

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

Appeal No. 29/2023 (WZ)

Riva Resorts Pvt. Ltd.

...Appellant

Versus

GCZMA & Ors.

...Respondents

OBJECTIONS TO THE AFFIDAVIT-IN-REPLY  
DATED 31/01/24 & ADDL. AFFIDAVIT-IN-REPLY  
DATED 19/04/24 FILED BY RESPONDENT NO.1

The Appellant above-named most respectfully states and submits as under:

1. The Appellant states that the Appellant is constrained to file the present objections, seeking compliance of certain directions by the Goa Coastal Zone Management Authority ("**Respondent No.1**"), as ordered by this Hon'ble Tribunal vide Order dated 19/10/2023 passed.
2. The Appellant submits that due to the deliberate omission/default on the part of the Respondent No.1 in complying with directions of this Hon'ble Tribunal as well as due

A handwritten signature in black ink, appearing to be "Nadik", written over a horizontal line.

to the act of the Respondent No.1 producing certain wrong plans/documents on record along-with its Additional Reply dated 19/04/2024, the Appellant is severely handicapped in filing its Rejoinder in the present appeal.

3. The Appellant therefore craves leave of this Hon'ble Tribunal to file a detailed & comprehensive Rejoinder, adverting to all contentions raised by the Respondent No. 1 in its Replies dated 31/01/2024 and 19/04/2024, upon compliance with the requisitions made in this Objection. The Appellant states and submits that the filing of this Objection itself may not be treated as a response of the Appellant to the said Replies of the Respondent No.1 as the Appellant is not dealing-with the said Replies on merits.
4. One of the fundamental challenges raised by the Appellant in the present appeal is *qua* the procedure and mode of conduct of the site inspections by the Respondent No.1 and preparation of the Site Inspection Plan dated 24/07/2012 and Site Inspection Plan of October-2020 by it. The Appellant states that both the aforesaid Site Inspection Plans have been heavily relied-upon by the Respondent No.1 while passing the impugned Demolition Order dated 29/09/2023 – to show alleged extensions carried-out by the Appellant subsequent to the passing of the earlier Demolition Order dated 22/06/2012 and the status-quo order

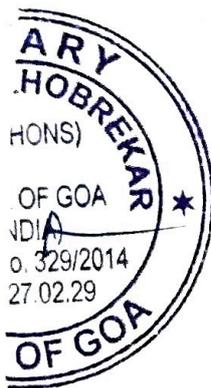


*Wojic*

dated 04/03/2013 passed by the Hon'ble Supreme Court in Civil Appeal No.1823/2013.

5. Upon considering the detailed objections raised by the Appellant in paras 38 to 40 of the present appeal (*regarding the Site Inspection Plan dated 24/07/2012 and the Site Inspection Plan of October-2020*), this Hon'ble Tribunal vide its Order dated 19/10/2023 was pleased to direct the Respondent No.1, as follows:

*"8. From the side of respondent No.1 – GCZMA, learned counsel Ms. Manasi Joshi has appeared. We direct her that the structures which have been identified for demolition earlier and regarding which the matter is pending before the Hon'ble Supreme Court, should be shown specifically along with their measurements and 68 structures which are being said to have been additionally constructed and have now been directed to be demolished by the impugned order, should be shown with their measurements alongwith their area specifically, by an affidavit to be filed from the side of respondent No.1 - GCZMA".*



6. The Appellant states that the Replies dated 31/01/2024 and 19/04/2024 filed by the Respondent No.1 are conspicuously silent regarding the comparative/super-imposed plan required to be filed along-with its Reply and the measurements/dimensions of the individual structures (*i.e. the alleged illegal structures*),

*Manasi Joshi*

captured during the site-inspections of July-2012 and October-2020.

7. The Appellant submits that the observations made by this Hon'ble Tribunal in para 8 of its Order dated 19/10/2023 constituted directions of this Hon'ble Tribunal and therefore the Respondent No.1 had no option but to comply with the same. The Appellant submits that even in case no measurements/dimensions of the alleged illegal structures were recorded by the Inspecting Team at the time of conducting the site-inspections of July-2012 and/or October-2020, it was incumbent upon the Respondent No.1 to fairly say so, in its Replies.

8. It was however entirely impermissible for the Respondent No.1 to gloss-over this crucial issue, which this Hon'ble Tribunal had directed the Respondent No.1 to address. In any event of the matter, the omission/default on the part of the Respondent No.1 has prejudiced the Appellant in filing an appropriate Rejoinder, dealing-with the said issue and/or advertng to the illegal conduct of the Respondent No.1, while preparing the said Site Inspection Plans.

