

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

Appeal No. 2/2024(WZ)

Calangute Constituency Forum ...Appellant

Versus

State of Goa & Ors. ...Respondents

**AFFIDAVIT-IN-REPLY OF RESPONDENT NO. 5**

I, Salvador Blaize Fernandes, major of age, Indian National, Sarpanch of the Village Panchayat of Candolim, Respondent No.5 abovenamed, having its office at Candolim, Bardez, Goa, do hereby say on oath and solemn affirmation as under:

1. I have perused a copy of the captioned appeal and understood its contents. I am filing the present reply in response thereto. Any contention raised in the said appeal, if not specifically dealt-with and/or denied by me herein, may not be deemed to have been admitted. I crave leave to

*Blaize Fernandes*



file a further and more detailed reply in case the circumstances of the present case so warrant.

**PRELIMINARY OBJECTIONS**

2. I say that the present proceeding has been filed under Sections 14, 15, 16, 17 r/w Section 18(1) of the National Green Tribunal Act, 2010 (*hereinafter referred to as the 'said Act'*). Even the perusal of the averments made in the present proceedings would reveal that, besides challenging the Order dated 30.11.2023 passed by the Goa Coastal Zone Management Authority ('**GCZMA**') discharging the Show Cause Notice cum Stop Work Order, it raises several alleged issues forming subject-matter of an original application u/s 14 of the said Act.
3. I respectfully submit that considering the tenor of the averments and reliefs sought in the present proceedings, it is clear that the same is a compendious proceeding under Section 14 r/w Section 16 of the said Act. I respectfully submit that it is well settled law that filing of a compendious proceeding under Section 14 and Section 16 of the said Act is non-maintainable in the eyes of law. On

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the ground itself, I respectfully submit that the present case may not be entertained.

4. Without prejudice, I respectfully submit that the present proceeding is grossly barred by limitation. Although on the face of it, the appeal seeks to challenge the legality of the Order dated 30.11.2023 passed by the GCZMA discharging the Show Cause Notice, reading of the averments made in the appeal would make it clear that the Appellant is indirectly impugning the grant of Permission/NOC dated 26.08.2019 issued by the GCZMA in favour of the Water Resources Department ('WRD'), for carrying-out the work of strengthening and renovating the existing bund, on the ground that grant of such permission is contrary to the provisions of the CRZ Regulations.

5. In the present appeal, the Appellant has submitted that the subject development is being carried-out partly in area zoned under CRZ-IA category. As per the Appellant, no development of the kind carried-out by the WRD is actually permitted in CRZ-IA zone as per the CRZ Regulations. Additionally, the Appellant has also raised

*Blaze Fernandes*

contentions regarding execution of work by the WRD in alleged violation of the Permission/NOC issued by the GCZMA.

6. I respectfully submit that the cause of action to raise the aforesaid alleged grievances first arose when the NOC/Permission for strengthening and renovating of the existing bund was issued by the GCZMA i.e. on 26.08.2019 or at the very least when the subject work was commenced by the WRD Contractor (M/s Noor Engineering) in the month of January-2022, as apparent from the Work Order dated 05/01/2022 issued by the Executive Engineer, WD-I, WRD, Porvorim-Goa to the said Contractor. The present appeal which is filed on or about 22.12.2023 is therefore clearly barred by limitation.

7. Knowing the facts fully well that the present proceeding is barred by limitation (*as far as the challenges covered under Section 14 of the said Act are concerned*), the present Appeal has been designed to camouflage the real cause of action and to portray the same as an appeal u/s 16 of the said Act, challenging the Impugned Order dated



*Bl. J. Fernandes*

30.11.2023. However, perusal of the averments made in the appeal reveal that the scope of the present appeal travels beyond the pleadings raised before the GCZMA in the Show Cause Notice proceedings and the same raises issues forming subject-matter of Section 14 of the said Act.

