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**BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNAL, WEST ZONE AT PUNE**

Appeal no. 20/2022 (WZ)

Paul Lobo & ors. ...Appellants(s)

Versus

Goa Coastal Zone Management

Authority & ors ...Respondent(s)

**COMPOSITE AFFIDAVIT IN REPLY TO THE
COUNTER AFFIDAVIT DATED 16/10/2024 AND
SITE INESPECTION REPORT DATED 03/10/2024
FILED ON BEHALF OF THE RESPONDENT NO. 1**

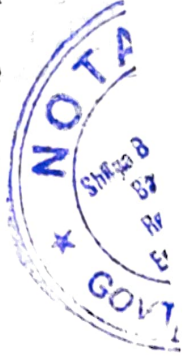
MAY IT PLEASE YOUR LORDSHIP:

I, Mr. Manoj Kumar Mehani, son of Late Sh. Yash Pal Mehani, major of age, Indian National, resident of Porvorim Bardez Goa, duly authorised representative of the Respondent No. 2, being conversant with the facts of the present case, on solemn affirmation begs to state and submit as under: -

Manoj Mehani



1. I say that I have read and understood the contents of the affidavit dated 16/10/2024 filed by the Respondent no 1 and the site inspection report dated 03/10/2024 annexed to the said Affidavit. I am advised to file the present affidavit dealing with the contents of the said affidavit dated 16th October 2024 and the said site Inspection report dated 03.10.2024.
2. At the outset, I adopt herein each and averment made by the Respondent No. 2 in the earlier affidavits filed on behalf of this Respondent and deny each and every contents of the affidavit dated 16th October 2024 and the inspection report dated 03/10/2024 filed by Respondent No. 1, which are contrary to what is stated in the earlier affidavits filed on behalf of this Respondent and what is contrary to the contents of this counter Affidavit.
3. I most respectfully state that, Pursuant to the orders passed by this Honourable Tribunal, site inspection came to be conducted on 03/10/2024 by the team



Mansoj Mehani

comprised of members as per the orders dated 22nd August 2024 passed by this Honourable Tribunal.

4. I say that in the affidavit under reply, the Respondent interalia claimed that the Respondent No. 2 has destroyed the sand dune to the extent of 304.90 m² falling within 0 to 500 of HTL.I specifically deny the said attributions made by the Respondent no1 in the Affidavit under reply and reiterate that the Respondent no 2 has not destroyed any sand dunes while carrying out construction of the project which is duly approved by all the competent authorities.

5. I say that as per the site inspection report dated 03/10/2024 following observations are made which are recited as under for ready reference of this Hon'ble Court:

1. The Survey No. 134/3 of Cavelossim Village of Salcete Taluka falls partly in No Development Zone in CRZ-III, partly between 200-500m from HTL in CRZ-II, partly outside CRZ areas and substantial portion is covered by sand dunes (CRZ-IA) as per CZMP 2011.

2. During site inspection it was noticed that there exists compound wall on the Southern and eastern side of the property. MS sheet fencing supported on MS Channels etc. has been erected enclosing all the sides of the ongoing project, with gate on eastern side,

M. P. Chavani



with approximately 4.00 m wide access on Southern side. (as shown in ANNEXURE I).

3. Furthermore, it was observed that the proposed hotel project, situated on survey number 134/3 in Cavellossim Village, Salcete, Goa, was under construction and is not completed as yet.

4. The sand dune indicated as per CZMP 2011 has been cut by the respondent, NOVA RESORTS PVT.LTD. for construction/widening of approach/access road.

5. The mapping of the road using DGPS os carried out and superimposed on the plan.

6. The Sand dune admeasuring 1100.00 sq.mtrs. was mentioned in the site inspection report dated 17/11/2021. This sand dune areas are shown as access approach road and public beach access road on the approved plan with bearing No. GCZMA/1S-16/09/1775 dated 20/10/2015 and which has been damaged in the course of their development.

7. The Sand dune which bears a mention as 1100sq.mts. was comprising of an area of property bearing Survey No. 134/3 and Survey No. 135/4 having an area of 360.90 sq.mts. and 739.10 sq.mts. cumulating to the area of 1 100 sq.mts.

