

**IN THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE AT PUNE)**

APPEAL NO. 48 OF 2016

IN THE MATTER OF:

MRS. LINET NUNES ... APPELLANT
VERSUS
GCZMA & OTHERS ... RESPONDENTS

**COUNTER AFFIDAVIT ON BEHALF OF
RESPONDENT NO. 1
GOA COASTAL ZONE MANAGEMENT AUTHORITY**

PAPER BOOK

(KINDLY SEE INDEX INSIDE)

**ABHAY ANIL ANTURKAR
ADVOCATE FOR RESPONDENT NO. 1**

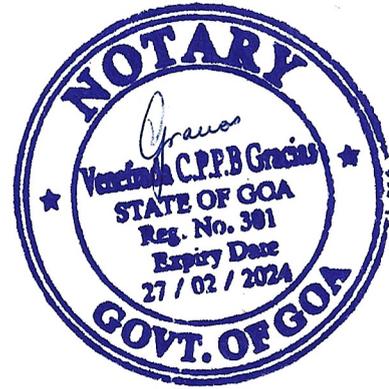
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IN THE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH AT PUNE

APPEAL NO. 48 OF 2016



IN THE MATTER OF:

LINET NUNES

... APPELLANT

VERSUS

GOA COASTAL ZONE
MANAGEMENT AUTHORITY
AND ORS.

...RESPONDENTS

**COUNTER AFFIDAVIT ON BEHALF OF
RESPONDENT NO. 1**

I, Dr. Sneha Gitte (IAS), being the Member Secretary, Goa Coastal Zone Management Authority, having my office at: 4th Floor, Dempo Towers, Patto, Panjim, Goa, do hereby solemnly affirm and state as under:

- 1) I say that I am the Member Secretary of the Respondent No. 1 Goa Coastal Zone Management Authority, and as such am competent to affirm the present Counter Affidavit. The present counter-affidavit is filed to oppose the reliefs sought by the Appellant in the above-captioned Appeal. Nothing in the present counter-affidavit may be treated to be an admission of the contents of the Appeal, unless the same is expressly and categorically admitted herein. I am filing the present Counter Affidavit based on the records available in my office.

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- 2) I say that before adverting to para-wise reply to the contentions raised by the Appellant 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 Appellant in the above captioned Appeal.

PRELIMINARY SUBMISSIONS

- 3) The answering Respondents submits that the claim of the Appellant that the offending structure was existing prior to 1991 is not accepted by the CRZ authority *inter alia* on the grounds that the Google images in 2003 did not show existence of any structure at the place presently the offending structure is located. Further, the Appellant failed to produce ^{Annex} and permissions from Panchayat, Excise Department, Town and Country Planning Department, etc to show that he was operating from the said offending structure prior to 1991, despite being given opportunity to produce such documents. Further, the CRZ Authority has given a categorical finding that the case of the Appellant that the structure is a temporary structure existing prior to 1991 is not correct and upon inspection it is found that the offending structure consists of concrete and the Appellant has even encroached upon the adjoining plot belonging to an unknown person.

A true copy of the Google Images of 2003 is annexed and is marked as ANNEXURE R-1.

- 4) The answering Respondent submit that the so-called certificate dated 05.05.1982 issued by the Village Panchayat

Venefrada P.P.B Gracias
Advocate & Notary Goa



of Anjuna-Caisua is apparently fake inasmuch as Goa became a State on 31.05.1987. Earlier it was a Union Territory known as "Government of Goa, Daman and Diu". The Emblem shown in the said disputed document dated 05.05.1982 is of Government of Goa (State of Goa) and not of Government of Goa, Daman and Diu (Union Territory). In 1982, when Goa was a Union Territory, the Emblem used to be the "Ashok Stambh". It is respectfully submitted that the Appellant has approached this Hon'ble Court with unclean hands. The CRZ Authority has also rightly discarded the said document dated 05.05.1982.

A true copy of the certificate dated 05.05.1982 is annexed and is marked as **ANNEXURE R-2**.

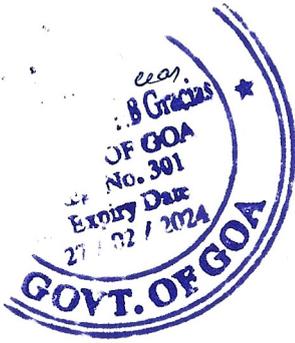
- 5) The answering Respondent received a complaint dated 17.08.2015 from the Respondent Nos. 2 to 6 [hereinafter "**Complainant**"] regarding construction of a restaurant and night club, viz. Curlies, in the property bearing Survey No. 42/10 along with the extensions carried out in adjacent property bearing Survey Nos. 42/9 and 42/11 at Village Anjuna. The Respondents No. 2 to 6 *inter alia* contended that the aforesaid illegal structure standing upon the subject land has been constructed by the Appellant in contravention of the relevant statutory provisions including the Coastal Regulation Zone Notification 2011.
- 6) Further to the aforesaid complaint, the answering Respondent issued a show cause notice *cum* stop work order dated



31.08.2015 to the Appellant. Thereafter, the answering Respondent received a similar complaint dated 26.08.2015 by the Respondent No. 7 and another show cause notice cum stop work order was issued on 01.10.2015 to the Appellant. The Appellant was called upon to show cause as to why a direction to demolish the aforesaid structures and to restore the land to its original condition should not be issued. The Appellant was also directed to produce construction/reconstruction/repair licence/approvals, if any, issued by the concerned authorities with the approved plan and documents to show title. The answering Respondent pointed out that as per the Coastal Regulation Zone Notification 2011 [hereinafter "**CRZ 2011 Notification**"], the entire belt within 200 metres of HTL from the sea is designated as the No Development Zone and, hence no construction/development of whatsoever nature are permissible therein.

- 7) The Appellant responded to the answering Respondent's Show Cause Notice *vide* her letter dated 03.11.2015. The Appellant *inter alia* contended that the structure standing on Survey No. 42/10 is an old house which has been numbered as House No. 774(2) by the Respondent No. 8 Panchayat. The Appellant alleged that the said structure was constructed before 19.02.1991 and therefore it would not be covered by the provisions of the CRZ 2011 Notification.
- 8) The Deputy Collector and Sub-Divisional Officer, Mapusa, Goa submitted a report dated 03.02.2016 to the answering Respondent *inter alia* observing as under

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- (i) That a local inquiry was conducted by the Mamlatdar of Bardez wherein it was stated that the erection/construction was done prior to 1982. It is a shack/restaurant.
- (ii) The area of shed A(part) is 135.00 sq. mts., area of kitchen B (part) is 51.00 sq. mts., area of wooden hut C is 54.00 sq. mts., and area of toilets 1 and 2 is 18 sq mts.
- (iii) As per the Gut Book, the area of old House is 242.00 sq. mts.
- (iv) The construction is within 200 mts from the HTL and no approval from the GCZMA is obtained.

Upon perusal of the aforesaid, the Deputy Collector and Sub Divisional Officer, Mapusa concluded that the Appellant had carried out the construction prior to 1982. Furthermore, it was recorded that the certified copy of the plan on Gut Book of Survey No. 42/10 shows an existing structure.

A true copy of the Report of the Deputy Collector and Sub Divisional Officer, Mapusa dated 03.02.2016 is annexed and is marked as **ANNEXURE R-3**.

- 9) Pursuant to the aforesaid complaint, the Inquiry Committee of the answering Respondent considered Case No. GCZMA/N/ILLE/COMPL/15-16/1160 and *vide* its report

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dated 10.03.2016 came to the conclusion that the unauthorised structure standing on the Suit Property was existing prior to the date of the enforcement of the CRZ 1991 Notification i.e. 19.02.1991. It therefore recommended that the Show Cause Notice *cum* Stop Work Order be withdrawn.

A true copy of the Inquiry Committee Report dated 10.03.2016 is annexed and is marked as **ANNEXURE R-4**.

- 10) The Respondent No. 2 complainant approached the Hon'ble National Green Tribunal, Western Zone Bench, Pune *vide* Application No. 06/2016 under Section 18 read with Sections 14, 15, 16, 17 of the National Green Tribunal Act, 2010 seeking directions against the Respondent No. 1 to demolish the illegal structure standing upon the Suit Property which extended to adjoining plots of land. The Hon'ble NGT by its order dated 18.03.2016 recorded the submission of the Ld. Advocate General that the complainant would be accorded an opportunity to be heard and directed the answering Respondent to hear the complainant and give him an opportunity to produce documents, if necessary, and pass appropriate orders in accordance with law.

A true copy of the order dated 18.03.2016 passed by the National Green Tribunal, Western Zone Bench, Pune in Application No. 06/2016 is annexed and is marked as **ANNEXURE R-5**.