8. Without prejudice, I respectfully submit that the present Appeal is liable to be dismissed on the ground of non-joinder of necessary parties *viz.* the owner of the land (the Comunidade of Candolim), on whose land, the subject development has been carried-out. On these grounds also, the present Appeal may not be entertained.

Without prejudice to the foregoing preliminary objections, the relevant facts of the present case are as under:

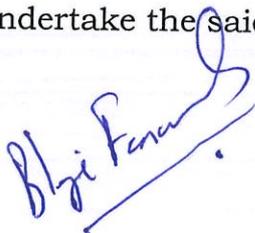
9. I say that there was an pre-existing bund lying along the western bank of the Nerul River, extending further northwards up to the Caculo House at Candolim. Towards the western side of the said existing bund, existed a vast tract of agricultural land. I say that more than 500 families of

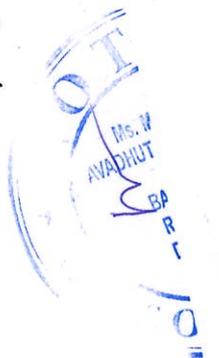
*Bhaji Fernandes*

local villagers depend for their livelihood on cultivation done in the said agricultural fields. I say that from the year 1986, the said existing bund had developed breaches due to which saline-water was entering the fields thereby making the same unfit for cultivation.

10. In view of the same, Village Panchayat of Candolim passed a Resolution at its Panchayat Body Meeting held on 01.07.2017, requesting the WRD to take-up the work of improvement and beautification of the said bund as the same was in need of urgent repairs and the same could also be thereafter used as a tourist attraction. Hereto annexed and marked as "**ANNEXURE R5/1**" is a copy of the said Resolution dated 01.07.2017.

11. I say that the Comunidade of Candolim, which is owner of the properties bearing Survey Nos. 13, 239 and 241 of Village Candolim (*wherein the work of improvement, strengthening and beautification of the existing bund was proposed*), gave their No Objection Certificate dated 01.09.2017, in favour of the WRD, enabling them to undertake the said work.

  
Blaze Fernandes



12. Pursuant to the Application dated 24.01.2019 moved by the WRD for strengthening & renovating the existing bund from Nerul Bridge to Caculo House, in terms of the accompanying Building Plan, a site-inspection of the bund area was carried-out by the Expert Members of the GCZMA along-with the representatives of the Directorate of Survey & Land Records ('**DSLRL**') and the WRD on 16.05.2019, wherein pertinently, it was observed that near the Nerul Bridge, the width of the existing bund was around 10 meters and thereafter it narrows down further towards the north.

13. The Site Inspection Report further recorded that since the bund was having sufficient width of around 10 mts. near the bridge and its location was close to the main road with good ambience, the WRD has proposed to beautify the bund area by putting paver-tiles over the bund with sit-outs and lights for making it a touristic attraction.

14. Perusal of the said Site Inspection Report clearly revealed that the Expert Members of the GCZMA had taken due

*Bhaskar Fenando*

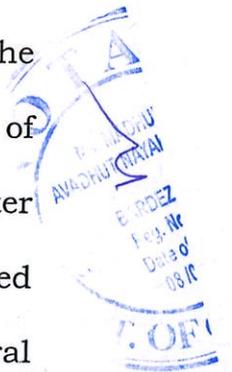


note of the fact that the proposed bund was falling within the No Development Zone and that, as per the CRZ Regulations, repair & renovation of the bund was permissible, for the purpose of preventing further erosion of the bund and intrusion of saline water into the adjacent agricultural field areas.

15. Even prior thereto, the Goa State Bio-diversity Board ('GSBB') had conducted a site-inspection of the existing bund area on 24.01.2019, through its Scientific & Administrative Officer. In the Report dated 06.02.2019 prepared by the GSBB, it was specifically recorded that the breach of the existing bund had led to prolific growth of mangroves due to inundation and free flow of saline water into the agricultural fields. The said Report further stated that ingress of mangroves had led to loss of agricultural land and therefore there was an urgent need for undertaking repair of the bund so as to revive the agricultural activities in the said area.

