

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH, AT PUNE
APPEAL NO. 2/2022**

IN THE MATTER OF

DR. JOE D'SOUZA AND ANR.

...APPELLANTS

VERSUS

THE STATE OF GOA AND ORS.

...RESPONDENTS

**AFFIDAVIT-IN-REPLY ON BEHALF OF THE RESPONDENT
NO. 5, THE CAPTAIN OF PORTS**

I, Capt. James Braganza, Adult, Occupation: Captain of Ports, Captain of Ports Department, Government of Goa, having my office at Dayanand Bandodkar Road, Panjim, Goa – 403001 do hereby affirm and state as under :

1. I say that I am the Captain of Ports, Captain of Ports Department, the Respondent No. 5 herein, and I am competent to affirm the present Affidavit-in-Reply. The present Affidavit is being filed to oppose any reliefs, interim or final, from being granted in favour of the Appellants. I say that I have examined the relevant records in my office in relation to the construction of the terminal building on the Panjim Jetty [hereinafter referred to as "*the project*" for the sake of brevity and convenience] and I am filing the present Affidavit-in-Reply on the basis of the record available in my office.



James Braganza

2. I say that nothing in this Affidavit-in-Reply may be deemed to be an admission of any of the contents of the present Appeal unless the same is categorically admitted herein.
3. I say that before adverting to para-wise reply to the contentions raised by the Appellants in the above-captioned Appeal, it is necessary to bring on record the correct narration of facts and position of law in relation to the controversy raised by the Appellants in the above captioned Appeal.

PRELIMINARY SUBMISSIONS

4. The project involves the construction of a terminal building on the existing Panjim Jetty on the banks of River Mandovi. Clearance was granted to the reconstruction of the Panjim Jetty in 2008 and the construction came to be completed in 2015. Pertinently, this was never challenged. The terminal building is being constructed atop this Jetty. The answering Respondent made an application dated 09.10.2014 to the Respondent No. 2 GCZMA seeking clearance under the CRZ Notification for the project. The Respondent No. 2 GCZMA granted clearance to the project falling in CRZ-II area under the CRZ Notification *vide* its letter dated 20.07.2015.
5. At the outset, it is submitted that the Appellant is essentially seeking revocation of the clearance dated 20.07.2015 granted by the Respondent No. 2 GCZMA under the Coastal Regulation Zone Notification, 2011 [hereinafter referred to as "**CRZ Notification**" for the sake of brevity and convenience] and has also prayed for setting aside the order of Respondent No. 2 GCZMA dated 15.07.2021 wherein his representations were rejected. It is clear that the Appellant has not challenged the aforesaid clearance and its legality is not



under question. Even assuming but not admitting that the Appellant has made such a challenge, the said challenge suffers from gross delay. Thus, the clearance dated 20.07.2015 has attained finality and substantial construction has already been carried out on the basis of the aforesaid clearance.

6. The Appellant sent a legal notice dated 10.05.2019 to the Respondents alleging illegalities in the project and asking for all permissions granted to the project to be revoked. The Appellant also asked for immediate stoppage of the construction work. In response to the aforesaid legal notice, the Respondent No. 2 GCZMA carried out a site inspection on 18.06.2019 in the presence of the officers of the answering Respondent, the Appellant and other officers concerned. It was concluded that the project clearly falls within CRZ-II area. At no point has the Appellant disputed or questioned the aforesaid conclusion.
7. The Appellant filed PIL Writ Petition No. 55/2019 in the Hon'ble Bombay High Court at Goa. Pertinently, even before the Hon'ble High Court, the Appellant did not challenge the legality of the clearance dated 20.07.2015 but only sought directions to the Respondent No. 2 for the revocation of the clearance. *Vide* its order dated 26.02.2020, the Hon'ble High Court directed the Respondent No. 2 GCZMA to hear the Appellant, the answering Respondent and the Goa State Infrastructure Development Corporation Ltd. in respect of the issues raised by the Appellant. Moreover, given the public importance of the project, the Hon'ble High Court refused to stay the construction of the same.
8. The Respondent No. 2 GCZMA carried out another site inspection on 31.05.2021 pursuant to the decision taken in its 257th Meeting dated 27.05.2021. The Respondent No. 2 GCZMA considered the Appellant's prayer for interim



