

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE

Execution Application No. 5/2023

IN

Appeal No. 16/2022

IN THE MATTER OF:

Mr. Suvarn Rajaram Bandekar ... Applicant

Versus

Goa Coastal Zone
Management Authority & Ors. ... Respondents

AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT

NO. 7

FILED ON: 03.08.2023

PLACE: Panaji, Goa



ADVOCATES FOR RESPONDENT NO. 7

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ADVOCATE FOR THE RESPONDENT

NO. 7

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Management Authority & Ors.

... Respondents

AFFIDAVIT IN REPLY ON BEHALF OF

THE RESPONDENT NO. 7

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. 7 hereinabove, do hereby solemnly affirm as under:

A handwritten signature in blue ink, appearing to read 'Fernandes', with a long horizontal stroke extending to the right.

1. I state that I have read and understood the contents of the Execution Application filed by the Applicant and I am filing the present Affidavit in Reply thereto.
2. I state that I am arrayed as Respondent No. 7 herein. I state that, albeit not dealing with the parawise averments and contentions of the Applicant, I am filing this Affidavit to the limited extent of setting out the case of the Respondent No. 7, opposing the Application for Execution. 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 the Applicant herein, has filed the present Application for Execution seeking execution of the Order dated 25.03.2022 passed by the Respondent No. 1 which has been upheld by this Hon'ble Tribunal vide its Judgement and Order dated 21.10.2022. I state that it is the prayer of the Applicant to execute the aforesaid Order and seeking demolition of all the structures found illegal in property bearing Survey No. 16/7 of Sernabatim Village, South Goa, Goa in terms of the Order



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dated 25.03.2022. I state that the Applicant has also prayed for disconnection of public utility services to the structures existing in property bearing Survey No. 16/7 of Village Sernabatim, South Goa, Goa.

4. I state that this answering Respondent is opposing the Application for execution filed by the Applicant and the prayers contained therein. I state and submit that this answering Respondent, despite being a necessary party, and arrayed as a Respondent Party before the GCZMA as well as this Hon'ble Tribunal, was neither served with any Notice of hearing nor given any opportunity of hearing before passing of the Orders which is sought to be executed now. I state that the GCZMA passed its Order dated 25.03.2022 directing demolition of the structures in Survey No. 16/7 of Village Sernabatim, against the answering Respondent, without even hearing the Respondent or serving any Notice upon this Respondent, in complete breach of principles of natural justice. I state that the Order dated 25.03.2022 against the answering Respondent is completely illegal and arbitrary, in as much as, the same is

General

passed in complete violation of principles of natural justice without affording this Respondent an opportunity of hearing, especially when the Order entails grave and severe civil consequences.



5. I state that the Order dated 25.03.2022 passed by the GCZMA came to be upheld by this Hon'ble Tribunal vide its Order dated 21.10.2022 in Appeal No. 16/2022 . I state and submit that the answering Respondent herein was arrayed as Respondent No. 6 in the Appeal Memo, however, no notice came to be served upon the answering Respondent and neither was the answering Respondent heard in the aforesaid Appeal which culminated into the Order dated 21.10.2022. In fact, it is imperative to mention that in the final Order dated 21.10.2022, the answering Respondent's name is removed from the cause title of the final order which only records Respondent Nos. 1 to 5. Despite that fact that the Appeal Memo records over 12 Respondents, then same do not find any mention in the final order.



6. I state that in view of the peculiar facts and circumstances of this case, the answering Respondent was constrained to file a Misc. Application No. 6/2023 seeking Recall of the Order dated 21.10.2022 passed by this Tribunal in Appeal No. 16/2022 as the same was passed in violation of the principles of Natural Justice as the answering Respondent herein was never served nor heard/represented in any of the proceedings that culminated into the Order dated 21.10.2022 directing demolition of structures in Survey No. 16/7 of Village Sernabatim, South Goa, and thus, the same is in gross violations of the rights of this Respondent. I crave leave to refer and leave on the to the pleadings and documents in MA No. 6/2023.

7. I state that though the answering Respondent was arrayed as Respondent No. 6 in the Appeal No. 16/2022, the answering Respondent was not shown in the array of parties in the Order dated 21.10.2022 passed by this Hon'ble Tribunal in Appeal No. 16/2022 and therefore, since the answering Respondent is not a party in the final Order dated 21.10.2022, the Order

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cannot be executed against this answering Respondent. I state that I ought to have been heard by this Hon'ble Tribunal, more specifically, since the Order dated 21.10.2022 entails civil consequences of demolition.



8. I state that the Misc. Application No. 6/2023 came to be dismissed by this Hon'ble 08.05.2023 on the count that the Hon'ble Supreme Court had already upheld its judgement. I state that this Respondent has preferred an Appeal against the Order dated 08.05.2023 before the Hon'ble Supreme Court of India in Civil Appeal No. 4868/2023 which is pending adjudication and in view of the same, is humbly praying to keep in abeyance the Execution Application until the Civil Appeal before the Hon'ble Supreme Court is decided. I state that in the event the Execution Application is allowed, the Civil Appeal before the Hon'ble Supreme Court filed by this Respondent will be rendered infructuous and irreparable injury will be caused to this Respondent. It is submitted that this Respondent was not given an opportunity of hearing despite being a necessary party and is now before the Hon'ble Supreme Court,



which is its last opportunity and hence, in view of the same, it is humbly prayed that the execution Application be kept pending.