- 11) Pursuant to the aforesaid order dated 18.03.2016, the answering Respondent in its 132nd Meeting dated 06.07.2016

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granted a personal hearing to the parties concerned including the Appellant. After considering the submissions of the parties concerned the answering Respondent decided to conduct an inspection in respect of the unauthorised structure standing on Survey No. 42/10 through its Expert Members in order to ascertain all the aspects/angles on the site and also to verify the documents available in the office records.

A true copy of the relevant extract of the Minutes of the 132nd Meeting dated 06.07.2016 of the answering Respondent is annexed and is marked as ANNEXURE R-6.



12) The answering Respondent issued the Notice of Site Inspection dated 12.07.2016 to the Appellant informing her that the inspection of the Suit Property will be conducted on 15.07.2016. The site inspection was carried out on 15.07.2016. Pertinently, despite the aforesaid notice, the Appellant chose to remain absent. The following observations were made *vide* the site inspection report dated 16.07.2016:

- (i) The Suit Property is occupied by G+1 permanent structure with a cemented plinth and wooden floor. Steel pipes are used as columns to support the top floor.
- (ii) The entire structure is found to be located in the No Development Zone (NDZ).
- (iii) No approvals from GCZMA have been obtained.

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- (iv) Although the restaurant claimed to be a temporary structure, it was fully covered and ought to have been dismantled during the monsoon. Therefore, it is classified as a permanent structure located right at/along the HTL.

The Expert Member who conducted the site inspection opined that the structure under reference standing in Survey No. 42/10 was not a temporary but a permanent structure with cemented plinth, wooden floor, and steel pipes used as columns to support the top floor.



A true copy of the Expert Member's Site Inspection Report dated 16.07.2016 is annexed and is marked as ANNEXURE R-7.

- 13) Pursuant to the aforesaid, the answering Respondent considered the case relating to the unauthorised structure on the Suit Property in its 133rd Meeting dated 20.07.2016 *vide* Case No. 2.7. The answering Respondent took into consideration the aforementioned Site Inspection Report, as well as the documents submitted by the complainants including the Google Earth images of 2003. Pertinently, the Appellant had never produced any substantive piece of evidence, documentary or otherwise, to establish her contention that the unauthorised structure standing on the Suit Property has been in existence since prior to 1991. Thus, the Appellant had failed to discharge her onus of proving that

the structure existed prior to 1991. In view of the non-production of any evidence supporting the existence of the permanent structure prior to 1991, or the existence of any commercial activity in the said structure prior to 1991, an adverse inference came to be drawn against the Appellant that the same was erected after coming into force of the Coastal Regulation Zone Notification, 1991 [hereinafter referred to as the **CRZ 1991 Notification** for the sake of brevity and convenience]. Accordingly, the answering Respondent decided to issue an order of demolition under Section 5 of the Environment Protection Act, 1986 read with other enabling provisions, to demolish the unauthorised permanent structure standing on the Suit Property and restore the land to its original condition.



A true copy of the relevant extract of the Minutes of the 133rd Meeting dated 20.07.2016 is annexed and is marked as **ANNEXURE R-8**.

- 14) Pursuant to the decision of the answering Respondent in its aforesaid meeting, the answering Respondent passed an order dated 21.07.2016 [hereinafter "**impugned order**"] directing that the structures standing on the Suit Property be demolished for being in violation of the relevant CRZ Notifications.

A true copy of the order dated 21.07.2016 passed by the answering Respondent is annexed and is marked as **ANNEXURE R-9**.

15) A perusal of the impugned order will make it abundantly clear that the same has been passed after hearing all the concerned parties. Thus, the contention of the Appellant that the impugned order has been passed in violation of principles of natural justice are categorically denied.

16) The answering Respondent submits that none of the documents produced by the Appellant before it buttress her case that the structure was standing upon Survey No. 42/10 since prior to 1991. In fact, the Survey Plan submitted by the Appellant does not prove the existence of the structure in question upon Survey No. 42/10 prior to 1991.

PARAGRAPH-WISE REPLY

17) The contents of Paragraphs No. 1, 2, and 3 are a matter of record and warrant no response.

18) The contents of Paragraph No. 4 are denied unless categorically admitted hereunder:

I. The contents of sub-para I warrant no response. However, it is pertinent to note that the Appellant claims to be the owner of the restaurant named 'Curlies' situated in Survey No. 42/10. Thus, the Appellant's challenge to the impugned order ought to be limited to the illegal structure standing upon Survey No. 42/10. In other words, the Appellant has no locus whatsoever to challenge the impugned order in so far as it directs demolition of the extensions to the Petitioner's structure in adjacent plots/properties bearing



Survey Nos. 42/9, 42/11, 45/19, and 45/41 of Village Anjuna. It is true that the Restaurant of the Appellant has been in operation for several years, but it is denied that the same has been in operation since prior to 19.02.1991.

- II. The contents of sub-para II are categorically denied. The Appellant has not produced any documents to establish that she has the necessary permissions required for running a restaurant and bar.
- III. The contents of sub-para III are denied. The Appellant has not produced any document to either establish that the structure existed prior to 19.02.1991 or to establish that the restaurant and bar was situated and operated from the purported structure alleged to have been existing prior to 19.02.1991.
- IV. The contents of sub-para IV are a matter of record and warrant no response.
- V. The contents of sub-para V warrant no response. However, it is denied that the documents supplied by the Appellant establish that the structure in question has been in existence prior to the CRZ Notification coming into force. A perusal of the Appellant's Response dated 03.11.2015 to the Show-Cause Notice *cum* Stop Work Order of the answering Respondent makes it abundantly clear that the Appellant did not produce any relevant documents to buttress her claim that the structure in question existed since prior to 1991.

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- VI. The contents of sub-para VI are a matter of record and warrant no response.
- VII. The contents of sub-para VII are denied. Assuming without admitting in any manner whatsoever that the existence of a structure upon Survey No. 42/10 is established by the Survey Plan prepared by the Directorate of Settlement and Land Records, the Appellant has not produced any supporting documentary evidence to establish that the structure in question is the same as the structure shown in the said Survey Plan.
- VIII. The contents of sub-para VII are denied. The structure in question has been constructed by the Appellant within the No Development Zone. The Appellant has produced no evidence to establish that the structure in question has been in existence since prior to 1991. The Appellant has also not produced any permission for construction from this Authority as contemplated by the 2011 CRZ Notification. The documents produced by the Complainants lead the answering Respondent to the conclusion that the structure in question has been constructed in violation of the 2011 CRZ Notification. The Appellant on the other hand failed to produce any evidence to rebut the aforesaid conclusion.
- IX. The contents of sub-para IX to XIV relate to proceedings initiated against the Appellants by the Goa Pollution Control Board, and are not within the knowledge or domain



of the answering Respondent. As such, they warrant no response from the answering Respondent.

X. The contents of sub-para XV are admitted.

XI. The contents of sub-para XVI are a matter of record and warrant no response. Notwithstanding the aforesaid, it is clarified that the reports/recommendations of the Inquiry Committee consisting of the Chairman and Members of the answering Respondent are not binding upon the answering Respondent. The answering Respondent decides the issues raised before it in accordance with the relevant statutory provisions including the 2011 CRZ Notification.



XII. The contents of sub-para XVII are a matter of record and warrant no response. The Inquiry Committee of the answering Respondent had concluded that the structure in question existed since prior to 1991 on the basis of the documents supplied to it by the parties. A perusal of the order dated 10.03.2016 passed by the Inquiry Committee makes it clear that it *inter alia* referred to and relied upon the report dated 29.12.2015 submitted by the Talathi of Anjuna along with the sketch and the extract of the Gat Book to concluded that the structure in question was in existence since prior to 19.02.1991. Pertinently, the Talathi *vide* Point No. 1 of his report records as under:

1	Date of Construction	<u>As per local</u> <u>enquiring the</u>
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		<u>erection/construction done prior to before 1982.</u>
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[Emphasis supplied]

Furthermore, the aforesaid Report of the Talathi also records the plinth area of the existing house as under:

7	What was the plinth area of old house if any	Area of old house = 242 sq. mts. (<u>as per Gut book copy enclosed</u>)
---	--	---

[Emphasis supplied]



However, the Note under the table in the Report categorically records that Point No. 7 mentioned in respect to plinth of the construction cannot be identified due to unavailability of Gut book as the said book is "...totally torned off and cannot be seen properly for site inspections." Thus, the veracity of the findings of the Talathi *vide* Report dated 29.12.2015 is doubtful. The contents of sub-para XVIII, XIX, and XX warrant no response.

