



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

(WESTERN ZONE BENCH), PUNE

I.A. No. 106/2023

in

O.A. No. 54/2023 [WZ]

Goa Foundation

...

Applicant

Vs

State of Goa and Ors.

...

Respondents

Affidavit in Reply on Behalf of the Respondent No. 3
to Application for Condonation of Delay.

May it please this Hon'ble Tribunal :

I, Mr. Savito Araujo, S/o Mr. Raul Araujo, Aged 36 Years,
Indian National, R/o House no. 261, Senaulim, Verna-Goa,
403722, the authorized signatory of the Respondent No. 3 do
on solemn affirmation state and submit as under;

Savito Araujo

1. I say that I have read and understood the contents of the Application for condonation of delay, and in response thereto I state and submit as under;
2. I deny all and singular averments/statements in the Application for Condonation of Delay which are inconsistency/contradictory in the case set out by me hereunder. Nothing may be deemed as having been admitted for want of specific denial/traverse.
3. I say that the Application under reply is completely misconceived and untenable in law and on facts and is liable to be rejected *in limine*.
4. I say that the Applicant has deliberately, with a view to mislead this Hon'ble Tribunal, contended that the delay is of only 3 days in filing the Application when the Applicant, which is an experienced litigant and has been litigating before this learned Tribunal at least since the year 2012, is fully aware that in fact the delay is of 540 days.

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5. I say that the Applicant has also given an impression to this Hon'ble Tribunal that the alleged construction of the wall started sometime in the months of April and May 2021, and has also further stated that the same is without any approval from the Goa Coastal Zone Management Authority ("GCZMA").

6. I say that in the first place this retaining/linear wall has been existing as a natural feature for the last 100 odd years. The GCZMA itself in a previous round of litigation, being in Writ Petition 245/2007, had placed a report dated 07.06.2007 on record of the Hon'ble High Court that the retaining wall was existing prior to the year 1991. The GCZMA had again filed a report on 24.08.2015 that the linear/retaining wall was existing from the time the hotel was constructed and eventually the GCZMA *vide* order dated 22.01.2016 had held that the structures were in existence prior to CRZ Notifications issued in the year 1991 and that the same were legal. Despite this background, the



Applicant has brazenly made false statements that the structure was constructed in the months of April–May 2021. I say that the grant of condonation of delay being a discretionary relief, and the Applicant having approached this Tribunal on falsehood and with unclean hands, the Application is liable to be rejected even on this score.

7. I say that the Applicant had participated in the proceedings initiated by the GCZMA in respect of the said structure pursuant to complaints filed by Vainguinim Valley Residents Association. In fact, the show-cause notice itself was issued by the GCZMA on 28.04.2021, in which proceedings the Applicant participated and was heard.
8. Thereafter, Writ Petition No. 1187/2021 (F) was filed by Vainguinim Valley Residents Association prior to the filing of P.I.L. Writ Petition No. 29/2022 (“PIL Writ Petition”) by the Applicant before the Hon’ble High Court. Writ Petition No. 1187/2021 (F) came to be disposed of on 11.02.2022

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as the GCZMA discharged the show-cause notice *vide* order dated 14.10.2021 and since the said order was appealable before the National Green Tribunal, the Writ Petition was disposed of. A copy of the order dated 14.10.2021 is hereto annexed and marked as **Exhibit-A**.



9. I say that the PIL Writ Petition filed by the Applicant before the Hon'ble High Court was in respect of the very structure which was subject matter of Writ Petition No. 1187/2021 (F). Despite being fully aware that the petition in respect of the alleged construction would only lie before this Tribunal, the Applicant filed the PIL Writ Petition before the Hon'ble High Court on 20.09.2021. The inspection was admittedly held by the GCZMA on 20.04.2021. Therefore, the alleged construction was to the knowledge of the Applicant at least from 20.04.2021.

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10. I say that, in the first place, the petition ought not to have been filed in the Hon'ble High Court. In any case, even if 28.04.2021 is taken as the date, which was the date for the issuance of show-cause notice, 144 days were permitted to elapse by the Applicant before even filing the Writ Petition before the Hon'ble High Court.

11. I say that the period between 20.09.2021 to 07.10.2022 was neither excluded, nor a direction was given to this Hon'ble Tribunal by the Hon'ble High Court while disposing of the petition on 07.10.2022 to hear the matter without having regard to the limitation and to consider the matter on merits. In fact in the order dated 07.10.2022, passed by the Hon'ble High Court, all the contentions of the parties were kept open which obviously includes the objection on the ground of limitation which is available to the Respondent No.3. Since the Hon'ble High Court had not either excluded the period of limitation nor had issued any direction to this Hon'ble Tribunal to consider the matter on merits



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by treating the period of limitation as being excluded on account of pendency of the petition before the Hon'ble High Court, there is no question of exclusion of the period of limitation between 20.09.2021 to 07.10.2022 when the PIL Writ Petition was pending before the Hon'ble High Court.

12. I say that the period for which the petition was pending before the Hon'ble High Court is 382 days. After adding the period of 144 days to 382 days, as on 07.10.2022, 526 days had elapsed.

13. I say that even after 07.10.2022, the Applicant has approached this Hon'ble Tribunal only on 13.04.2023, therefore from 07.10.2022 till 13.04.2023, 176 days elapsed. After adding the period of 176 days to 526 days, the total period elapsed between 20.04.2021, from the day on which alleged cause of action first arose to the Applicant and filing of the Application on 13.04.2023 is 702 days.

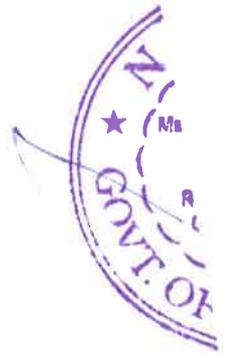


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14. I say that if the period of 06 months is considered from 20.04.2021, the limitation for filing the O.A. would have ended on 19.10.2021. This Hon'ble Tribunal would have the jurisdiction to condone the delay of only additional 60 days and not beyond, by applying the provisions of Section 5 of the Limitation Act, 1963 which would also end on 19.12.2021. Therefore, the Application having being filed on 13.04.2023 from 19.10.2021 is barred by a delay of 540 days.

15. I say that there is no provision for this Hon'ble Tribunal to apply the principles of Section 14 of the Limitation Act, 1963 to exclude the period of limitation on account of pendency of PIL Writ Petition before the Hon'ble High Court between 20.09.2021 to 07.10.2022.

16. I say that the Applicant has also tried to the Hon'ble High Court by contending that this Hon'ble Tribunal had adjourned the hearing to enable the applicant to approach the Hon'ble High Court to approach the



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Hon'ble High Court permitting it to hear the Application despite the expiry of the period of limitation. The Respondent states that the Applicant filed the Application before the Hon'ble High Court on 13.06.2023. This Respondent filed a detailed reply to such Application. The Hon'ble High Court *vide* order dated 07.07.2023 disposed of the Application without modifying its order dated 07.10.2022. In fact, in the entire order there is no direction whatsoever issued to this Hon'ble Tribunal to either exclude the period of limitation during the period when the petition filed by the Applicant remained pending before the Hon'ble High Court or to take up the matter on merits by excluding the period of limitation, spent before the Hon'ble High Court. The Hon'ble High Court has only recorded that the Applicant was pursuing the petition *bonafide* before the Hon'ble High Court and that the period should be considered sympathetically. I say that in the first place the provisions of Section 14 of the Limitation Act, 1963 do not apply in proceedings before this Hon'ble Tribunal. In any case, it is for



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this Hon'ble Tribunal, if at all the provisions are to be applied, to decide whether the period during which the PIL Writ Petition was pending before the Hon'ble High Court is to be excluded from calculation of period of limitation and whether the proceedings before the Hon'ble High Court were filed *bonafide*, with due diligence and in good faith. I say that there is no change whatsoever as regards the bar of limitation that was faced by the Applicant as on 07.10.2022 when the Hon'ble High Court disposed of the PIL Writ Petition and as on 07.07.2023, when the Hon'ble High Court disposed of M.C.A. No. 196/2023 filed by the Applicant, without modifying the order dated 07.10.2022. A copy of the application, the reply and the order dated 07.07.2023 are hereto annexed and marked as **Exhibit-B Colly**.

