

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH PUNE

O.ANO. 08/2024(WZ)

Johnny Fernandes &Anr

.....APPLICANTS

VS.

GCZMA & Anr.

..... RESPONDENTS

AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT NO. 1

I, Mr.Johnson Bedy Fernandes adult, having my office at 4th floor, Dempo Towers building, Patto, Goa, do hereby solemnly affirm and state as under:

1. I say that I am the Member Secretary of the Goa Coastal Zone Management Authority, i.e. Respondent No.1, and am authorised to affirm the present reply affidavit on its behalf. I have examined the relevant records available in my office in respect of the and am affirming the present Reply Affidavit based on the same. Nothing in the present Reply Affidavit may be deemed to be an admission of any of the contents of the memorandum of the above-captioned Application. Nothing in the memorandum of the above-captioned Appeal may be deemed to have been admitted for mere want of specific denial.

2. I say that the Applicant has filed the present O.A inter alia challenging the CZMP 2011 which is already notified based on approval conveyed by the Respondent No. 2 MOEF & CC vide letter dated 06/09/2022. I say that the Hon'ble Supreme Court had passed order on 7/11/2022 in Civil Appeal bearing no.7310/2022 at which point of time the so called alleged lacuna could have been raised by the Applicants. I say that filing of the present Original Application is an attempt to frustrate the rule of law.
3. I say that the present Application filed by the Applicant ought to be outrightly dismissed as it is an abuse of the process of law whereby the Principle of Merger gets attracted and on account of the fact that decision taken by the Authority has already gained finality before the Hon'ble Supreme Court.
4. I say that the Applicants are asking the present Respondent to take into consideration the provisions of the CRZ Notification 2019 which says that mangroves in private land will not require a buffer zone, and in that regards the buffers if any in respect of mangroves on the draft CZMP should be done away with . I say that the Applicants have come before this Hon'ble Tribunal with unclean hands as the property in question bearing Survey No. 275/1-A , 275/1-B and 275/1-C are all properties governed under Goa Agriculture Tenancy Act within which no commercial activity or no such structure can be allowed to be constructed as this land is



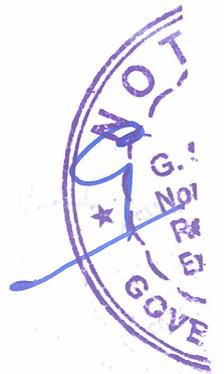
necessarily to be used only for agricultural purpose. I say that the Applicants have conveniently used this land for construction of various structures and that too in the buffer zone of the mangroves which were ordered to be demolished with the exception to their mundkarial house . Hereto annexed and marked **Annexure “ A”** is the Direction passed by the present Respondent dated 07/03/2022 which is also annexed as Annexure “ C “ to the Original Application . I say that the present Respondent has arrived at the decision details of which are mentioned in the said Direction dated 07/03/2022 that all the new structures shown by DSLR on survey plan after site inspection in survey nos. 275/1-A , 275/1-B and 275/1-C , 274/1 and 274/2 of village Morambi-O-Grande, Tiswadi, all are illegal /unauthorised structures except mundkarial dwelling house of the Applicants admeasuring an area of 134 sqmtrs and all that illegal/unauthorised structures need to be demolished as same falls in mangroves area and within 50 mtrs of mangroves buffer zone. I say that the present Respondent had concluded that the Applicants have undertaken large scale illegal construction/extensions without any valid approvals or the permissions from Appropriate Government Departments.

5. I say that its an admitted fact that Demolition Order dated 07/03/2022 was unsuccessfully challenged by the Applicants in this Hon’ble Tribunal in Appeal No. 15/2022 and before the Hon’ble Supreme Court in Civil Appeal No. 7310/2022 .I



say that both the Appeals were dismissed vide orders dated 06/09/2022 and 7/11/2022. I say that both Orders are annexed as **Annexure B Colly** to the present Original Application.

6. I say that this Respondent has furnished all the information to the Applicant. I say that application dated 04/05/2023 filed by the Applicant seeking recall was placed for discussion / deliberation and necessary action in the 382nd GCZMA meeting held on 29/01/2024 wherein this Authority has decided to reject the said application. Hereto annexed and marked **Annexure "C"** is copy of the extract of 382nd GCZMA meeting held on 29/01/2024.
7. I say that in the run up to prepare the CZMP 2011 and in accordance with CRZ Notification 2011 the Department of Environment & CC, Goa had received objections of varied nature which were duly compiled and segregated as against which comments were sought from various collateral departments which were duly assessed by the NCSCM, Chennai who has thereafter taken help of the satellite imageries from Geo Spatial Centre, Hyderabad and thereafter scientifically mapped the same on the CZMP 2011.
8. I say that the Department of Environment & CC, Goa had received approximately 3493 objections/suggestions from North Goa District and 4016 objections/suggestions from South Goa during the course of public hearing in respect of



Draft CZMP 2011. I say that the Answering Respondent upon receiving the summary of said objections/suggestions placed the facts before the Authority who thereafter passed the decision seeking for comments from referral department. Hereto annexed and marked **Annexure "D"** is copy of the extract of 265th GCZMA meeting held on 15/07/2021.

9. The NCSCM has clearly mentioned that the satellite imagery was the base on which the CZMP 2011 was prepared.

10. I say that the present Respondent cannot take into consideration any provision of CRZ Notification 2019 unless CZMP 2019 is prepared and finally notified and hence the present Respondent taking into consideration the provision of CRZ Notification 2019 to decide upon the matter governed by CRZ Notification 2011 does not arise.

11. I say that the Principle of Merger being duly applicable in the case in hand, the question of recalling any order by this Authority does not arise as no such provision vests at present with Respondent Authority. Therefore the question of issuing any notices for recall of orders/directions does not arise.

12. I say that the Department of Environment & CC has duly followed the mandate contained in the CRZ Notification for the purpose of preparing CZMP 2011 and hence any challenge made belatedly by the Applicants should not be considered by this Hon'ble Tribunal specifically so after 16 months from the date of final Notification of CZMP 2011. I submit that various reports sought to be relied by the



Applicants were already part and parcel of the scientific records which has been carefully examined by NCSCM and only then prepared the CZMP 2011.

In view of the above, it is most humbly submitted that the Application may be dealt with appropriately with the above information .

[Handwritten Signature]
Deponent

VERIFICATION

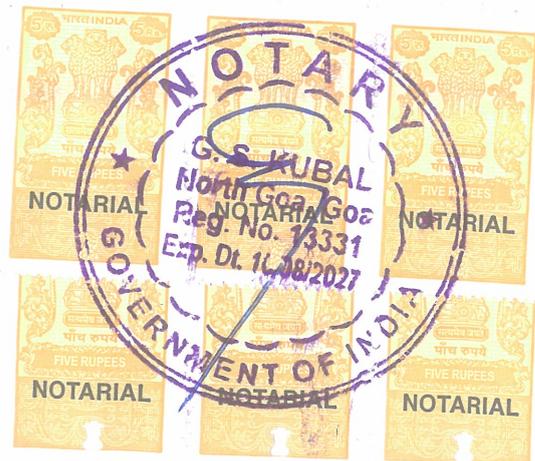
I, the deponent above-named do solemnly affirm that all that is stated in this Affidavit is True to the best of my knowledge and belief, which is based on the records available in respect of the issue involved in the above-captioned Original Application. Nothing false has been stated herein.

Solemnly affirmed this
11th day of March 2024

[Handwritten Signature]
Deponent

Solemnly affirmed before me by
[Handwritten Signature]
.....
.....
Reg. No.: 06/1651 Date: 11-3-24
known / Identified to me by.

[Handwritten Signature]
G. S. KUBAL
Notary (Govt. of India)
Panaji-Goa, India



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/16-17/07/2188 Date: 07/03/2022

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

Sub: Directions to demolish illegal unauthorized construction in the property bearing Sy. Nos., 275/1, 275/1-A, 257/1-B and 275/1-C, 274/1 and 274/2 of village Morambi-O-Grande, Tiswadi.

Ref. :-

- (1) Complaint letter dated 29/03/2016 from village Panchayat of Mercedes.
- (2) Complaint letter dated 06/04/2016 from Mr. Jose Oliveira & residents of Kumbharwada, vaddy, Mercedes, Goa. (
- 3) Complaint letter dated 24/05/2016 from Mr. Umesh Kudnekar & residents of Kumbharwada vaddy, Mercedes, Goa. (
- 4) Complaint letter dated 18/04/2017 from Sudesh Kalangutkar, Presidents of Mercedes Welfare Association.
- (5) Notice of Personal Hearing dated 23/07/2018.