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XIII. The contents of sub-para XXI form a part of the record and warrant no specific response. However, the Appellant's implication that it did not get any opportunity of presenting its case before the answering Respondent is categorically denied. The minutes of the 132nd Meeting dated 06.07.2016 make it abundantly clear that the answering Respondent decided to conduct re-inspection of the site under reference through its expert members in order to ascertain all the aspect/angles on site and also to verify the documents available in the office reports, and decide in the next meeting. Thus, the Appellant was fully aware that the answering Respondent intended to examine the documents on record and thereafter pass appropriate orders. Accordingly, upon receipt of the site inspection report from the Expert Members of the answering Respondent, the matter along with the inspection report was placed before the answering Respondent in its 133rd Meeting dated 20.07.2016⁶ for discussion and to take a final decision. Ultimately, the impugned order came to be passed by the answering Respondent after detailed discussion and due deliberation and upon considering the documents and evidence available on record.

XIV. The contents of sub-para XXII and XXIII warrant no response. Pertinently, the Appellant has categorically admitted that the notice of inspection was served upon her, and that her representative viz. Mr. Dominic Mendes was present at the time of the said inspection.

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XV. The contents of sub-paras XXIII, XXIV, XXV, and XXIV are a matter of record and warrant no further response.

19) The contents of the Grounds of Objection mentioned *vide* Paragraph No. 5 are categorically denied unless specifically admitted hereunder:

I. The contents of ground a are denied. The answering Respondent has given all the parties involved sufficient opportunities to present their case. The Appellant as well as the Respondent No. 2 Complainant submitted the relevant documents before the answering Respondent to support their respective cases. Initially, the Inquiry Committee appointed by the answering Respondent submitted its report dated 10.03.2016 and recommended that the proceedings be withdrawn against the Appellant. The said Report was based upon the relevant documents submitted by the Appellant. The Respondent No. 2 Complainant approached this Hon'ble Tribunal *vide* Application No. 6/2016 seeking demolition of the structure in question. This Hon'ble Tribunal *vide* its order dated 18.03.2016 directed the answering Respondent to take a decision upon the complaint of the Respondent No. 2 Complainant in a time bound manner. Accordingly, the answering Respondent summoned the parties and heard their submissions in its 132nd Meeting dated 06.07.2016. At no point has the answering Respondent suggested that the hearing dated 06.07.2016 would be "preliminary" requiring "cursory clarifications". In fact, the matter was placed in the 132nd



Meeting for “personal hearing”. After hearing the parties the answering Respondent took the following decision in its 132nd Meeting dated 06.07.2016:

“Decision: After detailed discussion and due deliberation and on considering the oral as well as written submissions made by the parties, the Authority decided to conduct re-inspection of the site under reference through its Expert Members in order to ascertain all the aspects/angles on site and also to verify documents available in Office and **decide accordingly in the next meeting.**”

Thus, it was abundantly clear that the answering Respondent would take a decision in the matter in the 133rd Meeting. Pertinently, admittedly the representatives of the Appellant were present during the site inspection. No objections were raised by the representatives of the Appellant.

- II. The contents of ground b are denied. The impugned order is not premised on the site inspection report alone. As is evident from a perusal of the impugned order, the answering Respondent has taken into consideration the relevant documentary evidence before taking a final decision.
- III. The contents of ground c are denied. The impugned order is based upon the submissions of the parties and the relevant documents supplied to the answering Respondent in the form of evidence. As admitted by the Appellant herself in

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the memorandum of the captioned Appeal, her representative, namely Dominic Mendes, was present at the time of the site inspection. Thus, it does not lie at the instance of the Appellant to say that she was not privy to the site inspection. It is reiterated that there has been no violation of the principles of natural justice.

- IV. The contents of ground d are denied. The Appellant was entirely aware of the contents of the site inspection report as her representative was aware at the time of the said site inspection.
- V. The contents of ground e are denied. The contents of the Complaint dated 17.08.2015 was supplied by the answering Respondent to the Appellant. Furthermore, the Show-Cause *cum* Stop Work Notice dated 31.08.2015 also mentioned that a restaurant and bar was being operated out of the structure in question. The Appellant was also put to notice about the illegal activities being carried out from the structure in question.
- VI. The contents of grounds f, g, and h are denied for the reasons mentioned hereinabove.
- VII. The contents of ground i are categorically denied. The answering Respondent conducted the proceedings in the complaint lodged by the Respondent No. 2 in compliance with the relevant statutory provisions, principles of natural justice, and orders passed by this Hon'ble Tribunal in Application No. 6/2016.



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VIII. The contents of ground j, k, and l are categorically denied for reasons already mentioned hereinabove.

IX. The contents of ground m are categorically denied. Since the Appellant has failed to conclusively establish that the structure in question has been in existence since prior to 1991 and the commercial activity has also been conducted therein since prior to 1991, the answering Respondent was duty bound to take action against the Appellant in terms of the CRZ 2011 Notification.



X. The contents of ground n are categorically denied. A perusal of the minutes of the 133rd Meeting of the answering Respondent and the impugned order will make it abundantly clear that the orders have been passed in accordance with the relevant statutory provisions and judicial pronouncements after taking into consideration the submissions of the concerned parties and the relevant documents on record.

XI. The contents of ground o and p are denied for the reasons mentioned hereinabove.

20) The contents of ground 6 and ground 7 warrant no response at this stage.

21) The contents of ground 8, 9, 10, and 11 warrant no response.

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22) I say that in light of the aforementioned facts and circumstances, this Hon'ble Court may kindly be pleased to dismiss the present Appeal with costs.



VERIFICATION

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DEPONENT

MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
PANAJI - GOA

I, the abovenamed Deponent, do hereby state on solemn oath and affirmation that the facts stated hereinabove in this Counter Affidavit are true and correct to the best of knowledge, information and belief, and nothing has been concealed.

Verified at Panaji on this 11th day of August, 2023



Atte
DEPONENT

MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
PANAJI - GOA

Executed before me
At Calangute Bardez - Goa
Reg. No. 152/08/2023
Dated: 11/08/2023

Gracias
Venefrada C.P.P.B Gracias
Advocate & Notary Goa State

ANNEXURE-R1

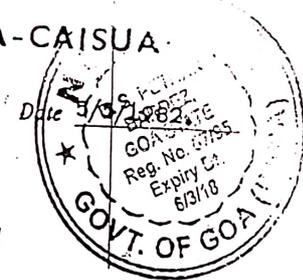




Annexure.R.2

VILLAGE PANCHAYAT ANJUNA-CAISUA BARDEZ - GOA

Ref. No. YP/ANJ-CAI/81-82.



TO WHOM IT MAY CONCERN

This is to certify that as per my knowledge on behalf of Smt. Aquelina Nunes, r/o St. Michael-Vaddo, Anjuna, Bardez-Goa, residing in the house located in survey no. 42/10, situated at St. Michael-Vaddo, Anjuna since last twenty years.

It is further to certify that the residential house owner and occupied by Smt. Aquelina Nunes is in very bad conditions and requires urgent repairs.

Since it is danger to the life of occupants family and children the Village Panchayat of Anjuna-Caisua hereby grant the no objection to repair/restore the house in the existing plinth area.

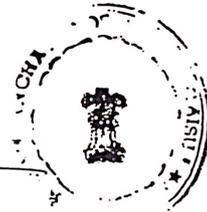
This N.O.C. is issued at the written request on the humanitarian ground and the applicant is very poor and also does not possess shelter if collapsed.



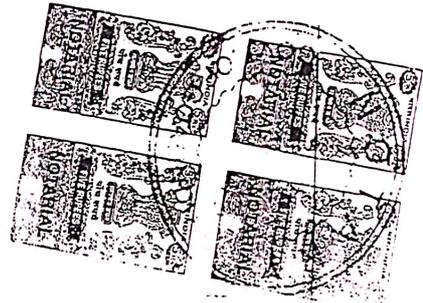
Certified that this is a True Copy
Mapusa Dt. 30-11-2010

D. S. Petkar
D. S. PETKAR
B.A.L.L.B.

NOTARY, Reg. No. 67/05
St. No. 15701/2010



V. V. Govokar
(Mr. V. V. Govokar)
SARPANCH,
V.P. Anjuna-Caisua.



Annexure.R.3

BEFORE THE DY. COLLECTOR & SUB DIVISIONAL OFFICER,
MAPUSA-SUB-DIVISION, MAPUSA - GOA.

Case No. DC/MAP/CRZ/37/2015 | 811

State
(Represented by the Mamlatdar of Bardez)

....Complainant

V/s

Linet Nunes
Sy. No.42/10, Village Anjuna,
Bardez-Goa.

Member Secretary
G.C.Z.M.A.
Inward No. 4684/
Date 08/02/16

....Respondent

REPORT

This office is in receipt of the show cause notice cum stop work order issued under section 5 of the Environment (Protection) Act, 1986, read with rule 4 of the Environment (Protection) Rules, 1986 from the Member Secretary, Goa Coastal Zone Management Authority, Panaji-Goa vide No. GCZMA/N/ILLE-COMPL/15-16/91/1624 dated 01/10/2015 with the direction to this office to ensure that no further civil work is carried out at site, other in accordance in law. Based upon which the stop work order vide no. DC/MAP/CRZ/37/2015/9160 dated 05/10/2015 was issued to Linet Nunes, Sy.No.42/10, Village Anjuna, Bardez-Goa. The case was registered under Case No. DC/MAP/CRZ/37/2015.