17. I say that if the period pending before the Hon'ble High Court is excluded, even then there is a delay of 156 days in approaching this Hon'ble Tribunal. It is submitted that the cause of action arose on



20.04.2020 and therefore the 06 months period would expire on 19.10.2020. The Applicant approached the Hon'ble High Court only on 20.09.2021. Therefore, 05 months had already elapsed from the date when cause of action first arose to the Applicant, as claimed by the Applicant before even approaching the Hon'ble High Court. The Hon'ble High Court disposed of the matter on 07.10.2022 clearly holding that these issues could be raised before this Hon'ble Tribunal. The period for limitation therefore continued from 07.10.2022. The balance 01 month period of 06 months available to the Applicant to approach this Hon'ble Tribunal from 07.10.2022 ended on 08.11.2022. Therefore, from 08.11.2022, the Applicant having approached this Tribunal only on 13.04.2023 there is a delay of 156 days in approaching this Hon'ble Tribunal. It is submitted that there is a delay of 156 days even if one were to exclude the period of pendency of writ petition before the Hon'ble High Court which in the facts and circumstances of the case cannot be excluded.



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18. I, therefore, say that even if this Tribunal could have exercised its powers of condoning the further delay of 60 days for which there is no Application whatsoever, such powers cannot be exercised *suo moto*. Even then there is a delay of 96 days in approaching this Hon'ble Tribunal after excluding 156 days, during which the PIL Writ Petition remained pending in the Hon'ble High Court. It is submitted that even from the outer limit of addition of 60 days beyond the period of limitation of 06 months, the Application filed by the Applicant is with a delay of 96 days.

19. I, therefore, submit that looked at from any perspective, the Application is hopelessly barred by limitation and therefore the same ought to be rejected at the threshold *in limine*.

20. With reference to Paragraph 1, it is specifically denied that any illegal concrete embankment is raised by the Respondent No.3. The so called concrete embankment has been existing for the last almost



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100 years, the repairs thereof were permitted by the GCZMA *vide* its order passed in the year 2017.

21. With reference to Paragraph 2, the contents thereof are matters of record and are not disputed.
22. With reference to Paragraph 3, it is specifically submitted that the calculation made by the applicant is completely erroneous. The limitation period had commenced from 20.04.2020 and not from 10.10.2022, as the Applicant would like to believe or is making deliberate attempts to mislead this Hon'ble Tribunal. It is specifically denied that there is a delay of 3 days in approaching this Hon'ble Tribunal. It is submitted that there is a delay of 540 days in approaching this Hon'ble Tribunal.
23. With reference to Paragraph 4, the contents thereof are denied for want of knowledge, however the same do not justify the inordinate delay of 540 days. At the highest the same is an explanation for a delay of 3 days, when in fact the delay is of 540 days.



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24. With reference to Paragraph 4C, it is specifically denied that the Applicant was diligently pursuing the matters, as alleged. It is submitted that such statements are only made to prejudice this Hon'ble Tribunal.
25. With reference to Paragraph 4 D, E and F, the judgments rendered therein are in the peculiar facts and circumstances of those cases and are totally inapplicable in the facts and circumstances of the present case.
26. With reference to Paragraphs 5 and 6, it is submitted that the application is totally misconceived and the calculation is patently erroneous and perhaps made with the intention to mislead this Hon'ble Tribunal. It is specifically and unequivocally denied that the delay is of 3 days and therefore it is submitted that the Application is liable to be dismissed *in limine* with exemplary costs, and be so rejected.



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27. I say that what is stated in Paragraphs 1, 2 (p), 4(p), 5, 6(p), 7, 8(p) to 19(p), 20, 21, 22(p), 23 (p), 24, 25(p) and 26(p) is true to my own knowledge and belief and what is stated in the remaining Paragraphs viz. 2(p), 3, 4(p), 6(p), 8(p) to 19(p), 22(p), 23 (p), 25(p) and 26(p) is based on legal submissions and/or inferences of facts, which I believe to be true.

Solemnly affirmed on this 17th day of July, 2023 at Panjim Goa

[Signature]
Deponent

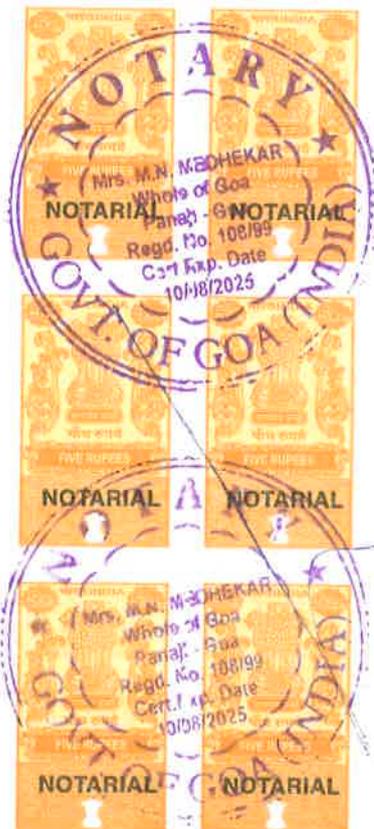


Identified by :



[Signature]
Adv. L. Rodrigues

This document ~~power of attorney agreement, affidavit~~ is executed before me and I attest its execution Reg. No. 2994 Date 17/07/2023 at Panaji Tiswadi Goa.



[Signature]
MEERA MEDHEKAR
ADVOCATE & NOTARY
Pinto Chambers, M. B. Road,
Panaji - Goa.
Cer. Exp. Date 10/08/2025

Exhibit - A
129**GOA COASTAL ZONE MANAGEMENT AUTHORITY**C/o Department of Science, Technology and Environment (Govt. of Goa)
4th floor, Dempo Towers, Patto Panaji Goa,www.czma.goa.gov.in

Ref. No. GCZMA/N/ILLE-COMPL/21-22/13/1086

Dated: 14/10/2021

**DIRECTION UNDER SECTION 5 OF THE ENVIRONMENT (PROTECTION)
ACT, 1986. READ WITH RULE OF THE ENVIRONMENT (PROTECTION)
RULES, 1986.**

Sub: Directions to discharge the Show Cause Notice bearing No. GCZMA/N/ILLE-COMPL/21-22/13/32 dated 28/04/2021 issued to the Owner /Management of Fomento Resorts, Cidade de Goa Resort, Vainguinim Beach.

WHEREAS, the Goa Coastal Zone Management Authority (hereinafter referred to as 'the GCZMA' in short) has been constituted by the Ministry of Environment & Forests (MoEF), Government of India pursuant to the directions of the Hon'ble Supreme Court of India to deal, inter alia, with violation of the Coastal Regulation Zone (CRZ) Notification 2011 and implementation of the CRZ Notification.

AND WHEREAS, the Office of the Goa Coastal Zone Management Authority (hereinafter referred as 'the GCZMA' in short) had received a complaint letter dated 19/04/2021 and inwards in the office of the GCZMA on the 19/04/2021; from Bhanu Shirodkar resident of Nagali Taleigao; and the office has also received a Complaint from Vainguinim Valley Residents Association dated 20/04/2021 and inwards in the office of the GCZMA on 20/04/2021; with regards to alleged illegal construction & development being carried out within the CRZ & NDZ by the Owners / Management of Fomento Resorts, Cidade de Goa Resort at the Vainguinim Beach, Dona Paula; without obtaining any proper permission from the Competent Authorities.

AND WHEREAS, upon receipt of the Complaint the GCZMA carried out a Site Inspection, and the Site Inspection report is placed in file.

AND WHEREAS, in the said Site Inspection dated 20/04/2021; of the Expert Member; it is stated that the representative of Fomento Resorts and Hotels submitted a copy of CRZ approval granted for repairs & that the work is carried out in phases as per the design prepared in consultation with WRD and the work is carried out as per the approval granted.

AND WHEREAS, the complainants alleged that the site inspection carried out on 20/04/2021 was in their absence & hence they pleaded for a fresh site

inspection which was carried out on 23/04/2021. It was noted that M/s. Fomento Hotels has violated the conditions imposed by the Authority. Cement concrete has been used as against eco-friendly material. Moreover, cement concrete structures are prohibited on the beach, that too within the intertidal zone (CRZ 1B), that is a highly ecologically fragile area. The ongoing linear wall construction is a new work, and not "repairs" as permitted under the NOC.