9. The Appellant states and submits that as per the well settled law, it is the bounden duty of the Respondent No.1 to conduct a site inspection prior to issuing Show Cause Notice to the Project



*Pratik*

Proponent. Such site inspection is required to prepare a site inspection report, of the observations noticed in the course of the inspection; and stating more particularly the area, nature, extent and dimensions of the purported illegal structures.

10. As per the information of the Appellant, there is no record whatsoever made by/available with the Respondent No.1, of the measurements (*length, breath, height, total area etc.*) of the purported illegal structures, which were covered in the Site Inspection Plan dated 24/07/2012 and Site Inspection Plan of October-2020, which Inspection Plans were heavily relied-upon by the Respondent No. 1 while passing the Impugned Demolition Order dated 29/09/2023.



11. The Appellant states and submits that it is the bounden duty of the charging authority (*before issuing Show Cause Notice*) to do such an exercise and give such details in the Show Cause Notice, for eliciting an effective response to the allegations. The project-proponent cannot be expected to work-out this area, purportedly on the basis of scales of the available Site Plans, which would never give the measurements with exact precision. Any such private exercise done by the project-proponent could be self-serving and such measurements may not be accepted by the Authority or the Complainant.

12. For that matter, after conclusion of the Show Cause Proceedings and passing of the Demolition Order, even the concerned

*Waste*

Authority cannot be permitted to do such exercise as it would reduce the Show Cause Proceedings to an empty formality. In any Show Cause Notice Proceeding, especially where the allegation of the charging Authority is founded on a case of purported extension of structures subsequent to the last site-inspection, such an issue can never be resolved without having the comparative dimensions and area of the structures prior and subsequent to such last site-inspection, which is not brought on record by the Respondent No.1 in the present case.

13. The Appellant respectfully submits that this Hon'ble Tribunal may not permit the Respondent No.1 to do such an exercise *post-facto* in this appeal because this Hon'ble Tribunal is exercising limited appellate jurisdiction under Section 16 of the National Green Tribunal Act, 2010, and only scrutinizing the legality & validity of the impugned demolition order made by the Respondent No.1. Therefore, no fresh contentions or exercise involving facts, can be permitted for the first time at the appellate stage, which was not done by the trial body *i.e.* the Respondent No.1, at the time of passing the impugned order.

14. In case this Hon'ble Tribunal feels that the exercise done by the Respondent No.1 is not as per law, it can only quash & set-aside the impugned order and remand the matter back to the Respondent No.1 for fresh adjudication.



*Pratik*

15. Another fundamental issue raised by the Appellant in the present appeal concerned non-consideration of the P.T. Sheet of Mandrem Village (Ref: Pg. 98 of the Appeal Paper-book) by the Respondent No.1 while passing of the impugned Demolition Order dated 29/09/2023. It is the case of the Appellant that all the structures ordered to be demolished by the Respondent No.1 vide the impugned Demolition Order were in existence prior to 1991/prior to 1972 and the same were duly recorded in the said P.T. Sheet Extract prepared by the Office of the Inspector of Survey & Land Records, Directorate of Survey & Land Records, Govt. of Goa ('**DSLRL**' for short), in the year 1972.



16. The Appellant had obtained certified copy of the said P.T. Sheet from the DSLR under the Right to Information Act, 2005. The Appellant had specifically produced the said document along-with its Reply dated 04/04/2023 filed in response to the Show Cause Notice issued by the Respondent No.1 and made elaborate submissions on the legality of the impugned structures, by co-relating them to the P.T. Sheet. However, the impugned Demolition Order dated 29/09/2023 passed by the Respondent No.1 did not even advert-to or deal-with the said P.T. Sheet Plan, much less reject the same.

17. Further, in the Show Cause Notice Proceedings, neither the original complainant (Respondent No.3) nor the Respondent No.1 had raised any plea questioning the authenticity of the said

*Adik*

P.T. Sheet (which was admittedly supplied by the DSLR to the Appellant under RTI Act). Neither in his pleadings filed in the Show Cause Notice Proceedings did the Respondent No.3 challenge the authenticity of the said P.T. Sheet Extract produced on record by the Appellant nor did the Respondent No.1 give any independent finding to that effect in its impugned Demolition Order.