The report was called from the Mamlatdar of Bardez. The Mamlatdar of Bardez submitted the report vide No. MAM/BAR/CI/CRZ/18152/2015/6076 dated 14/12/2015 stating that necessary inquiry was conducted through the Talathi of Anjuna in respect of property bearing Sy. No. 42/10 of Anjuna village in Bardez Taluka. The Mamlatdar of Bardez stated that as per local inquiry the erection/construction done to prior to before 1982. It is a shack/restaurant. The area of shed A (part) is 135.00 m², area of kitchen B (part) is 51.00m², area of wooden hut C is 54.00 m² and area of toilets 1 & 2 is 18 m². The area of old house=242.00m² (as per gut book). The said construction is within 200mts. from H.T.L. and no approval from the GCZMA is obtained. Further the Mamlatdar of Bardez with regards to the point "Whether there is any violation of CRZ Regulation if so" it is mentioned as may be decided at your end.

The respondent filed the reply sating that the respondent is the owner in possession of the property under survey No.42/10 of village Anjuna, Bardez-Goa. That in the said property there were existing old structure since prior to the year 1971 which is being reflected in the Gut book in the office of Village Panchayat of Anjuna-village. The said structure were in very bad condition which were repaired in the month of May of the year 1982. That house tax in respect thereto bearing no.774 (2) in the Panchayat office at Anjuna and were stand recorded in the name of respondent mother Smt. Akelina Nunes alias

Aquelina Nunes. That said structure stand transferred in respondent name and respondent paying the house tax till date. That the said house structure were existing since prior to the year 1971 and due to its old age were required urgent repair if not repaired could have collapsed hence was carried repair by the respondent under the proper permission/N.O.C. from the office of the V.P. of Anjuna Caisua under ref no. V.P./ANJ/-CAI/81-82 and respondent running small restaurant in it for her livelihood. That structure thereto is also seen while perusing the Gut Book maintained by the V.P. Anjuna-Caisua which has been clearly shown in the record/Gut Book maintained by the said Village Panchayat office. That the respondent has not carried out any illegal construction in the said property surveyed under no.42/10 which is existing before period 1971 and therefore proceeding be dropped. It is stated that the respondent has already sought the permission for its repair to the existing structure with the relevant authority and there is no violation of CRZ regulation by the respondent.

Perused the aforesaid report submitted by the Mamlatdar of Bardez, wherein it is clear that the respondent has carried out the construction prior to 1982. The area of shed A (part) is 135.00 m², area of kitchen B (part) is 51.00m², area of wooden hut C is 54.00 m² and area of toilets 1 & 2 is 18 m². The area of old house=242.00m² (as per gut book) within 200mts. from H.T.L. in property bearing Sy. No. 42/10 of Village Anjuna. As per the report of Mamlatdar of Bardez, wherein it has stated that no prior permission has been obtained so also it has stated by the Mamlatdar in his report that construction was carried out prior to 1982, so also upon perusal of certified copy of plan on Gut Book of Survey No.42/10 of village Anjuna, Bardez Taluka attached to the Mamlatdar report clearly shows the existing structure which Mamlatdar in his report has stated that structure area is 242 sq.mts. the Goa Coastal Zone Management Authority may decide accordingly.

The report is submitted for your kind information and necessary action.

All the relevant papers are enclosed herewith.

Date: 03 /02/2016

Yours faithfully


(Pundalik V. Khorjuekar)
Dy. Collector & Sub Divisional Officer
Mapusa-Sub-Division
Mapusa - Goa.

Encl.: The photocopy of the file bearing No. DC/MAP/CRZ/37/2015 is enclosed herewith.

To,
The Member Secretary,
Goa Coastal Zone Management Authority, Dempo Towers, 3rd floor, Panaji - Goa.

Copy for information to: The Collector, North Goa District, Panaji - Goa.

Annexure.R.4

BEFORE THE INQUIRY COMMITTEE

GCZMA

Case No. GCZMA/N/ILLE/COMPL/15-16/1160

1. Mr. Kashinath Shetye
2. Mr. Sagardeep Sirsaikar

V/s

1. Mr. Edwin Nunes
2. Mr. Linet Nunes

REPORT

1. Upon a complaint dated 17-08-2014 by Kashinath Shetye against Edwin Nunes (affected party-1) and a complaint dated 26-08-2015 by Sagardeep Sirsaikar against Linet Nunes (affected party-2) in respect of violation of CRZ Notification, the GCZMA issued a Show Cause Notice cum Stop Work Order dated 31-08-2015 and 01-10-2015 to the affected party-1 and affected party-2 respectively. After the filing of reply and producing documents, GCZMA forwarded the file to the Inquiry Committee for inquiry and report.
2. At the personal hearing the complainant Kashinath Shetye and Sagardeep Sirsaikar filed their respective say with documents and photographs. The affected parties Edwin Nunes and Linet Nunes through their Adv. K. Kamat produced the documents namely: report dated 14-12-2015 of the Mamlatdar of Bardez and Dy.Collector and S.D.M Mapusa; report dated 09-12-2015 of the Talathi to the Mamalatdar; sketch by the field surveyor;

house tax receipts; receipt of payment for renewal licence of restaurant; certificate dated 05-05-1982 and 12-07-2010 of Village Panchayat of Anjuna; extract of general body meeting and the report dated 03-02-2016 of Dy. Collector and S.D.M Mapusa.

3. The complaint is in regard of a construction of restaurant and night club 'Curlies' in the property bearing Sy.No. 42/10 along with extension carried put in adjacent property bearing SY.No. 42/9, 42/11 at Anjuna in violation of CRZ Notification and without obtaining permission from the Panchayat and GCZMA.
4. As per CRZ Notification, the CRZ along the sea coast of Anjuna Village, Chapora Fort is classified as CRZ-1 and the rest of the area is classified as CRZ-III. In CRZ-III the area upto 200 mts from HTL is earmarked as No Development Zone wherein no construction activities are permissible except for repairs or reconstruction of existing authorized structure not exceeding existing plinth area etc.
5. The structure of restaurant Curlies is situated in Sy. No. 42/10 and 42/11 of Anjuna Village and since the structure of the restaurant 'Curlies' falls in the area of 200 mts from HTL and since no construction is permissible within the area of 'No Development Zone, the question of our consideration is whether the structure of the restaurant Curlies was existing prior to the date of CRZ Notification 19-02-1991.

6. The affected parties produced the N.O.C dated 05-05-1982 issued by the Village Panchayat for repairs of the house in Sy.No. 42/10. The N.O.C dated 05-05-1982 is marked as Annexure A. The Certificate dated 12-07-2010 issued by the Village Panchayat and marked as Annexure B, shows that in the register of demand collection of house tax and light tax, the house no. 774/2 in Sy.No. 42/10 is in the name of Akelina Nunes (mother of the affected party 1 and affected party-2) and paid the house tax, light tax from the year 1983-84 to 2006 and transferred in the name of Linet Nunes, affected party-2 in the year 2007.
7. The house tax receipts dated 02-01-1991, 06-01-1992, 15-01-1995 and 12-04-2007 which are marked as Annexure C (Colly) are in the name of Akelina Nunes (mother of the affected party 1 &2). The receipts dated 18-07-2007 of payment of fees for the transfer of house & light tax, receipts of payment of house tax dated 18-07-2007, 01-06-2009, 23-06-2010 and the receipt dated 12-07-2010 of payment of fees of the N.O.C for renewal of Bar & Restaurant in H.No. 774/2, are in the name of Linet Nunes (affected party-2). The receipts dated 18-07-2007; 01-06-2009; 23-06-2010 and 12-07-2010 are marked as Annexure D (Colly).
8. The affected party produced the report of Talathi of Anjuna dated 29-12-2015 alongwith the sketch and extract of GAT Book in respect of Sy.No. 42/10 of Village Anjuna. In the sketch the area of the shed is 135 sq.mts., of the kitchen 51 sq.mts., wooden hut 34 sq.mts and toilet 18 sq.mts. In the report there is reference of an old house shown in the GAT book and having area of 242 sq.mts. The report of Talathi, the sketch of the

structure in Sy.No. 42/10 and the GAT book are marked as Annexure E (Colly).

9. The GCZMA issued a Show Cause Notice cum Stop Work Order dated 01-10-2015 to Linet Nunes and directed the Dy.Collector and SDM, Mapusa, to issue Stop Further Civil Work/ Construction and Show Cause as to why a direction to demolish the structure and restore the land to its original condition should not be issued to Linet Nunes (affected party-2). Based on the report of the Talathi, the sketch plan, GAT book, N.O.C and receipts of payment of house tax, the Dy.Collector in the report dated 03-02-2016 observed that the area of old house is 242 sq.mts. and the construction was carried out prior to the year 1982. The report dated 03-02-2016 is marked as Annexure F.