Annexed hereto and marked as “Exhibit- A- Colly” is the Copy of the Order dated 08.05.2023 passed by this Hon’ble Tribunal in MA No. 6/2023 and Copy of the Case Status before the Hon’ble Supreme Court.

9. I state that it is clear from the perusal of the GCZMA Order dated 25.03.2022 annexed to the Execution Application, that the Respondent despite being a necessary party Respondent in the GCZMA proceedings on account of being the legal heir of Mr. Armand Cardozo (owner of the property bearing Survey No. 16/7 of Village Sernabatim “said property”), was neither served nor heard in the proceedings. I state that the Respondent has sentimental value to the structures erected by her father in the said Property and thus, is praying to be heard before the same is demolished or any direction of execution is passed before this Hon’ble Tribunal.

10.I state that by virtue of the death of Mr. Armand Cardozo, this Respondent became a co-owner of the said property and has an undivided share. I state that this Respondent has interest in the property as a co-owner of the said property and the Order dated 21.10.2022 has been passed upholding the GCZMA Order directing demolition of all structures in the said Property which adversely affects the Respondent herein, without affording any opportunity to be heard in the matter. It is clear that even the Applicant herein failed to take any steps to duly serve this Respondent and this Respondent was completely caught unaware of the GCZMA Order and the Order dated 21.10.2022 passed by this Hon'ble Tribunal which have serious civil consequences affecting the rights in the said property of the Respondent. It is clear that the GCZMA Order and the Impugned Order has been passed against the Respondent, without affording the Respondent an opportunity to present its case, and thereby, directing the Respondent to demolish the structures in Survey No. 16/7 of Village Sernabatim, Colva, Goa (of which the Respondent is a co-owner).



General



11.I state that this Respondent was arrayed as Respondent No. 6 in the Memo of Parties in the Appeal No. 16/2022 as the Respondent is the co-owner of the said Property and was also a party in the Order dated 25.03.2022 passed by the GCZMA and thus, a necessary party. I state that the GCZMA passed the Order dated 25.03.2022 to demolish the structures in the said Property against this Respondent and the same is clearly recorded in the GCZMA Order. Moreover, despite this Respondent being arrayed as Respondent No. 6 in the Appeal No. 16/2022 which is amply clear from the Appeal Memo on record, this Respondent was neither served with any Notice nor had any knowledge of the Appeal proceedings, and thus, was never heard and the Order dated 21.10.2022 was passed in violation of principles of natural justice. I further state that despite the Appeal Memo Recording this Respondent as Respondent No. 6, the Order dated 21.10.2022 passed by this Hon'ble Tribunal records Respondent Nos. 1 to 5.

12.I state that this Respondent has perused the Appeal file and whereas the Affidavit Service of the Original Appellant states

that the service on this Respondent is unclaimed, but however, the endorsement of the postal authorities clearly shows that the door was locked and therefore, it is thus absolutely clear that this Respondent was never served in the matter.



13.I state that this Respondent has been directed to demolish the structures of the said property vide the GCZMA Order dated 25.03.2022, however, this Respondent was not served in the proceedings before the GCZMA and was neither heard and thus, the Order of the GCZMA directing this Respondent to demolish the structures is in complete violation of principles of natural justice. Since this Respondent is aggrieved by the GCZMA Order dated 25.03.2022 and further aggrieved by the Order dated 21.10.2022 upholding the Order dated 25.03.2022 passed by the GCZMA, this Respondent has preferred a Misc. Application seeking recall of the Order. I state that this Respondent also preferred a Review Application before the GCZMA against its Order dated 25.03.2022 which is also pending hearing and final adjudication.



14.I state and reiterate that this Respondent was not served with any notice nor was heard in any of the proceedings before this Hon'ble Tribunal in Appeal No. 16/2022 despite this Respondent being a party, i.e., Respondent No. 6. I state that the Order does not record the names of the Respondent No. 6 to 11 despite them being arrayed as parties in the Appeal Memo and thus, this Respondent has made out a fit case for recall of Order dated 21.10.2022.

15.I state that the Applicant herein, the Respondent No. 5 in the Appeal, who was the complainant before the GCZMA filed the Complaint against the heirs of Mr. Armando Cardozo, namely, a) Leticia Cardozo, (b) Jovek Cardozo (c) Maria Sunifer Cardozo (d) Maria Sweta Cardozo (e) Audrey Cardozo Fernandes (f) James Sebastiao Fernandes. That vide Order dated 25.03.2022, the GCZMA directed the above Respondents, the heirs of Armando Cardozo, to demolish the structures in the said property, and therefore, being aggrieved by the fact that the Respondent herein was not heard or even served with any Notice in Appeal No. 16/2022, this Respondent

has filed an Application seeking recall of the Order dated 21.10.2022, that has grave and civil consequences and consequently, filed an Appeal before the Hon'ble Supreme Court.



