in the NDZ area in various coastal belts in the State of Goa.



6. Pursuant to such direction the Goa Coastal Zone Management Authority (hereinafter referred as "GCZMA") (Respondent no.1 herein) based on the action taken report submitted by the village Panchayat of Sernabatim, Vanelim, Colva and Gandaulim to GCZMA have issued the show cause notice to the private Respondent.

7. I state that the inquiry committee of GCZMA has submitted its report on 28/092015 to GCZMA and has given it finding that "based on the permission granted, the structure falls beyond 200 mts from the HTL and further held that the structures of this Respondent in survey number 40/4 of colva village is in accordance with law".

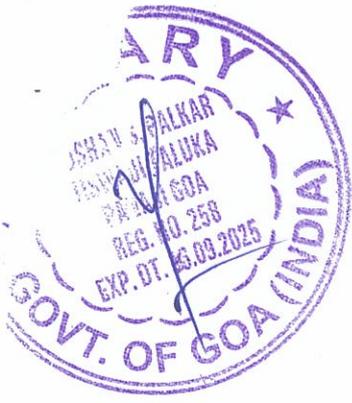
8. It is respectfully submitted based on the inquiry committee report the GCZMA heard the matter and has framed two issues,



(a) whether the structure belonging to Soul Vacation-Colmar Condominium is located and situated in property bearing survey no.40/4 of Colva are within 200 mts of HTL?

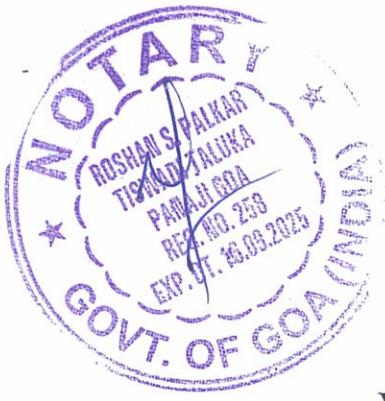
(b) Whether the Respondents justify the Construction of Structures located in situated in property bearing Survey no. 40/4 of Colva with valid permissions/approval?

9. It is respectfully submitted that the Respondent no.1 while adjudicating the said issue have considered the mapping of Director of Survey and Land Records (DSLRL) 2006, 2022 mapping, and the documents submitted by this Respondent. The GCZMA has considered the following permissions/approvals/NOC obtained by Respondent no.3:-



- a. This Respondent has obtained the permission dated 06/07/1995 from the Chief Town Planner and member secretary GSCCE for the construction of Residential complex which shows structure beyond 200 meters on the plan.
- b. The construction license dated 14/11/1995 of the Village Panchayat colva was granted to the Respondent. The survey records of Survey no. 40/4 of village colva i.e. Form I & XIV shows the name of the Respondent based on the TCP permission and no fault can be attributed to the Panchayat.
- c. The Deputy Collector and SDM Margao have also issued conversion sanad dated 18/09/1998 to the Respondent. The

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Village Panchayat of Colva has issued NOC dated 25/05/1990 for release of water connection and NOC dated 25/05/1990 for release of electricity connection.

d. Furthermore, the GCZMA vide letter dated 12/05/1999 has granted approval for the proposed construction of compound wall in survey number 40/4 (Part) of village colva. This Respondent also has the occupancy dated 02/02/1999 from the Chief Town Planner. The village Panchayat of Colva on 07/04/1999 issued occupancy certificate to the said building of this Respondent

e. The Village Panchayat of colva vide letter dated 16/06/1999 issued NOC to this Respondent to register the residential units/condominium with the Tourism Department. Thereafter the Department of Tourism issued a Certificate of registration of Hotel dated 02.08.1999 to the Respondent.

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It is respectfully submitted that this Respondent has obtained all the permissions in accordance with law from all authorities respectfully submitted **that the structures of the Respondents are beyond 200 mts of the HTL and on the border at that time** and there is no structure within 0 to 200mtrs HTL of the Respondent which fact has also been appreciated and observed in the inquiry committee report and which has been also confirmed by the Respondent No. 1 in its order dated 12/10/2022 after considering the mapping of the DSLR . It is further submitted that this Respondent has constructed the structure only upon obtaining NOC/ approvals/Permissions from the concerned GSCCE (erstwhile authority of GCZMA).

Therefore, it is respectfully submitted that the structures of private Respondent have due permission from the erstwhile GSCCE and Panchayat also the structures are beyond 200 mts

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line and on the border at the time of grant of permissions further the Respondent no.1 also held that the structure of this Respondent was constructed in the property bearing survey no.4o/4 of Village Colva with the valid permissions and approvals.