stay on the construction activities of the project in its 260th meeting dated 10.06.2021. Upon hearing the Appellant and the answering Respondent, the Respondent No. 2 GCZMA did not grant any interim stay on the project and fixed the matter for final hearing. The final hearing took place in the 261st meeting dated 24.06.2021 of the Respondent No. 2. The primary contention before the Respondent No. 2 GCZMA was that the clearance dated 20.07.2015 granted by it should be revoked as conditions therein have not been abided by. However, the Appellant above-named did not bring any documents or facts on record to support his contention about violation of the conditions. In fact, from the facts of the present case it is clear that the answering Respondent has abided by all the necessary conditions. The Respondent No. 2 GCZMA finally decided the matter in its 264th meeting dated 06.07.2021 thereby rejecting the Appellant's complaints and a detailed and reasoned order dated 15.07.2021 (impugned order) came to be passed.

9. The order dated 14.06.2021 and 15.07.2021 (impugned order) make it abundantly clear that all the objections raised by the Appellant were carefully considered and dealt with. According to regulations 4(i)(d) and 4.2(i)(b) of the CRZ Notification, as the construction of the terminal building involves less than 20,000 sq. mts. built-up area, no rapid Environment Impact Assessment [hereinafter referred to as "*rapid EIA*" for the sake of brevity and convenience] was required for the project. Moreover, the project does not fall within the purview of the Environment Impact Assessment Notification, 2006 [hereinafter referred to as "*the EIA Notification*" for the sake of brevity and convenience] and as such no prior Environmental Clearance was required.



10. As is clear from the facts and circumstances of the case, the Appellant's objections are mala fide which have been raised only because of the inconvenience caused to the Appellant as the project is coming up in front of his house. On this ground alone, the Appeal deserves to be dismissed.

PARA-WISE REPLY

11. In so far as paragraph 1 and 2 are concerned, the contents therein are a matter of record and warrant no response. However, it is denied that the construction of the project is illegal.

12. In so far as paragraph 3 is concerned, it is submitted that according to the letter dated 09.06.2008, the Respondent No. 2 granted in-principal approval under the to the repair, renovation and expansion of the existing jetty at Panaji.

13. In so far as paragraph 4 is concerned, it is submitted that the project is located in CRZ-II area under the CRZ Notification.

14. In so far as paragraphs 5 to 16 are concerned, the contents thereof are a matter of record. It is submitted that the North Goa Planning and Development Authority has clarified in its letter dated 31.03.2016 to the Captain of Ports Department that it has no jurisdiction in respect of the construction of the terminal building as it falls only in the riverine area and not on land.

15. In so far as paragraph 17 is concerned, the contents therein are denied and it is submitted that no permission is required from the Respondent No. 4 Authority.



16. In so far as paragraphs 18 and 19 are concerned, it is submitted that the project falls in CRZ-II area and is covered by Regulation 4(i)(d) as concluded by the Respondent No. 2 GCZMA on multiple occasions.

17. In so far as paragraph 20 is concerned, the contents therein are a matter of record and as such warrant no response.

18. In so far as paragraph 21 is concerned, the contents therein are denied. The Appellants contention that the project falls within "NDZ" is absurd. The project in question does not fall within the "No Development Zone". According to the CRZ Notification, "No Development Zones" come only within CRZ III areas. It must be noted that the Appellant at one instance says that the project falls within CRZ-I area and at the other instance says that the project falls within CRZ-III area.

19. In so far as paragraph 22 is concerned, it is submitted that Regulation 4.2 lays down the procedure for obtaining clearance for permissible activities under the CRZ Notification, 2011. However, the provisions regarding requirement of a Rapid EIA are not applicable to the project as it is covered by the exception granted to projects under Regulation 4(i)(d) read with Regulation 4.2(i)(b) of the CRZ Notification. Further, in terms of Regulation 4.2(i)(c), a comprehensive EIA is required only for projects in stretches classified as low and medium eroding by the Ministry of Environment, Forests and Climate Change. However, the project is not situated in such low and medium eroding areas. Therefore, neither a Rapid EIA studies nor a comprehensive EIA is mandatory for the project.