16. At the very outset, it is pertinent to state that the Respondent was shocked when she learnt of all the aforesaid proceedings, namely, the proceedings before the GCZMA and the proceedings before this Hon'ble Tribunal pertaining to demolition of structures in the property bearing Survey No. 16/7 of Village Sernbatim, South Goa, Goa. I state that it appears that some of the siblings of the Respondent had been served and appeared before the GCZMA, however, there was absolutely no service on the Respondent despite the fact that this Respondent is a co-owner of the property bearing Survey No. 16/7 of the Village Sernbatim, South Goa, and despite the fact that this Respondent was arrayed as a party in the proceedings before the GCZMA and that the Order of demolition is against this Respondent as well.

A handwritten signature in blue ink, appearing to be 'afarward'.

17.I state that it was imperative upon the Applicant and other Respondents, to serve Notice of the proceedings on this answering Respondents as there was no other way to have knowledge of the pending proceedings. I state that the Respondent is not on talking terms with any of its siblings due to family disputes amongst them. I state that had the Respondent known that there were legal proceedings pending with respect to the said property, the Respondent would have duly appointed its pleader and defended all the allegations as any adverse outcome from the proceedings would have had serious civil consequences. However, since the Respondent was not served in any of the proceedings and since nobody even informed the Respondent that such proceedings were pending against the Respondent and hence, the Respondent was unable to defend and protect its right and interest in the said property and directions have been passed by the GCZMA and this Hon'ble Tribunal without hearing the Respondent.

18.I state that on 31.01.2023, this Respondent received service vide Whatsapp 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 filed by the same Applicant. Pertinently, 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". The Respondent herein is arrayed as Respondent No. 3(d) in the Appeal No. 32/2022. I state 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.



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Annexed hereto and marked as “Exhibit B” is the Copy of the Order dated 25.01.2023 passed by this Hon’ble Tribunal in Appeal No. 32/2022.

19. I state that it was for the first time that the Respondent had received service of any dispute. I state that it was in this Order dated 25.01.2023 in Appeal No. 32/2022 that a reference was made to another Appeal No. 16/2022. I state that from perusal of the Order dated 25.01.2023 in Appeal No. 32/2022, it is clear that the Applicant herein contended that he received the address and phone numbers of this Respondent from Appeal No. 16/2022. It was only at that time that this Respondent learnt that there was another Appeal No. 16/2022 before this Hon’ble Tribunal wherein the Respondent was a party Respondent party. However, upon perusing the Order dated 21.10.2022 passed in Appeal No. 16/2022, the Respondent’s name did not feature in the Memorandum of Parties. The Respondent further learnt that the Order dated 21.10.2022 upheld the GCZMA Order dated 25.03.2022 which directed demolition of structures in the said property and thus, preferred the Misc. Application

for recall and review and upon the same being dismissed, this Respondent has preferred an Appeal before the hon'ble Supreme Court which is pending hearing.



20. I state that the Respondent had absolutely no knowledge that the said property of which she was a co-owner to and the said property wherein her father had erected structures and commenced commercial activities was on the verge of demolition due to Orders of the GCZMA and this Hon'ble Tribunal. It is pertinent to mention that the father of the Respondent had commenced commercial activities in the said Property much prior to 1991 and it was the only source of income to the family as it was the only bar and restaurant operated by the late father of the Respondent. I state that her father raised her from the income and business in the said property and hence, the Respondent has sentimental value to the structures existing in the said Property and is only praying to be heard in the matter and to keep in abeyance the execution until the Civil Appeal in the Hon'ble Supreme Court is disposed off.

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21.I state and reiterate that the Respondent was not heard nor served in the proceedings which culminated into the Order dated 21.10.2022 passed by this Hon'ble Tribunal or the GCZMA Order dated 25.03.2022 and hence, was unaware of the same and the directions contained therein, which is the subject matter of the present Execution Application. Thereafter, upon perusing the directions as contained in the Order and upon obtaining legal advice, the Respondent felt constrained to file a Misc. Application seeking recall and review of Order dated 21.10.2022 as the basic rights to be heard were violated and filed recall with urgent dispatch before this Hon'ble Tribunal.

22.I state that the Respondent has a strong case on merits and has documents and has certain findings in its favour and therefore, Order dated 21.10.2022 is passed, without affording the Respondent with any proper and due opportunity for hearing.

23. I state that the father of the Respondent, Mr. Armando Cardozo and her aunt Mrs. Bertha Fernandes had purchased a property bearing Survey No. 16/2 vide of Village Sernabatim vide a Deed of Sale dated 03.01.1977. I state that upon re-survey an Order was passed by the Mamlatdar that the property bearing Survey No. 16/2 of Village Sernabatim was corrected in the revenue entries to Survey No. 16/7 admeasuring 6450 sq. mts. and recorded the name of Shri Armand Cardozo as the owner of the said property.



24. I state that the father of the Respondent applied for NOC from Village Panchayat of Sernabatim and the Panchayat resolved to grant a NOC on 02.12.1984 to the father of the Respondent for running a bar and restaurant in Survey No. 16/7 of Village Sernabatim in Resolution No. 3(f) of the Village Panchayat. It is amply clear from the perusal of this document that the structures in Survey No. 16/7 existed prior to the year 1991.