AND WHEREAS, the Authority issued a Show Cause Notice bearing No. GCZMA/N/ILLEGAL-COMPL/21-22/13/132 dated 28/04/2021 with a direction to parties to remain present for hearing on the 06/05/2021. The Respondent filed their reply on the 03/05/2021. The Authority had postponed the hearing from the 06/05/2021 to 20/05/2021 and later on 27/05/2021 at 3.30 p. m.

AND WHEREAS, in the 257th GCZMA meeting held on 27/05/2021 the proceeding was that, "Learned advocate Parag Rao for the Respondent M/s Fomento Resorts attended the hearing through VC. Ld Advocate Clayton Fonseca appeared for complainant Vainguinim Association. Learned advocate Pundalik Raikar appeared for Bhamu Shirodkar attended the hearing.

Learned advocate Parag Rao submitted that he is objecting the SCN issued by GCZMA which is in violation of merit. He submitted that the party did not attend the site inspection dated 23/04/2021 as they did not receive any notice. The learned advocate prayed for fresh site inspection to the Authority.

Learned Advocate Clayton submitted that they didn't receive the notice of inspection dated 20/04/2021 hence they requested for 2nd inspection by Authority which was carried out on 23/04/2021. Learned Advocate Raikar submitted that the matter is before district court. Further, submitted that the respondent has taken NOC in 2017 for repair of linear wall. Further the Respondent had completed the work as stop work order was not issued. Learned Advocate for complainant prayed for fresh site inspection.

AND WHEREAS, in the 257th GCZMA meeting held on 27/05/2021 the Authority decided that, "The Authority heard Ld. Adv Shri. Clayton Fonseca and Ld Adv Shri. Pundalik Raikar on behalf of the complainants and Ld Adv Shri. Parag Rao representing Respondent M/s Fomento Hotels on VC.

Permission was granted to Fomento Hotels & Resorts Ltd on 25.07.2017 to carry out repairs to a gadga / retaining wall and a linear wall in its property surveyed under no. 246/1 of Taleigao village. The primary allegation in the complaints is regarding alleged construction of a concrete linear wall on Vainguinim beach. On the other hand, the respondent contends that the construction/repairs are within their private property. After lengthy deliberations, it was decided that the Expert Members (GCZMA) would visit GCZMA office to peruse the documents and replies filed by the parties. Accordingly decision on the matter was deferred".

AND WHEREAS, in the 259th GCZMA meeting held on 07/06/2021 the Authority decided that, "The matter once again discussed in today's meeting and the Authority decided to have a joint inspection of the site under chairmanship of Additional Collector-I, with members comprising Mamlatdar, representative of

Water Resources Department, DSLR and representative field surveyor of GCZMA with records.

1. To plot the location of linear wall and gadaga / retaining wall constructed by the respondent on plan with reference to survey no.246/1of village Taleigao.
2. To plot HLL line on the plan. Reference may be made to HLL marked by NCSCM on draft CZMP 2011 and
3. To record the dimensions of the linear wall.
4. To plot the linear wall existing as per old record.
5. To assess the construction of linear wall in reference to permission issued on 25/07/2017.

AND WHEREAS, as decided in the 259th GCZMA Meeting a joint site inspection was conducted on 28/06/2021 and the committee submitted the report on 29/07/2021. Fresh hearing notices were issued to all the parties.

AND WHEREAS, During 268th GCZMA meeting held on 19 /08/2021, the authority after hearing both the parties directed the complainant to collect the copy of the joint site inspection report dated 28/06/2021 and also directed the respondent to collect the relevant documents from the O/o GCZMA and further placed the matter for personal hearing to both the parties on 24/08/2021 at 4.30pm. However the said meeting was postponed to 31/08/2021.

AND WHEREAS, in the 269th GCZMA meeting held on 31/08/2021 the proceeding of the hearing were as under, "Mr Collen Curry, the President of Vainguinim Valley Residents Association present along with Mr. Akash Madgaonkar and his advocate Adv C Fonseca. Mr. Bhanu Shirdokar present in person, The Owner/ Management of Fomento Resorts represented by Adv Parag Rao. The Goa Foundation, Mr Claude Alvares, present in person Kashinath J Shetye, absent, but his representatives present Mr. Inacio Pereira present in person.

Adv. C. Fonseca sought for the report from WRD. Further he submitted the brief chronology of the case before the authority and how the NOC for linear wall was granted by GCZMA. Further Adv C. Fonseca submitted that they do not have report dated 6.5.2021 and 24/5/2021. It was further submitted that the issue is construction of concrete wall on the Vainguinim beach and it is very serious in nature as it violates the permission. He stated that the permission is only for the repairs by using eco friendly material and rejected the RCC cantilever wall. Fomento had not applied for reconstruction. The Adv C. Fonseca further submitted that the inspection was carried on 13/5/2017 and he highlighted the certain points by reading the said report which is attached to the written arguments. The application was made before this Authority for the wall which is subject matter of the case as it was collapsing but the Respondents have constructed a wall diving right into the sand. Further, Adv C.

Fonseca highlighted the 1st inspection report, and further submitted that Expert Member of the Authority headed the inspection team and what was granted was for repair and the work that was carried out accordingly in consultation with WRD. It was further pointed out under what provision WRD issued the permissions to Fomento as WRD do not have rights to give any permission for construction as the WRD is a resource Department and not the construction Department to grant any permission. It was further argued that work is been carried out as per the approval but who gave the approval the inspection was suppose to be based on the documents which are on record but that has not been done beside the CRZ rule. There is no document on record to show communication with the WRD Department. Adv Fonseca pointed out that the Permission for repairs was not placed in any GCZMA Meeting. Further Adv C. Fonseca highlighted the relevant photographs which placed on record. It was further pointed by the Adv Fonseca that no Field surveyor was present on the site beside WRD officials and other officials. The Plan of the DSLR shows only one wall and it overlaps the orange portion which is the boundary wall. Adv Fonseca stated that the Photographs of the 1st site inspection tally with the photographs of the 2nd inspection. Adv Fonseca stated that the Concrete wall is constructed in the intertidal Zone. It was further submitted that construction of the wall was in 3rd inspection report and this is complete in violation of law and the wall which is constructed has to be demolished.

The Complainant Mr. Claude Alvares argued that the survey plan given by the expert committee DSLR and the plan submitted before this Authority and requested to compare both the plans that the structure in question is not shown. Further submitted that as per the Additional Collector report it clearly indicates that there is nothing on record, there is no Legend on the plan. Gadga wall is shown in orange but linear wall which is shown in green on the plan. He further submitted that written submission is on record and he is relying on the same.

Further Adv C Fonseca rebutted to the arguments advanced by Mr Claude Alvares and submitted that the Authority has granted permissions in consultation with the WRD. He further submitted that there is a linear wall and distinct gadga wall, this is the case of Fomento that there are two distinct walls and affidavit is given to the court.

The representative who was present on behalf of Mr. Kashinath Shetye submitted that he has put everything in writing and the same may be considered.

Adv Parag Rao, submitted that as per plan submitted there are 2 walls one is Gadga wall and the other is linear wall. All the plans are produced before the Water Resource Department and there is no suppression of facts at all. Adv Rao seeks to rely on his written replies submitted to the Authority. The construction of the swimming pool was rejected by the Authority. Adv Rao states that the concrete wall which is in question is not a concrete wall but it is a pile cap. Adv Rao stated that this pile cap hangs in air and controls the

erosion. Adv Rao stated that all his written replies and the documents are on records. He prayed that the Complaint may kindly be rejected.

Advocat Fonseca rebutted by requesting the Respondent to produce documents to prove that the wall was prior to 1991. Adv Rao requested the Authority to keep the matter for clarifications as he wanted to produce coloured photographs".

AND WHEREAS, in the 269th GCZMA meeting held on 31/08/2021 the Authority decided that, "The Authority after hearing arguments stated that they would peruse the replies and documents submitted by all the parties and if required would keep the matter for clarification but as of now the matter is posted for orders".

AND WHEREAS, the discharge order was circulated among the Expert Members. In reply the Authority had received email message from Shri. Sajeet Dongre and Shri. Savio Correia that they were not present on 31/08/2021 on the day when the final arguments were heard and said they should not associated with the order of discharge. Mr. Faviano Miranda Expert Member did not agree with the decision of authority and filed his objection in writing.

