

**BEFORE THE NATIONAL GREEN TRIBUNAL**

**WESTERN ZONE BENCH AT PUNE**

Appeal No. 32/2022 (WZ)

**IN THE MATTER OF:**

Mr. Suvarn Rajaram Bandekar                      **... Applicant**

*Versus*

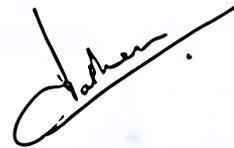
State of Goa & Ors.                                      **... Respondents**

**AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT**

**NO. 5**

**FILED ON: 02.07.2023**

**PLACE: Panaji, Goa**



**ADVOCATES FOR RESPONDENT NO. 5**



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**AFFIDAVIT IN REPLY ON**

**BEHALF OF THE RESPONDENT**

**NO. 5**

I, Maria Odry Fernandes, aged about 49 years, daughter of Armando Cardozo, Indian Citizen, residing at S-5, Kurtarkar Vihar, Aquem Alto, Margao, South Goa, Goa, the Respondent No. 5, hereinabove, do hereby solemnly affirm as under:

1. I state that I have read and understood the contents of the Appeal filed by the Appellant and I am filing the present Affidavit in Reply thereto.

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2. I state that I am arrayed as Respondent No. 5 herein in the amended Appeal Memo served upon me in June, 2023. I state that, albeit not dealing with the parawise averments and contentions of the Appellant, I am filing this Affidavit to the limited extent of setting out the case of the Respondent No. 5, opposing the prayers of the Appeal. I crave leave of this Hon'ble Tribunal to file a detailed/additional Affidavit at a later date, if so directed or advised.

3. I state that on 31<sup>st</sup> January, 2023, this Respondent received service of an Appeal No. 32/2022, Application for Amendment and an Order dated 25.01.2023 passed by this Hon'ble Tribunal in Appeal No. 32/2022. It is submitted that in the Order dated 25.01.2023, this Hon'ble Tribunal has observed that certain Respondents therein, namely, Respondent Nos 3(c), 3(d), 3(e), and 3(g) were served through Registered AD with an endorsement, namely, "Door Locked". It is submitted that in the original Appeal filed before this Hon'ble Tribunal, the Appellant was arrayed as Respondent No. 3(d) (now as Respondent No. 5 after amendment). It is submitted that the





Hon'ble Tribunal observed that the Respondent No. 3 shown as the Late Mr. Armando Cardozo had died prior to filing of the Appeal No. 32/2022 and thus, he was not supposed to be shown in the array of the parties and appeal memo and thereby, directed the Appellant therein to move an amendment application numbering the Respondent Nos. 3(a) to 3(h) as Respondent Nos. 3 to 10 respectively. Moreover, since this Hon'ble Tribunal was unsure whether the service was duly effective on the Respondents, this Hon'ble Tribunal was pleased to direct the Appellant in Appeal No. 32/2022 to serve the Respondents vide Dasti within 15 days from the date of the Order and to file a fresh Affidavit of Service. It is submitted that thereafter, the Appellant was directed to carry out amendment and this Respondent was arrayed as Respondent No. 5 in the amended Appeal memo served upon the Advocate of this Respondent in June, 2023.

4. I state that the Appellant has filed the present Appeal challenging the Order dated 01.07.2022 bearing reference no. GCZMA/SAL/SERNA/12-13/01/712 (**"Impugned Order"**)

*Amend*

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passed by the Goa Coastal Zone Management Authority (“GCZMA”), whereby the GCZMA rejected the Application/representation dated 14.01.2019 filed by the Appellant, i.e., Mr. Suvarn Rajaram Bandekar. I state that the Appellant has further prayed from this Hon’ble Tribunal to direct the Respondents herein to carry out restitution of sand dunes/restoration of property and to further, pay costs of an amount Rs. 10,28,700/- alongwith escalation, if any. Furthermore, the Appellant has sought for a direction to the Respondents to pay a punitive penalty under the principle of polluter pays for the alleged damage to the property bearing survey no. 16/4 and 16/4-A in Village Sernabatim, Salcete, South Goa.



### Brief Facts

5. I state that the Appellant had previously filed an Original Application No. 23/2013 (subsequently renumbered as O.A. No. 480/2018) (“OA”) before this Hon’ble Tribunal seeking for restitution of damaged sand dunes after removal of the road passing through the property of the Appellant. During the



pendency of the O.A., the Respondent No. 2, GCZMA, issued a Demolition Order dated 05.12.2014 with respect to the complaint preferred by the very same Appellant against the same private Respondents herein pertaining to the structures existing in Survey No. 16/7 of Village Sernabatim, Salcete, Goa. The aforesaid Demolition Order came to be challenged before this Hon'ble Tribunal in Appeal No. 39/2014 (renumbered as Appeal No. 126/2018) and Appeal No 43/2014 (renumbered as Appeal No. 128/2018), which came to be allowed and remanded back to the GCZMA.