25. I state that the father of the Respondent also obtained an Excise License dated 20.08.1986 in respect of the premises in Survey



No. 16/7 of Village Sernabatim. Therefore, it is clear that the structures existing in the Survey No. 16/7 of Village Sernabatim were much prior to the year 1991.

26.I state that this Respondent is in possession of the Application dated 06.05.1988 made by the father of this Respondent to the Village Panchayat seeking a House Number for the structures existing in Survey No. 16/7 of Village Sernabatim. The Application is supported with a survey plan which clearly depicts the structures that existed in the year 1988, which is prior to the cutoff date in 1991 and therefore, the document clearly reveals that the structures existed in survey no. 16/7 of Village Sernabatim, South Goa, Goa prior to 1991.

Annexed hereto and marked as "Exhibit- C" is the Copy of the Application dated 06.05.1988 addressed to the Sarpanch, Village Panchayat Sernabatim.

27.I further state that the above Application dated 06.05.1988 was inwards in the office of the Village Panchayat of Sernabatim on 08.05.1988 and the same is clear from the inward registry of the Village Panchayat which reflects the name of Mr. Armando

Cardozo, and thus, it is clear that the Application was inwards in the Office of Village Panchayat of Sernabatim.

Annexed hereto and marked as "Exhibit- D" is the Copy of the Inward Register of the Village Panchayat of Sernabatim.



28.I state that consequently, upon placing on record the Application along with Survey Plan for property bearing Survey No. 16/7, the Village Panchayat of Sernabatim took its resolution and decided to issue the house number to the structures in Survey No. 16/7 of Village Sernabatim to Mr. Armando Cardozo and therefore, it is clear that this document reveals that the structures existed in survey no. 16/7 prior to the cutoff date in the year 1991.

Annexed hereto and marked as "Exhibit- E" Copy of the Extract of the Resolution dated 08.05.1988 of the Village Panchayat of Sernabatim.

29.I state that these documents are relevant to address the issue framed in the Appeal No. 16/2022, i.e., whether the structures existed prior to 1991 and therefore, these documents clearly

establish that the structures existed in property bearing survey no. 16/7 much prior to 1988 and had a valid house number as well. I state that this Respondent has produced all these documents before the Hon'ble Supreme Court which is pending adjudication.



30. I state that the father of this Respondent had also paid House Tax and Trade Tax and had receipts of the same which are prior to the year 1991. It is clear from the records that the structures in Survey No. 16/7 were existing prior to the year 1991.

31. I state that the proceedings pertaining to the said property appears to have commenced vide an Order passed in MCA No. 309/2013 in WP No. 218/2012 in *Suvarn Bandekar v. State of Goa and Ors.* by the Hon'ble High Court of Bombay at Goa, wherein, the GCZMA was directed to issue necessary notices within six weeks from the date of the Order.

32. It appears that pursuant thereto, the GCZMA commenced proceedings with respect to the structures in Survey No. 16/7 in Sernabatim Village, South Goa, Goa, on the basis of a Complaint by Suvarna Bandekar in Ref No. GCZMA/SAL/SERN/12-13/01/1369. However, this Respondent, despite being arrayed as the legal heir of the late Mr. Armand Cardozo in the aforementioned proceedings, was not served with any of the Notices/Orders passed by the GCZMA and therefore, it is amply clear, the Respondent herein was not given any opportunity of hearing before the GCZMA.



33. I state that it appears from the records that an Order dated 05.12.2014 was passed by the GCZMA in Ref No. GCZMA/SAL/SERN/12-13/01/1369 whereby the GCZMA directed the demolition of all structures in Survey No. 16/7 except for the structures of the bar and restaurant as the same existed prior to the year 1991. It is imperative to state that the Order was passed without hearing the Respondent and the Respondent was not even aware of the proceedings as the Respondent was never served in the matter before the GCZMA.

34. It appears that the Order dated 05.12.2014 passed by the GCZMA was challenged by Maria Leticia Cardozo and Jovek Cardozo before this Hon'ble Tribunal (Western Bench) vide Appeal No. 43/2014 which was transferred to the National Green Tribunal Principal Bench, New Delhi, wherein it was re-numbered as Appeal No. 128/2018. That it appears that another Appeal was parallelly filed by Ms. Sunifer Cardozo and Ms. Maria Shweta Cardozo. Pertinently, the Respondent herein was not served in any of the proceedings and was neither heard nor given any opportunity to present its case.

35. I state that this Hon'ble Tribunal was pleased to dispose the Appeal vide its Order dated 20.12.2018 and remanded the matter back to the GCZMA, directing it to consider the material on record and decide.

36. Despite the matter being remanded back to the GCZMA and the Respondent being arrayed as a party in the proceedings



before GCZMA, the Respondent herein was not served with any Show Cause Notices/Orders by the GCZMA or the Complainant therein. Moreover, no private service had been effected onto the Respondent herein.