AND WHEREAS, in the 271st GCZMA meeting held on 21/09/2021 the Authority observed and decided as under,

"OBSERVATIONS /FINDINGS :

The Authority noted that the Letter from the Executive Engineer -1 Water Resource Department vide letter dated 04/ASW/WDI-WRD/2021/109 dated 05/07/2021 has submitted a Report of the Site Inspection at Vainguinim Beach held on 28/06/2021 wherein it has stated that the Linear Wall was constructed in consultation with WRD Department and is generally as per the typical drawings /section submitted to the office. As per the Report of the Additional Collector -I, the DSLR has depicted the Linear Wall within the boundary of Survey No 246/1 of Village Taleigao. As per the Report of the DSLR, there is no encroachment shown as alleged by the Complainant. The Plan of DSLR also shows the existence of Linear Wall as well as boundary of survey no 246/1 of Village Taleigao.

The Respondent has submitted the certified copy of Plans of Resurvey conducted by the DSLR in respect of property bearing survey no 246/1 of Village Taleigao in the year 2004 wherein DSLR has shown all the structures in survey number 246/1 including the linear wall.

The Authority noted that M/s Fomento Resorts had moved an application to the Executive Engineer Water Resource Department to carry out necessary repairs of the existing walls namely Gadga Wall and Linear Wall in the property belonging to M/s Fomento Resorts as per the decision of the GCZMA by way of two separate applications. It is noted that M/s Fomento Resorts in its letter addressed to WRD had mentioned to provide eco-friendly cantilever deck of wood after strengthening the existing pitched wall and regards linear wall repair, it proposed to use wooden piles driven along the existing wall backed up with laterite rubble filter covered with existing sand fill.

The Authority noted that the Executive Engineer-1 had issued a letter to M/s Fomento Resort vide letter no F.04/ASW 2/WDI/ WRD/2021-22/34 dated 06/05/2021 stating that the Assistant Engineer S.D.IV, W.D.I on 04/05/2021; had visited the site and has brought out that the ongoing work of linear wall in survey number 246/1 at village Taleigao is as per consultation and drawing/ section of the Linear Wall shared with the department vide letter dated 09/08/2017 in continuation to discussion during the 152nd GCZMA meeting held on 29/06/2017. Before issuing this letter, the Executive Engineer obtained a Report from the Assistant Engineer, Water Resource Department vide letter number SDIV/ WDI/WRD/F 63/21-22/85 dated 04/05/2021 where in it is stated that, "..... Fomento Resort vide letter dated 3/8/2017 had submitted the plan for construction of the Linear Wall in a sketch of 300 m. as per the drawings it was proposed to drive 100 mm wooden piles close to each other for a depth of 5m on the sea face and drive to a depth of 3M at spacing of 1m c/c on the inter face. The piles are then capped with concrete and backed by laterite rubble. This methodology and scope of work was discussed with the WRD officials which was agreed to. During the inspection of the site on 03/05/21 a 70 m stretch of the Linear Wall was in progress and the piles have been driven in the sand as per the plans/ drawings. As the work constructed under construction of linear wall generally conforms to the plans/ drawings as per the consultation with this department letter may be issued to Fomento and GCZMA stating that the work is done in consultation with WRD".

As there were Complaints Lodged before the Collector North Goa District , Deputy Collector & SDM, Tiswadi and Mamlatdar of Tiswadi, about the alleged construction activity at Vainguinim Beach. The Inquiry was conducted by the

Mamlatdar and the report was forwarded to the Office of the Collector North District through the Deputy Collector in SDM Panaji. The said report inturn was forwarded to this Authority by the Deputy Collecotr (Revenue) and Member Secretary DLC North Goa vide Letter no 4-7-2021/CRZ/Vainguinim/RB-10677/1386 dated 27/05/2021. As per the Report of the Authorities, the repair of linear wall is carried out in phases over a period of time.

The Executive Engineer-1, Water Resource Department vide letter dated 24/05/2021; had submitted a letter for the completion of construction of linear wall. The letter stated that the site was inspected by the concerned Assistant Engineer of the division on 24/05/2021; and it had been confirmed that the work of linear wall in survey number 246/ 1 at village Taleigao has been executed and completed as per consultation and the drawing/ section of the Linear Wall.

It is noted that with regards to an earlier direction by Hon'ble High Court of Bombay at Goa in Writ Petition No W.P. No 245/2007, the GCZMA had conducted a Site Inspection on 07th June, 2007. The Authority perused the Report submitted to the Hon'ble High Court and noted that it was mentioned in the report that there existed a Linear wall prior to the CRZ Notification 1991. The Page 3 of Inquiry Committee report states as under

"There is a linear structure of height of approximately 30-40 cms (short retention wall) which exists on the beach running parallel to the wall of the Hotel existing apparently much before 1991. This fact was informed to the Petitioners. Petitioners pointed out that in the month of February 2007 they have seen waste water flowing through this platform. In front of this structure there exist water collection chamber which has a pipe connection leading to the PCC structure (Short Retention wall) on the beach. During the Site Inspection water collection chamber was checked and it was notice that storm water is flowing through the same and on to the beach. The pipeline connecting the water chamber through the short retention wall structure is cut and water flows from the chamber directly on to the beach. There is no evidence of sewerage water flowing through these chambers".

Subsequently, the GCZMA upon the directions of the Hon'ble High Court in W.P. No. 245/2007 passed an order dated 22/01/2016 bearing ref no

GCZMA/N/ILLE-Compl/15-16/26/2512 disposed of the proceedings initiated on the basis of complaints and closed the matter.

This Authority, based on the documents and reports from various Authorities and submissions made and after considering joint inspection report dated 28/07/2021 and all documents on records, notes that the for subject under consideration of show cause notice requisite permissions were obtained by M/s Fomento Resorts from this Authority who were directed to carry out the work in consultation with the WRD. In the letter dated 24/05/2021 and 05/07/2021, the Water Resources Department has categorically stated that the work of linear wall in survey number 246/1 at village Taleigao had been executed and completed as per consultation. From the above discussions, it is amply clear that the M/s Fomento Resorts has carried out the said work as per the approval granted by this Authority within their property bearing Survey No 246/1 of Village Taleigao as per the drawings/ plans in consultation with the Water Resources Department, Govt of Goa.

The inspecting team headed by the Additional Collector-I North Goa has submitted the report along with the Plan vide dated 28/07/2021 with respect to all the five points of inspection and depicts that the Linear Wall on the plan falls within survey no 246/1 of Taleigao Village of Tiswadi Taluka and there is no encroachment made by the Respondent.

The objection raised by Mr. Flaviano Miranda, Expert member GCZMA, does not hold good as the Authority had verified all the reports of the WRD who had expertise knowledge admitted that the work of linear wall is been carried out as consultation which has been directed by the Authority in 152nd Meeting held on 29/06/2017. The report submitted by Additional Collector-I North District and the plan prepared by DSLR shows the linear wall and the boundary around the property bearing survey no 246/1 of village Taleigao.

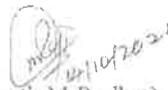
As regards the allegation that the alleged construction is taken place in NDZ, the Authority finds there is no substance in the said allegations as the Inquiry Committee appointed by GCZMA pursuant to the directions issued by Hon'ble Bombay High Court at Goa in WP 245/2007 has already held in 07th June, 2007 that the linear wall had already existed prior to 1991. Therefore, repairs are permissible to the existing structure which is in existence prior to 1991 and the GCZMA had given permission for the same on 25/07/2017.

DECISION / CONCLUSION:

In view of the above the Authority decided to drop the Show Cause Notice issued to the Owner/ Management of Fomento Resorts, Cidade de Goa Resort.

NOW THEREFORE, the GCZMA in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 (Central Act 29 of 1986) read with sub-rule (3) (a) of Rule 4 of the Environment (Protection) Rules 1986, and read with powers vested with the GCZMA vide Order S.O. 3975 (E) dated 31/10/2019 issued by the Ministry of Environment & Forests, Government of India, and in view of the directions issued by the GCZMA, this Authority hereby discharges the Show Cause Notice bearing no. **GCZMA/N/ILLE-COMPL/21-22/13/32 dated 28/04/2021** issued to the **Owner /Management of Fomento Resorts, Cidade de Goa Resort, Vainguinim Beach**, as decided by the authority in its 271st GCZMA meeting held on 21/09/2021 and case is disposed off accordingly.