WHEREAS, the Office of the GCZMA received four complaints, as referred at Sr. No (1) to (4) above against Mr. Johny Fernandes and Mr. Shane Fernandes regarding alleged illegal development of plots in property bearing Sy. Nos. 275/1, 1-B and 1-C; illegal development, illegal conversion of land, filling of mud and construction of houses and also cutting of mangroves, illegal transfer, filling and selling of agricultural tenanted land in property bearing Sy. Nos., 275/1, 275/1-A, 257/1-B and 275/1-C, 274/1 and 274/2 of village Morambi-O-Grande, Tiswadi.

AND WHEREAS, in terms of resolution of GCZMA in its 179th meeting held on 19/07/2018, the authority decided to call the parties for personal hearing on 31/07/2018 in terms of principles of natural justice vide letter no. GCZMA/ N/ILLE-COMPL/16-17/07/664 dated 23/07/2018.

AND WHEREAS, the said matter was placed before the Authority in its 180th GCZMA meeting held on 31/07/2018, for personal hearing, and you were found absent for the said hearing. In the 180th meeting GCZMA meeting held on 31/07/2018, the Authority decided to grant final opportunity to respondent.

The matter was placed in the 181st GCZMA meeting held on 14/08/2018 for personal hearing the proceeding in the said matter can be seen as under "The complainants' along with the representative from the village panchayat of Morambi-o-Grade remain present. The respondent Mr. Johny Fernandes and Mr. Shane Fernandes were also present. The Advocate on behalf of village panchayat submitted that there is no permission issued by village panchayat for said constructions. The respondent sought time before Authority to file submission to the Authority.

In the 181st GCZMA meeting held on 14/08/2018 it was decided as follow " The Authority after hearing both parties and considering written and oral submission Authority directed respondents to file their submission if any before Authority before 28/08/2018 with a copy of same to the respondent.

The matter was placed in the 183rd GCZMA meeting held on 31/08/2018 for discussion and deliberation and taking final decision in the matter. In the 183rd GCZMA meeting held on 31/08/2018 it was decided as follow ' Authority took note of all submission made by both parties. The inspection report has clearly established the fact that there is land reclamation and destruction of mangroves done by the respondent within NDZ of chimbel creek, further it is also established that construction of poultry, slaughter house, chawl etc in sy. Nos. 275/1, 275/1-A, and 275/1-C are within NDZ area. The respondent have not got any prior permission from GCZMA for any of said work. As it is no construction activity apart from those permitted as per CRZ notification 2011 can be carried out in NDZ area. The documents submitted by the respondent are permission from village of panchayat Mercedes who is not competent authority to grant such permission in the CRZ area. Authority also took note of the prayer made by complainants to ascertain the area of reclamation done by the respondent through a survey by DSLR. Therefore Authority decided to issue demolition order for all structures present in survey No. 275/1, 275/A and 275/1 C of Mercedes village Morambi-o-Grande with direction to restore the land in its original position. It is further resolved to direct DSLR to conduct survey to ascertain extend of land reclamation done by respondent based on which further directions for restoration of land reclaimed shall be issued.



The said demolition order dated 20/09/2018 was challenged by respondent before the Hon'ble High Court of Bombay at Goa vide Writ Petition bearing no. 1088/2018.

The Hon'ble High Court of Bombay at Goa after hearing the matter passed an order dated 27/02/2019 wherein it has observed as follows:

- (i) *The petition is partly allowed.*
- (ii) *The impugned order is hereby set aside.*
- (iii) *The petitioner shall file a reply along with documents, if any before the second respondent within two weeks from today.*
- (iv) *The second respondent shall then proceed to decide the matter on its own merits and in accordance with law after granting an opportunity of personal hearing to the petitioner as well as the respondent nos.6 and 7.*
- (v) *The second respondent in its discretion can decide to grant personal hearing to respondent no.5 also, if found necessary.*
- (vi) *The second respondent shall decide the matter as expeditiously as possible and preferably within a period of four weeks from the receipt of the reply."*

The respondent has filed reply dated 12/03/2019 to the office of GCZMA.

The matter placed in 196th GCZMA meeting held on 16/04/2019, Advocate S. Naik remained present on behalf of the complainant Mr. Jose Oliveira, Avertino Miranda remained present on behalf of Umesh khandolkar, Adv A.P. Mandrekar remained present on behalf of respondent. The complainant stated that the nature of violation can be seen progressively with the help of Google images from 2003 onwards and after CRZ notification. There has been rampant illegal construction in the said area. The complainant relied on site inspection reports from Expert Members (GCZMA) and Goa State Pollution Control Board. Complainant submitted aerial pictures depicting said illegal construction. The respondent inter alia stated that the site inspection report by the Expert member is not supported by any sketch/map hence it is not a valid. The distance from the creek and construction is not known. Also there exists a sluice gate. The respondent is tenant and declared as mundkars. The property is agriculture and not influenced by any tidal effect.

In 196th GCZMA meeting held on 16/04/2019 decided as follow " The authority heard parties at length. The authority noted that the site in question has been inspected by the Expert Members of the GCZMA. The Expert Members of GCZMA has identified the said property as property lying along banks of tidally influenced back water of Mandovi river and having lush mangroves. The authority noted that it is the case of the respondent that they are agricultural tenants and mundkars of the said property and the structures in Syno.275/1, 275/2-A, 275/1-B,275/1-C,274/1, village Morombi protected under Mundkar Act and Agricultural Tenancy Act. Further the case of the respondent is that Chimbel creek actually falls more than 200 mts from the property and hence the property is beyond CRZ area. It is the case of the respondent that there is no map on record to identify the No Development Zone (NDZ).

It is the case of the complainant that the report of the expert member of GCZMA is clear and set out the violations done by the respondent. It is the case of the complainant that the illegal filling and construction is evident from Google images and structures built by respondent cannot be considered as prior to 1991.

Considering the case of the respondents and complaints, the authority observed that in the present matter admittedly there is no specific map depicting the High Tide line (H.T.L) and No Development Zone (NDZ) line. The authority noted that there are lush green and thick mangroves identified at site by the Expert Members.

The Authority is of the opinion that the present location of H.T.L and corresponding 100 mtrs NDZ line and Ecologically Sensitive area (ESA) if any are required to be ascertained. Presently the Ministry of Environment Forest and Climate Change (MOEF & CC) has entrusted and notified the National Centre for Sustainable Coastal Management NCSCM (Chennai) as sole agency responsible for identification & demarcation of high tide line (H.T.L). Considering the contentions of the complainant, respondents, report submitted by Expert Members of GCZMA the authority resolved to direct the respondent to demarcate the CRZ line and Ecologically Sensitive area (ESA) if any through the NCSCM (Chennai) at his own costs and submit the same before this authority.

The respondent is directed to carry out said exercise of demarcation of CRZ line and Ecologically Sensitive area (ESA) if any in all the survey numbers owned by him from the NCSCM (Chennai) within 4 weeks of receipt of the order from authority. Based on demarcation of CRZ line and Ecologically Sensitive area (ESA) if any in the plot of the respondent, a final decision in the matter would be taken. In the mean time, the respondents are directed to maintain status quo in the property own by him.

WHEREAS as upon inquiry direction were issued by the Authority on 27/11/2019 calling upon respondent herein Shri. Johny Fernandes & Shri. Shane Fernandes to demarcate the HTL & ESA in survey numbers owned by them through NCSCM at their own cost within 4 weeks of receipt of the Authority direction.

AND WHEREAS despite of said direction this Authority in receipt of complaint that said Shri. Johny Fernandes & Shri. Shane Fernandes continuing with their illegal construction activities and they also even failed to place report from the agency as directed to demarcate the HTL & ESA in survey numbers owned by them

AND WHEREAS in view of that Authority decided to carry out the exercise of ground truthing and mapping through DSLR in properties survey No. 274/1, 275/1-A, 275/1-B and 275/C of village morambi-O-Grande, Tiswadi and to superimpose all the structures with measurements on sy plan and show all the old and new structure, ongoing construction work in survey No. 274/1, 275/1-A, 275/1-B and 275/C of village morambi-O-Grande, Tiswadi.

AND WHEREAS as directed by Authority DSLR conducted site inspection on 10/02/2021 and prepared plan whereby superimposed all structures on survey plan of survey No. 274/1, 275/1-A, 275/1-B and 275/C of village morambi-O-Grande, Tiswadi and shown which are new structures erected and which are old structure recorded on survey plan.

AND WHEREAS matter placed before Authority in its 286th meeting held on 25/01/2022, Advocate from both complainant and respondent present complainant

Avertino present in person complainants and respondents both in receipt of plan submitted by DSLR and Authority heard the both side argument matter posted for order.