6. I state that from the records and pleadings in the present Appeal it is clear that as regards the aforementioned OA filed by the Appellant, after several hearings, appointment of Court Commissioner, collection of evidence, cross examination of witnesses and several site inspections later, this Hon'ble Tribunal was desirous of dismissing the OA and in view of the same, dismissed the OA as withdrawn. From the records it is clear that the Appellant had agitated the very same issue of restoration of sand dunes as is raised in the present Appeal in

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its OA which was rejected by this Hon'ble Tribunal. The present Appellant is reagitating the very same issues before different forums/tribunals and different proceedings, over the last decade only to mete out harassment to this Respondent, without any substance whatsoever.



7. In fact, the central allegation of the Appellant is that the private respondents have not undertaken restoration in terms of the Order dated 24.05.2012 passed by the GCZMA. If that was the case, the remedy of the Appellant would be to file for execution or appeal against the Order. Instead, the Appellant preferred an OA only in the year 2013 which after due consideration by this Hon'ble Tribunal, was dismissed as withdrawn and hence, the Appellant cannot now reagitate the issue which has attained finality.

8. In order to circumvent the entire process, the Appellant filed an application/representation before the GCZMA alleging the very same issues as alleged in the OA seeking restitution and restoration of sand dunes and in effect, seeking execution of an

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Order passed in the year 2012 by the GCZMA, which is completely barred by law of limitation. I state that despite the objections, the Respondent No. 2 went into the merits of the matter and after examining expert reports, found no merit in the contentions raised by the Appellant as recorded in the Impugned Order. It is submitted that the Appeal against the Impugned Order is completely devoid of any merit as the Respondent No. 2 correctly rejected the representation of the Appellant after proper application of mind and considering expert committee reports and hence, the same warrants no interference.

9. In fact, the very same issues were raised by the Appellant against the same Respondents in the OA and after almost six years of pendency, the aforesaid OA was dismissed as withdrawn after hearing the parties at length, recording evidence, considering inspection reports, appointment of court commissioner, etc., as there was absolutely no merit in the case advanced by the Appellant and hence, was dismissed as withdrawn. It is pertinent to submit that the OA was not

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withdrawn at admission stage but at the final hearing stage. The present dispute is barred by the principles of res judicata and the Appellant is barred from reagitating the same issue at different forums between the same parties.



10. From the perusal of the Impugned Order, it is clear that the application/representation dated 14.01.2019 filed by the Appellant sought for execution of the Order dated 24.05.2012 passed by the GCZMA. It is amply clear that the Order dated 24.05.2012 passed by the Respondent No. 2 had attained finality and there was absolutely no justification by the Appellant to seek execution of the Order by alleging that sand dunes existed there which were required to be restored. The aforesaid application/representation is completely barred by limitation and gross delay.

11. Upon perusal of the Order dated 24.05.2012 passed by the Respondent No. 2 it is clear that there was absolutely no direction for restoration of sand dunes and hence, the belated contention of the Appellant of restoration of sand dunes in the



OA and the Application dated 14.01.2019, ought not to be entertained. If the Appellant was aggrieved by the Order dated 24.05.2012, the Appellant ought to have challenged the same to seek restoration of sand dunes as well, which the Appellant did not do. Since there is absolutely no mention of the same, the challenge now is completely belated and the Order has attained finality. It is clear that the issue pertaining to sand dunes is completely belated, an afterthought and this Hon'ble Tribunal ought not to entertain the same.

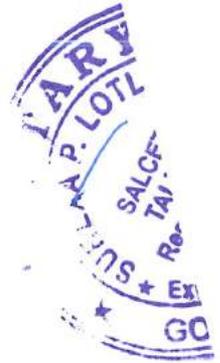
12. It is submitted that from the various orders of this Hon'ble Tribunal, GCZMA and the Hon'ble High Court, as placed on record by the Appellant in the Appeal paperbook, there is not a single finding to the effect which states that either Mr. Armand Cardozo, or the heirs of Armand Cardozo (the private respondents) built the alleged illegal road which was demolished by the Deputy Collector and hence, without any such finding, no penalty or liability can be imposed on this Respondent. The allegations of the Appellant are completely

*Armand Cardozo*

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baseless, devoid of any merit and is only a means to harass the heirs of Mr. Armand Carodzo.

13. It is submitted that the Appellant has failed to make out any valid ground calling for any interference in the Impugned Order or for grant of any of its prayers and hence, the Appellant ought to be dismissed with costs.