8. It is observed that property bearing Sy.no. 135/4 is outside the 500 mts. and as per finally notified CZMP 2011 there is no sand dune

9. The actual area of road in property bearing Sy.No. 134/3 which is part of the sand dune, as per CZMP 2011 is 304.90 sq.mts.

6. I say that in paragraph 8 of the counter affidavit under reply, the Respondent No. 1 recited the said observations and recommendations made in the report prepared by the committee.

7. At the outset I beg to state that the Respondent no 2 has not destroyed any Sand dunes as claimed in the inspection report and in the affidavit under reply. It is stated that even in the earlier inspection report dated 17/11/2021, the Respondent No. 1 claimed that the

Mansi Mehra



project proponent have destroyed sand dunes, approximately of an area of 1100 m². If one peruses the said report, it becomes evident that the Respondent No. 1 had prepared the said report dated 17/11/2021 on the basis of draft CZMP plan, which was not finalised, as on the date when the said report dated 17/11/2021 was prepared. Relying on the said draft plan, the Respondent No. 1 choose to make attributions, that the project proponent has destroyed the sand dunes, and further chose to crucify the project proponent for the act, not committed by the project proponent and penalised the project proponent without their being any authority of law. The project proponent without joining issues to such arbitrary act of the Respondent No. 1 decided to abide by the directions as the Respondent No. 2 was concentrating on making the project operational without any issues. As a matter of fact, the project proponent never destroyed any sand dunes while undertaking construction of the project in the property bearing survey number 135/4.



Manoj Phani

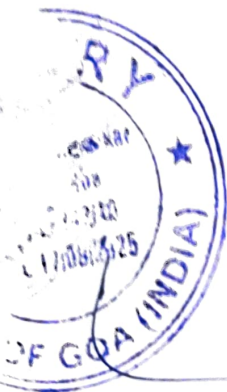
8. I say and submit that, the directions which were issued by the Respondent No. 1 ought not to have been issued more, particularly in view of the fact that there was no authenticated final CZMP plan in place indicating existence of sand dunes.
9. I say that the Appellant choose to initiate false complaint alleging destruction of sand dunes only with an intention to crucify the project proponent for acts which, as on the date of the complaint cannot be termed to be illegal.
10. I say that in the earlier site inspection report dated 17/11/2021, it was alleged that the project proponent has purportedly damaged sand dunes to the extent of 1100 sq.mts. and based on the said report the impugned direction came to be issued. I say that the said directions are in fact issued without any authority of law in as much as the allegations of alleged destruction of sand dunes are not based on any document which would legally determine the existence of the sand dunes at the place from where it

Mawaj Mchani

is alleged to have been destroyed . The perusal of the Affidavit under reply and the Site inspection report clearly discloses so. I say that in the Affidavit under reply and the Site inspection report annexed thereto, it has come on record that out of the purported area of 1100 m², Where the sand dunes is alleged to have been destroyed, an area admeasuring 739.10 m², which falls in survey number 135/4 is beyond 500 m of HTL. Considering the said fact, the Respondent No. 1 would have no jurisdiction to issue any directions to the project proponent for any purported violation beyond 500 m of HTL. In any event even the CZMP Plan do not show existence of any sand dunes beyond 500 mts. The observation made in the report dated 3-10-2024 goes to establish that the exercise undertaken by the Respondent no 1 of issuing impugned direction was not based on fact situation at loco but was based on surmises . I say that such an exercise on behalf of the Respondent no 1 is not tenable in law .

11. Now dealing with the observations at item number one of the report, I most respectfully state that the

M. P. Phani



Respondent No. 1 would have no jurisdiction to issue any such directions to the project proponent for any area which would fall beyond 0 to 500 m of HTL. As a matter of fact, the project proponent, admittedly has not undertaken any activity in the area falling within 0 to 200 m of HTL. The construction activity which has been undertaken by the project proponent is in the land falling between 200 to 500 m of HTL and the said construction is being carried out strictly as per the plans approved by the competent authorities, including the Respondent No. 1. I reiterate and state that the project proponent has not destroyed any sand dunes as claimed in the report dated 03/10/2024.