10. The entire structure of restaurant 'Curlies' is with wooden poles and wooden flooring and a few pillars of iron rods of small diameter so as to support the wooden first floor. Moreover there is a retaining wall of a height of 2.50 mts. all along the entire beach and after the retaining wall it is the land of coconut garden, where the structure of the restaurant 'Curlies' and in the same line the structures of other owners are situated. Apart from the fact that the structure of restaurant 'Curlies' was existing prior to year 1982, the area of the structure is the same as the area of 242 sq.mts. shown in the GAT Book. (Annexure E Colly). Besides the existence of the structure restaurant 'Curlies' do not disturb the coastal ecosystem and cause any damage to the environment.

11. Considering that N.O.C for repairs/ renovation of the existing structure (Annexure A) is of the year 1982; that the registration of the house no. 774/2 (Annexure B) for the purpose of house and light tax is from the year 1983-84; that the receipts of payment of house taxes (Annexure C Colly) are of the years 1991-1992, 1995; that the GAT Book (Annexure E Colly) shows the existence of an old structure of 242 sq.mts, the structure of the restaurant Curlies having an area of 242 sq.mts. in Sy.No. 42/10 and 42/11 of Village Anjuna, was existing prior to the date of CRZ Notification 19-02-1991. The GCZMA to withdraw the show cause notice cum stop work order dated 31-08-2015 of Edwin Nunes (affected party-1) and the show cause notice cum stop work order dated 01-10-2015 of Linet Nunes(affected party-2)



(Afonso Araujo)
CHAIRMAN



(Kanchan M. Lotlikar)
MEMBER



(Caetano Joaquim de Braganza)
MEMBER

Dated: 10/03/2016

Annexure.R.5

BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH, PUNE

Application No.6/2016

In the matter of :-

Kashinath Jairam Shetye & Anr. Vs. Edwin Nuns & Linet Nunes Curlies
Restaurant & Ors.

CORAM: HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER
HON'BLE DR. AJAY A. DESHPANDE, EXPERT MEMBER

Present: Applicant/Appellant : In person
Respondent No.1 : Mr. Shivan Desai, Adv. a/w
Mr. Gajanan Korgaonkar, Adv.
Respondent No.2 : Mr. A.N.S. Nadkarni, Advocate General a/w
Mr. Dattaprasad Lawande, Govt. Advocate
Respondent Nos.3 to 6 : Mr. A.N.S. Nadkarni, Advocate General a/w
& 8 : Ms. Purna Bhandari, Addl. Govt. Advocate,

Date and Remarks	Orders of the Tribunal
<p>Item No. 3 18th March, 2016 Order No. 3</p>	<p>Mr. Kashinath Jairam Shetye is the Applicant. His Application has gained access to this Tribunal under Section 18(1) read with Section 14, 15, 16, 17 of the National Green Tribunal Act, 2010 wherein he has sought direction against Respondent No.1 to demolish alleged illegal construction of building running, restaurants, night club, in Survey No.42/10 which according to him extend to Survey No.45/41, 42/9, 42/11 and 45/19 in total disregard to CRZ Regulations of CRZ-I and III. It is alleged that Respondents have indulged in fabrication of documents. Several other incidental reliefs are sought in the Petition.</p> <p>On Notice by this Tribunal to Respondents, learned Advocate General Mr. A.N.S. Nadkarni appears for State of Goa which includes Respondent Nos.2 to 6 and 8. Learned Counsel Mr. Shivan Desai appears for Respondent No.1. It is submitted by learned Advocate General that the grievance of the Applicant is that he was not heard on the complaint filed by him by the Goa Coastal Zone Management Authority (GCZMA). He would fairly submit that the GCZMA will give him full opportunity to be heard and to support his stand. The GCZMA will give him full opportunity and pass appropriate order.</p> <p>In view of the submissions of learned Advocate General, we are satisfied that this Application can be disposed of with following order:</p> <p>(1) The GCZMA will hear the Applicant on the complaint and give him opportunity to produce documents, if necessary and pass appropriate order in accordance with law.</p> <p>(2) All contentions of the first Respondent are kept open to be</p>

Item No. 3
18th March, 2016
Order No. 3

urged before the Authority concern.

(3) GCZMA is directed to dispose of the complaint of the Applicant as expeditiously as possible but within outer limits of four (04) months from the date of this Order.

Application No.6/2016 stands disposed with no order as to costs.

..... JM
(Dr. Justice Jawad Rahim)

..... EM
(Dr. Ajay A. Deshpande)



Annexure.R.6

EXTRACT OF THE MINUTES OF 132nd GCZMA MEETING HELD ON
06/07/2016

Case No. 1.6:

To Comply with the Order dated 18/03/2016 of the Hon'ble National Green Tribunal at Pune in Application No. 06/2016 filed by Mr. Kashinath Shetye V/s. Edwin Nunes & ors with regard to the alleged illegal construction carried out in the property bearing Sy. No. 42/9, 42/11 and 45/19 of Village Anjuna, Bardez – Goa.

Brief Summary:

- Complaint received from Mr. Kashinath Shetye & Ors. with regard to alleged illegal construction of a Restaurant and night club "Curlies" in the property bearing Sy. No. 42/10 and extension of the structures up to the adjacent Sy. Nos. 42/9 and 42/11 at H. No. 774/2, St. Michael waddo of Village Anjuna, Bardez – Goa carried out by Edwin Nunes and also, a complaint received from Mr. Sagardeep Sirsaikar with regard to the same subject matter carried out by Linet Nunes.
- Accordingly, a Show Cause Notice Cum Stop Work Order was issued to Linet Nunes which was replied to by alongwith documents in support of their case.
- The said matter was also forwarded to the Inquiry Committee of the GCZMA and Deputy Collector & SDO, Bardez for inquiry and report in the matter. The Inquiry Committee submitted its report wherein it is recommended to the GCZMA to withdraw the Show Cause Notice cum Stop Work Order dated 31-08-2015 of Edwin Nunes (Affected party – 1) and the Show Cause Notice cum Stop Work Order dated 01-10-2015 of Linet Nunes (Affected Party -2).
- Subsequently, an Application bearing No. 06/2016 was filed by Mr. Kashinath Shetye & Ors. before the Hon'ble National Green Tribunal (NGT), Pune challenging the alleged illegal construction being carried out by Mr. Edwin nunes and Linet nunes in the property bearing Sy. No. 42/9, 42/11 and 45/19 of Village Anjuna, Bardez – Goa and the alleged inaction on the part of the Respondent authorities against the alleged illegal construction.
- Accordingly, the said matter was disposed of by the Hon'ble NGT at Pune vide Order dated 18/03/2016 with a direction to GCZMA to hear the concerned parties with an opportunity to produce the documents in support of their case and to dispose of the complaint of the Applicant as expeditiously as possible within a period of four months.

In view of the above, the matter was placed before the Authority for grant of personal hearing to the concerned parties and decide accordingly.

Proceedings: The Complainant, Mr. Kashinath Shetye remained present in person. Adv. Shivan Dessai represented the Respondents, Mr. Edwin Nunes & Linet Nunes. Also, Mr. Sagardeep Sirsaikar and Jaiprakash Sisaikar remained present. However, the Complainant, Mr. Kashianth Shetye raised objections for the presence of Mr. Sagardeep Sirsaikar and Jaiprakash Sisaikar for the personal hearing as the Authority is required to hear the parties only in respect of his complaint and in view of the directions dated 18/03/2016 of the Hon'ble NGT, Pune in Applicaton No. 06/2016 filed by him. The Authority in view of the objections raised by Mr. Kashinaht Shetye informed Mr. Sagardeep Sirsaikar and Jaiprakash Sisaikar that they will be heard separately as far as their complaint is concerned.

Mr. Kashinath Shetye stated that there was a small structure existed earlier however, the Hon'ble High Court of Bombay at Goa somewhere in 2004 had passed an Order for demolition of the structure under reference and the same was demolished accordingly. That his complaint with respect to the illegal construction carried out in Sy. No. 42/10 which further extended in the adjacent properties bearing Sy. Nos. 42/9, 11 and 41 of Village Anjuna, Bardez – Goa. Even in 2008 when the resurvey was carried out by the GCZMA through RSI in view of the directions of the Hon'ble High Court of Bombay at Goa in W. P. No. 422/1998 there existed no structure. Even if the house was there no permission has been obtained from the GCZMA and that no Restaurant existed earlier. The construction is carried out right on the Anjuna beach and on the sand dune and the same is CRZ – I area.