For and on behalf of the
Goa Coastal Zone Management Authority



(Dasharath M Redkar)

Member Secretary (GCZMA)

To,

1. The Owner/ Management of Fomento Resorts, Cidade de Goa Resort, Vainguinim Beach, Dona Paula.
2. Mr. Bhanu Shirdokar, resident of Nagali Taleigao;
3. Gawtam Kurtikar, to be served through email gawtamkurtikar10@gmail.com
4. Mr Collin Curry, the President of Vainguinim Valley Residents Association, Plot No 43, Machado's Cove, Vainguinim Valley, Dona Paula Goa 403004.
5. Mr H Saldanha, to be served through email hasathomenow@gmail.com
6. The Goa Foundation, Mr Claude Alvares, to be served through email goafoundation@gmail.com
7. Mr Raj Vaidya, Community Pharmacist, Hindu Pharmacy Panaji Goa. email rajvaidya@gmail.com
8. Kashinath J Shetye, r/o A-102, Raj Excellency, Patto, Ribandar Goa email shetyebabu@yahoo.com
9. John Nazareth, r/o H.No. 71, Gaoeche Bhat, Mercedes Goa.
10. Desmond Alvares, Doxxier Assagao Goa
11. Narendra Chodankar, r/o H.No 1281, st Estevam, Tonca Tiswadi Goa
12. Premendra Vernekar, resident of House No 31 patto Ribandar Goa.
13. Mr Ankush Morajkar, r/o H.No. 583/2 Malim Batim Bardez Goa
14. Inacia Domic Pereira, r/o H.No. 836, St Agostinho, Marrod, St.Cruz, Tiswadi Goa.

IN THE HON'BLE HIGH COURT OF JUDICATURE
OF BOMBAY AT PORVORIM, GOA

Misc. Civil Application No. _____ / 2023

in

P.L.L.W.P. No. 29/2021

The Goa Foundation

through its Secretary, Dr. Claude Alvares,
age 75 years, Having Regd. Office at
Room No 7, Above Mapusa Clinic,
Mapusa, Goa 403507
PAN No. AAAAG0249C,
Income: Rs 10 - 15,00,000/- per annum (approx.),
Registration No. - 23/Goa/86,
Email id: goufoundation@gmail.com

...APPLICANT

v/s.

1. **The State of Goa,**
Through its Chief Secretary,
Having office at Secretariat,
Porvorim, Goa, 403521.
2. **The Village Panchayat of Taleigao,**
Through its Secretary,
Taleigao Community Center,
Caranzalem, Taleigao Goa -403002.

3. **The Greater Panaji Planning and Development Authority (GPPDA),**
Mala, Panaji, Goa 403001.

4. **M/s Fomento Resorts & Hotels Ltd,**
Having office at Cidade de Goa,
Vainguinim Beach Goa - 403004.

5. **Indian Hotels Co Ltd.,**
Corporate Office,
9th Floor Express Towers,
Barrister Rajni Patel Marg
Nariman Point, Mumbai, Maharashtra - 400021.
[Deleted as per order dt. 07.10.22]

6. **The Goa Coastal Zone Management Authority**
(GCZMA) through its Member Secretary,
Dempo Towers, 4th floor,
Patto, Panaji, Goa - 403001.

.....RESPONDENTS

(Above addresses are all registered addresses of parties)

APPLICATION FOR MODIFICATION
OF THE ORDER DT. 07.10.2022

To,

The Hon'ble Chief Justice
and His Companion Judges,
Bombay High Court at Porvorim, Goa

MAY IT PLEASE YOUR LORDSHIPS

1. The Applicant had filed P.I.L. W.P. No.29/2022 before this Hon'ble Court in connection with restriction of access to the public Vainguinim beach at Dona Paula by construction of an illegal structure/embankment on the beach by a resort located in the area.
2. The construction of the illegal structure took place during the month of April-May, 2021. The P.I.L. W.P. was filed within 4 months, on 21.09.2021.
3. The P.I.L. W.P. invoked the doctrine of Public Trust, and earlier judgments of the Hon'ble Supreme Court in the matter relating exclusively to the access of the public to the said beach.

4. When the matter was finally taken up on 07.10.2022 for consideration by this Hon'ble Court, the Court was pleased to pass an order directing that the matter be referred to the Hon'ble NGT for adjudication, as it had already decided in other CRZ related matters that such matters would be sent to the NGT. A copy of the order dated 07.10.2022 is enclosed at Annexure 1.
5. The applicant, consequently, filed an Original Application before the Hon'ble NGT for appropriate reliefs within 6 months, with an application for condonation of delay of 3 days. When the NGT took up the matter for consideration, it drew the attention of the applicant to the fact that the period of limitation had already been exceeded and that it had no powers to take up matters beyond the period of limitation under the NGT Act, without the High Court recording that the delay on account of time spent in the High Court is condoned. As per the Act, the cause of action would be 6 months from April-May 2021 [*when the concrete embankment / structure was constructed*], whereas the OA, pursuant to this Court's directions in its order dt. 07.10.2022, had been filed on 13.04.2023.
6. The Hon'ble Tribunal was kind enough to issue notice in the matter in its order dt. 26.04.2023 [Annexure 2], but nevertheless adjourned the hearing to enable the Applicant to approach this Hon'ble Court for an order permitting it to hear the application despite the expiry of the period of limitation.

Hence Applicant is seeking suitable modification of the order dt. 07.10.2022 of this Court through this application.

7. The Applicant states that this matter was filed in this Court within reasonable time of the violation and was pending consideration before this Hon'ble Court for more than a year for various reasons. The applicant was of the bona fide belief that since the matter of access to this specific beach had previously been taken up by this Hon'ble Court in PILs filed by this Applicant, the matter should be similarly filed before this Hon'ble Court. Notices were issued in the PIL to the respondents and pleadings were complete when the matter was taken up for hearing. However, as the violation had occurred on a beach which falls in the CRZ domain, this Hon'ble Court in its order dt. 07.10.2022 finally directed that the applicant raise its challenge before the NGT.

8. The Applicant states that inadvertently this Court did not include in its order a specific direction in respect of limitation, as it has done in other CRZ matters where petitioners were directed to raise their challenge before the Hon'ble NGT. The Applicant is enclosing as Annexure 3 a copy of order of this Court dt 03.01.2023 in P.L. W.P. 21/2019, directing the Applicant to file its petition challenging the CRZ Notification 2019 before the Hon'ble NGT, which includes a direction on limitation. In that matter, the WP was filed on 13.03.2019 and disposed of on 03.01.2023, with the order overcoming the difficulty of expiry of the period of limitation.

9. The Applicant states that when the matter was taken up for admission by the Hon'ble NGT on 26.04.2023, the applicant faced the technical hurdle of expiry of limitation period. Although the applicant explained that the matter was pending in this Hon'ble Court since 2021, it was pointed out by the Hon'ble NGT that there is no specific direction from this court on the aspect of limitation in its order dt. 07.10.2022 disposing P.I.L.W.P. 29/2022.
10. The Applicant submits that the order of this Hon'ble High Court explicitly directs that the issues canvassed in the PIL be taken up by the NGT. It is submitted that the issue of condonation of delay/limitation was inadvertently omitted, since this Court would never have granted an empty relief. However, since the NGT has raised the issue that there is no explicit direction on the issue of expiry of the limitation period, the Applicant is filing the present application for modification of the order dated 07.10.2022 and to seek a direction from this Hon'ble Court to that end.
11. The Applicant reiterates that the matter is of immense public importance, that is, the removal of an illegal obstruction across the Vainguinin beach in order to restore the beach to its natural state. At the moment, the illegal construction, besides colonizing a significant part of the beach, also effectively restricts public access to the beach.

Prayers

12. In view of the above, the applicant is making the instant application for the following reliefs:

a) This Hon'ble Court may be pleased to modify the order dated 07.10.2022 to include a direction in respect of limitation;

b) For any other relief this Court may be pleased to grant in the facts and circumstances of this case.

For the above, the applicant is truly grateful.

Place: Porvorim, Goa

Date: 13.06.2023

Applicant

IN THE HIGH COURT OF BOMBAY AT GOA.