AND WHEREAS, the matter was placed in the 289th GCZMA meeting held on 08/02/2022, the Authority decided that, *"The Authority after hearing both the parties and after taking into consideration the written reply along with documents and oral arguments of both the parties. Authority decided to pass the following Order.*

That is case of complainant that Mr. Johny Fernandes and Mr. Shane Fernandes regarding alleged illegal development of plots in property bearing Sy. Nos. 275/1, 1-B and 1-C; illegal development, illegal conversion of land, filling of mud and construction of houses and also cutting of mangroves ,illegal transfer, filling and selling of agricultural tenanted land in property bearing Sy. Nos., 275/1,275/1-A , 257/1-B and 275/1-C, 274/1 and 274/2 of village Morambi-O-Grande, Tiswadi.

That it is case of respondents that land in dispute is agriculture land was cultivated by shri. Mario Fernandes @ Maruti kalal late father of respondents as tenant of said property surveyed under survey No. 275/1 of village Morambi-O-Grande and also build his residential house therein. That said shri. Mario Fernandes @ Maruti kalal late father of respondents declared as tenant of said property surveyed under survey No. 275/1 of village Morambi-O-Grande by judgment and order dated 12/04/2006 passed by Mamlatdar in case No. MAM/TNC/DECL/Merces/01/2006, Respondent also claimed that their late father was also declared as Mundkar of dwelling house existing survey No. 275/1 of village Morambi-O-Grande vide order dated 17/10/2006 passed by Mamlatdar in case No.MAM/8-A/MERCES/10/2006. The respondents late Father purchased Mundkarial plot along with dwelling house therein, having total admeasuring an area of 440 sq.mts out of which dwelling house having total admeasuring an area of 131 sq.mts.

That respondents late father applied for partition the said property surveyed under survey No. 275/1 of village Morambi-O-Grande and said partition was allowed by concerned Deputy collector and said property sub divided into plots and new survey numbers has been allotted to said property i.e. survey no. 275/1-A,275/B and Survey no.275/1-C. that after death of their late father the present respondents are in possession of aforesaid property.

That respondents denied every statement and submission made in the complaint, it is case of respondents that land is in question is beyond 200 mts from bank of creek(chimbel) and was never covered nor part of mangroves, hence does not attract the CRZ Regulations.

Authority on due deliberation and perusal of documents,reply placed on record noted that respondent nowhere denied the existing of structures in Sy. Nos., 275/1, 275/1-A, 257/1-B and 275/1-C, 274/1 and 274/2 of village Morambi-O-Grande, Tiswadi. Which are also been marked by DSLR and same has been shown/superimposed on survey plan,in its site inspection by doing ground truthing. The said structure also noted

and observed by the expert member of Authority in its site inspection carried out as per direction of Authority, it is also observed by the Expert member that property in question is situated adjoining to a Mangroves habitat which indicate tidal influence and hence the attract CRZ provisions.

It is evident from DSLR and Expert member report that there exist structures in Sy. Nos. 275/1, 275/1-A, 257/1-B and 275/1-C, 274/1 and 274/2 of village Morambi-O-Grande, Tiswadi, that as far as legality of these structures are concerned respondents have not produced any such documents before the Authority, the respondents only defended that said structures does not falls under CRZ jurisdictions. The Authority directed respondents to carry out said exercise of demarcation of CRZ line and Ecologically Sensitive area (ESA) if any in all the survey numbers owned by him from the NCSCM (Chennai) within 4 weeks in order to ascertain the jurisdictions of Authority, the respondents failed to place report from the agency as directed to demarcate the HTL & ESA in survey numbers owned by them.

The Authority directed DSLR to conduct site inspection and superimposed all structures on survey plan in order to ascertain new and old structures erected in properties Sy. Nos., 275/1, 275/1-A, 257/1-B and 275/1-C, 274/1 and 274/2 of village Morambi-O-Grande, Tiswadi accordingly DSLR carried out the site inspection on 10/02/2021 and showed factual position of land and demarcated new structures on survey plan and same been place before Authority.

That since scope of this Authority is very narrow, that respondents has not produced any documents which can prove that said new structures were constructed prior to 1991 and so also not produced any prior permission obtain by respondents for construction of said new structures reflecting on site plan prepared by DSLR, from there it very much clear that said all new structures are existing in Sy. Nos., 275/1, 275/1-A, 257/1-B and 275/1-C, 274/1 and 274/2 of village Morambi-O-Grande, Tiswadi are illegal/unauthorized.

And as far as jurisdiction of this Authority is concerned, Authority has superimposed the said DSLR plan on Draft CZMP 2011 and it concluded that said structures totally falls within Mangroves and 50 mts Mangroves buffer which attract the CRZ provision and in view of aforesaid said property entirely falls in CRZ hence this Authority have full jurisdiction over the said properties Sy. Nos., 275/1, 275/1-A, 257/1-B and 275/1-C, 274/1 and 274/2 of village Morambi-O-Grande, Tiswadi.

Authority took note of Landmark judgment and order passed by hobbles High Court of Bombay in PIL 87/2006 in "Bombay Environmental Action Group and another v/s The State of Maharashtra and others" for protection of mangroves area

The Authority also noted judgment and order passed by NGT principle Bench New Delhi in "Kachchh Camel Breeder Association v/s Union of India" original application No.111/2018, which speak of protection of mangroves areas.

AND WHEREAS in view of above Authority arrived at decision that all new structures shown by DSLR on survey plan after site inspection in Sy. Nos., 275/1, 275/1-A, 257/1-B and 275/1-C, 274/1 and 274/2 of village Morambi-O-Grande, Tiswadi, all are illegal/unauthorized structures, except Mundkarial dwelling house of respondent having ad-measuring an area of 134 sq.mts and all that illegal/unauthorized structures need to be demolished as same falls in mangroves and within 50 mts mangroves buffer.

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In view of the above observations, the Authority has now come to the conclusion that the Respondents have undertaken large scale illegal construction /extensions without any valid approvals or permission from the Appropriate Government Departments existing in property bearing Survey Nos. Sy. Nos., 275/1, 275/1-A, 257/1-B and 275/1-C, 274/1 and 274/2 of village Morambi-O-Grande, Tiswadi.

The Respondents has miserably failed to produce the requisite documents including the Conversion Sand, the Construction License, the Approved Plan, permission from GCZMA and Town and Country Planning Department, License from the Village Panchayat

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 power vested with the GCZMA vide Order S.O. 3975 (E) dated 31/10/2019 issued by the Ministry of Environment & Forests, Government of India, hereby directs Mr. Johny Fernandes and Mr. Shane Fernandes to demolish all new structures shown by DSLR on survey plan in Sy. Nos., 275/1, 275/1-A, 257/1-B and 275/1-C, 274/1 and 274/2 of village Morambi-O-Grande, Tiswadi except **Mundkarial dwelling house of respondent** having admeasuring an area of **134 sq.mts** presently existing in survey No.275/1-C of village Morambi of Tiswadi Taluka and are hereby directed to restore the land to its original condition, within 30 days from the date of receipt of this order, failing which the concerned Deputy Collector/ S.D.O shall demolish all the structures to enable restoration of land to its original state within 15 days and recover the expenses incurred on demolition from Mr. Johny Fernandes and Mr. Shane Fernandes as the arrears of land revenue. Further, Dy. Collector & S.D.O of Bardez is required to submit a compliance report in respect of aforesaid directions to the GCZMA within 10 days upon expiry of the aforementioned 30 days time period. The proceedings are disposed off accordingly.


10/11/2022

(Dasharath M. Redkar)

Member Secretary (GCZMA)

olc

To,

1. *Johny Fernandes resident of behind Shantaban Housing Complex, Kumbharwada, Vaddy, Mercas, Goa.*

2. *Shane Fernandes both resident of behind Shantaban Housing Complex, Kumbharwada, Vaddy, Mercas, Goa.*

Copy to,

1. *The Sarpanch/Secretary, village Panchayat of Mercas, Mercas, Tiswadi, Goa.*

2. *Mr. Jose Oliveira, representative on behalf of residents of Kumbharwada, r/o H. No. 232., Firguem bhat, vaddy, Mercas-Goa.*

3. *Sudesh Kalangutkar, (President, Mercas Manch welfare Association, Near Mercas, Club, Mercas, Goa.*

4. *Mr. Umesh Kudnekar & residents of Kumbharwada vaddy, Mercas, Goa*

5. *The Collector & District Magistrate,(North), Office of the Collector (North), Collectorate building opp. Municipal Gardern panaji-Goa.... for executing the order and ensure compliance of the order.*

6. *The Deputy Collector & S.D.O of Tiswadi, Panaji-Goa ... to assist the Collector for executing the order and compliance.*

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

(By Video Conferencing)

**Appeal No. 15/2022 (WZ)
I.A. No. 45/2022(WZ)**

IN THE MATTER OF:

1. **JOHNNY FERNANDES**
S/o Mario Fernandes, Indian National,
35 years of age,
R/o H.No. 246, Behind Shantaban
Housing Complex, Kumbharwada,
Vady, Mercedes Tiswadi — Goa 403006

2. **SHAINE FERNANDES**
s/o Mario Fernandes, Indian National,
34 years of age,
R/o H.No. 246, Behind Shantaban
Housing Complex, Kumbharwada,
Vady, Mercedes Tiswadi — Goa 403006

.....Appellant(s)

Versus

1. **GOA COASTALZONE MANAGEMENT AUTHORITY,**
Department of Science, Technology
and Environment (Govt. of Goa)
through the Member Secretary
Office at 4th Floor, Dempo Towers, Patto,
Panaji — Goa 403001

2. **VILLAGE PANCHAYAT OF MERCES**
Through the VP Secretary
Office at Mercedes,
Tiswadi — Goa 403006

3. **JOSE OLIVERIA,**
R/o H No. 232, Firguem Bhat,
Vaddy, Mercedes-Goa 40-3006

4. **SUDESH KALANGUTKAR**
C/o Mereces Manch Welfare
Association, Near Mercedes Club
Merces, Tiswadi Goa-403006

5. **UMESH KUDNEKAR**
R/o Kumbharwada, Vaddy
Merces, Tiswadi-Goa 403006

.....Respondent(s)

Counsel for Appellant(s):

Mr. Shivan Desai and Mr. S.S. Swaminathan, Advocates

Counsel for Respondent(s):

Mr. Annelise Fernades, Advocate for R-2
Ms. Caroline Collasso, Advocate for R-3
Mr. Abhijeet Prabhudesai, Advocate for R-4

PRESENT:

Hon'ble Mr. Justice Dinesh Kumar Singh (Judicial Member)
Hon'ble Dr. Vijay Kulkarni (Expert Member)

Judgment Reserved on: 26.08.2022
Pronounced on: 06.09.2022

JUDGMENT

1. The present Appeal has been filed by the Appellant under Section 16(g) of the National Green Tribunal Act, 2010 against the order dated 07.03.2022 passed by Member Secretary of Respondent No.1-Goa Coastal Zone Management Authority (GCZMA) directing the Appellants to demolish all the structures shown by the DSLR on survey plan in Survey Nos. 275/1, 275/1-A, 257/1-B, 275/1-C, 274/1 and 274/2 of village Morombi-O-Grande, Tiswadi — Goa, except Mundkarial dwelling House of Respondent admeasuring an area of 134 sq. mtrs., presently existing in Survey No.275/1-C in the said place and restore the land to its original condition within 30 days.

2. The facts in brief of this Appeal are as follow:-

- (i) That the Appellant No.1 is the owner and in possession of agricultural land bearing Survey No. 275/1-A of village Morombi-O-Grande, Tiswadi – Goa and the Appellant No. 2 is the owner and in possession of agricultural land bearing Survey No. 275/1-B of the same village. Both are co-owners

and in possession of Mundkarial House bearing No. 246 along with surrounding area bearing Survey No. 275/1-C of the said village. These properties are agricultural lands/paddy fields which were originally surveyed under Survey No.275/1of the said village where a dwelling house bearing house no. 246 exists. The grandfather of the Appellants was cultivating the said properties for many years and was residing in the said dwelling house since, 1960. After his demise, the Appellants continued to cultivate the said properties and continued to reside in the said house. Therefore, the said land came to be governed under the Goa Agricultural Tenancy Act, 1964 and the dwelling house came to be protected under Goa Mundkar (Protection from Eviction) Act, 1975.

- (ii) Somewhere around 1980s, the father of the Appellants constructed two (2) additional structures for the purpose of storage of agricultural produce and implements and the said structures came to be registered in the name of the Bhatkar of the property since the father of the Appellant was not formally declared as a tenant. On 17.12.1996, the Panchayat issued no objection certificate (NOC) for starting a poultry farm in the said structures.
- (iii) Vide Judgment/Order dated 12.04.2006 passed by the Mamlatdar of Tiswadi, the father of the Appellants was declared an 'Agricultural Tenant' of the said properties for the purpose of inheriting the rights from late Maloji Kalal i.e. the grandfather of the Appellants. Pursuant to the said declaration, the father of the Appellants sought to purchase the said properties, an application for which was allowed vide judgment/order dated 20.07.2006 by the Mamlatdar.

- (iv) It is further submitted that since the land admeasuring 435 sq.mtrs. was acquired by the Government for water pipeline and another piece of land admeasuring 440 sq. mtrs. was governed under the Mundkarial Laws, the father of the Appellants sought correction of the areas mentioned in the purchase certificate. Pursuant to which, Corrigendum dated 04.01.2007 was issued, rectifying the mistake and issuing fresh Certificate of Purchase.
- (v) Vide Judgment/Order dated 17.10.2006, the Mamlatdar of Tiswadi declared the father of the Appellants to be 'Mundkar' of the dwelling house bearing no. 246. In pursuance of the said declaration, the father of the Appellants sought to purchase the said Mundkarial House along with the surrounding area.
- (vi) Vide Judgment /Order dated 21.02.2007, the Application for purchase was allowed by the Mamlatdar. During the purchase of the house along with surrounding area admeasuring 440 sq.mtrs, a survey was conducted by Mamlatdar and a plan was prepared which clearly shows the existence of the structures bearing House Nos. 257/1 and 246/1 in addition to the Mundkarial House bearing house No. 246. Thereafter, said property was partitioned and came to be re-surveyed under Survey Nos. 275/1-A, 275/1-B and 275/1-C.
- (vii) Thereafter, in the year 2018, pursuant to a complaint made by Respondent Nos. 2 to 5, the Appellant received a personal hearing notice from the Authority/Respondent No.1 on 14.08.2018 and time was sought by the Appellant to file reply and the

matter was fixed for hearing on 28.08.2018. On the said date, the meeting of GCZMA was cancelled and thereafter, the Appellants were shocked to receive the demolition order dated 20.09.2018 issued on the basis of decision taken by Respondent No.1 on 31.08.2018. The entire exercise adopted by Respondent No. 1 is without giving any effective hearing to the Appellants, hence, it is in violation of Principles of 'Natural Justice'.

(viii) Aggrieved by the said order, the Appellants approached the Hon'ble High Court by filing Writ Petition No. 1088/2018, wherein vide order dated 27.02.2019, the High Court partly allowed the petition and set aside the demolition order dated 20.09.2018 while permitting the Appellants to file reply and a direction was given to the Respondent No. 1 to consider the same and decide the matter. In pursuance to that, a reply was filed by the Appellants on 12.03.2019 disputing the jurisdiction of the Respondent No. 1 and placed on record the documents which established that the properties were agricultural fields and which did not fall in any way within the purview of CRZ Notification and that the Appellants were in possession of the said properties since the 1960s. Hence, they were to be governed by the Goa Agricultural Tenancy Act and Goa Mundkar Protection Act.

(ix) Further it is submitted that Respondent No.1 directed the Appellants to get a survey carried out through NCSCM at their own cost which was beyond the scope and power of Respondent No.1 and *de hors* the law.

The cost of the survey was estimated to be Rs. 3 lakh and hence, beyond the capacity of the Appellants to bear it. Therefore, Appellants did not carry out the said survey. Since the said order was not passed under Section 5 of the Environment (Protection) Act, 1986, the Appellant did not deem it necessary to challenge the same.

- (x) Thereafter, the Respondent No.1 issued notice on 12.03.2020 for site inspection, to be conducted on 13.03.2020. The Expert Member unilaterally concluded that the site in question was adjoining mangrove habitat and hence, it attracted provisions of CRZ Notification. The said Expert Member did not take into consideration the larger property, of which the said properties formed a part, which was agricultural field and was not subject to CRZ provisions.
- (xi) Thereafter, the Respondent issued another Notice on 11.06.2020 for site inspection and ground truthing to which vide reply dated 15.06.2020, the Appellants raised objections, disputing the jurisdiction and non-compliance of the procedure by the Respondent No. 1.
- (xii) Further, it is submitted that the Appellants raised objections to the draft Coastal Zone Management Plan (CZMP) vide letter dated 05.03.2021 stating that the said properties and the surrounding areas were agricultural lands which were more than 200 mts away from the water body and that due to dysfunctional sluice gate, there was ingress of water in some portions of the surrounding areas which led to

the growth of mangroves and it had happened only after year 2010.

(xiii) Further it was stated that the said properties were not in the list of properties mentioned as CRZ/ESA as per the 1996 CZMP, hence, the same were beyond the purview of CRZ Notifications.