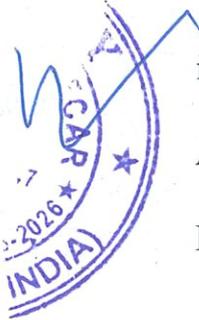


37. It is imperative to mention that the father of the Respondent expired on 07.09.2012. Therefore, when the proceedings were pending before the GCZMA, the Applicant (original complainant) before the GZCMA ought to have made the Respondent a party Respondent instead of arraying the Late Mr. Armand Cardozo through its legal heirs. Nevertheless, the Original Complainant ought to have taken steps to serve the Respondent in the proceedings before the GCZMA.

38. It appears that the GCZMA in proceedings bearing reference no. GCZMA/SA/SERNA/12-13/01/2349 vide its Order dated 25.03.2022 passed a direction to demolish all the structures existing in Survey No. 16/7 within a period of 30 days. That this Order of demolition was also not served upon the Respondent herein.

Handwritten signature in blue ink.

39. It appears that the Order dated 25.03.2022 passed by the GCZMA came to be challenged before this Hon'ble Tribunal in Appeal No. 16/2022 by two legal representatives of Mr. Armand Cardozo, i.e., Mr. Jovek Cardozo and Ms. Maria Leticia Cardozo.



40. It appears that vide Order dated 21.10.2022, this Hon'ble Tribunal dismissed the Appeal No. 16/2022 whereby it directed demolition of all the structures in Survey No. 16/7 of Sernabatim Village. I state that this Respondent despite being arrayed as Respondent No. 6 in the Appeal Memo, was neither served nor heard in the Order dated 21.10.2022. In fact, the name of this Respondent also does not feature in the final Order dated 21.10.2022 despite being Respondent No. 6 in the Appeal Memo.

41. It appears that the Impugned Order passed by this Hon'ble Tribunal was challenged by Mr. Jovek Cardozo before the

Hon'ble Supreme Court and the same came to be dismissed without any reasons vide Order dated 25.11.2022 in Civil Appeal No. 8563/2022.



42.I state that this Respondent had no knowledge of all the aforementioned proceedings either before the GCZMA, or this Hon'ble Tribunal or the Hon'ble Supreme Court and all the orders in the proceedings have been passed without affording the Respondent any opportunity of hearing despite the Respondent being a necessary party in the proceedings and despite the fact that the Orders passed therein have serious and grave civil consequences as far as this Respondent is concerned.

43.I state that the Respondent was shocked to know to of all the aforesaid proceedings upon being served in the Appeal No. 32/2022 through WhatsApp on 31.01.2023. I state and reiterate that the Respondent was not heard at the time the Order was passed or when the Order was passed by the GCZMA and hence, was unaware of the same and the directions contained

therein until perusing the same as recently as January of 2023 for the first time.



44.I state and submit that I am opposing the present Application for Execution in the peculiar fact circumstances as stated above, as this Respondent was actually and factually never heard or represented either before the GCZMA or before this Hon'ble Tribunal and therefore, the Order dated 21.10.2022 and GCZMA Order dated 25.03.2022 are passed in violation of principles of natural justice.

45.I state that this Respondent was actually and factually never served with any Notices/Orders either before the GCZMA or before this Hon'ble Tribunal with respect to the present subject matter and thus, this Respondent ought to be heard before any Order of demolition is implemented or executed by the authorities. In the event this Respondent is not heard, the same would be in complete violation principles of natural justice.

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46.I state and submit that this Respondent has a good case on merits and therefore, in view of the same, atleast an opportunity ought to be given to this Respondent, more specifically, when it entails severe civil consequences and thus, the Execution Application may be kept in abeyance until the Hon'ble Supreme Court finally decides the rights of this Respondent.



47.I state that in the event the Execution Application is allowed and the structures in the said property are demolished, the same would be in complete violation of this Respondent's fundamental right to be heard and would render the Civil Appeal in the Hon'ble Supreme Court as infructuous. On the contrary, no prejudice will be caused to the Applicant in the event the Execution Application is kept in abeyance only until the Civil Appeal is heard and hence, the balance of convenience is in favour of this Respondent.

48.I state and submit that considering the peculiar facts and circumstances of the present matter and the fact that the Respondent was actually and factually never served with

Notices/Orders either by the GCZMA or the original Complainant and even in the Appellate proceedings before this Hon'ble Tribunal, therefore, any demolition of structures existing in Survey No. 16/7 of Village Sernabatim would be in complete violation of the principles of natural justice and the Fundamental Rights of the Respondent herein. .



49. I state that the whatever has been stated in paragraph nos. 1 to 48 hereinabove is true to my knowledge and belief and also based on legal submissions which I believe to be true and correct.