**The Impugned Order warrants no interference and is completely legal**

14. It is denied that the Impugned Order does not disclose any reasons and is passed without any application of mind. In fact, upon the perusal of the Impugned Order, it is amply clear that the GCZMA has correctly applied its mind to the facts and circumstances of the present case, and rightly rejected the application/representation of the Appellant.

15. The Appellant's sole contention is that the GCZMA ought to have considered a report which was prepared at the instance of the Appellant and on that ground, the Appellant has alleged that

*denied*

the Impugned Order is required to be set aside. It is respectfully submitted that the GCZMA not considering the reports prepared at the behest of the Appellant is not a ground for setting aside the Impugned Order since the GCZMA correctly called for independent site inspection report from the Goa State Biodiversity Board.



16. It is submitted that the GCZMA relied upon all the records pertaining to the present matter right from the year 2011 and thereafter, placed reliance on two independent reports to pass the Impugned Order. The first such report was prepared by the Team of Expert Members of GCZMA which is dated 17.02.2014 which concluded as follows:

- a. The stretch that was dug up can be restored to its original morphology by simply transferring back the dug up sand.
- b. Planting of ipomoea creepers is expected to restore the profile of the dune strip to its original state within 1-2 years, provided the area is not disturbed further.

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17. Upon the fresh application in 2019 of the Appellant to reagitate the same issue after six years, the Respondent No. 2 again sought for report from the Goa State Biodiversity Board (GSBB) along with Expert Member of GCZMA. It is submitted that the GSBB is an expert statutory body constituted under the provisions of the Biological Diversity Act, 2002. In terms of Section 22 of the said Act, the GSBB inter alia consists of experts in matter relation to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources. It is amply clear from the records, that the Respondent No. 2 has time and again sought assistance from the GSBB in respect of matters relating to sand dune restoration.



18. It is submitted that the GSBB and the expert member of the GCZMA undertook a site inspection on 28.10.2020 and concluded the following:

*General*



- a. That the entire stretch of road is fully covered with vegetation;
- b. Sand/mud disposition has taken place over which growth of vegetation is seen;
- c. Restoration of sand dunes for the demolished road surface is seen happening by a natural process as evidences are seen on the ground that herbaceous growth is taking place;
- d. Hence, it is recommended that the area may be allowed to reclaim naturally as far as possible and by planting native dune vegetation;
- e. Natural restoration has occurred over a period of time since June, 2012.

19. In view of the aforesaid Report and the latest site inspection report, it is clearly observed that the natural restoration is happening over a period of time. Moreover, it was observed that the site should be undisturbed and kept free from human intervention and hence, casting an obligation to not undertake

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any acts of restoration on the demolished road. Moreover, the Expert Member of the GCZMA also concurred with the observations of the GSBB and hence, it is clear that not only the experts at GSBB applied their mind but also the expert at GCZMA applied its mind and all were of the view that the site should be kept undisturbed and free from human intervention.



**20.** It is submitted that upon the aforesaid reports and findings, the GCZMA found merit in the present, in as much, natural restoration of sand dunes has occurred over time. Only after duly applying its mind to two reports and taking opinion of the experts, did the GCZMA dismiss the application/representation of the Appellant and hence, the Impugned Order has been passed after complete application of mind and the Appellant has made out no valid legal ground, to set aside the Impugned Order.

**21.** I state that the GCZMA itself is an expert body which is further relied upon an expert report and after considering the arguments of all parties, the GCZMA has correctly dismissed

the Application/representation of the Appellant by relying upon the expert reports. I state that in such a scenario, there is absolutely no justification for this Hon'ble Tribunal to exercise its appellate jurisdiction to entertain and grant any reliefs in the present Appeal.



**Status Report is completely erroneous and ought not to be considered**

22. It is submitted that this Hon'ble Tribunal vide its Order dated 29.08.2022 was pleased to constitute a Joint Committee to ascertain whether restitution had already taken place naturally. It is submitted that the aforesaid Order dated 29.08.2022 was passed without issuance of Notice to the Respondents. In the event the Respondents were heard, the Respondents would have pointed out the long drawn litigation initiated at the behest of the Appellant since 2013.

23. It is submitted that the Joint Committee conducted its site inspection without issuing any notice to this Respondent and as stated hereinabove, this Respondent was unaware of the present

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proceedings until 31.01.2023 wherein, the Copy of the Appeal was served upon this Respondent. It is submitted that the Status Report also does not record the presence of this Respondent and the presence of the Respondent was crucial during the aforesaid Site Inspection. It is submitted that on the aforesaid count as well, this Hon'ble Tribunal ought not to go by the Status Report.



24. It is submitted that if this Respondent was heard, this Respondent would have pointed out how there was absolutely no error in the Impugned Order and hence, there was no reason to constitute a fresh Joint Committee and call for a new report.