16. The GSBB Report further mentioned that cutting of existing mangroves was to be avoided in the course of

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execution of the proposed work (*of strengthening/repair of the bund*) and if unavoidable, necessary permissions from the Forest Department were to be obtained and compensatory re-plantation was to be carried-out as per the ratio specified by the Forest Department.

17. Subsequent to the aforementioned site-inspections of the GCZMA and the GSBB, the proposal of the WRD was deliberated by the GCZMA in its meeting held on 25.06.2019. At the said meeting, the engineers of the WRD were present and explained to the Authority, the details of the said project. Upon finding the said proposal to be in accordance with the CRZ Regulations, the GCZMA approved the proposal of the WRD for strengthening & renovating the existing bund and issued a formal NOC/Permission dated 26.08.2019, in favour of the WRD.

18. From the documents on records, it therefore transpires that the GCZMA was well-aware about the true project-profile and permitted the same since it was compliant with the CRZ Regulations. From the documents on record, it also transpires that the WRD had carried-out the subject



*Bhaji Fernando*

work in terms of the NOC/Permission dated 30.11.2023 issued by the GCZMA and the approved Building Plan. In any event of the matter, the work carried-out by the WRD is not only in public interest but the same was imminently required to prevent further breaches in the bund which would have otherwise caused ingress of saline-water into the agricultural fields and made them unfit for cultivation.

19. The challenge raised in the present appeal is substantially on the point that while undertaking the subject work, the WRD increased the width of the existing bund from alleged 3 meters to 7.5 meters, so as to convert it into a public road and serve the requirements of Survey No. 12 of Candolim Village, which according to the Appellant, is otherwise a land-locked property and could not get its building project approved without the widened bund access.
20. In support of its contention that the size of the existing bund (*prior to undertaking of the subject work by the WRD*), was of 3 meters width, the Appellant has placed reliance on a purported Communitade Plan of the year 1936

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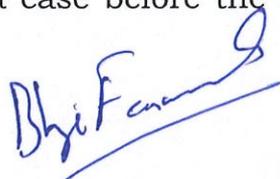


*(which is annexed at Pg.111 of the Appeal Paper Book).*

However, perusal of the said Plan would reveal that the same does not identify the properties with survey numbers and therefore it is impossible to correlate the properties forming part of the said Plan as being the same properties whereat the subject work was undertaken. Without prejudice, the said Plan nowhere indicates that the width of the pre-existing bund *(prior to the undertaking of the subject work)* was only 3 meters.

21. On the contrary, it is apparently clear from the Site-Inspection Report dated 06.05.2019 prepared by the GCZMA that the pre-existing bund was not of uniform width throughout the stretch from Nerul Bridge to Caculo House at Candolim, whereat the subject work was proposed. The said Site-Inspection Report in fact found the width of the existing bund to be almost 10 meters near the Nerul Bridge and narrowing down further towards the north.

22. The Project Proponent *i.e.* the WRD had clearly come-up with a case before the GCZMA in the Show Cause Notice





proceedings that the scope of work was only to strengthen the bund by heightening the existing embankment, providing toe-wall to strengthen & prevent the embankment from eroding from the inner-side and pitching the sloppy- side of the embankment with laterite stone. The WRD had clearly averred before the GCZMA that it had not widened the bund, as alleged, and that it had also not destroyed any mangrove trees in the course of its work.

23. From the documents on record, it appears that the WRD in its Reply to the Show Cause Notice filed before the GCZMA had specifically stated that it had not cut any mangrove trees during the ongoing work. The WRD had submitted that the existing bund being old, had breached at several places and that sluice-gates had also been damaged. Due to the said breaches, tidal-water was freely entering the agricultural fields during high-tide and returning back to the river at low-tide thereby causing several mangrove trees standing in the way of the tidal-water in such breached stretches to be uprooted on its

*Bhishan Singh*



own and that such destruction was not as a result of construction of the bund.