Manoj Fernandes

Place: Margao
Panaji, Goa

Date: 03/08/2023

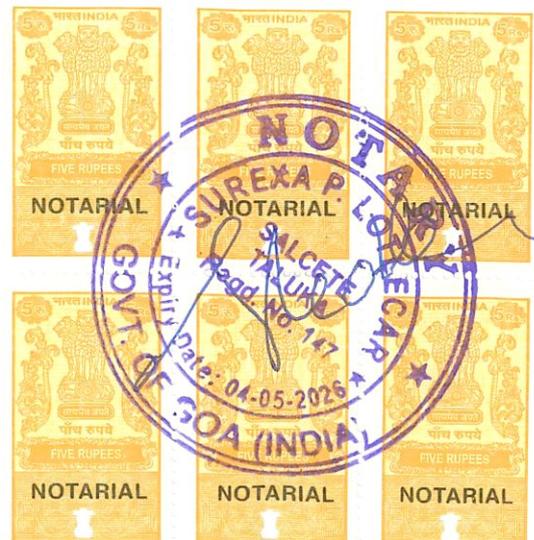
Manoj Fernandes

RESPONDENT NO. 7

Solemnly affirmed before me by
Mania Odry Fernandes
who is identified by Aadhaar
Card no 727163942494
to whom I personally know
Reg. No. 8149/2023
Date: 03/08/2023

Surexa P. Lotlecar

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



Item No.9

(Pune Bench)

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

(Through Hybrid Option)

**MISC. APPLICATION NO.06 OF 2023 (WZ)
IN
APPEAL NO.16 OF 2022 (WZ)**

Maria Odry Fernandes d/o late
Mr. Armand Cardozo

.... Applicant

Versus

GCZMA & Ors.

....Respondents

Date of Hearing : 08.05.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Mr. Dattaprasad Lawande, Advocate with Mr. Aniruddha Kulkarni and Mr. Jay Mathew, Advocates

ORDER

1. This Misc. Application is filed by Maria Odry Fernandes with following prayers:

- “(a) This Hon’ble Tribunal may be pleased to allow this Application and Recall the Order dated 21.10.2022 passed in Appeal No.16/2022 and restore the Appeal for hearing;*
- (b) Pending hearing and final disposal of this Application,, this Hon’ble Tribunal be pleased to stay the operation of the order dated 21.10.2022 passed by this Hon’ble Tribunal in AppealNo.16/2022;*
- (c) Pending hearing and final disposal, the Hon’ble Tribunal be pleased to stay the operation of the order dated 25.03.2022 passed by the Goa Coastal Zone Management Authority in GCZMA/SAL/SERNA/12-13/01/2349;*
- (d) Pending hearing and final disposal of this Application, stay the demolition of the structures in Survey No.16/7 of village Sernabatim, Colva, Goa;*
- (e) Any other appropriate reliefs that this Hon’ble Tribunal deems fit and proper in the interest of justice.”*

2. It is submitted in the application that the applicant was never served nor heard/represented either by the Goa Coastal Zone Management Authority (GCZMA), which passed order dated 25.03.2022 or in Appeal No.16/2022 which came to be rejected vide order dated 21.10.2022 whereby the order dated 25.03.2022 passed by the GCZMA was upheld by this Tribunal. Therefore, in view of the violation of the principles of natural justice, this application has been moved.

3. According to the applicant, she was a necessary party in Appeal No.16/2022 being legal heir of Mr. Armand Cardozo (owner of the property bearing Survey No.16/7 of village Sernabatim), who has sentimental value to the structures erected by her father. By virtue of the death of Mr. Armand Cardozo, the applicant became a co-owner of the property having share in the same, which is an undivided property. Even the original complainant/respondent No.5 – Suvarn Bandear failed to take any steps to serve the notice on the applicant. Therefore, she was completely caught unaware of the order passed by the GCZMA. The impugned order will have serious consequences affecting her rights in the said property. Without affording an opportunity of hearing to the applicant, the said property has been ordered to be demolished. It appears that some siblings of the applicant had been served and appeared before the GCZMA. However, there was absolutely no service on the applicant. The applicant is not on talking terms with her siblings due to family dispute amongst them. Had the applicant known that there were legal proceedings pending with respect to the property, the applicant would have appointed her pleader to defend all the allegations. The applicant received service of notice in Appeal No.32/2022 wherein an order dated 25.01.2023 passed by this Tribunal is mentioned. It is upon perusal of the order dated 25.01.2023 passed in Appeal No.32/2022 that

she first came to know that there was another Appeal bearing No.16/2022 before this Hon'ble Tribunal wherein the applicant was a party. Upon perusal of the impugned order, it was found that the applicant's name was not featuring in the memo of parties. The father of the applicant had commenced commercial activities in the said property much prior to 1991 and it was the only source of income to the family as it was only bar and restaurant operated by the father of the applicant.

4. This matter is at the admission stage as of now. We find that the order dated 25.03.2022 passed by the GCZMA, which was assailed in Appeal No.16/2022 before this Tribunal, was communicated to the applicant as is clear from the endorsement, which is being disputed by the learned counsel for the applicant that the applicant did not receive any such order. As regards the service of notice upon the applicant in Appeal No.16/2022 being considered by us, we find an order dated 02.08.2022 passed by us, which states that the service was sufficient on all the respondents as per the service affidavit filed by the appellant in that appeal and it was clarified that respondent Nos.6 to 11 were the proforma respondents as no relief was sought against them. We have again gone through the service-affidavit and find that with respect to the applicant, it was an endorsement of the registered A.D., which was sent to him, to have been unclaimed as the door was locked on two occasions i.e. 15.07.2022 and 16.07.2022 and in the light of that, the service is found to be sufficient.