Adv. Shivan Dessai submitted that he is the owner of only one Survey number i.e. Sy. No. 42/10 and is not concerned about the construction carried out in other survey numbers as alleged by the Complainant as he is not the owner of the same. The structure has been in existence since 1971 when the survey was conducted and thus it shows that it existed prior to 1991. So also, the structure is reflected on the survey plan prepared by the DSLR which is a competent authority under Goa Land Revenue Code and till date the same has not been challenged and as such is valid. He further stated that NOC for repairs was also obtained from the Village Panchayat in the year 1983.

Decision: After detailed discussion and due deliberation and on considering the oral as well as written submissions made by the parties, the Authority decided to conduct re-inspection of the site under reference through its Expert Members inorder to ascertain all the aspects / angles on site and also to verify the documents available in Office records and decide accordingly in the next meeting.

Annexure.R.7

Survey no. 42/10, Anjuna (Curlies restaurant)

1. Inspection was done on 15 July 2016.
2. The property belong to Mr E Nunes and L Nunes; neither of them was present during the site inspection.
3. The plot is occupied by a G+1 permanent structure, with a cemented plinth, wooden floor; steel pipes are used as columns to support the top floor
4. The entire structure is used as a restaurant, located along the HTL within the reach of sea waves; the restaurant is found in the No Development Zone (NDZ).
5. In fact, the restaurant extends into the other plot, the owner of which is not known; the restaurant is in operation as several people / tourists were present inside.
6. The HTL is marked by a massive cement concrete retaining wall, built in three steps that lead to the sandy beach.
7. Severe erosion was observed along the wall, parts of which are broken due to the heavy wave activity.
8. Although the representative of the owner produced some certificates from the panchayat, the approvals from the GCZMA have never been obtained.
9. Although they claim that the restaurant is a temporary structure, it is fully covered and it ought to have been dismantled during the monsoon. Therefore, this can be classified as a permanent restaurant located right at / along the HTL.
10. In view of the above, the commercial activities noted in the NDZ, a sea wall pf concrete, and without permissions from the competent authorities are a gross violation of CRZ 2011 rules.


 16/07/2016
 (Dr. H. Mascarenhas)
 Member GCZMA

Annexure.R.8

Extract of the minutes of 133rd GCZMA meeting held on 20/07/16.

Case No. 2.7:

To Comply with the Order dated 18/03/2016 of the Hon'ble National Green Tribunal at Pune in Application No. 06/2016 filed by Mr. Kashinath Shetye V/s. Edwin Nunes & ors with regard to the alleged illegal construction carried out in the property bearing Sy. No. 42/9, 42/11 and 42/10 of Village Anjuna, Bardez - Goa.

Brief Summary:

- Complaint received from Mr. Kashinath Shetye & Ors. with regard to alleged illegal construction of a Restaurant and night club "Curlies" in the property bearing Sy. No. 42/10 and extension of the structures up to the adjacent Sy. Nos. 42/9 and 42/11 at H. No. 774/2, St. Michael waddo of Village Anjuna, Bardez - Goa carried out by Edwin Nunes and also, a complaint received from Mr. Sagardeep Sirsaikar with regard to the same subject matter carried out by Linet Nunes.

- Accordingly, a Show Cause Notice Cum Stop Work Order was issued to Linet Nunes which was replied to by alongwith documents in support of their case.
- The said matter was also forwarded to the Inquiry Committee of the GCZMA and Deputy Collector & SDO, Bardez for inquiry and report in the matter. The Inquiry Committee submitted its report wherein it is recommended to the GCZMA to withdraw the Show Cause Notice cum Stop Work Order dated 31-08-2015 of Edwin Nunes (Affected party – 1) and the Show Cause Notice cum Stop Work Order dated 01-10-2015 of Linet Nunes (Affected Party -2).
- Subsequently, an Application bearing No. 06/2016 was filed by Mr. Kashinath Shetye & Ors. before the Hon'ble National Green Tribunal (NGT), Pune challenging the alleged illegal construction being carried out by Mr. Edwin nunes and Linet nunes in the property bearing Sy. No. 42/9, 42/11 and 42/10 of Village Anjuna, Bardez – Goa and the alleged inaction on the part of the Respondent authorities against the alleged illegal construction.
- Accordingly, the said matter was disposed of by the Hon'ble NGT at Pune vide Order dated 18/03/2016 with a direction to GCZMA to hear the concerned parties with an opportunity to produce the documents in support of their case and to dispose of the complaint of the Applicant as expeditiously as possible within a period of four months.
- The matter was placed in the 132nd GCZMA meeting held on 06/07/2016 wherein the Authority after detailed discussion and due deliberation decided to conduct re-inspection of the site under reference through its Expert Member of the GCZMA.
- Accordingly, site inspection was conducted by Shri. Ragunath Dhume and Dr. Antonio Mascarenhas on 15/07/2016. The site inspection report submitted by Dr. Antonio Mascarenhas is as follows:
 - The property belong to Mr E Nunes and L Nunes; neither of them was present during the site inspection.
 - The plot is occupied by a G+1 permanent structure, with a cemented plinth, wooden floor; steel pipes are used as columns to support the top floor.
 - The entire structure is used as a restaurant, located along the HTL within the reach of sea waves; the restaurant is found in the No Development Zone (NDZ).
 - In fact, the restaurant extends into the other plot, the owner of which is not known the restaurant is in operation as several people / tourists were present inside.
 - The HTL is marked by a massive cement concrete retaining wall, built in three steps that lead to the sandy beach.
 - Severe erosion was observed along the wall, parts of which are broken due to the heavy wave activity.
 - Although the representative of the owner produced some certificates from the panchayat, the approvals from the GCZMA have never been obtained.
 - Although they claim that the restaurant is a temporary structure, it is fully covered and it ought to have been dismantled during the monsoon. Therefore, this can be classified as a permanent restaurant located right at / along the HTL.

MOST URGENTNGT MATTER**Annexure.R.9**DIRECTIONS UNDER SECTION 5 OF THE ENVIRONMENT (PROTECTION) ACT, 1986. READ WITH RULE 4 OF THE ENVIRONMENT (PROTECTION) RULES, 1986.

Sub: Directions to demolish the structure (G+1) standing in the property bearing Sy. No. 42/10 of Village Anjuna, Bardez – Goa with further extension carried out in the adjacent plots / properties bearing Sy. Nos. 42/9, 11, 45/19, 45/41 of Village Anjuna.

Ref: (1) Complaint letter dated 17/08/2015 filed by Mr. Kashinath Shetye & ors.

(2) Show Cause Notice cum Stop Work Order bearing no. GCZMA/N/ILLE-COMPL/15-16/80/1287 dated 31/08/2015 issued by the GCZMA.

(3) Complaint letter dated 26/08/2015 filed by Mr. Sagardeep Sirsaikar.

(4) Show Cause Notice Cum Stop Work Order bearing No. GCZMA/N/ILLE-COMPL/15-16/91/1624 dated 01/10/2015.

(5) Reply dated 03/11/2015 received from Linet Nunes.

(6) Letters bearing No. GCZMA/N/ILLE-COMPL/15-16/91/2175 and GCZMA/N/ILLE-COMPL/15-16/91/2174 both dated 21/12/2015 issued by the GCZMA.

(7) Reply letter dated 29/12/2015 received from Mr. Sagardeep Sirsaikar.

(8) Letter bearing No. GCZMA/N/ILLE-COMPL/15-16/91/2408 dated 13/01/2016 forwarding the complaint to the Inquiry Committee of GCZMA.

(9) Report dated 03/02/2016 received from the Deputy Collector & S.DO, Bardez.

(10) Report dated 10/03/2016 submitted by the Inquiry Committee of GCZMA.

- (11) Application bearing No. 06/2016 was filed by Mr. Kashinath Shetye & Ors. before the Hon'ble National Green Tribunal (NGT), Pune.
- (12) Order dated 18/03/2016 passed by the Hon'ble National Green Tribunal (NGT), Pune in Application bearing No. 06/2016.
- (13) Notice of personal Hearing bearing No. GCZMA/APPL No. 06/2016/WZ/NGT/63/774 dated 21/06/2016.
- (14) Extract of the minutes of 131st GCZMA meeting held on 01/07/2016.
- (15) Extract of the minutes of 132nd GCZMA meeting held on 06/07/2016.
- (16) Notice of Inspection bearing no. GCZMA/N/ILLE-COMPL/15-16/80/886 dated 12/07/2016.
- (17) Site Inspection report submitted by the Expert Member of GCZMA.
- (18) Extract of the minutes of 133rd GCZMA meeting held on 20/07/2016.

WHEREAS, the Office of the GCZMA was in receipt of a complaint letter dated 17/08/2015 from Mr. Kashinath Shetye & Ors. with regard to alleged illegal construction of a Restaurant and night club "Curlies" in the property bearing Sy. No. 42/10 and extension of the structures up to the adjacent properties bearing Sy. Nos. 42/9 and 42/11 at H. No. 774/2, St. Michael waddo of Village Anjuna, Bardez – Goa carried out by Edwin Nunes without obtaining prior permission / licence / NOC from the concerned authorities.