24. I say that after considering the respective submissions, the GCZMA rightly passed the Impugned Order discharging the Show Cause Notice since the subject development was carried-out by the WRD pursuant to valid Permission/NOC issued by the GCZMA.

25. Considering the objections raised by the Appellant; as also the recommendations made by the Expert Members of the GCZMA and the GSBB in the course of the Joint Site Inspections held on 28.04.2023, the GCZMA imposed necessary safeguards in respect of the subject development *viz.* that:

- A. No road access would be provided to the bund;
- B. Re-plantation of mangroves would be undertaken along the bund in consultation with the GSBB/Mangrove Society;
- C. Sluice gate would be maintained;

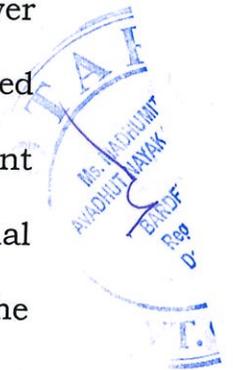
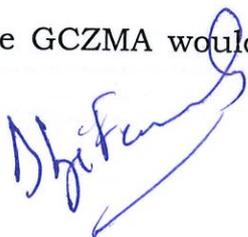
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- D. Use of pavers or paver blocks with at least 50% opening for construction of approach road to control surface run-off and;
- E. Street lights would be solar powered only.

26. It is pertinent to note that the GSBB Site Inspection Report dated 28.04.2023 (*upon which strong reliance has been placed by the Appellant itself*) states in clear terms that any further restoration/reduction of width of the repaired bund, by a removal of excess material of construction, would destabilise the bund and create further damage to the eco-system. The GSBB however recommended that necessary sluice-gates may be provided and based on the water volumes required for displacement as per Hydro-Geologist engaged by the WRD, additional sluice gates/points may also be provided to make the same functional and restore the flow. The GSBB has also recommended plantation of diverse mangroves and associated species in the said area.

27. I say that the perusal of the Impugned Order passed by the GCZMA would reveal that the GCZMA has given due



credence to the recommendations of its own Expert Members as well as of the GSBB and ordered re-plantation of mangroves wherever damage was noticed. The GCZMA has also taken note of the Appellant's allegation that the widened bund could be used as access road for the building-project of Respondent No.9, and to that extent, incorporated specific safeguards that no road access would be provided thereon.

28. I say that even otherwise, the Respondent No. 5 Panchayat has put gates on the bund so that the same may not be used as an access road by any private parties. Hereto annexed and marked as **"ANNEXURE R5/2"** are copies of the photographs showing placement of gates on the bund in order to block access to vehicles etc.

29. I say that ordering demolition or removal of the repaired bund was neither legally warranted nor practically feasible and such action would have only caused further intrusion of saline water to the agricultural fields and also resulted in further damage to the eco-system (*as per the findings of the GSBB itself*). The GCZMA therefore threaded a cautious path and allowed the work, subject to necessary



*B. J. Fernandes*

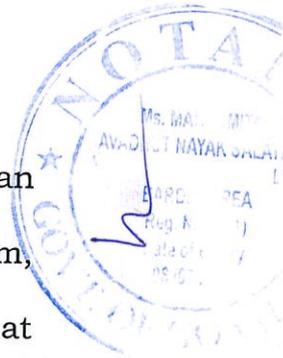
safeguards, which was the only possible/reasonable approach to take in the present case.

30. I reiterate that the subject work has been undertaken by the WRD in public interest and therefore I respectfully submit that there is no reason to interfere with the Impugned Order passed by the GCZMA in the present case, which is not only legal but also reasonable and environmentally neutral. In view of the above, it is respectfully prayed that the present Appeal be dismissed.