20. In so far as paragraphs 23 to 26 are concerned, it is submitted that the application made by the answering Respondent seeking clearance was accompanied by the site plans of the project and the Respondent No. 2 GCZMA was well aware of the location of the project. As the existing Panaji jetty was shown under Chalta Number 2, PT Sheet No. 7, the application made a reference to the Chalta Number of the existing jetty on which the project lies. In the year 2016, the answering Respondent made an application dated 26.07.2016 for correction and resurvey of the site of the Jetty. Accordingly, the Deputy Collector and Sub-Divisional Officer, Panaji passed an order dated 23.11.2016 confirming the Report dated 04.11.2016 of the Assistant Survey and Settlement Officer, Panaji observing that the jetties were wrongly shown under Chalta Number 2, PT Sheet No. 7 as the same are actually concrete platforms standing on piles above the water body. Once the construction in question is a permissible activity, the issue regarding the site of construction bearing a Chalta Number or whether the project falls in riverine or land area are of no significance. There is an existing Jetty which was reconstructed in 2015 after obtaining necessary permissions and the terminal building is placed atop the said Jetty in order to facilitate the use and operation of the Jetty. The location of the Jetty and the fact that the same is a structure standing on piles above the water body was known to the Respondent No. 2 *inter alia* because the permission/clearance for the same was granted by the Respondent No. 2 way back in 2008. Moreover, the answering Respondent sent a letter dated 28.11.2019 to the Respondent No. 2 GCZMA regarding the correction of the survey records with the copy of the plan after the resurvey of the Chalta No. 2, PT Sheet No. 7. Furthermore, it is not correct to say that the Respondent No. 7 refused permission. The Respondent No. 6 in its letter dated 31.03.2016 clarified that it has no jurisdiction over the project in question.



21. In so far as paragraph 27 is concerned, the contents therein are denied. As substantially explained in the previous paragraph, the CRZ clearance is legal and was not obtained by fraud or misrepresentation. The answering Respondent has approached all the relevant Authorities and the construction of the project began only after obtaining all the necessary permissions.

22. In so far as paragraph 28 is concerned, it is pointed out that the construction of terminal building is important from the point of view of marine safety and security and the project is of public importance.

23. In so far as paragraph 29 and 30 are concerned, the contents therein are denied. As already pointed out, the permission granted by the Respondent No. 2 GCZMA is legal and no permission from the Planning Authorities was required.

24. In so far as paragraphs 31 to 37 are concerned, the Petitioner's grievances regarding environmental harm are misconceived. The Respondent No. 2 GCZMA has dismissed the complaints of the Petitioner only after conducting site inspections and upon being satisfied that there is no destruction or harm to the marine life or any adverse effect on the coastal ecosystem. There is no obstruction to the flow of the water as the terminal building is being constructed on the already existing jetty and is elevated from the water. Moreover, the construction of the terminal building does not lead to increased chances of flooding. The Petitioners have made only mere allegations of environmental damage without substantiating such tall claims. The impugned order has been passed only after considering such claims of the Petitioners and after conducting a site inspection on 31.05.2021.



25. In so far as paragraph 38 is concerned, the contents therein are denied. No such permission from the Conservation Committee was required.
26. In so far as paragraph 39 is concerned, the apprehensions of the Petitioners are misconceived. The project is being carried out in accordance with the law.
27. In so far as paragraphs 41 to 50 are concerned, the contents therein are a matter of record and do not warrant a response. However, it is reiterated that the Respondent No. 2 GCZMA's permission for the construction of the terminal building is strictly in accordance with law and the construction is lawful.
28. In so far as paragraphs 51 to 54 are concerned, the allegations do not concern the Respondent No. 5 and no response from the answering Respondent is warranted.

REPLY TO THE GROUNDS

29. In so far as ground "A" is concerned, it is reiterated that the permission granted by the Respondent No. 2 GCMZA to the project is legal and the clearance dated 20.07.2015 has attained finality. The Appellant cannot belatedly question the clearance.
30. In so far as ground "B" is concerned, it is submitted that the contents therein are misconceived and false. Environment Impact Assessment was conducted prior to the reconstruction of the jetty in 2008. All the necessary permissions and clearances were obtained and the reconstruction was completed in 2015. The present case does not involve construction of a jetty but the construction of a terminal building along the High Tide Line over the existing jetty. The project



does not fall within the purview of the EIA Notification and thus, no prior Environmental Clearance is required for the project.

31. In so far as ground "C" is concerned, the project involves construction activities within permissible limit and the Appellant has failed to point out specific violation of a legal provision in respect of environmental pollution.