**WITH RESPECT TO THE MERITS OF THE APPEAL**

13. At the outset this Respondent denies and disputes all the allegations made in the present Appeal and further states that the present Appeal is without cause of action against the Respondent Panchayat.

14. With respect to para 1 of the Appeal the contents of the same are not admitted and the Petitioner is put to strict proof.



The Appellant has not produced any resolution authorizing the deponent to file the present Appeal and hence the present Appeal may be dismissed 'on this ground alone.

15. With respect to para 2 and 3 of the Appeal the contents are denied.

16. With respect to para 4, 5, 6 and 7 of the Appeal the contents of the same are denied to the extent the same are contrary to what ever has been stated herein by this Respondent. I state that the Hon'ble High Court of Goa while issuing directions in SMWP 2/2006 issued directions to the Respondents therein, who are state authorities and Village Panchayats (Local Bodies ) to identify the illegal structures within the NDZ area and which were the subject matter of CRZ regulation 1991. I reiterate that one of the directions (.e.





Serial No 9 direction) issued by the Hon'ble High Court which clarifies that the direction issued vide order dated 26/09/2007 will also not apply to structures which have been held to be validly constructed or repaired with the permission of CRZ authorities. It is pertinent to mention that this Respondent had obtained necessary permissions from the erstwhile authority, GSCCE in the year 1995 for construction of structure and have validly carried out the construction of the structure and therefore the direction: issued by the Hon'ble High Court of Bombay at Goa cannot be applicable to this Respondent.

17. With respect to para 8, 9 and 10 of the Appeal the contents of the same are denied to the extent the same are contrary to what ever has been stated herein by this Respondent. I state that pursuant to the direction of the Hon'ble High Court the show cause notices were issued to this Respondent by the Respondent No.1. The Respondent No.1 there after directed the inquiry committee to prepare a report and submit it to the





GCZMA to take a decision. The inquiry committee accordingly after hearing the parties has held that the structure of this Respondent in survey no 40/4 of Village Colva is in accordance with law which report was thereafter forwarded to the Respondent No. 1.

18. With respect to para 11 and 12 of the Appeal the contents of the same are denied to the extent the same are contrary to what ever has been stated herein by this Respondent.

19. With respect to para 13 of the Appeal the contents of the same are denied to the extent the same are contrary to what ever has been stated herein by this Respondent. This Respondent has obtained the conversion sanad in accordance with law, if the Appellant is aggrieved by the same then the Appellant has to talke appropriate remedy to challenge the same before appropriate forum available in law and the same may not be maintainable or adjudicated by this Honble





Tribunal in terms of the provisions of the National Green Tribunal Act.

20. With respect to para 14 of the Appeal the contents of the same are denied to the extent the same are contrary to what ever has been stated herein by this Respondent. It is respectfully submitted that the Respondent no.3 has approvals from the GSCCE from the year 1995 and pursuant to which this Respondent has constructed its structure and which permission have attained finality. It is respectfully submitted that the Appellant is precluded from questioning the permission of the GSCCE as there is no challenge to the same. In event of the matter the subject matter before the Respondent no.1 was if the structure of this Respondent was within 200 mtrs, and in the order impugned herein the same is held to be beyond 200 mtrs.

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21. With respect to para 15 of the Appeal the contents of the same are denied to the extent the same are contrary to what ever has been stated herèin by this Respondent. It is respectfully submitted that the issue before Respondent No.1 pursuant to the Hon'ble High Court's order was to consider the legality of the structure within the NDZ area and the Respondent No.1 have examined the legality of the structure of this Respondent in terms of the permission granted by the authorities. This Respondents states that as per the approved plan the total F.A.R consumed is 30.90% only. It is, denied that the total FAR consumed.for the entire Plot area is 49.01%. It is submitted that permission speak for itself.

22.With respect to para 16 of the Appeal the contents of the same are denied. I state that to the extent the same are contrary to whatever has been stated herein by this Respondent. **It is**



respectfully submitted that the Respondent no.1 on perusal of plan of DSLR 2006 & 2022 mapping noted that Respondent has not constructed any new construction within NDZ except one additional structure which was subsequently removed by Respondent by its own. It is denied that the later additional structures and large extensions into even the setbacks were carried out when comparing the site plan dated 06/07/1995 of Respondent no.3. Further the Respondent no.1 also considered the HTL marked by NSCSM as per CZMP 2011 and in terms of the same this Respondent have not constructed any new construction within NDZ.

23. With respect to para 17 of the Appeal the contents of the same are denied. It is stated that the Respondent no.1 while issuing/the order impugned herein has considered all documents/permissions granted in favour of this Respondent.