MCA 196/2023

in

PILWP 29/2022

THE GOA FOUNDATION ... APPLICANT

VS

STATE OF GOA & ORS. ... RESPONDENTS

AFFIDAVIT IN REPLY ON THE BEHALF OF
RESPONDENT NO. 4

MAY IT PLEASE YOUR LORDSHIPS :

I, Savito Araujo, son of Mr. Raul Araujo, aged 36 years, Indian National resident of H No. 261, Senaulim, Verna, Goa 403722, the authorised

representative of Respondent No. 4, do hereby on solemn affirmation, state and submit as under:

1. I say that I have read and understood the contents of Application for modification of order dated 07.10.2022 filed by the Applicant. I am conversant with all the facts involved in the present case and as such I am in a position to depose in the present matter.
2. I deny all and singular averments and statements which are inconsistent and/or contradictory to the case set out by me. Nothing may be deemed as admitted for the want of specific denial or traverse.
3. I say that the present application is liable to be rejected in limine on account of the following:-
 - a. Application for modification is misconceived and not maintainable in law;
 - b. Such application cannot be filed in a matter that has already been disposed of;

- c. The Application tantamounts to abuse of process of law and Court.
4. I say that in the garb of a review, which would be clearly barred by limitation and for which no grounds exist, the present Application for modification has been filed that too in an absolutely casual manner as if an Application for modification is a matter of right. Since there is no error apparent on the face of the record, review itself would not lie and an attempt on the part of the Applicant to seek review of the order in the garb of application for modification ought to be nipped in the bud.
5. I say that the Applicant had not at all approached this Hon'ble Court bonafide and in good faith. The Applicant was all along aware that the alleged structure was allegedly in violation of CRZ Regulations. Despite being fully aware that all environmental issues including CRZ violations are required to be decided only by the National Green

Tribunal (NGT), the Applicant approached this Hon'ble Court.

6. It needs to be mentioned that the Applicant has been pursuing environmental causes in the State of Goa for decades, as proclaimed by the Applicant itself. The website of the Applicant would disclose that the Applicant has been pursuing matters before the National Green Tribunal since the year 2012 including matters which have been transferred by this Hon'ble Court to the NGT. The Applicant has been appearing extensively before the NGT in respect of mining matters, forest matters, and matters concerning violation of CRZ Notification. The information obtained from the website of the Applicant in respect of Applications and appeals filed by the Applicant before the NGT bears out this fact. A copy of the information displayed by the Applicant on its website in respect of Applications and Appeals filed and pending before the National Green Tribunal is hereto annexed and marked as **EXHIBIT-A**.

7. I say that the applicant before approaching this Hon'ble Court had in fact made a complaint to the Goa Coastal Zone Management Authority (GCZMA) on 21.04.2021 which was followed by another complaint to the Chief Secretary on 07.06.2021. Copies of communications dated 21.04.2021 and 07.06.2021 are hereto annexed and marked as **EXHIBIT-B COLLY.**
8. The above, in any case would clearly disclose that the Applicant was all along aware that there was alleged violation of environmental law, more particularly the CRZ notification and had questioned the Goa Coastal Zone Management Authority about the same.
9. I say that it is relevant to point out that Writ Petition No. 1187 of 2021 (F) was filed by Vainguinim Valley Residents Association through its President in respect of the very alleged structure prior to the Applicant filing PIL WP no 29/2021, inter alia claiming that the

Goa Coastal Zone Management Authority was not initiating any action despite repeated complaints.

10. This Hon'ble Court in Writ Petition No.1187 of 2021(F) on 12.05.2021 noted that the Goa Coastal Zone Management Authority had issued show cause notice and the statement of the learned Advocate General that the show cause notice would be disposed of within four (4) weeks was accepted as an undertaking to the Court. Thereafter on 01.10.2021 this Hon'ble Court was informed that a decision would be taken within 15 days from 01.10.2021 and thereafter on 11.02.2022 when the matter came up for hearing, it was noted by this Hon'ble Court that the Goa Coastal Zone Management Authority had passed an order discharging the show cause notice vide it's order dated 14.10.2021. This Court noted that hearing was given to all concerned, including the Applicant therein. The copy of the order dated 14.10.2021 of GCZMA was taken on record by this Hon'ble Court. This Hon'ble Court thereafter held that the petitioners

therein should avail appropriate remedies with respect to order dated 14.10.2021 passed by Goa Coastal Zone Management Authority for redressal of the same. Considering that against the order dated 14/10/2021 an appeal would lie to the NGT, this Hon'ble Court disposed of the petition. Copies of orders dated 12.05.2021, 01.10.2021 and 11.02.2022 passed by this Hon'ble Court and order dated 14/10/2021 passed by the GCZMA are hereto annexed and marked as **EXHIBIT-C COLLY**.

11. I say that the applicant herein was heard pursuant to the show cause notice and pursuant to the order of 12.05.2021 by the Goa Coastal Zone Management Authority in W.P no, 1187/2021(f), by the GCZMA. However, the Applicant on its own decided that the hearings conducted by the Goa Coastal Zone Management Authority were not satisfactory. The same is evident from the averments made in Paragraph 19 of P.I.L. Writ Petition No. 29 of 2022, a portion whereof is transcribed hereunder:-

" 29.The Petitioner attended the same and submitted a written note, but found that the entire proceeding had turned into a dispute over the nature of the N.O.C. issued by the GCZMA in 2017 for the repairs of the hotel's boundary wall (also termed as gadaga/linearwall) and whether the hotel had violated the conditions of the N.O.C."

12. I say that the Applicant therefore was clearly aware that the alleged violation resulting from the alleged structure was being looked into by the Goa Coastal Zone Management Authority. The Applicant appeared before the Goa Coastal Zone Management Authority. The Applicant knew that the decision would be concerning the very same structure which was the subject matter of the petition filed by the Petitioner. The Applicant was therefore fully aware of the proceedings initiated

in Writ Petition No. 1187 of 2021 (F). The Applicant therefore had knowledge about the orders dated 14/10/2021 and 11/10/2022 or in any case would have known about the same with a reasonable exercise of due diligence. The Applicant therefore was fully aware that a Show cause notice in respect of the alleged structure stood discharged on 14/10/2021 and that in light of order dated 11/2/2022 the proceedings would now have to be taken up before the NGT.

13. I say that it is the case of the Applicant that the alleged structure was being constructed in the year April 2021 and therefore if at all the Applicant intended to file an Original Application(OA) the same should have been filed in October 2021. Therefore, there is a delay of around 1 year 6 months in filling OA from the date on which the alleged cause of action arose to the Applicant. In any case the Applicant was aware that on 14/10/2021 the Show Cause Notice was discharged

by the GCZMA. The Applicant is fully aware that such order is required to be challenged in Appeal under section 16 of the NGT act 2010. That the limitation for challenging of such order is 30 days which would expire on 14/11/2021. That the tribunal can extend the limitation by another 60 days and not more. Therefore the challenge to such order could have been entertained by the NGT latest up to 13/1/2022. Furthermore, even when Writ Petition 1187/2021 was disposed of on 11/2/2022 in the light of the order dated 14/10/2021 passed by the GCZMA, the Applicant did not take any steps to either withdraw the petition and approach the NGT immediately or to challenge the order dated 14.10.2021 before this Court but took its own sweet time till this Hon'ble court directed the Applicant to approach the NGT vide its order dated 7/10/2022.

14. I say that even from 11/2/2022 there is a delay of 8 months in approaching the NGT. Since the subject

matter of Writ Petition No. 1187/2021(F) and PIL 29/2022 was one and the same the Applicant could not have expected any different treatment at the instance of this Hon'ble Court.

15. I say that despite clear cut findings in the order dated 14/10/2021 that the alleged structure lies within the boundary of the property of the Respondent no. 4 i.e. survey 246/1 of village Taleigao; that the alleged retaining wall was existing prior to 1991 ; that the permission for repairs was granted by the GCZMA in the year 2017 which was valid for a period of 5 years and the same was in respect of the alleged wall, the Applicant by disregarding all these facts has sought to approach the NGT, by inter alia contending that the alleged structure lies on the Vainguinim Beach, that the NOC given by the GCZMA is for some other wall and not the alleged structure and that the structure was constructed for the first time in April 2021. The Applicant

therefore has omitted to lay a challenge to the order dated 14/10/2021, knowing full well that such challenge will be hopelessly barred by limitation before the NGT. Therefore under the cover of the pendency of PIL WP 29/2022, which would not lie before this Hon'ble Court to the knowledge of the Applicant, the Applicant is seeking to get substantial delay on its part condoned by way of the present application. In fact the Applicant has given a complete go by to the issue of access raised before this Hon'ble Court in PIL 29/2022 in the OA filed before the NGT. The copy of the OA without annexures filed before the NGT is annexed hereto and marked as **EXHIBIT D.**

16. I say that when the matter came up on 07.10.2022, this Hon'ble Court was conscious that the proceedings before the National Green Tribunal are governed by limitation period for original application as well as for appeals. This Hon'ble

Court only granted liberty to the Applicant to approach the National Green Tribunal and in fact this Hon'ble Court very clearly held that all contentions of the parties are expressly left open, which obviously means that any and every contention available to the Respondent (No. 4) was also kept open which obviously includes the contention that the appeal or the original application which the Applicant would file was barred by limitation. The order is crystal clear and there is absolutely no ambiguity whatsoever in the order. By no stretch of imagination can it ever be contended that this Hon'ble Court inadvertently did not extend the period of limitation. The Applicant is seeking to put the blame on this Hon'ble Court by way of the present application. The applicant is very well aware that if the applicant was to make a request for extension of limitation, the same would be opposed by this Respondent.