AND WHEREAS, upon receipt of the abovesaid complaint letter, a Show Cause Notice Cum Stop Work Order bearing No. GCZMA/N/ILLE-COMPL/15-16/80/1287 dated 31/08/2015 was issued to Edwin Nunes with a direction to Stop further Civil work with immediate effect and Show Cause as to why a direction to demolish the structures and to restore the land to its original condition should not be issued. So also, a letter bearing No. GCZMA/N/ILLE-COMPL/15-16/80/1288 dated 31/08/2015 was issued to the Secretary, Village Panchayat of Anjuna for necessary action in the matter.

AND WHEREAS, it is pertinent to note that the Office of the GCZMA was also in receipt of a complaint letter dated 26/08/2015 from Mr. Sagardeep Sirsaikar with regard to alleged illegal construction of a hotel in the property bearing Sy. No. 42/10 at Sorantowado, Anjuna, Bardez – Goa carried out by Linet Nunes, R/o. Sorantowado, Anjuna, Bardez – Goa.



AND WHEREAS, upon receipt of the abovesaid complaint letter, a Show Cause Notice Cum Stop Work Order bearing No. GCZMA/N/ILLE-COMPL/15-16/91/1624 dated 01/10/2015 was issued to Linet Nunes with a direction to Stop further civil work / construction with immediate effect and to Show Cause as to why a direction to demolish the structure and to restore the land to its original condition should not be issued which was accordingly, the same was replied by Linet Nunes vide reply dated 03/11/2015 which was inwards to this Office on 01/12/2015.

AND WHEREAS, subsequently, letters bearing No. GCZMA/N/ILLE-COMPL/15-16/91/2175 and GCZMA/N/ILLE-COMPL/15-16/91/2174 both dated 21/12/2015 were issued by this Office to Mr. Sagardeep Sirsaikar and Mr. Kashinath Shetye, Respectively to file their comments with regard to the reply dated 03/11/2015 filed by Linet Nunes and accordingly, Mr. Sagardeep Sirsaikar vide letter dated 29/12/2015 filed his comments to the reply received from Linet Nunes.

A copy of the said reply letter dated 29/12/2015 received from Mr. Sagardeep Sirsaikar is enclosed herewith as **Annexure 'A'**.

AND WHEREAS, the said matter was also forwarded to the Inquiry Committee of the GCZMA vide letter bearing No. GCZMA/N/ILLE-COMPL/15-16/91/2408 dated 13/01/2016 for necessary inquiry in the matter and to submit the report in the matter.

AND WHEREAS, it may be noted that a report dated 03/02/2016 was also received from the Deputy Collector & S.DO, Bardez which interalia in brief stated that as per the report submitted by the Mamlatdar of Bardez, it is clear that the Respondent has carried out the construction prior to 1982. The area of shed A (part) is 135.00 m², area of Kitchen B (part) is 51.00 m², area of wooden hut C is 54.00 m² and area of toilets 1 & 2 is 18 m². The area of the old house = 242.00 m² (as per gut book) within 200 m from HTL in the property bearing Sy. No. 42/10 of Village Anjuna. It is further stated that no prior permission has been obtained and the construction was carried out prior to 1982, so also, upon perusal of the plan on Gut Book of Sy. No. 42/10 of Village Anjuna, Bardez – Goa attached to the Mamlatdar Report clearly shows the existing structure which Mamlatdar in his report has stated that the structure area is 242 sq. m.

A copy of the said report 03/02/2016 received from the Deputy Collector & S.DO, Bardez is enclosed herewith as **Annexure 'B'**.



AND WHEREAS, the Inquiry Committee of the GCZMA after conducting due inquiry in the matter submitted its report dated 10/03/2016 which interalia in brief stated that considering the NOC for repairs / renovation of the existing structure of the year 1982; the registration of the house no. 774/2 for the purpose of house and light tax is from the year 1983-84; the receipts of payment of house taxes are of the years 1991-1992, 1995, the GAT book shows the existence of an old structure of 242 sq.mts., the structure of the Restaurant Curlies having an area of 242 Sq. mts. in Sy. No. 42/10 and 42/11 of Village Anjuna, was existing prior to the date of CRZ Notification 19-02-1991. The GCZMA to withdraw the Show Cause Notice cum Stop Work Order dated 31-08-2015 of Edwin Nunes (Affected party – 1) and the Show Cause Notice cum Stop Work Order dated 01-10-2015 of Linet Nunes (Affected Party -2).

A copy of the said report 10/03/2016 received from the Inquiry Committee of Bardez is enclosed herewith as **Annexure 'C'**.

AND WHEREAS, an Application bearing No. 06/2016 was also filed by Mr. Kashinath Shetye & Ors. before the Hon'ble National Green Tribunal (NGT), Pune challenging the alleged illegal construction being carried out by Mr. Edwin Nunes and Linet Nunes in the property bearing Sy. No. 42/10 with further extension in the adjacent properties 42/9, 42/11, 45/19 and 45/41 of Village Anjuna, Bardez – Goa and the alleged inaction on the part of the Respondent authorities against the alleged illegal construction.

AND WHEREAS, the said matter was disposed of by the Hon'ble NGT at Pune vide Order dated 18/03/2016 with a direction to GCZMA to hear the concerned parties with an opportunity to produce the documents in support of their case and to dispose of the complaint of the Applicant as expeditiously as possible within a period of four months.

AND WHEREAS, in this regard and in view of the aforementioned Order of the Hon'ble NGT, the concerned parties vide notice of hearing bearing No. GCZMA/APPL No.:06/2016/WZ/NGT/63/774 dated 21/06/2016 were directed to remain present for personal hearing before the Authority in its 131st meeting held on 01/07/2016. However, the personal hearing could not take place due to paucity of time and the parties present were directed to remain present for the next meeting i.e. 132nd meeting held on 06/07/2016.

A copy of the extract of minutes of the 131st GCZMA meeting held on 01/07/2016 is enclosed herewith as **Annexure 'D'**.

AND WHEREAS, the matter was then placed before the Authority in its 132nd meeting held on 06/07/2016 in order to grant personal hearing to the parties. Both the parties were heard at length. The proceedings before the Authority are indictaed hereinbelow:

Proceedings before the GCZMA

“The Complainant, Mr. Kashinath Shetye remained present in person. Adv. Shivan Dessai represented the Respondents, Mr. Edwin Nunes & Linet Nunes. Also, Mr. Sagardeep Sirsaikar and Jaiprakash Sisaikar remained present. However, the Complainant, Mr. Kashianth Shetye raised objections for the presence of Mr. Sagardeep Sirsaikar and Jaiprakash Sisaikar for the personal hearing as the Authority is required to hear the parties only in respect of his complaint and in view of the directions dated 18/03/2016 of the Hon’ble NGT, Pune in Application No. 06/2016 filed by him. The Authority in view of the objections raised by Mr. Kashinaht Shetye informed Mr. Sagardeep Sirsaikar and Jaiprakash Sisaikar that they will be heard separately as far as their complaint is concerned.

Mr. Kashinath Shetye stated that there was a small structure existed earlier however, the Hon’ble High Court of Bombay at Goa somewhere in 2004 had passed an Order for demolition of the structure under reference and the same was demolished accordingly. That his complaint with respect to the illegal construction carried out in Sy. No. 42/10 which further extended in the adjacent properties bearing Sy. Nos. 42/9, 11 and 41 of Village Anjuna, Bardez – Goa. Even in 2008 when the resurvey was carried out by the GCZMA through RSI in view of the directions of the Hon’ble High Court of Bombay at Goa in W. P. No. 422/1998 there existed no structure. Even if the house was there no permission has been obtained from the GCZMA and that no Restaurant existed earlier. The construction is carried out right on the Anjuna beach and on the sand dune and the same is CRZ – I area.

Adv. Shivan Dessai submitted that he is the owner of only one Survey number i.e. Sy. No. 42/10 and is not concerned about the construction carried out in other survey numbers as alleged by the Complainant as he is not the owner of the same. The structure has been in existence since 1971 when the survey was conducted and thus it shows that it existed prior to 1991. So also, the structure is reflected on the survey plan prepared by the DSLR which is a competent authority under Goa Land Revenue Code and till date the same has not been challenged and as such is valid. He further stated that NOC for repairs was also obtained from the Village Panchayat in the year 1983”.



AND WHEREAS, after detailed discussion and due deliberation and on considering the oral as well as written submissions made by the parties, the Authority decided to conduct re-inspection of the site under reference through its Expert Members in order to ascertain all the aspects / angles on site and also to verify the documents available in Office records and decide accordingly in the next meeting.

A Copy of the extract of the minutes of the 132nd GCZMA Meeting held on 06/07/2016 is enclosed herewith as Annexure 'E'.