24. With respect to para 18 of the Appeal the contents of the same are denied. This Respondent states that the Respondent no.1 was exercising its powers under the directions of the Hon'ble High Court of Bombay at Goa and was examining the issue of structures within NDZ areas on the coastal belt within State of Goa. This Respondent states that considering the same Respondent no.1 has issued the order which is impugned herein.

25. With respect to para 19 of the Appeal the content of the same does not pertain to this Respondent and hence not dealt with.

26. With respect to para 20 of the Appeal the content of the same are matter of record.

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27. With respect to para 21 & 22 of the Appeal the content of the same are not concerning this Respondent and are denied.

28. With respect to para 23 of the Appeal the content of the same are denied. It is respectfully submitted that the GCZMA has granted permission/Approval dated 12.05.1999 for construction of compoundwall.

29. With respect to para 24 of the Appeal the content of the same are denied. This Respondent states that the Respondent no.1 considers DSLR mapping 2006, 2022 mapping and also further considers the CZMP 2011 and in all this plans, the Respondent no.1 did not find any structure of this Respondent within NDZ at the time of granting permission.

30. With respect to para 25 of the Appeal the content of the same are denied. This Respondent respectfully submit that the

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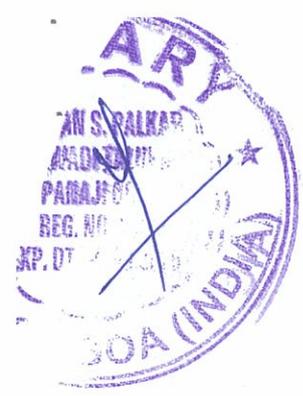


Appellant cannot question the legality of the permission without there been any challenge to the same. It is denied that the permissions were for by Respondent no.3 and granted in violation of CRZ rules. I respectfully submitted that the Appellant is barred from raising issues of legality of the permissions granted in favour of this Respondent, without there being any challenge to the same and that too after such long delay.

31. With respect to para 26 of the Appeal the content of the same are denied.

32. With respect to para 27 of the Appeal the content of the same are denied.. With respect to highlighted portion below para 27 of the Appeal the content of is denied. With respect to second highlighted portion below para 27 of the Appeal the content of the same are denied as the high tide line is shifted





now which is very evident and the appeal filled without verification of records is filed only for the sake of filing appeal has to be dismissed with heavy costs.

33. With respect to para 28 of the Appeal the content of the same are denied.

34. With respect to para 29, 30 and 31 of the Appeal the content of the same are denied.

35. With respect to para 32 of the Appeal the content of the same are denied.

36. With respect to para 33,34,35,36,37,38 & 39 of the Appeal the content of the same are denied.



37. With respect to grounds raised in the Appeal from para 40 to 47 the same are baseless and frivolous.

38. With respect to para pertaining to limitation the content of the same are denied. It is respectfully submitted that the present appeal has been filed beyond the period of limitation.

39. In view of the whatever has been stated herein above the present Appeal is devoid of any merits and hence may be dismissed with heavy costs.

40. I state that the part of the contents of the para 1 to 40 of the present Affidavit in reply are true to my knowledge and part of the content of remaining para are based on the legal submissions whichi believe to be true and correct.





Solemnly Affirmed at margao -Goa, on this 13<sup>th</sup> day of October ,  
2023-

~~WUV~~  
DÉPONENT

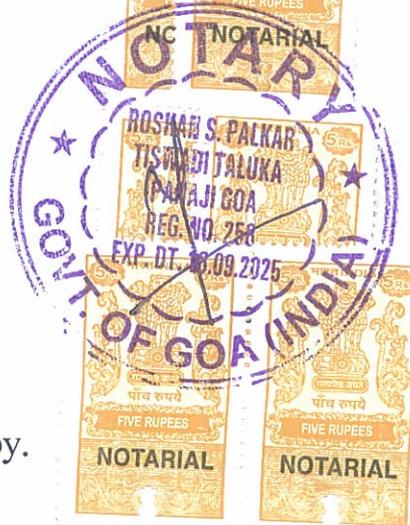
Solemnly affirmed and verified /  
before me  
by Mr. Yogesh Faterpekar  
Reg. No. 2296/2023 Dated 14/10/2023

Identified by me:

Driving Licence brg. NO .  
GA 07 20110000496

  
**ROSHAN S. PALKAR**  
NOTARY  
Tiswadi Taluka  
Panaji - Goa  
Reg No. 258

Adv. for Respondent no.3



Solemnly affirmed before me by.