17. I say that the Applicant and this Respondent having accepted the order which was passed after hearing all the parties and there being no ambiguity of whatsoever, there is no question of modification of the order as sought by the Applicant. I say that law of limitation is based on public policy and the provisions of the NGT Act would indicate that the bar of limitation is to be construed strictly. Furthermore, the remedy before the NGT having become barred, the immunity available to this Respondent from institution of proceedings before the NGT cannot be lightly disturbed. The right accrued to this respondent cannot be brushed aside in a casual manner as is sought to be done by the Applicant.
18. I say that this Hon'ble Court having granted liberty to the Applicant to approach the National Green Tribunal did not preclude this Respondent from raising all objections available to this Respondent in law, including the objection of limitation.

19. I say that apart from this it is to be noted that the Applicant has been pursuing this cause in respect of the alleged structure malafide. I say that the Secretary of the Applicant along with his friends had in fact by way of Picnic had organized a party on the Vaiguinim beach and all of them can be seen seated on this very wall in the year 2009 which is a property boundary of the Respondent when the Applicant contends that the alleged structure came to be constructed for the first time. Therefore, the contention that this wall is constructed in April 2021 is itself bogus, false and malafide to the knowledge of the Applicant. The Photographs of Secretary of the Applicant and others sitting on this very wall at the time of the picnic are hereto marked and annexed as **EXHIBIT-E COLLY.**

20. I say that independent of this, the linear wall which is a natural feature has been existing for

more than 100 years and in fact while applying for repair permission in the year 2017, this respondent had annexed photographs which also showed that some of portion of this wall had got damaged and accordingly permission was taken from the Goa Coastal Zone Management Authority for repair and restoration so that the sand erosion does not take place. Pursuant to such permission the work was carried out in phases in the years 2017 and 2018. It is only in the year 2021 that some of the citizens made an issue. I say that this wall was depicted in the survey plan which was prepared in the year 1972 and can also be seen in the resurvey plan prepared by the DSLR in 2004. Apart from this the GCZMA itself had conducted an inspection of the very said structure amongst other structures on 7/6/2007 pursuant to Writ Petition 245/2007 in which the issue about the existence of this very retaining wall as being existing prior to 1991 or not arose. The GCZMA in report of 7/6/2007 held that the wall was exiting

much before the year of 1991. The inquiry committee of the GCZMA, in its report of 24/8/2015 also held that the liner retaining wall was existing from the time the hotel was constructed and eventually the GCZMA vide order dated 22/1/2016 categorically held that impugned structures are in existence prior to the CRZ Notification 1991 and as such are legal. Copies of the report dated 7/6/2007, report dated 24/8/2015 and order dated 22/1/2016 are hereto annexed and marked as **EXHIBIT F Colly**. Copy of the application dated 26/6/2017 along with photographs taken in the year 2017 itself are hereto annexed and marked as **EXHIBIT- G Colly**. The DSLR plan which was prepared in 2004 and issued by DSLR in 2017 is hereto annexed and marked as **Exhibit- H**.

21. I say that the above would disclose that the Applicant despite being aware of the fact that right from beginning that the remedy lay before the

NGT, approached this Hon'ble Court despite knowing that in almost all matters this Hon'ble Court had relegated the parties to NGT. Therefore in such circumstances the period of pendency of PILWP 29/2022 cannot be excluded as a matter of course. The Applicant did not approach this Hon'ble Court bonafide, believing that this Hon'ble Court would entertain the petition despite there being alternate remedy being available to the Applicant. In any case the Applicant not having applied for extension of Limitation to approach the NGT, cannot on a spacious plea that this Hon'ble Court by inadvertence did not extend the period of limitation seek the relief of modification. I say that this Hon'ble Court depending on the facts and circumstances of the cases has been either extending the limitation or keeping all contentions of the parties open. The Applicant itself has successfully raised the argument of alternate remedy being available to the concerned petitioner before this Hon'ble Court in the past.

22. I say that the Applicant instead of challenging the discharge of show cause notice by order dated 14.10.2021 has once again sought to mislead the National Green Tribunal by filing an Original Application for which 6 months is the limitation as against the limitation for an Appeal which is 30 days. Therefore, even the challenge to the order dated 14/10/2021 discharging the show cause notice would be hopelessly barred by limitation. The Applicant has cleverly tried to skirt the order dated 14.10.2021 and sought to project before the National Green Tribunal that the application filed by the Applicant is an Original Application. Further, the Applicant once again tried to mislead the NGT that there is delay of only 3 days in filing the OA.

23. With reference to Paragraph (1), the contents thereof insofar as they are borne out from the

pleadings in P.I.L. Writ Petition No. 29/2022 are not disputed.

24. With reference to Paragraph to paragraph (2) it is denied that the construction of illegal structure took place during April - May 2021. Assuming, while not admitting the same to be true even for a moment, it is submitted that the limitation to file an OA before the NGT would expire in October 2021 and therefore the OA filed before the NGT on 13/4/2023 is with an inordinate delay of 547 days. However, the Applicant deliberately to mislead the NGT has stated that there is only a delay of 3 days.

25. With reference to Paragraph (3), the contents thereof are matters of record and therefore are not commented upon. However, it is reiterated that the Applicant was all along aware even before approaching this Hon'ble Court that the

construction of the alleged structure was allegedly in violation of CRZ Notification and for which the only remedy was before the NGT.

26. With reference to Paragraph (4), I shall refer to and rely upon the order dated 7/10/2022 for its true scope and interpretation. I say that the Hon'ble Supreme Court as well as this Hon'ble Court, have consistently held atleast from the year 2012 that the jurisdiction of tribunal to deal with environmental issues is wide and expansive.
27. With reference to Paragraphs (5) and (6), the contents thereof that the OA was filed before the Hon'ble NGT are not disputed. Whatever is stated apart from that is not borne from the order dated 26/4/2023. In fact there is a delay of 547 days in approaching the NGT and not 3 days as has been contended by the Applicant. The Applicant has also deliberately omitted to challenge the order

dated 14/10/2021, as the limitation would expire in November 2021 itself.

28. With reference to Paragraph (7), I say that the applicant all along was aware that insofar the alleged structure is concerned, the same had nothing to do with the alleged access/excess and the same should have been filed before the National Green Tribunal. The Applicant in any case now has given up the issue of access/excess in the proceedings filed before the National Green Tribunal. This Hon'ble Court correctly directed the Applicant to approach the National Green Tribunal. A copy of the OA filed by the Applicant before the National Green Tribunal is already annexed as EXHIBIT-D.
29. With reference to Paragraph (8) it is submitted that there is no inadvertence on the part of this Hon'ble Court at all. It is highly presumptuous on the part of the Applicant to contend that this Court inadvertently did not include in its order a specific

direction in respect of limitation as it has done in other CRZ matters where petitioners were directed to raise their challenge before the National Green Tribunal. I say that the order dated 03.01.2023 in P.I.L. 21/2019 is in a completely different context where the challenge was to the Notification. All orders passed under Environment Protection Act and the CRZ Notification by the authorities are specifically amenable to the jurisdiction of the National Green Tribunal and all proceedings are required to be filed before the National Green Tribunal. The Applicant is more than aware of this position as is evident from the large number of matters filed by the Applicant before the National Green Tribunal. Since the matter pertained to a challenge to a Notification, there were doubts about whether the National Green Tribunal, which is a tribunal, could quash and set aside a Notification. This issue was finally resolved by the Hon'ble Supreme Court, and therefore in the peculiar facts and circumstances of the case, the

period of limitation was extended but that too by observing that the proceedings were being conducted by the Applicant bonafide before this Hon'ble Court. The said proceedings and order has absolutely nothing to do with the issues raised in the present application and which were raised in P.I.L. Writ Petition 29/2021 which could have been only decided by the National Green Tribunal.