12. As regards, observations at item two of the report, the MS sheet fencing referred to therein has been constructed on three boundaries of the said property. On the southern boundary, the project proponent has reserved an area for access from the survey boundary and has put the said fencing. The area reserved on the southern boundary is having a length of about 260 mts which is meant to provide access as required to

M. Anwarul Haque

be maintained as per the approved plans. At the cost of repetition, I say that while reserving the said area for access, all precautions were taken to comply with the conditions contained in the permissions granted by the Respondent No. 1 and no sand dunes were destroyed.

13. With regards to item number three of the report, it is stated that out of 56 proposed rooms, the project proponent has constructed superstructure of 16 rooms, besides undertaking work of laying foundation and plinth of 24 rooms. The said construction has been undertaken as per the approved plans and no sand dunes were even touched while undertaking the said work.

14. As regards, item number four, it is specifically denied that any sand dune has been cut by the project proponent for construction/widening of approach/access Road as alleged. The observation made at item number four of the report itself, make it obvious that approach road was existing. The said



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access is being used by the project proponent since the date of the purchase of the said property in the year 1994 and prior to that the said access was used by the predecessor in title of the project proponent. Perusal of Google images of the year 2002 onwards clearly depicts the existence of the said access, which is otherwise noted by the Respondent No. 1 in the present report and also in the report, prepared in the year 2021, which is found page 111 of the paper book. Though the Respondent No. 1 referred to the existence of the said access, as can be visualised from the Google image, the Respondent No. 1 failed to ascertain the width of the said access from the Google image. The perusal of the Google image clearly depicts that the width of access, as visible on the said Google image, if measured is approximately 10 m wide. I say that that at least from the year 2015, the said access passing through the property 135/4 is tarred as can be seen from Google images of the year 2015, which are downloaded from Google.

Mansingh Chauhan

15. I most respectfully submit that even otherwise, the area identified as access in the property bearing survey number 135/4 is beyond 500 mts of HTL and hence, with respect, the Respondent No. 1 will have no jurisdiction to issue any directions or orders in respect of the area beyond 500 m of HTL. It is specifically denied that the project proponent have cut sand dunes as claimed. The attributions made in that regard are incorrect and are not supported by any cogent material. The Respondent No. 1 is also silent as to on what basis the said attributions are made.

16. Regards, item number six, it is specifically denied that any Sand dunes are damaged in the course of the development as alleged. The perusal of the Google image at least from the year 2002 and subsequent years clearly reveals that there is an excess always available at site. Hence the conclusion drawn by the Respondent No. 1 as narrated at item six of the report is factually incorrect. The project proponent crave leave to and rely on the Google images, of the year 2015, which clearly depicts existence of a tarred road.

Mansingh Mehani



The attribution made as regards alleged damage to the sand dune is not supported by any material and is specifically denied.

17. As regards the observations made at item number 7 and 8 of the report, while specifically denying that sand dunes are destroyed, it is most respectfully submitted that on the basis of the observation made in the said report, it becomes apparent that the entire exercise undertaken by GCZMA in passing directions to the Project Proponent is with respect without jurisdiction. It also establishes the fact that the claim raised by the Appellant in the appeal also is false and incorrect. It is respectfully submitted that the Respondent No. 1 would have no jurisdiction to pass any directions and or issue any orders in respect of the area falling Beyond 500 m of HTL. Even otherwise CZMP plan also do not acknowledge existence of sand dune beyond 500mts.

18. As regards item number nine, it is specifically denied that there were any sand dunes at site in an



Musaf Mehani

area admeasuring 304.90 m² as alleged. It is stated that the CZMP plan is not prepared based on factual ground truthing at site. As a matter of fact, said plan is prepared relying solely on data furnished by government department without even ascertaining the factual situation at site. It is stated that in the entire State of Goa, several wrong mapping instances are noted and various complaints and objections are filed before the authority, which are pending consideration. This Respondent also have raised objections for wrong depiction of sand dunes in the property bearing survey numbers 134/3. The said objections were raised vide letter dated 03.04.2023 immediately after notification of the CZMP plan and the same is pending adjudication before the competent authority. In fact, by a letter dated 22.10.2024 addressed to the Respondent No. 1, the project proponent reiterated the request and called upon the Respondent No. 1 to look into the matter at the earliest. The said application along with the objections raised by the project proponent is annexed hereto. Without prejudice to the above, it is stated that the project proponent has not