**VERIFICATION**

I, Salvador Blaize Fernandes, major of age, Indian National, Sarpanch of the Village Panchayat of Candolim, Respondent No.5 abovenamed having its office at Candolim, Bardez, Goa do hereby solemnly affirm that the contents of paras 1, 6(part) and 9 to 30 of the foregoing reply are true to my own knowledge and/or based on records and the contents of the remaining paras 2 to 5, 6(part), 7 & 8 thereof, are based on legal submissions which I believe to be true and correct.

*Blaize Fernandes*



Solemnly affirmed at Mapusa, Goa, on this 27<sup>th</sup> day of February, 2024.

*[Handwritten Signature]*  
DEPONENT

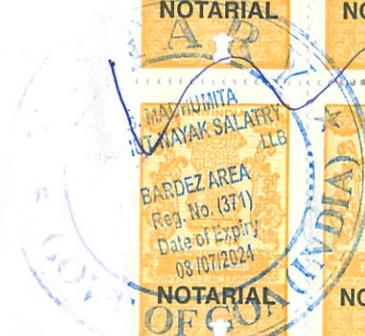
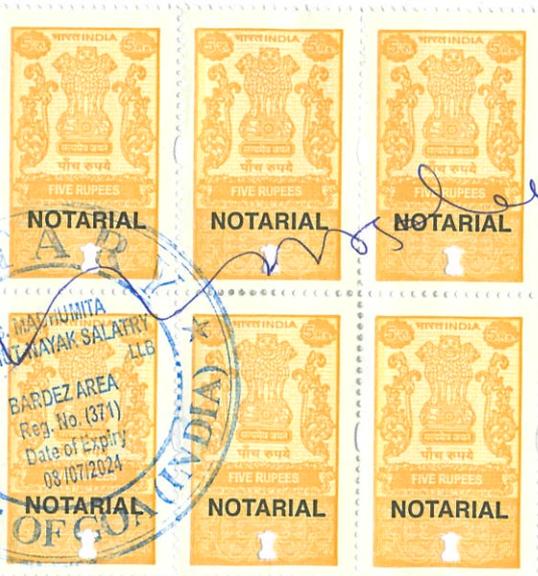
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Mapusa Dated... 27/02/2024

*[Handwritten Signature]*

Ms. Madhumita Avadhut Nayak Salatry  
LLB

NOTARY  
BARDEZ-TALUKA  
MAPUSA-GOIA  
Reg. No. (371)  
Sr. No.

972/2024





ANNEXURE R5/1

Ph: 2489061

**Village Panchayat Candolim**  
Bardez - Goa  
403 515

Ref. No.: VPC/

Date :

**TRUE COPY OF RESOLUTION NO. 9 (1) PASSED IN THE MONTHLY  
MEETING HELD ON 01/07/2017**

**Sub: Improvement and Beautification of Bandh at Candolim**

**Proposed by: Shri. Salvador B. Fernandes**

**Seconded by: Shri. Fermino Fernanses**

**Resolution No. 9(1)** :- It is unanimously resolved by the panchayat body to request the principal engineer / chief engineer W.R.D to take up the work of improvement and beautification of Bandh from Nerul bridge upo Caculo house at Confraria Vaddo at Candolim side as this bandh was earlier re-constructed by the W.R.D and now the same bandh requires urgent improvement and beautification as the same will be a major tourist destination/attraction and also for the villagers and the tourists. Also the local villagers can take up boating and other activities. And after construction of the same, the village panchayat of Candolim undertakes to maintain the same and the expenditure to be incurred from the panchayat funds.

Approved and passed unanimously by the panchayat body.

Date: 01/07/2017

Place: V.P Candolim



*Salvador B. Fernandes*  
SECRETARY  
VILLAGE PANCHAYAT CANDOLIM  
BARDEZ - GOA.

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ANNEXURE R5/2