32. In so far as grounds "D", "E", "F", "G" and "H" are concerned, as already state hereinabove, the Petitioners claims of environmental harm are misconceived. It is reiterated that the project in question does not lead to the destruction of the marine life nor does it disturb the coastal ecosystem. Moreover, there is no obstruction to the flow of the water. It is again pointed that the terminal building is being constructed atop the existing jetty. The Appellant has failed to point out to any specific violation of a legal provision.

33. In so far as ground "I" is concerned, the contents therein are vehemently denied. As already explained herein above, the permission granted by the answering Respondent is strictly in accordance with the law.

34. In so far as ground "J" is concerned, the contents therein are denied. As stated herein above, no damage to the environment is being caused by the project in question.

35. In so far as ground "K" is concerned, it is submitted that the Petitioners' apprehensions are misconceived and the construction of the terminal building is being carried out only after careful consideration.



36. In so far as ground "L" is concerned, the Respondent No. 2 GCZMA has rightly rejected the Petitioner No. 1's complaints as the project in question stands in compliance with the CRZ norms.

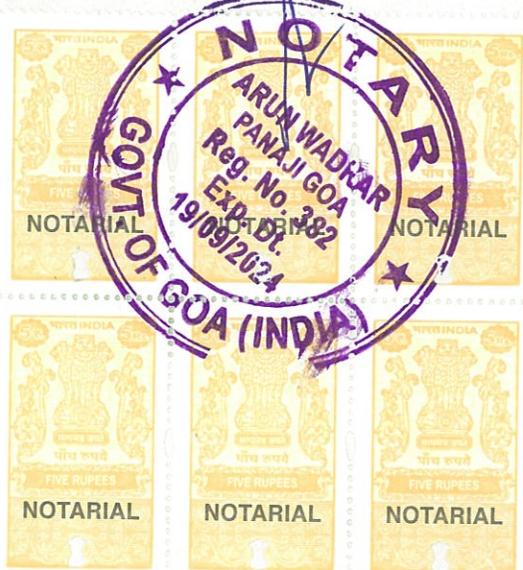
37. In so far as ground "M" is concerned, it is submitted that as pointed out herein above, the terminal building is an essential foreshore facility under the CRZ Notification. It is essential for the marine security and safety.

38. In so far as ground "N" is concerned, it is reiterated that the project falls in CRZ-II area and all the necessary permissions have been obtained. Moreover, there was no requirement of a prior Environmental Clearance under the EIA Notification or a rapid EIA study under Regulation 4.2 of the CRZ Notification.

39. In so far as grounds "O", "P", "Q", "R" and "S" are concerned, the contents therein are denied. The Respondent No. 2 GCZMA has passed a reasoned order rejecting the Appellant No. 1's complaints only after careful consideration of all the submissions made before it and all the records pertaining to the project in question. Pertinently, another site inspection was carried out 31.05.2021. It is reiterated that the CRZ clearance granted by the Respondent No. 2 GCZMA is legal and in accordance with the CRZ Notification.

Therefore, in light of the aforementioned facts and circumstances, it is most humbly submitted that the above-captioned Appeal ought to be dismissed.

RY



[Signature]
DEPONENT

SOLEMNLY AFFIRMED AND VERIFIED BEFORE / ME BY *Capt. James Breganze* WHO IS IDENTIFIED BEFORE / ME BY *Adhar Gull* WHOM I KNOW SERIAL No. *3621* DATED *28/3/2022*

[Signature]
ARUN WADKAR
NOTARY AT TISWADI TALUKA
STATE OF GOA-INDIA
REG. No. 382/14
DATED 19/9/2014

VERIFICATION

I, Capt. James Braganza, Adult, Occupation: Captain of Ports, Captain of Ports Department, Government of Goa, having my office at Dayanand Bandodkar Road, Panjim, Goa – 403001, the above-named deponent, do hereby state on oath that the statements made by me in the above affidavit are true and correct to the best of my knowledge, information and belief. No part of it is false and nothing material has been concealed there from.

Place: *Panaji*
Date: *28.03.2022*

James Braganza
DEPONENT
Capt. James Braganza
Captain of Ports

SOLEMNLY AFFIRMED AND VERIFIED
BEFORE / ME BY *Capt. James B Braganza*
WHO IS IDENTIFIED BEFORE / ME
BY *Arjun G...*
WHOM I KNOW
SERIAL No. *3623* DATED *28/3/2022*



Arjun Wadkar
ARUN WADKAR
NOTARY AT TISWADI TALUKA
STATE OF GOA-INDIA
REG. No. 382/14
DATED 19/9/2014