(xiv) Further, it is submitted that vide letter dated 08.10.2021 issued by the Panchayat of Merces, Appellants were informed about the site inspection and ground truthing to be conducted on 09.10.2021, in pursuance of the directions of Respondent No. 1 but the same has not been conducted specifically for the purpose of determining the validity and applicability of the draft CZMP which has caused prejudice to the Appellants. The Respondent No.1 has placed excessive reliance on draft CZMP which does not have any legal sanctity, in absence of any loco- demarcation of mangroves habitats or its buffer zone. The exercise of jurisdiction by Respondent No.1 is a material of irregularity and the draft CZMP, till date has not been finalized. Hence, they cannot be made basis to issue direction under Section 5 of the Environment (Protection) Act, 1986. The impugned order is passed on complete misconception of the CRZ Notification. Hence, the Appeal should be allowed.

3. The stand taken by Respondent No.1-GCZMA in its Affidavit dated 19.07.2022 is as follows:-

- (I) That the area is ecologically sensitive and hence the Appellants have acted in an imprudent and reckless manner to construct a dwelling house and two additional structures for storing agricultural produce and implements on the afore-mentioned land.
- (II) The Appellants failed to appear in personal hearing on 31.07.2018. Therefore, final opportunity was given to the Appellants to appear on 14.08.2018, on which date, the Appellants were present in person along with Respondent Nos. 2 to 5 and also along with representative from the Village Panchayat. The Advocate representing Village Panchayat submitted that there was no permission issued to the Appellants for the said constructions. Thereafter, the Appellants sought time to file submissions. Hence, the Appellants were directed to make submissions on 28.08.2018 but they did not submit any reply.
- (III) Thereafter, matter was placed for hearing on 31.08.2018 and after taking into consideration the submissions made by the parties and the inspection report, it was clearly established that there is land reclamation and destruction of mangroves done by the Appellants within the NDZ of Chimbhel Creek. The Poultry, Slaughter House and Chawl etc. constructed in Surveys Nos. in 275/I, 275/1-A, 275/1-B and 275/1-C are within the NDZ area. Hence, impugned demolition order was issued. Therefore, it cannot be said that the opportunity of hearing was not given and the Principle of Natural Justice has been violated.

- (IV) Further, it is submitted that Respondent No.1 directed the DSLR to conduct a survey of the afore-said land and superimpose the DSLR plans on draft CZMP, 2011 and accordingly after having done so it was concluded that the said structures fell within the mangrove and 50 meters mangrove buffer which attract the CRZ Notification.
- (V) Further, it is submitted that Section 3 of Environment (Protection) Act, 1986 provides power to Central government to take measures to protect and improve the environment. The Central Government constituted the GCZMA/Respondent No.1 in exercise of the powers conferred under sub-sections (1) and (3) of section 3 of the Environment (Protection) Act, 1986 which has power to issue direction under Section 5 of the Environment (Protection) Act, 1986 in writing to any person, officer or any authority who shall be bound to comply with such directions. Therefore, to say that Respondent No.1 does not have power is erroneous interpretation of law by the Appellants.
- (VI) It is further submitted that the Expert Member Committee concluded that the site was adjoining mangrove habitat and hence attracted CRZ provisions. The Expert Member Committee conducted the survey in a diligent manner wherein it was observed that the structure erected on the property in issue is being used as a store house to keep construction material and to accommodate workers and the area in question is situated adjoining a mangrove habitat indicating tidal influence. Hence, CRZ provisions

would be attracted. Hence, it is stated that the Appeal should be dismissed with cost.

4. The stand taken by Respondent No.3- Mr. Jose Oliveira in its Affidavit dated 08.06.2022 is as follows:-

(A) The GCZMA has carried out the site inspection on 20.11.2017 which contained following details:-

“

(a) The site is an agricultural land lying along the bank of the tidally influenced backwater of Mandovi River at Morombi—o-Grande.

(b) The site was earlier a paddy field.

(c) The backwaters of Chimbhel creek at Merces ends at the boundary of the said agricultural land and the backwater area has flourishing mangroves all over.

(d) No permanent building/structure existed on the plot on or prior to 1991.

(e) All these structures are constructed within 50 mts from the bank of backwater.

(f) The survey map of the years 1974, 1977,1978 obtained from the DSLR indicates that the Chimbhel Creek in its last leg has given rise to a backwater behind Shantabhan Housing Complex at Morombi-o-Grande in Merces much prior to 1991, with thick Mangroves covering over 1000 sq. Mts of area.

(g) All the constructions done are well within the NDZ area.”

(B) Further it is submitted that report of the GSPCB dated 26.04.2017 holds as follows:

"The site is located in close proximity to mangroves. River Mandovi is at a distance of 1.6 Km from the site and a rivulet of the Mandovi river is adjacent to the site."

At Point No. 20 of the GSPCB report, it clearly states:

"Disposal Method: Into Septic tank as informed, however many outlets from the residential quarters provided for the labourers seen draining into the creek."

This GSPCB report also states at Page 6 that the solid dry waste is burned within the plot premises and the wet waste is dumped behind the residential shed near the mangroves. It further states that unhygienic conditions are maintained where the premises are given on rent.

- (C) The Coastal Zone Management Plans (CZMP 2011) for the State of Goa were completed in the meanwhile and the plans clearly indicates that the land bearing Sy Nos. 275/1-A, 275/1-B & 275/1-C, Morombi-o—Grande village is within the mangrove buffer zone and therefore within CRZ-1 area.
- (D) It is seen from the google earth image attached that the subject paddy fields bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village, have been filled and built upon by the Appellants, close to the creek of Mandovi and are within khazan lands.
- (E) The Tenants Association of Moromobi-o-Grande khazan lands has a list of its members under Form-III. This list includes an entry at sl. no 192 which reads:-

"Sl No —192; Name of the member — Piedade D'Souza; Name of the field —Adverice Querchoaco; Total area held by the member - 7645" This is the description of the same land which now bears sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village, as is confirmed on page 43 of the Appellant's own memo of Appeal, where it is stated that the Appellants' father was the tenant of this khazan paddy field named "ADVERICO DE QUERCHOACO". It is verified that there is no other field with this name, or any similar name, in the

village of Morombi-o-Grande. Therefore, clear that the land bearing sy. Nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village is a part of the Morombi-o-Grande village khazan lands (sic).”

- (F) The google earth image of 2003 shows that this land was paddy fields in 2003, in contiguity with, and, of the same nature as, the adjoining low-lying paddy fields. These are the paddy fields that are described as marginal to the creek of Mandovi River and are clearly a part of the 320 Hectares extent of the Moromobi-o-Grande khazan lands. The google earth image of 2005 clearly shows saline water ingress inside sy no. 275/1, Moromobi-o-Grande village, proving irrefutably that the land bearing sy no. 275/1, Moromobi-o-Grande village is a part of the khazan land. The google earth image of 2022 shows the presence of mangroves on 3 sides of the land bearing sy no. 275/1, Moromobi-o-Grande village, confirming that the subject land is also a part of the khazan lands.
- (G) Photographs of the present status of the surrounding lands show that the land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village has been filled up with mud while the adjoining lands are overgrown with mangroves. It is obvious that if the land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village was not filled up, it would remain influenced by tidal waters and would be having growth of mangroves. The land bearing sy nos 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village is therefore irrefutably within the Moromobi-o-Grande khazans.

(H) Para 7, (i), A of the CRZ Notification 2011 classifies CRZ-I areas and sub-para (a) includes mangroves under CRZ-I. It states,

"Mangroves, in case mangrove area is more than 1000 sq mts, a buffer of 50 meters along the mangroves shall be provided;"

The Notification further states under "Annexure I Guidelines for preparation of Coastal Zone Management Plans", para I, D, II,

3. Buffer zone along mangrove areas of more than 1000sq mts shall be stipulated with a different colour distinguishing from the mangrove area.

4. The buffer zone shall also be classified as CRZ-1 area".

(I) The photographs annexed as Annexure K show that the land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village is in the midst of dense mangroves and is fully within the 50 m mangrove buffer zone.

(J) A marked up google earth image of 2022 showing the mangrove patch adjoining sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village, its area calculations and its 50 m buffer zone.

(K) It can be seen from the image attached as Annexure M that the entire land bearing sy nos. 275/1-A, 275/1-B and 275/-C, Moromobi-o-Grande village is within the 50 m buffer zone of the mangrove patch having an area of over 3,49,000 sq. mtrs.