AND WHEREAS, as decided by the Authority a notice of Site Inspection bearing no. GCZMA/N/ILLE-COMPL/15-16/80/886 dated 12/07/2016 was issued. The inspection of the site was accordingly conducted on 15/07/2016 by the Expert Members of GCZMA and prepared and submitted its report to GCZMA which inter alia in brief states as follows:

- The property belong to Mr E Nunes and L Nunes; neither of them was present during the site inspection.
- The plot is occupied by a G+1 permanent structure, with a cemented plinth, wooden floor; steel pipes are used as columns to support the top floor.
- The entire structure is used as a restaurant, located along the HTL within the reach of sea waves; the restaurant is found in the No Development Zone (NDZ).
- In fact, the restaurant extends into the other plot, the owner of which is not known the restaurant is in operation as several people / tourists were present inside.
- The HTL is marked by a massive cement concrete retaining wall, built in three steps that lead to the sandy beach.
- Severe erosion was observed along the wall, parts of which are broken due to the heavy wave activity.
- Although the representative of the owner produced some certificates from the panchayat, the approvals from the GCZMA have never been obtained.
- Although they claim that the restaurant is a temporary structure, it is fully covered and it ought to have been dismantled during the monsoon. Therefore, this can be classified as a permanent restaurant located right at / along the HTL.
- In view of the above, the commercial activities noted in the NDZ, a sea wall of concrete, and without permissions from the competent authorities are a gross violation of CRZ 2011 rules.

A copy of the site inspection report submitted by the Expert Member of the GCZMA is enclosed herewith as Annexure 'F'.

AND WHEREAS, upon receipt of the site inspection report from the Expert Members of GCZMA, the matter alongwith the inspection report was placed before the Authority in its 133rd meeting held on 20/07/2016 for discussion and to take final decision in the matter.

AND WHEREAS, the Expert Members who conducted the site inspection stated that the structure under reference standing in the property bearing Sy. No. 42/10 of Anjuna Village cannot be called as a temporary structure and the same is permanent in nature with a cemented plinth, wooden floor; steel pipes used as columns which support the top floor. The Expert Members also brought to the notice of the Authority that though the G+1 Structure is constructed / erected in Sy. No. 42/10 it has been extended in the adjacent plots covering Sy. Nos. 42/9, 11, 45/19 and 45/41. The Google images of 2003 also does not show any structure in the said property existing in 2003. Therefore, it is apparent that said structure is new and has been constructed in violation of CRZ Notification right on the High Tide Line of the sea.

AND WHEREAS, it was further discussed that the onus of proving that the structure existed prior to 1991 is on the Respondent and as it existed in NDZ area the Respondent also needs to give evidence of the existence of the commercial activity in the said structure i.e. Night club, Bar & Restaurant prior to 1991.

AND WHEREAS, further, the Respondent is operating commercial activity in the structure and he is required to have Bar license to sell liquor, trade license of Panchayat, Commercial tax registration, Shops and Establishment licence etc. The Respondent should have produced all those licenses / permissions as proof of the existence of the structure prior to 1991. However, the Respondent has not produced any evidence in support of the same.

AND WHEREAS, also the Respondent is operating a big Night Club, Bar & Restaurant which also has electricity connection which could also have proved its existence prior to 1991. However, the Respondent did not produce any evidence in this regard.

AND WHEREAS, in view of non production of any evidence supporting the existence of commercial activity prior to 1991 in the said structure can safely be drawn as an adverse inference which clearly establishes that the commercial

activity of Night club / Bar & Restaurant came into operation in the said structure post 1991 i.e after coming into force of the CRZ Notification, 1991.

AND WHEREAS, after detailed discussion and due deliberation and upon considering the documents and evidence available on record and the site inspection report dated 15/07/2016, the Authority took the following decision:

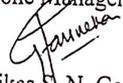
- 1) To direct the owner / Proprietor, Curlies Bar and Restaurant for closure of the commercial activity carried out by them;
- 2) To issue an Order of demolition under Section 5 of the Environment (Protection) Act, 1986, read with other enabling provisions to the G+1 permanent structure standing in the property bearing Sy. No. 42/10 of Village Anjuna, Bardez – Goa having further extended in the adjacent plots / properties bearing Sy. Nos. 42/9, 11, 45/19, 45/41 of Village Anjuna with further directions to the violator to restore the land to its original state, failing which the Dy. Collector & SDO, Bardez to demolish the structures and restore the land to its original condition and recover the expenses as arrears of land revenue from the violator;
- 3) To issue Order of withdrawal and disconnection of Power and Water connection as well as license of the Excise Department and also to direct the Village Panchayat of Anjuna to cancel the trade license issued to the violator if any and ensure stoppage of any commercial activity in the illegal structure forthwith.

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. 2264 (E) dated 22/07/2014 issued by the Ministry of Environment & Forests, Government of India, the GCZMA hereby directs:

- i) Closure of all commercial activity in the form of Night club, Bar & Restaurant being run by Edwin Nunes and Linet Nunes, Both R/o Curlies Restaurant and Night Club And Guest house, St. Michael Wado, Dando, Anjuna, Bardéz-Goa in the structure standing in the property bearing Sy. No. 42/10 with further extensions in the adjacent plots / properties bearing Sy. Nos. 42/9, 11, 45/19, 45/41 of Village Anjuna, Bardez – Goa forthwith.
- ii) The Commissioner of Excise Department to withdraw the Excise license granted to Edwin Nunes and Linet Nunes for sale and consumption of liquor in the Curlies Night Club, Bar & Restaurant within a period of 30 days.

- iii) The Chief Electrical Engineer, Electricity Department to disconnect the power supply connection to the said structure i.e. Curlies Night Club, Bar & Restaurant.
- iv) The Chief Engineer, Public Works Department (PWD) to disconnect the water supply connection to the said structure i.e. Curlies Night Club, Bar & Restaurant.
- v) The Secretary, Village Panchayat of Anjuna, to withdraw the Trade License to the activity carried out in the said structure i.e. Curlies Night Club, Bar & Restaurant and further to ensure its compliance.
- vi) To demolish the illegal structure standing in the property bearing Sy. No. 42/10 of Village Anjuna, Bardez – Goa having further extended in the adjacent plots / properties bearing Sy. Nos. 42/9, 11, 45/19, 45/41 of Village Anjuna and restore the land to its original condition, within 15 days from the date of receipt of this direction failing which the Dy. Collector & S.D.O, Bardez-Goa to verify if the illegal structure standing in the property bearing Sy. No. 42/10 of Village Anjuna, Bardez – Goa having further extended in the adjacent plots / properties bearing Sy. Nos. 42/9, 11, 45/19, 45/41 of Village Anjuna are removed / demolished and in the event it is not removed as per these directives, then the Deputy Collector & S.D.O of Bardez to remove the illegal structure standing in the property bearing Sy. No. 42/10 of Village Anjuna, Bardez – Goa having further extended in the adjacent plots / properties bearing Sy. Nos. 42/9, 11, 45/19, 45/41 of Village Anjuna thereafter within a time period of two weeks thereafter and recover the expenses incurred from Edwin Nunes and Linet Nunes, as the arrears of land revenue. Further, Edwin Nunes and Linet Nunes are required to submit a compliance report in respect of compliance of afore stated directions to the GCZMA within next 3 days of expiry of the aforementioned 15 days time period.

For and on behalf of the
Goa Coastal Zone Management Authority


(Vikas S. N. Gaunekar)

Member Secretary (GCZMA)

Encl: As above

To:-

1. ✓ Edwin Nunes,
2. ✓ Linet Nunes,

Both R/o Curlies Restaurant and Night Club
And Guest house, St. Michael Wado, Dando,
Anjuna, Bardez-Goa.

Copy to: -

1. P.A to Secretary (Environment) & Chairman (GCZMA), Secretariat, Porvorim....for kind information.
2. The Collector & District Magistrate (North), Collectorate of North Goa, Panaji-Goa...for kind information and necessary action.
3. The Dy. Collector & S.D.O of Bardez, Mapusa, Bardez-Goa...for compliance of the aforementioned directions and submission of compliance report accordingly.
4. The Chief Electrical Engineer, Vidyut Bhavan, Panaji-Goa...for compliance of the aforementioned directions and submission of compliance report accordingly.
5. The Chief Engineer, Public Works Department, Altinho, Panaji-Goa...for compliance of the aforementioned directions and submission of compliance report accordingly.
6. The Secretary, Village Panchayat of Anjuna, Bardez-Goa...for necessary action and to co-ordinate with the Office of the Dy. Collector & S.D.O, Bardez accordingly.
7. Mr. Kashinath Shetye, R/o A-102, Raj Excellency, Patto, Ribandar-Goa.....for information.
8. Mr. Sagardeep Sirsaikar, R/o 308, Welcome House, Chapora, Dabholwada, Bardez-Goa.