

BEFORE THE HON'BLE NATIONAL GREEN  
TRIBUNAL (WESTERN ZONE BENCH) AT PUNE

Original Application No. 165/2015 (WZ)

In the matter of:

Goa Paryavaran Sangharsh

Sanvrakshan Samittee

.....Applicant

V/s

M/s Kenilworth Resort &

Spa and 2ors.

.....Respondents

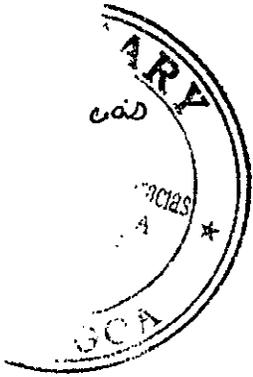
AFFIDAVIT- IN -REPLY ON BEHALF OF GOA  
COASTAL ZONE MANAGEMENT AUTHORITY  
(RESPONDENT NO. 3)

MAY IT PLEASE YOUR LORDSHIPS:

I, Mr. Johnson Bedy Fernandes, Son of Germano Herculano Fernandes, aged about 44 years, Indian National, resident of Curchorem – South Goa, the Member Secretary, Goa Coastal Zone Management Authority (GCZMA), the Respondent No. 1 herein most respectfully state and submit as under: –

1. I say that I am presently the Member Secretary, Goa Coastal Zone Management Authority (GCZMA), the Respondent No. 3 herein. I say that I am authorized to file the present Affidavit.

2. I say that I have perused a copy of the captioned Application; and have read and understood the contents thereof.

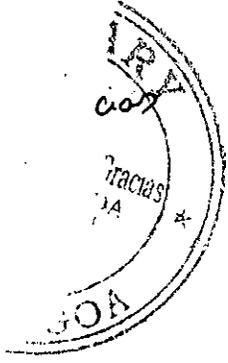


3. Before dealing with the merits of the Appeal, the Respondent No. 3 raises the following preliminary objections which are taken alternatively and without prejudice to one another –

A) The present Application is baseless, without any merit/s and has been filed without application of mind. I say and submit that there is absolutely no substantial question of Environment arising under Sections 15 and 17 of the National Green Tribunal Act, 2010 (NGT Act, 2010) to be adjudicated upon.

I say and submit that in order to claim any relief under Section 15, there must be determination in terms of Section 14 of the NGT Act, 2010. I say that there is no such determination of substantial question relating to Environment under Section 14 here. Moreover, the Applicant is not entitled to any relief even under Section 17 of the NGT Act, 2010, in as much as, the Applicant has not shown any accident/injury or damage to property, nor has the Applicant sought for compensation as per Schedule II therein.

B) The present Application is an abuse of process of this Hon'ble Tribunal and in the nature of a roving/fishing inquiry. The Application is



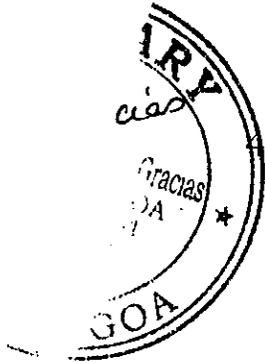
vague and without any research. The contents of the Application are general in nature. The Application does not point out specific violations and/or specific grievances and/or damages. Moreover the Applicant has failed to furnish/produce any material to buttress the Applicant's claims and allegations. I say and submit that entertaining Applications of such nature would result in putting the Hon'ble Tribunal and the Authorities to tedious task of going on a wild goose chase, which is de hors the purpose and functions of the NGT Act, 2010 and the Environment (Protection) Act, 1986.

C) The application is barred by limitation. Without prejudice to the fact that the Application lacks merit and does not raise any question pertaining to environment that call for adjudication from this Hon'ble Tribunal, I say that the Application is grossly barred by limitation under the National Green Tribunal Act, 2010. In paragraph 7 of the Application, the Applicant has admittedly stated that the Resorts and Constructions have been in existence since the last 2 decades. Further in the pleadings on Limitation in the Application, the Applicant states that the Application is in the nature of a 'PIL', while going on to say that the Respondent No. 1 started business activities in January 2012.

I say and submit that the Applicant cannot invoke and/or misuse the powers of this

Hon'ble Court to raise issues which are clearly beyond the jurisdiction of this Hon'ble Tribunal.

I also say and submit that Applicant has made blatant contradictory statements to somehow come within the purview of the 5 years limitation period under Section 15 of the NGT, Act 2010.



4. I say that the Respondent No. 2 through the Directorate of Survey and Land Records has filed a detailed Report dated 28-3-2016 on the CRZ violations on Utorda Beach, South Goa as called for. I seek to refer to and rely upon the Report for the purpose of adjudication of the present application notwithstanding whatever is stated in this Reply.