(L) The amendment of the CRZ Notification, 2011 dated 01.05.2020, which is annexed as pages 101 and 102 by the Appellants to this Appeal, was in response to the unanimous request from Goan population and Government to demarcate the HTL for khazan lands at the bunds and sluice gates and for demarcation of mangroves that have grown in the paddy fields due to saline water ingress in khazan paddy fields as CRZ-IA. This amendment to the Notification not only

strengthens protection given to the mangroves and khazan fields in sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village and adjoining khazan fields, but also explains how the mangroves have grown in these khazan fields due to saline water ingress.

- (M) The Draft CZMP 2011 prepared by NCSCM and submitted for final approval to the Ministry of Environment, Forests & Climate Change by Government of Goa shows that the land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village is within mangrove buffer zone. It also shows khazan fields adjoining the eastern, western and northern boundaries of sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village. However, due to the filling of the khazan lands within the land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village after felling of the mangroves in this land, which is recorded in the inspection report of GCZMA dated 20.11.2017, NCSCM has failed to recognize that this land is khazan land.
- (N) The Appellants reference to CRZ Notification 2019 is irrelevant since this Notification is not in force for the State of Goa and the CRZ Notification 2011 is applicable to Goa presently.
- (O) The Appeal admits under para 20, "... there was ingress of water in some portions of the surrounding areas which led to the growth of mangroves ...", implying that the Appellants have admitted that the land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village is adjoining mangroves and is therefore within mangrove buffer zone.

- (P) The inspection report of GCZMA expert members dated 20.11.2017 and annexed hereto as Annexure A states in its Conclusions and Recommendations, paras iii), iv) and vi),

"iii) Since the entire backwater area starting from the western boundary of the plot [Sy. No. 275] with thick Mangroves all over is existing much prior to 1991, the CRZ Regulation of 1991 becomes applicable.

iv) As the existing thick Mangroves are more than 1000 sq. m in area, a setback of 50 m becomes applicable from the Mangroves to the plot area towards the landward side within which no activity is permissible.

vi) The constructions done of poultry, slaughter house, big house, toilets, chawl, etc are all falling within the 50 m set back/NDZ area and are not permissible."

It has thus been concluded by Expert Members of GCZMA based on site inspection that the subject land is within Mangrove buffer zone.

- (Q) The inspection report of GCZMA expert members dated 20.11.2017 and annexed hereto as Annexure A states in its Conclusions and Recommendations, para ii), b),

"The Mangroves have been cut for making area available for reclamation, which is also without obtaining any permission from the Forest Department."

This confirms that the land bearing sy nos 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village is within Mangrove area and that mangroves have been cut to allow reclamation of the CRZ-I area.

- (R) The Minutes of the GCZMA 171st Meeting held on 10.4.2018, under case 2.3, records the decision of the GCZMA regarding this matter as,

"The Authority after perusing the site inspection report by the Expert Member and noted that violators have also cut many mangrove trees within the area without obtaining any permission from the concerned authority after detailed discussion and deliberation decided to issued demolition order to the Mr. Johnny Fernandes and Mr. Shane Fernandes having property bearing Sy. nos., 275/1, 275/1-B, 275/1-C, 274/1 and 274/2 of village Morombi-O-Grande, Tiswadi within CRZ area." (emphasis provided).

This also confirms that the land bearing sy. nos. 275/1-A, 275/1-B and 275/1-C, Moromobi-o-Grande village is within Mangrove area and that the felling of the mangroves and reclamations of the CRZ-I area have changed the nature of this land.

- (S) The google earth image of 2005, annexed herewith as a part of Annexure J, clearly shows that saline water ingress into sy. nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village had already taken place by 2005. Growth of mangroves in such conditions is quick and certain, since mangrove seeds abound in these saline waters and take root within no time. It is therefore certain that sy nos 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village would have been covered with mangrove growth within a year or two. The next google earth image available is only five years later dated 2010, which shows that filling of the land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village had started and also shows that mangroves were existing on the northern, eastern and western sides of the said land before the filling. Hence the google earth images also confirm that the filling done in or before 2010 could also have taken place only by cutting mangroves within sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village.

(T) The google earth image of 2003, also annexed herewith as a part of Annexure J, reveals that the nature of the land bearing sy nos 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village is identical to the adjoining paddy fields. Hence, if the Appellants had not felled mangroves and filled the low-lying khazan lands bearing sy nos 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village, this land would have also been covered densely with mangroves like the lands on the three sides of this land.

(U) The inspection report of GCZMA dated 20.11.2017 states under "Conclusions and Recommendations", para 1),

"The site where the filling is done for reclamation of the area for construction is within NDZ of the backwater of Chimbel Creek." (emphasis provided).

This conclusion of the GCZMA Expert Members clearly confirms that the land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village has been filled for reclamation of the khazans and construction of structures. It also confirms that the area is within NDZ of Chimbel Creek.

(V) The inspection report of GCZMA dated 20.11.2017 states under "Conclusions and Recommendations", para ii), a),

The filling of the tenanted agricultural land of the Comunidade of Merces is done without its permission." (emphasis provided).

This conclusion of the GCZMA Expert Members again confirms that the khazan land bearing sy. nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o- Grande village has been filled in violation of the CRZ Notification 2011.

(W) The inspection report of GCZMA dated 20.11.2017 states under "Conclusions and Recommendations", para ix),

“Similarly, the mud filling done for reclamation of the area is also not permissible within the NDZ/agricultural area.”(emphasis provided).

This conclusion of the GCZMA Expert Members also confirms that the khazan land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village has been filled with mud for reclamation in violation of the CRZ Notification, 2011.

- (X) Comparison of the google earth images of 2003 and 2005 with the google earth image of 2010 shows that filling of the land bearing sy. nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village started around 2010.
- (Y) The photographs of the land bearing sy. nos. 275/1-A, 275/1-B and 275/1C, Morombi-o-Grande village also reveal that it has been filled with mud for illegal reclamation and subsequent construction of illegal structures. The photographs show that the land is now much higher than surrounding paddy fields, revealing that this land is filled up and reclaimed.
- (Z) The land records for the land bearing sy. nos. 275/1-A, 275/1-B and 275/1C, Morombi-o-Grande village show that 7,869 sq metres out of 7,988 sq metres of the land are for rice cultivation. The present nature of the surface is hard, red lateritic mud, which cannot be suitable for rice cultivation. The land is also now much higher than surrounding paddy fields. It is obvious therefore that low lying khazan fields in sy. nos. 275/1A, 275/1-B and 275/1-C, Morombi-o-Grande village, which were used for paddy cultivation, have been filled with red mud in violation of the CRZ Notification 2011.

(AA) The earliest google earth image available of 2003 shows only one small structure existing within sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village. Subsequent google earth images of 2010 and 2022 show that numerous constructions have been carried out within sy nos 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village since 2003 in a phased manner. No permissions are obtained under the CRZ Notification 1991 or 2011 for any of the structures.

(BB) The DSLR plan annexed shows that all the structures within sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village are new structures or temporary sheds. This plan gives conclusive evidence that all the structures within sy nos. 275/1-A, 275/1B and 275/1-C, Morombi-o-Grande village are in gross violation of the CRZ Notification 2011.

(CC) The inspection report of GCZMA dated 20.11.2017 states under "Conclusions and Recommendations", para ii),d),

"The constructions of poultry shed, slaughter house, the big house, toilets, chawl, etc are all done without obtaining permissions from GCZM and other authorities."

This proves that no permissions are obtained from GCZMA for the structures within sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o- Grande village and that they are therefore in violation of CRZ Notification 2011.

(DD) The inspection report of GCZMA dated 20.11.2017 states under "Conclusions and Recommendations", para viii),

"As per CRZ Regulation, the construction is permissible within the NDZ area if it is done only on the existing plinth of the old structure, however no such structure existed on the plot prior to 1991."

This proves that no permissions can be granted by GCZMA for the structures within sy nos 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village and that they are therefore in violation of CRZ Notification 2011.

(EE) The inspection report of GCZMA dated 20.11.2017 states under "Conclusions and Recommendations", para xii),

"As the violator has not obtained any permission, neither from the Comunidade of Mercedes nor from the Village Panchayat, Mercedes and most importantly from GCZMA, all the erected structures become illegal structures and cannot be permitted to exist at the said area."

This proves that no permissions are obtained from GCZMA for any of the structures within sy nos 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village and that they are therefore in violation of CRZ Notification 2011.

(FF) The google earth images, photographs and inspection reports relied upon clearly show that filling has been carried out in land bearing sy nos. 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village after 2005. Section 17-A of the Town & Country Planning Act, 1974 states that no filling of low-lying land can be carried out without prior permissions from the Chief Town Planner. However, no such permissions are obtained.

(GG) The construction of a chawl for a large number of migrant workers, numerous toilets, other residential and commercial structures on this land imply that the use of the land bearing sy nos 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village has been changed from paddy cultivation to residential and commercial non-agricultural use. Sections 31 to 33 of the Goa Land Revenue Code, 1968 require prior permission from the District Collector for any change in land use. However, no

such permissions are obtained under sections 31 to 33 of the Goa Land Revenue Code, 1968.