30. With reference to Paragraph (9), the fact that the matter was pending before this Hon'ble Court since the year 2021 cannot enure to the benefit of the Applicant, as the Applicant had absolutely no reason to approach this Hon'ble Court in respect of the alleged structure. Neither was the matter admitted nor was any indication given by this Hon'ble Court that this Hon'ble Court would hear this matter and dispose of the matter without relegating the matter to the National Green Tribunal. The National Green Tribunal correctly declined to entertain the Original Application as it

was barred by limitation. Submissions made beyond the contents of the order dated 26.04.2023 are denied.

31. With reference to Paragraph (10) it is specifically denied that there was any omission, that the issue of condonation of delay was inadvertently omitted since this Court wouldn't have granted an empty relief. This Hon'ble Court has not granted any relief to the applicant but has merely pointed out to the Applicant the correct forum before which the proceedings should be initiated by the Applicant and the issue stops at that. In fact this Hon'ble Court has kept all contentions expressly open which obviously includes all contentions of law and fact, including the issue of limitation which enures to the benefit of the Respondent. Since both the parties were heard in the matter, and at no point of time the Applicant also prayed for extension of limitation, which would have been strongly objected to by this Respondent, is one

more reason why this Hon'ble Court should not show indulgence to the Petitioner. It is submitted that the Application itself in the first place is misconceived and no direction can be given by this Hon'ble Court in an application for modification of the order. I say that grant of relief in such application will set a bad precedent and in any case would cause severe prejudice to this respondent, who would be vexed before the NGT in a stale cause.

32. With reference to Paragraph (11), it is submitted that the Applicant is unnecessarily trying to drag this Respondent into litigation after litigation. The Applicant of all the entities cannot contend that the alleged structure was constructed in April 2021 when the Secretary of the Applicant can be seen sitting on the said wall along with a group of people when they had organized a party/picnic post decision of the Hon'ble Supreme Court in the year 2009. It is specifically that the public access to

the beach is restricted. It is once again reiterated that the wall is on the southern western side of the property bearing surgery number 246/1 which belongs to the Respondent No.4.

33. With reference to Paragraph (12) I say that no relief as prayed for by the Applicant can be granted in the facts and circumstances of the present case.

34. I say that what is stated by me hereinabove in 1, 2(p), 4(p), 5(p), 6, 7, 8, 9, 10(p), 11, 12, 13(p) 14, 15(p), 16(p), 17(p), 19, 20, 21(p) 22(p), 23, 24(p), 25(p) 26(p), 27(p), 28(p), 29(p), 30(p), 31(p),

32(p), and 33(p) are true to my knowledge, records and belief and what is stated hereinabove in paragraphs 2(p), 4(p), 5(p), 10(p), 13(p), 15(p), 16(p), 17(p), 18, 21(p), 22(p), 24(p), 25(p), 26(p), 27(p), 28(p), 29(p), 30(p), 31(p), 32(p), and 33(p) are based on legal submissions or inferences and facts which I believe to be true.

Solemnly affirmed on 7th

July, 2023 in Porvorim

DEPONENT

Identified by me :

Adv. for the Respondent No. 4

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 196 OF 2023
IN
PUBLIC INTEREST LITIGATION WP NO. 29 OF 2022

The Goa Foundation, Thr. Its Secretary Dr. ... Applicant
Claude Alvares

Versus

State of Goa, Thr. Its Chief Secretary & 5 Ors. ... Respondents.

Ms. Norma Alvares, Advocate with Mr. Om D'Costa, Advocate for the Applicant.

Mrs. Sapna Mordekar, Additional Government Advocate for the Respondent nos. 1 and 2.

Mr. S. Mahambrey, Advocate for the Respondent no. 3.

Mr. Parag Rao, Advocate with Mr. Akhil Parrikar and Ms. Linnette Rodrigues, Advocate for the Respondent nos. 4 and 5.

CORAM: M. S. KARNIK &
B. P. DESHPANDE, JJ.
DATE: 7th July, 2023

ORAL ORDER

1. Heard.
2. This is an application for modification of the order dated 07.10.2022 with a prayer to include a direction in respect of limitation.
3. On 07.10.2022, this court disposed of the Public Interest Litigation by passing the following order :

“P.C.:

Permission to delete respondent No.5. Amendment to be carried out forthwith.

2. After this petition was heard for some time, we are of the opinion that the issues which are canvased in this petition are issues which can be effectively agitated before the National Green Tribunal by the petitioner. We accordingly dispose of the petition with liberty to the petitioner to approach the National Green Tribunal.

3. All contentions of the parties are expressly left open.

4. Disposed of accordingly.

5. No costs.”

4. Learned counsel for the applicant-Goa Foundation, Ms. Norma Alvares, for the reasons stated in the application, urged that as there was no specific observation as regards the limitation in respect of the period spent in prosecuting the petition, there is some difficulty faced by the petitioner before the National Green Tribunal (NGT) on the aspect of delay. Hence the application.

5. The application is vehemently opposed by Shri Rao, learned counsel for the respondent nos. 4 and 5. Placing reliance on the decision of the Supreme Court in the case of **Supertech Limited vs. Emerald Court Owner Resident Welfare Association & Ors.**¹, the learned counsel emphasized on paragraph 12 thereon in support of his submissions. Paragraph 12 reads thus :

“12. The hallmark of a judicial pronouncement is its stability and finality. Judicial verdicts are not like sand dunes which

¹ (2021) 10 SCR 569

are subject to the vagaries of wind and weather. A disturbing trend has emerged in this court of repeated applications, styled as Miscellaneous Applications, being filed after a final judgment has been pronounced. Such a practice has no legal foundation and must be firmly discouraged. It reduces litigation to a gambit. Miscellaneous Applications are becoming a preferred course to those with resources to pursue strategies to avoid compliance with judicial decisions. A judicial pronouncement cannot be subject to modification once the judgment has been pronounced, by filing a miscellaneous application. Filing of a miscellaneous application seeking modification/clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly ["Quando aliquid prohibetur ex directo, prohibetur et per obliquum"]."

6. Reliance is also placed by learned counsel on the decision of the Supreme Court in the case of **Bhopal Gas Peedith Mahila Udyog Sangathan & ors. vs. Union of India & Ors.**², more particularly paragraphs 40 and 41 in support of his submission that the petitioners were well aware that the subject matter of the Public Interest Litigation petition pertains to the jurisdiction of the NGT and, therefore, the proceedings prosecuted before this court were not bonafide. It is also submitted by Shri Rao that the petitioners have filed several petitions in this court wherein they have been directed to avail the remedy provided under the NGT Act, hence apart from the fact the present application is not maintainable, it is submitted that this application is

² (2012) 8 SCC 326

not bonafide. A grievance is made by Shri Rao that he has not been sufficiently heard in the present application.

7. We are of the opinion that considering the nature of request made, the application deserves to be allowed in the interest of justice. The petitioner had approached this court by way of Public Interest Litigation. This court while disposing of the Public Interest Litigation, was of the opinion that the issues which are canvassed in this petition are issues which can be effectively agitated before the NGT by the petitioner. In this light of the matter, the petition was disposed of with liberty to the petitioner to approach the NGT. All contentions of the parties were expressly left open.

8. Once this court has observed that the issues raised in the petition can be effectively agitated before the NGT by the petitioner, as a result of which the petitioners were directed to approach the NGT, it goes without saying that the petitioners were pursuing the petition bonafide before this court. We are inclined to observe that the period spent in prosecuting the petition was bonafide and the period spent in bonafide prosecuting the present petition needs to be sympathetically considered by the Tribunal while deciding the issue of limitation.

9. Whether the proceedings before the NGT are bonafide or not, is a contention the petitioner can raise before the NGT which can be

considered on its own merits as this court has already left all contentions of the parties open.

10. In our opinion, the observations which we are inclined to make while disposing of the Misc. Civil Application, do not amount to a modification of a judicial pronouncement.

11. The application is disposed of.

B. P. DESHPANDE, J.

M. S. KARNIK, J.

ANDREZA PEREIRA
Digitally signed by ANDREZA PEREIRA
Date: 2023.07.07 17:17:39 +05'30'