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destroyed any Sand dunes at site. I say that the area on the southern side of the property bearing survey number 134/3 is reserved by the project proponent as an access which is required to be maintained as per the Approved plans. The apparent contradiction in the site inspection report prepared on 17th of November 2021, and the report prepared now pursuant to the orders of this honourable court on 22/10/2024, itself makes it apparent that the respondent is being targeted and being punished for act, which is not illegal under any law. Moreover, the Respondent No. 2 has learnt from reliable sources that CZMP plan 2011 is being revised by NSCSM due to various incorrect depictions mainly attributable to the fact that the CZMP plan is prepared to the scale of 1:25000 which itself leads to lot of incorrect depictions at site . I say that the GCZMP plan even do not tally with the factual situation at site depicted in survey plans maintained by the land survey department interms of the provisions of the Land Revenue Code.

Manoj Phani

19. It is stated that perusal of the affidavit filed by the Respondent No. 1 and the inspection report prepared in the year 2021, makes it apparent that said report dated 17/11/2021 was based on draft CZMP plan and the present report is based on the final notified CZMP plan. It may be relevant to take note of the fact that admittedly, the construction activities at site, commenced in the year 2015. At that time, neither draft CZMP plan nor final plan was notified. The respondent number 1 considered the application for grant of permission on the basis of the law applicable as on the date when the permission was granted by imposing conditions in accordance with law . I say that the said permissions came to be granted by the Respondent no 1 upon carrying out inspection at site and upon being satisfied that there are no sand dunes at the location where the project proponent is permitted to undertake construction of the project . It is stated that as per the records, CZMP plan was available in public domain only on 06.09.2022. It may be necessary to take note of the fact that prior to notification of the draft plan, the construction



M. P. Melani

activities of the project proponent had already commenced, upon obtaining all the relevant permissions from the competent authorities hence the construction being, ongoing, subsequent change in law or change in CZMP plan , if any would not affect the ongoing construction.

20. I say that any directions and or orders relying upon the inspection report prepared either on 17/11/2021 or the report dated 03/10/2021 would amount to imposing penalty or punishing this Respondent for acts which were not illegal as on the date when said activities commenced, hence the question of imposing any directions in the fact of the case would not arise. It is most respectfully stated that the project being on going project, the law will be applicable as on the date when the permissions was granted and more particularly as on the date when the construction project commenced. Any subsequent change in law or CZMP Plan notified subsequent to the commencement of the project cannot take away the rights which are already created in favour of this

Mansingh Mehta

Project Proponent. It is stated the rights vested in law cannot be taken away by subsequent developments.

21. That apart the perusal of the site inspection report dated 03/10/2024 it makes it clear that the said site inspection report has not been signed by the Scientist of NCSCM Chennai hence no sanctity can be given to the said report.

22. Contents of the affidavit dated 16/10/2024 and the report dated 03/10/2024 filed by the Respondent No. 1 which are not admitted and what is contrary be taken as specifically denied.

23. I say that the contents of above para are 1(Part), 2(Part), 3, 4, 5, 6, 7, 8(Part), 9, 10, 11(Part), 12, 13, 14(Part), 15(Part), 16(Part), 17(Part), 18(Part), 19, 20(Part), 21 and 22 true to my knowledge and records and contents of para 1(Part), 2(Part), 8(Part), 11(Part), 14(Part), 15(Part), 16(Part), 17(Part), 18(Part) and 20(Part), are based on the legal advised which I believe to be true and correct.



M. P. Mehani

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Place: Porvorim, Goa
Date: 09/11/2024

Marij Melani
RESPONDENT NO 2

Shilpa
Adv for Respondent No 2



SUBMITLY AFFIRMED AND VERIFIED
BEFORE ME BY Marij Kumar Melani
WHO IS IDENTIFIED BEFORE ME
BY _____
WHOM I KNOW / BY _____
SERIAL NO. 627 / u. 09/11/2024 DATED