(HH) As admitted by the Appellants, they have purchased the land bearing sy nos 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village by claiming tenancy under the Goa, Daman and Diu Agricultural Tenancy Act, 1964. However, the Goa Land Use Regulation Act, 1991 completely prohibits any non-agricultural use of such lands. Therefore, no permissions can be granted by the authorities for any constructions on this land for residential or commercial use, or for change in use of this land.

(II) The construction of any structure requires prior Construction License from the Village Panchayat. No such permissions have been obtained.

5. The stand of Respondent No.4 is the same as that of the stand of Respondent No.3. Therefore, it would be futile to reproduce the pleadings.

6. Heard the arguments of all the parties.

7. The Learned Counsel for the Appellants mainly confined their argument to the point that the demolition order by the Respondent No.1/GCZMA of the properties detailed in the impugned order i.e. Surveys Nos. 275/1, 275/1-A, 275/1-B and 275/1-C, Morombi-o-Grande village only relate to the Appellants and not the other survey nos. i.e.274/1 and 274/2 and that these survey numbers which belonged to them are not covered under CRZ Notification because as per Sub-Clause A(a) of Clause (i)-CRZ-I of Regulation 7 of the CRZ Notification, 2011 the following CRZ area shall be classified as follows:-

“7. Classification of the CRZ – For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as follows, namely:-

(i) CRZ-I,-

A. The areas that are ecologically sensitive and the geomorphological features which play a role in the maintaining the integrity of the coast,-

(a) Mangroves, in case mangrove area is more than 1000 sq mts, a buffer of 50meters along the mangroves shall be provided;”

8. The ecological sensitive area must contain mangrove area of more than 1000 sq. mtrs. and a buffer of 50 mtrs. along with mangroves while in the case in hand there is no evidence led from the side of the Respondents to show that the constructions which are ordered to be demolished were covered under mangrove as there was no mangrove area more than 1000 sq. mtrs. Hence, the Respondent No.1 did not have any jurisdiction to treat the property in question to be covered under CRZ Notification and accordingly, demolition order is an illegal order which needs to be set aside.

9. Further, he has drawn our attention to the documents at page nos. 43 to 53 of the paper book which is order issued by Mamlatdar of Tiswadi Taluka , Panaji, Goa wherein application of the father of the Appellants dated 31.05.2006 for purchase of paddy field has been allowed which bears survey no. 275/1 of Village Morombi-o-Grande.

10. He has also drawn our attention to page no. 54 of the paper book which is Form No. III-A, purchase certificate in the name of Mario Fernades Alias (father of the Appellants) and the description of the property bears survey no. 275/1. Then, he drew our attention to page no.66 of the paper book which is certificate of purchase of house no. 246 by father of the Appellants situated in survey no.275/1 and to

page no. 68 of the paper book which is the order passed by the Deputy Collector & Sub-Divisional Officer, Panaji, Goa which shows newly partitioned portion which bears Sub-Division No.1-A, 1-B of survey no. 275 of Village Morombi-O-Grande in Tiswadi Taluka.

11. Then, he has drawn attention to the order of Hon'ble High Court passed in Writ Petition No. 1088/2018 at page nos.72 to 75 of the paper book wherein the Petitioner/Appellant No.1 had assailed the show cause notice issued to him pertaining to property bearing survey no. 275/1, 275/1-A, 275/1B and 2751-C of Morombi-O-Grande, Merces and the impugned order was set aside on the ground that opportunity of hearing to the Petitioner/Appellant was not given. There was no merit touched in this case by the Hon'ble High Court. Thereafter, he has drawn our attention to page nos. 94 to 95 of the paper book which is inspection report of the impugned survey numbers which is conducted by Member Secretary of GCZMA on 17.03.2020 and specifically pointed out in this that at clause of E of the observations and recommendations it simply mentions that the site in question is situated adjoining to a mangrove habitat. This indicates there is a tidal influences, hence, attract CRZ Provisions. But, it is argued that it no where mentions that mangrove was more than 1000 sq. mtrs. as that was the condition precedent to consider the said area to be covered under ecologically sensitive area as per Regulation 7 of CRZ Notification, 2011 (cited above).

12. Then, he has drawn our attention to page nos.103 to 105 of the paper book which is an application by the Appellants before the Authority /GCZMA wherein objections were raised to the effect that the mangrove appears to have come up recently somewhere after 2010 in the neighboring paddy fields because sluice gate/bund was not maintained in proper condition by the authorities which allowed ingress of saline water. Till 2003, there was no mangrove around their

property or adjacent to various housing complexes which are constructed after 1991 and that as per CRZ Notification 2019, the mangrove in private land will not require a buffer zone but all these objections were not considered by the authority and demolition order was passed arbitrarily.

13. Further, he has drawn our attention to page nos. 38 to 40 of the paper book pertaining to survey no. 275/1-A wherein occupant's name is Johny Fernades who is Appellant No.1; on survey no. 275/1-B, the name of the occupant is recorded as Shaine Fernades who is Appellant No. 2 and in survey no. 275/1-C the name of the father of the Appellants is recorded as Applicant and argued that this show that the entire property bearing survey nos. 275/1-A, 275/1-B and 275/1-C were belonging to the Appellants and their family.

14. From the side of Learned Counsel for Respondent No.1/GCZMA, it is vehemently argued that the area in which demolition order has been passed lies under dense mangrove which is evident from the google image which is annexed at page no. 264 of the paper book and therefore, the same would be covered under CRZ Notification and would be governed by Regulation No. 7-(i)-CRZ-1)-A(a). It is evident that the said constructions have been raised by the Appellants without any permission from the authorities concerned and that no such construction was permissible in that area, hence, they there have been rightly directed to be demolished.

15. We have gone through the impugned order wherein it is recorded by the Authority/GCZMA that the Appellants nowhere denied the existence of structures in survey nos.275/1, 275/1-A, 275-B and 275/1-C which are also marked by DSLR and the same have been shown/superimposed on survey plan in its site inspection and by doing ground truthing, it is observed that property in question is

situated adjoining to mangrove habitat which indicates tidal influence and hence, CRZ-2011 provisions would be attracted. It is also evident from DSLR and Expert Member's Report that there exist structures on the said survey numbers and so far as their legality is concerned, the Appellants have not produced any such document before it to establish them to be legal rather they defended the said structures only on the ground that they and not covered under CRZ Notification, 2011. At this, the Authority had directed the Respondents to get an exercise of demarcation of CRZ line and ecologically sensitive area done in all the survey numbers owned by him from NCSCM but the Respondents failed to do so. In this regard, during argument, the Learned Counsel for the Appellants stated that it was a very expensive affair as they would have paid expenditure of approximately Rs.3 Lakh and therefore, the Authority was indiscreet in thrusting such cost upon the Appellants to bear, although, it was the job of the Authority to get such a survey conducted.

16. Further, it is mentioned in the impugned order that the Authority directed DSLR to conduct site inspection and superimpose all structures on survey plan in order to ascertain new and old structures erected in the said survey numbers, which direction was carried out by DSLR in site inspection on 10.02.2021 and showed factual position of the land and demarcated new structures on the survey plan.

17. The Appellants did not produce any documents which could prove that the new structures were constructed prior to 1991 nor any permission was produced by them for the said constructions which are reflected in the site plan prepared by DSLR. Therefore, it was clear that all the structures located in the said survey numbers were illegal and unauthorized.

18. Further, it is mentioned in this order that the Authority superimposed the said DSLR Plan on the draft CZMP, 2011 and it concluded that the structures totally fall within mangroves and 50 mtrs. mangrove buffer which attracts CRZ provision and, therefore, this property fell in CRZ and the Authority has full jurisdiction. Because of this only, impugned order has been passed, directing demolition of the said structures having been found to be illegal.

19. After going through the entire order, we find that all the documentary evidences which were led by the Appellants were considered appropriately by the Authority and with the assistance of the two site inspections , it was established by them beyond doubt that the structures which are ordered to be demolished did fall in the CRZ area, which also finds support from the google earth image annexed at page no. 267 of the paper book wherein the disputed structures are shown to be located very clearly amid the dense mangrove.

20. Therefore, we do not find any force in the arguments made by the Learned Counsel for the Appellants rather we find force in the argument of Learned Counsel for the Respondent No.1 as well as the other Respondents.

21. We are of the view that impugned order does not suffer from any illegality/infirmity; the same deserves to be upheld and is accordingly upheld. This Appeal stands dismissed. There shall be no order as to cost.