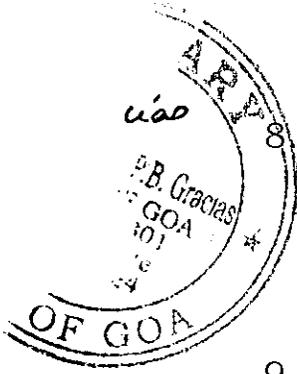
5. I say and submit that all the 10 Applications as originally filed being OA Nos. 164/2015 to 174/2015 are a reproduction hook line and sinker of each other. I say that in the circumstances, the Replies are also on the same lines, in as much as the answering Respondent is not in a position to address grievances in the absence of particulars.

#### **PARAWISE COMMENTS**

6. Paragraphs 1 and 2 pertain to addresses and merit no response.

7. With regard to the contents of paragraphs 3 of the Application, the same do not pertain to the GCZMA. Without prejudice, the Applicant has

not given particulars and/or material and/or photographs to identify the alleged illegal Construction. I say that the GCZMA has documents and plans to pertaining to permissions given to Respondent No. 1's resort. I say and submit that the Applicant may be directed to furnish particulars of the alleged illegalities mentioned in paragraph 2.



Paragraph 4 of the Application is an elaboration on prayers sought in the Application and merit no response.

9. Paragraphs 5 and 6 are general pleadings about MoEF Notifications and the law pertaining to Environmental Clearances. In this regard, the MoEF ought to have been made a party. The Application suffers from non-joinder of necessary party/ies.
10. Contents of paragraphs 7 are again general in nature, the Applicant may be directed to furnish particulars of the alleged illegal constructions and the also the alleged nexus between members of the authority and ministers and illegalities. I say since the Applicant has made serious allegations about an alleged nexus, particulars may be called for.
11. Contents of paragraphs 8 do not pertain to this Respondent.
12. Contents of paragraphs 9 to 14 are particulars of the Applicant and general in nature and/or

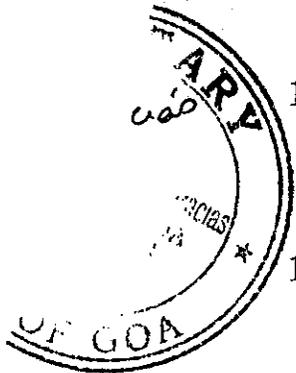
do not concern this Respondent, therefore merit no response.

13. With respect to the Grounds in paragraph 15 (a) – the Applicant may furnish the particulars of the offending structure and the violations. In any case the ground are baseless, denied and merit no response.

14. With respect to the Grounds in paragraph 15 (b) to (f) the same do not pertain to the GCZMA.

15. With respect to the contents in paragraph 16 on the cause of action, the Application ought to be dismissed at the very threshold on account of the contradictory statements made in the Application which itself casts a doubt on the bonafides of the alleged claims. I say that while in paragraph 7 of the Application the Applicant alleges the constructions to be 2 decades old, in paragraph 16, the Applicant claims that the business activities started in January 2012 only to somehow circumvent the limitation period under section 15 of the NGT, Act 2010. I say that the Applicant is conveniently claiming recurring violations as a ruse to make false claims and make up alleged causes of action. The Application suffers from mis-joinder of causes of action. The Application ought to be dismissed on this count alone.

16. With respect to the pleadings on Limitation in paragraph 18, I say and submit that Application is hopelessly barred by limitation as has been elaborated in paragraph 3C above. The



Application ought to be dismissed on this ground itself.

17. I say that the calculation of compensation in paragraph 19 is not in terms of the National Green Tribal Act and the Rules and the Schedule II there under. I say that the NGT Act, 2010 clearly provides a procedure and form to claim any compensation under Section 15 and damages under section 17 of the NGT Act, 2010.

18. I state that in view of whatever is stated hereinabove, no relief whatsoever can be granted in favor of the Appellants and the matter may be dismissed with exemplary costs.

19. I state that whatever has been stated herein above is true to my own knowledge and based on the documents/records available with the office of this respondent to which I have access and the contents of the same which I believe to be true and correct.

Solemnly affirmed at Panaji - Goa

This 30<sup>th</sup> day of October 2020

Solemnly affirmed before me  
Johnson Bedy Fernandes  
Who is identified before me by  
Pan Card AA JPF 3664N  
\_\_\_\_\_ At Calangute - Goa

Sr. No. 213/10/2020  
Date. 30/11/2020

Gracias  
Venefreda C.P.B. Gracias  
Advocate & Notary  
Bardez - Goa

  
DEPONENT