25. It is submitted that Joint Committee prepared a Status Report wherein it proceeded on the assumption that sand dunes existed on the demolished road, prior to its construction, which itself is completely erroneous and flawed. There is absolutely no evidence to assume and neither is there any finding as to on what basis the Joint Committee assumed that there were sand dunes on the demolished road, prior to its construction. It is

*Amend*

submitted that the Status Report is flawed due to the foundational error which goes to the root of the matter, i.e., the assumption of the existence of sand dunes prior to the construction of the demolished road.



26. It is submitted that the GCZMA had itself conducted a site inspection on 17.03.2011 wherein it specifically recorded that there were no sand dunes which is at page no. 152 of the Appeal paperbook. The site inspection report clearly records that there are no sand dunes and further fails to record any details pertaining to number of sand dunes and height of sand dunes as the same did not exist.

27. It is further imperative to state that the Appellant in its complaints pertaining to the alleged illegal road in the year 2000 and in the year 2010 did not even make a whisper of the alleged dunes present despite expressly stating that some trees might have been damaged and hence, it is clear, as a matter of afterthought, after the road had been demolished, the Appellant in the year 2013 began agitating the issue of sand dunes which

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have been allegedly damaged by the Respondents, which is completely baseless, unfounded and devoid of any merit.

28. It is submitted that the GSBB and the experts of the GCZMA in their reports have already stated that the demolished road area to remain untouched and the same is being restored naturally to its original state. It is further observed in the reports relied upon by the Impugned Order that the entire stretch of road is fully covered with vegetation including bushes and shrubs except a small portion of which is seen free from natural vegetation. That reports over the last decade have stated to keep the area untouched as sand disposition has taken place.



29. It is submitted that in view of the two reports relied upon in the Impugned Order, there was absolutely no need to ascertain whether the restitution has already taken place naturally. It is submitted that the photographs produced by the Joint Committee makes reference to damaged sand dunes without in any manner arriving at a finding that there were sand dunes existing there in the first place which goes to the root of the

*General*

matter. It is denied that there are any remnants of debris/mud above the area under restitution.



30. It is submitted that the Status Report is prepared by the Joint Committee consisting of member from the National Centre for Sustainable Coastal Management, Chennai (NCSCM) and one member of the GCZMA. It is submitted that the NCSCM takes by general responsibilities pertaining to conversation and sustainability of coasts pan India. However, the Goa State Biodiversity Board (GSBB) is a statutory body which is incorporated by the Government of Goa to carry out several functions including matters relating to the conservation of biodiversity and sustainability of the environment. It is submitted that the experts from the GSBB and the GCZMA (expert bodies from the State of Goa), who have practical knowledge and are well aware of the local conditions and the ecology of the coasts in the State of Goa, have opined that the site in question does not require any interference and is restoring on its own and hence, it is humbly submitted that this Hon'ble Tribunal ought not to interfere with the Impugned

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Order, which is well reasoned and justified. It is submitted that the GSBB also have expertise in restoration of site and upon due site inspection opined that the site in question does not require any interference.

31. It is submitted that the Appellant has invoked the Appellate jurisdiction of this Hon'ble Tribunal challenging the Impugned Order and therefore, the onus and burden is on the Appellant to show that there is a gross error in the Impugned Order. In the present appeal, no such ground is made out by the Appellant and hence, the same calls for no interference.

32. It is submitted that in view of the above, the present Appeal is required to be dismissed and the Appellant is not entitled to any reliefs whatsoever.

33. I state that whatever has been stated by me in this Affidavit is true to my knowledge, based on the records available with me and in the nature of legal submissions which I believe to be true and correct.



*Mr Fernandes*

Place:

Date: 02.08.2023

*Fernandes*

RESPONDENT NO. 5



VERIFICATION

I, Maria Odry Fernandes, aged about 49 years, daughter of Armando Cardozo, Indian Citizen, residing at S-5, Kurtarkar Vihar, Aquem Alto, Margao, South Goa, Goa, the Respondent No. 5, do on solemn affirmation state that what is stated by me in aforementioned paragraphs is true to my own knowledge and belief and based on the records available in my office to which I have access and which I believe to be true and correct.

*Mr Fernandes*

Verified at *Margao Goa*

On this 2<sup>nd</sup> day of August, 2023

*Fernandes*

DEPONENT

Solemnly affirmed before me by

*Maria Odry Fernandes*

who is identified by

*Aadhaar Card No 7271 6394 2494*

to whom I personally know

Reg. No. *8115/2023*

Date: *02/08/2023*

*Surexa P. Lotlecar*  
SUREXA P. LOTLECAR  
NOTARY MARGAO  
SALCETE TALUKA  
STATE OF GOA (INDIA)