22. The pending I.A. is also stands disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

September 06, 2022
Appeal No. 15/2022 (WZ)
I.A. No. 45/2022(WZ)
JG

497 ANNEXURE B COLLY
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 7310/2022

JOHNNY FERNANDES & ANR.

APPELLANT(S)

VERSUS

**GOA COASTALZONE MANAGEMENT
AUTHORITY & ORS.**

RESPONDENT(S)

ORDER

Heard learned counsel for the appellants.

We do not find any reason to interfere in the judgment impugned dated 06.09.2022 passed by the National Green Tribunal, Western Zone Bench, Pune in appeal No. 15 of 2022 (WZ). The appeal is accordingly dismissed.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(C.T. RAVIKUMAR)

Signature Not Verified

NEW DELHI

Digital Signer:
Ashwani Kumar

Date: 2022/11/12

10:45:15

Reason:

NOVEMBER 07, 2022.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 7310/2022

JOHNNY FERNANDES & ANR.

Appellant(s)

VERSUS

GOA COASTALZONE MANAGEMENT AUTHORITY & ORS.

Respondent(s)

(IA No.155381/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT and IA No.155380/2022-STAY APPLICATION and IA
No.156148/2022-PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 07-11-2022 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE AJAY RASTOGI
HON'BLE MR. JUSTICE C.T. RAVIKUMARFor Appellant(s) Ms. Shivaa Desai, Adv.
Mr. Aniroodh S. Desai, Adv.
Mr. Vibhuti Sushant Gupta, Adv.
Mr. Narender Kumar Verma, AORFor Respondent(s) Ms. Ronita Bhattacharya Bector, Adv.
Ms. Nupur Kumar, AOR
Ms. Priyansha Sharma, Adv.
Ms. Muskan Surana, Adv.UPON hearing the counsel the Court made the following
O R D E R

The civil appeal is dismissed in terms of the signed order.

Pending application(s), if any, stands disposed of
accordingly.(MONIKA DEY)
COURT MASTER (NSH)(ASHWANI KUMAR)
ASTT. REGISTRAR-cum-PS
(Signed order is placed on the file)

ANNEXURE C

EXTRACT OF THE 382nd GCZMA
MEETING HELD ON 29/01/2024

Item No.2

Item No.2.1

To decide upon the application filed by Johny Fernandes and Shaine Fernandes on 04/05/2023 for recall of directions passed on 07/03/2022 and 15/03/2023.

Brief facts

The office of GCZMA in receipt of application dated 04/05/2023 from Johny Fernandes and Shane Fernandes for recalling of on Order dated 07/03/2022 having Ref

AS



GCZMA/N/ILL-COMPL/16/17/07/2188 along with Corrigendum dated 23/03/2022 having Ref No. GCZMANILL-COMPL/16/17/07/2292, passed/issued by GCZMA.

That Applicant herein already preferred appeal before Hon'ble NGT appeal bearing Appeal No.15/2022(WZ) against Order dated 07/03/2022 having Ref GCZMA/N/ILL COMPL/16/17/07/2188 along with Corrigendum dated 23/03/2022 having Ref No GCZMANILL-COMPL/16/17/07/2292, passed/issued by GCZMA and said appeal is dismissed by Hon'ble NGT Pune vide its order dated 06/09/2022 and held that there is no grounds to interfere in GCZMA Order.

The applicants thereafter preferred second appeal before Hon'ble Supreme Court of India, wherein also Hon'ble Supreme Court of India dismissed applicants appeal and upheld the GCZMA Order.

Thereafter the office of GCZMA in receipt of Review application dated 16/12/2022 from Johny Fernandes and Shane Fernandes, on Order dated 07/03/2022 having Ref GCZMA/N/ILL-COMPL/16/17/07/2188 along with Corrigendum dated 23/03/2022 having Ref No. GCZMANILL-COMPL/16/17/07/2292, passed/issued by GCZMA.

In this regard, the GCZMA placed said Review application dated 16/12/2022 filed by Shri.Johny Fernandes and Shri Shane Fernandes in its 328th meeting held on 02/02/2023 for discussion and Authority decided to dismiss Review application dated 16/12/2022 filed by Shri Johny Fernandes and Shri Shane Fernandes.

The Authority received present application on 04/05/2023 Shri. Johny Fernandes and Shri.Shane Fernandes for seeking recall and set aside the impugned order dated 07/03/2021 issued by GCZMA.

The said application dated 04/05/2023 seeking recall is put for discussion, deliberation and taking necessary decision.

DECISION: The Authority observed that the owner of the offending structure has knocked the doors of the various Courts of Law including the Apex Court where no relief has been accorded to them. Resultantly the doctrine of merger stands to get applied to this particular case. Secondly, if such type of second innings are allowed to be entertained then there would be no end to litigation. The limitation for such vexatious applications being entertained will see no light of the day and it would only mean to frustrate the findings which have been upheld by the Apex Court. So also there is no provision for recall of directions under the Environment Protection Act and hence the Authority deems it fit to reject the request of the concerned party made in the said application dated 04/05/2023 for recall of order/decision.




ANNEXURE D

EXTRACT of 265th GCZMA meeting
minutes held on 15/07/2021Item No. 5DELIBERATION ON FURTHER ACTION ON THE OBJECTIONS AND SUGGESSTIONS RECEIVED FOR THE DRAFT CZMP, 2011.

The Member Secretary explained to the members that the Authority has received approximately 3493 number of objections and suggestions for North Goa and 4016 number of objections and suggestions for South Goa respectively when notice for Public Hearing on March 7th 2021 was issued.

Broadly the objections and suggestions can be summarised as follows:-

1. Objection for non depiction of structures in the / Wrong depiction of structures
2. Objection for depiction of Port Limits.
3. Objection for wrong depiction of Khazans / non depiction of Khazan
4. Objection to the wrong / non depiction of sluice gates
5. Objection to the wrong/non depiction of Bunds
6. Objection to the wrong /non depiction of fishing zone
7. Objection to the wrong /non depiction of fish breeding areas.
8. Objection to the wrong/non depiction of fishing ward
9. Objection to the wrong /non depiction of fishing village boundary
10. Objection regarding the wrong depiction of High tide Line
11. Objection to the wrong / non depiction of sand dunes
12. Objection regarding wrong /non depiction of mangroves / buffer for mangroves.
13. Objection regarding wrong/non depiction of notified heritage sites

The members perused the nature of objections and suggestions and decided to address the objections and suggestions as follows:

Sr.No	Nature of Objection /Suggestions	Proposed action
1	Objection for non depiction of structures in the / Wrong depiction of structures	To convey that the GCZMA in its 251 st meeting has addressed this issue and the copy of the minutes of the meeting to be enclosed.
2	Objection for depiction of Port Limits.	To convey that the GCZMA in its

		251 st meeting has addressed this issue and the copy of the minutes of the meeting to be enclosed. NCSCM will be requested not to depict the port limits in the final CZMP maps.
3	Objection for wrong depiction of Khazans / non depiction of Khazan	To be forwarded to WRD for their comments and ground truthing wherever required.
4	Objection to the wrong / non depiction of sluice gates	To be forwarded to WRD for their comments and ground truthing wherever required.
5	Objection to the wrong/non depiction of Bunds	To be forwarded to WRD for their comments and ground truthing wherever required.
6	Objection to the wrong /non depiction of fishing zone	To be forwarded to Fisheries Department for their comments and ground truthing wherever required.
7	Objection to the wrong /non depiction of fish breeding areas.	To be forwarded to Fisheries Department for their comments and ground truthing wherever required.
8	Objection to the wrong/non depiction of fishing ward	To be forwarded to Fisheries Department for their comments and ground truthing wherever required.
9	Objection to the wrong /non depiction of fishing village boundary	To be forwarded to Fisheries Department for their comments and ground truthing wherever required.
10	Objection regarding the wrong depiction of High tide Line	Team of Expert members (GCZMA)
11	Objection to the wrong / non depiction of sand dunes	Team of Expert members (GCZMA)
12	Objection regarding wrong /non depiction of mangroves / buffer for mangroves	To constitute a committee comprising of Dr. Simon Dsouza, Dr. N.P.S Varde, Dr. Prabhakar Shirodkar and Dr. Vinod Dhargalkar to carryout ground truthing and submit comments.
13	Objection regarding wrong/non depiction of notified heritage sites	To be forwarded to Town & Country Department and Department of Archives & Archaeology for confirmation of site.

Decision: The Authority approved the proposed action as per table above and had further decided to send the data to NCSCM Chennai on receipt of inspection report from the Expert members for updation on daily basis by keeping in mind the directives given by the NGT for completion of CZMP by 31/08/2021.

Meeting ended with thanks to the Chair.


Member Secretary
(GCZMA)


Chairman
(GCZMA)