Shilpa B. Salgaonkar
09/11/2024
SHILPA B. SALGAONKAR
NOTARY AT BARDEZ - GOA
STATE OF GOA-INDIA
REG. NO. 24370

NOVA RESORTS PRIVATE LIMITED

SURVEY NO 134/3, CAVELOSSIM VILLAGE, SALCETE, GOA

To,

03.04.2023

The Member Secretary
Goa Coastal Zone Management Authority
Dempo Tower 4th Floor
Patto, Panaji - Goa

O/o Member Secretary *Park 5/1/23*
Goa Coastal Zone Management Authority
C/o Department of Environment & Climate Change
Dempo Tower 4th Floor,
Patto Plaza Panjim-Goa. 403001

We are the legal owners of plot bearing S. No. 134/3 of Cavellossim Village, Salcete Taluka. Our total plot area is 23400.00 m².

We further made an application for our hotel project in the year 1992 and obtained GSCCE Local preliminary approval through 14th GSCCE Meeting dated 26th May 1997 and file was further submitted to Ministry of Environment and Forest Delhi and after detail presentation and submission the same was approved vide letter J-19011/12/97-IA-III dated 28th July 2000.

Further, we were granted Consent for Establishment NOC by GSPCB vide letter ref 5/1299/98-PCB/971 dated 14th September 1998

We were granted NOC by GCZMA post MOEF approval vide letter ref. GCZMA/S/15-16/09/1775 dated 20th October 2015 and finally obtained Technical Clearance from Town & Country Planning Dept. vide ref. no. TPM/27994/Cavel/134/3/16/3492 dated 22nd July 2016 and Construction License by Village Panchayat of Cavellossim vide Ref. No. VP/Cav/2016-2017/3 dated 22nd October 2016.

We had obtained an official CRZ line form the Survey Dept (Authorised agency) for design and confirmation of approval of our project vide Ref No. 19/DSL/Resurvey Cell/CRZ-Sea/64/15/172 Dated 09/06/2015 as was necessary at the time.

We have obtained Sanad for an area of 14400.00 Sq. Mts. of our total 23,400.0 Sq. Mts, For Commercial Purpose vide ref. no. AC-I/SAL/SG/CONV/91/2015/3908 dated 12th April 2016 for area which was beyond 200.0 Mts as per CRZ line Demarcation.

However due to several local constraints and viability of the market we were not able to commence the work with the said construction license. We have noticed that the CRZ dept has now reduced our area as compared to the earlier area approved by the MOEF.

Now upon release of CZMP plan we came to know that there are sand dunes shown on the plan whereas on site there are no sand dunes.

Hence, You are requested to kindly rectify the same.

An early response will be highly appreciated.

Yours Sincerely,

For Nova Resorts (P) Ltd.

(Authorised Signatory)

Manoj Mehari
Manoj Mehari



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NOVA RESORTS PRIVATE LTD.

Site : Sy. No. 134/3, Village Cavelossim, Salcette, South Goa

To,
The Member Secretary
Goa Coastal Zone Management Authority
Panaji Goa

22.10.2024

Sub: Our letter dated 03.04.2023

Respected Sir,


This is reference to our letter dated 03.04.2023 addressed by us to you, intimating you that CZMP Plan of 2011 which was finalized in the year 06/9/2022 had certain anomalies. Infact in the survey no. 134/3 sand dunes are shown on East and South side of the property. Where it is a matter of fact there are no sand dunes existing on that side of the site.

The said objections were raised by us in April 2023; however, we have not heard anything from you nor has any response been received by us on the said objections. We therefore request you to please process our said letter dated 03.04.2023 to rectify the said CZMP 2011 plant notified by you as for as our property bearing survey no 134/3 of village Cavelossim, Salcette, Goa is concerned.

You are aware that necessary permissions are granted by all the statutory departments including yours to set up a resort in the said property. However, inspite of the said fact because of wrong location of the sand dunes on the plan there are hurdles in completion of the said project. In view of the above, we hereby once again request your good self to do the needful on top priority.

Awaiting favours of your early compliance.

Your Sincerely,


For Nova Resorts (P) Ltd
(Authorized Signatory)
Manoj Kumar Mehani




22/10/2024
D/o Member Secretary
Goa Coastal Zone Management Authority
C/o Department of Environment & Climate Change
Dempo Tower 4th Floor,
Forte Plaza Panjim-Goa. 403001