5. As regards the merit of the case, the judgment which was passed by us in Appeal No.16/2022 was passed after sending notice to the applicant as well although by mistake on the part of the concerned Stenographer the names of all the respondents (i.e. respondent Nos.6 to 11) were not transcribed/typed which were in the array of the parties in the memo of appeal. However, that would not render the judgment to

have not been passed on merits against the applicant. Moreover, we find that the applicant is suffering from the order which was passed by the GCZMA. Therefore, it was open for the applicant to approach the GCZMA first if at all she had any grievance and even thereafter also if any grievance was there, she could have approached this Tribunal in appeal against that. In the present matter, the appeal has been considered by us on merits, which has been rejected vide the impugned order, which order has been upheld by the Hon'ble Supreme Court in Civil Appeal No.8563 of 2022 (Armand Cardozo (since deceased) through legal heirs & Anr. Vs. Goa Coastal Zone Management Authority & Ors.), vide order dated 25.11.2022. Therefore, we do not find any merit in the present Misc. Application. Accordingly, this Misc. Application is rejected.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

May 08, 2023
M.A. No.6/2023 (WZ)
npj

Diary No.- 29965 - 2023

MARIA ODRY FERNANDES vs. GOA COASTAL ZONE MANAGEMENT AUTHORITY

Case Details	
Diary No.	29965/2023 Filed on 27-07-2023 05:08 PM [SECTION: XVII] PENDING
Case No.	C.A. No. 004868 - / 2023 Registered on 01-08-2023 (Verified On 02-08-2023)
Tentatively case may be listed on (likely to be listed on)	11-08-2023 (Computer generated)
Petitioner(s)	1 MARIA ODRY FERNANDES S/D/W/Thru:- LATE MR. ARMAND CARDOZO S-5, KURTARKAR VIHAR, AQEM ALTO, MARGAO, SOUTH GOA, , DISTRICT: SOUTH GOA ,SOUTH GOA , GOA
Respondent(s)	1 GOA COASTAL ZONE MANAGEMENT AUTHORITY THROUGH MEMBER SECRETARY HAVING HIS OFFICE AT C/O DEPARTMENT OF SCIENCE, TECHNOLOGY ENVIRONMENT, GOVERNMENT OF GOA OPPOSITE SALIGAO SEMINARY, P. O. SALIGAO, BARDEZ , , GOA 2 COLLECTOR AND DISTRICT MAGISTRATE COLLECTOR AND DISTRICT MAGISTRATE 3RD FLOOR, MATANNA SALDANA, ADMINISTRATIVE COMPLEX, NEAR KTC BUS STAND, MARGAO , , GOA 3 DY. COLLECTOR DY. COLLECTOR 1ST FLOOR, FLOOR, MATANNA SALDANA, ADMINISTRATIVE COMPLEX, NEAR KTC BUS STAND, MARGAO , , GOA 4 SECRETARY SECRETARY VILLAGE PANCHAYAT OF SERNABATIM VELIM, COLVA AND GAUDAULIM , , GOA 5 SUVARNA BANDEKAR SWATANTRA PATH, PO BOX -11, VASCO DE GAMA , , GOA
Pet. Advocate(s)	CHARU SANGWAN
Resp. Advocate(s)	

Item No. 3

(Pune Bench)

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

(By Video Conferencing)

Appeal No. 32/2022 (WZ)

Mr. Suvarn Rajaram Bandekar

.....Appellant

Versus

State of Goa & Ors.

....Respondent(s)

Date of hearing: 25.01.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Appellant : Mr. Shailesh S. Henriques along-with Ms. Manasi Joshi,
Advocates

Respondent(s) : Mr. Dhruv Tank, Advocate for R-2/GCZMA
Mr. Parag Rao, Advocate for R-3a & 3b

ORDER

1. From the side of Appellant, learned Counsel Mr. Shailesh S. Henriques along-with Ms. Manasi Joshi has appeared.

2. Service affidavit has been filed from the side of Appellant stating that he has effected service on all the Respondents through RPAD and e-mail but the notices sent through registered post have returned in respect of Respondent Nos. 3(c), 3(d), 3(e) and 3(g) with the endorsement that "Door Locked". It is further stated there-in that email address of Respondent No. 3(c) was not available with him. During argument, the learned Counsel for the Appellant stated that since the phone number of Respondent No. 3(c) is available with him, he would obtain the e-mail address and thereafter communicate the memo of appeal along-with all the necessary documents.

3. From the side of Respondent Nos. 3a & 3b, learned Counsel Mr. Parag Rao has appeared and states that he has not been served with the complete set of documents, which were annexed with the appeal memo. Though the learned Counsel for the Appellant says that the said documents have been sent on e-mail address of the party but without getting into the verification as to whether these documents have been sent to the party or not, we direct the learned Counsel for the Appellant to serve a complete set of the entire documents to the learned Counsel for the Respondent Nos. 3a & 3b within a period of 07(seven) days and no more. Thereafter within 03(three) weeks, reply affidavit, if any, may be filed by the learned Counsel for the Respondent Nos. 3a & 3b.

4. We find that Joint Committee report has already been filed on earlier date and a copy of the same has already been uploaded on the website of NGT. Therefore, the parties who have any objection against the said report, may download the same and file objections, if any, within a period of 15(fifteen) days.

5. We also noticed that the Respondent No. 3 is shown as Late Mr. Armando Cardozo, who had already died prior to filing of this appeal, therefore, he was not supposed to be shown in the array of the parties in the appeal memo and his legal heirs are shown as Respondent Nos. 3a and 3b onwards. We direct the learned Counsel for the Appellant to move an amendment application in this regard, numbering the Respondent Nos. 3a to 3h as Respondent Nos. 3 to 10 respectively, within a period of two weeks. An amendment application shall be moved within a period of 7(seven) days and a copy of the same shall be served upon the learned Counsel for the other parties.

6. We find that none has appeared from the side of Respondent Nos. 3c to 3h, though the Appellant claims to have served notices upon them through e-mail as well as by Registered Post and is claiming that the addresses of these Respondents were taken by him to be correct because they were mentioned in earlier filed Appeal No. 16/2022(WZ), in which they were the parties. We are not sure whether these addresses are correct, therefore, we direct the learned Counsel for the Appellant to serve the memo of appeal as well as entire set of documents upon Respondent Nos. 3c to 3h Dasti, within a period of 15 days and thereafter, a fresh service affidavit be filed by Appellant within a period of 1(one) week.

7. Put up this matter on 24.03.2023 for disposal of the amendment application to be moved by the Appellant.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

January 25, 2023
Appeal No. 32/2022 (WZ)
P.Kr

EXHIBIT- C

From: Armando Cardozo,
H.No. 01,
Ambaxir Sernabatim,
Colva,
Salcete - Goa.

Date: 06/05/88

To,
The Sarpanch,
V.P. Colva, Vanelim & Sernabatim,
Gandaulim,
Salcete - Goa.

Sub : Allotment of House Number.

Sir,

I am the owner of seven cottages comprising of several rooms located in my property known as Praya, surveyed under No. 16/7 of Sernabatim Village. I am also running Xavier Bar and Restaurant in the same property in structure bearing H. No. 107/3.

I kindly request that house number be allotted to me for the said cottages as I plan to run business of Tourist cottages in the same after getting permission from the Tourism Department.

Kindly do the needful.

Thanking you.

Armando Cardozo
5/88
Village Panchayat
SERNABATIM, VANELIM
COLVA & GANDAULIM

Yours faithfully,
Armando Cardozo
(Armando Cardozo)

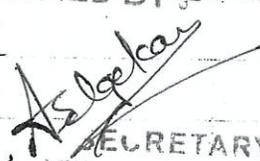
INWARD CORRESPONDENCE REGISTER



Sr. No.	Date of Receipt	Where from Received	No. of Letter	Date of Letter	File no. & where in entered	Subject Matter	Action taken on	Remark
114.	8-5-88	Lina SP.DA, Margao	SPD/A/4594/D/1162/ 3836/87-88	25.3.88		Plan of sent. Lina Sautimano, of Colva.		
115	8-5-88	Manuel Rebelo, 3rd ward, Colva	—	8-5-88		Complain.		
116.	8-5-88	Shri Armando Cardoso, H.No. 1, formation Aulhasai, Colva Salcete-Goa	/	6-5-88		Allotment of House number.		
117.	8-5-88	Global Ads. H, fourth floor, magazine Sodan, S.V. Road Panaji Goa, India	GA/NOC/189-88.	4-5-88		NOC for erecting boarding.		
118.	8-5-88	Louise Mascarenhas, "Kububatabeb" La. Manuel, Dona Paula, Goa	—	6-5-88		Reg. Complain of suit. Caetano.		
119.	9-5-88	Albano Rebelo, 4th ward, Colva, H.No. 416, Salcete	PF/OUT/118.	9-5-88		NOC for business activity.		
120.	9-5-88	Baltasar Fernandes, 1st ward, H.No. 3, Colva, Near Church, Colva, S. Goa.	—	9-5-88		Issue of R/certificate for Civil Registration		

(Jose)

Date 8-5-1988

Resolution	Remark
<p>meeting the income and expenditure relating to the month of April, 1988 and same was approved by the members present.</p>	<p>8</p>
<p>3. The plan for proposed construction of compound wall, presented by Mrs. Keera Santimarias from 4th Ward Colva was placed in the meeting for discussion and action. After details verification in the file it was decided to inspect the site for confirmation of regarding plots and access.</p>	
<p>4. An application under in ward No. 116 dated, 8-5-1988 from Mr. Armando Cardoso, s/o, Sernabatim, Ambassis pertaining to allotment of House Number, was placed in the meeting for discussion and action. After detailed discussion members agreed to issue house number to his structure and same should be accessed in the Panchayat records.</p>	<p>CERTIFIED BY:  SECRETARY Village Panchayat SERNABATIM, VANELIN COLVA & GANDAULIM</p>
<p>(b) An application under in ward No. 112, dated 7-5-88 from Mr. Francisco Cardozo, s/o 4th Ward Colva pertaining to issue of house number to his wooden structures in front of Hotel Silver Sand, 4th Ward Colva, was placed in the meeting for detailed discussion and action. After discussion, members</p>	