18. However, upon realizing its folly in passing the impugned Demolition Order without consideration of vital defense documents, the Respondent No.1 for the first time in this appeal, tried to contend that the P. T. Sheet Plan produced by the Appellant raised certain doubts regarding its authenticity and that the DSLR had provided the copy of the Original P.T. Sheet of the subject property, to the Respondent. It was therefore sought to be contended that the copy of the P.T. Sheet Plan produced by the Appellant was not tallying with the copy of the original P.T. Sheet supplied by the DSLR to the Respondent No.1.

19. However, if the copy of the P.T. Sheet Plan produced by the Respondent No.1 at Annexure-A of its Reply dated 31/01/2024 is perused, it would be apparent that it was exactly the same plan as produced by the Appellant and no deviation whatsoever existed between the two documents.



*ASOK*

20. Upon the said fact being pointed-out to this Hon'ble Tribunal, the Ld. Advocate appearing for Respondent No.1 submitted that the document produced at Annexure-A of its Reply dated 31/01/2024 was an error and the same would be replaced with a correct plan. Accordingly, liberty was granted by this Hon'ble Tribunal to the Respondent No.1, vide Order dated 01/02/2024.

21. Pursuant thereto, the Respondent No.1 has filed an Additional Affidavit in Reply dated 19/04/2024, wherein, in the guise of producing correct version of the original P.T. Sheet of Mandrem Village (*prepared by the DSLR in the year 1972 and as produced on record by the Appellant at Pg. 98 of the Appeal Paper-book*), the Respondent No.1 has high-handedly produced an **"UPDATED P.T. SHEET NO.1 AFTER CRZ AREA SURVEY"** of Mandrem Village, which itself mentions the date of the said survey as 13/12/2004 to 16/12/2004.



22. It is therefore apparent that the Plan sought to be produced on record by the Respondent No.1 along-with its Additional Reply dated 19/04/2024 is not the original P.T. Sheet Plan prepared by the DSLR in the year 1972 (*which was produced on record by the Appellant at Pg. 98 of the Appeal Paper-book*) but rather a document titled as an 'Updated P.T. Sheet' of Mandrem Village prepared on the basis of a purported survey conducted in the year 2004.

23. The Appellant emphatically denies the contents of the said Updated P.T. Sheet of 2004 on the ground that data contained therein has been bodily lifted, copied and pasted from the Survey Plan (*veracity whereof the Appellant has already questioned by filing appropriate resurvey application before the Dy. Collector & SDO, Pernem*).

24. However, the moot point is that the Respondent No.1, after initially making incorrect claims regarding authenticity of the original P.T. Sheet Plan, is seeking to somehow justify the same, by producing different/separate documents.

25. The Appellant submits that, firstly, it is legally impermissible for the Respondent No.1 to raise fresh grounds in appeal by filing replies and therefore the plea questioning authenticity of the P.T. Sheet (*which was never raised, considered or dealt-with by the Respondent No.1 while passing the impugned order*) cannot be raised in the present appeal.

26. Secondly, the Appellant submits that the Respondent No.1 is an interested-party in the present proceedings and therefore its version cannot be treated as the gospel-truth in matters concerning internal documents pertaining to some other Govt. department.

27. Thirdly, no document from the DSLR has been produced on record by the Respondent No.1 in support of its above plea



*Prathima*

(purportedly stating that the P.T. Sheet Plan produced by the Appellant is unauthentic or questionable in any manner).

28. Fourthly and most importantly, the aforesaid question cannot be addressed and/or decided in the absence of DSLR being a party to the proceedings, without hearing its own independent stand, without permitting the Appellant to rebut the stand of the DSLR (in case the same is adverse to the Appellant). Therefore, assuming without admitting that the plea questioning authenticity of the Appellant's P.T. Sheet Plan is to be considered, then remand of the subject show-cause proceeding back to the Respondent No.1, for fresh adjudication, would be imperative and inevitable.



29. The Appellant submits that P.T. Sheet Plan produced on record by it, is one of its most important defense documents. Therefore, questions concerning its authenticity cannot be lightly raised and/or adjudicated without hearing the concerned Govt. Department and affording opportunity to the Appellant to deal with their stand (in case it is adverse to the claim of the Appellant).

30. The Appellant reiterates that without clarity on the issues highlighted in this Objection, it is impossible for the Appellant to understand and/or effectively rebut the stand of the Respondent No.1., by filing an appropriate Rejoinder. It is therefore submitted that the Respondent No.1 may be directed by this Hon'ble

*Angik*

Tribunal to address to the aforesaid issues at the earliest so as to enable the Appellant to file a comprehensive and detailed Rejoinder in the present appeal.

Date: 31/05/2024

Place: Pune, Maharashtra.

  
APPELLANT

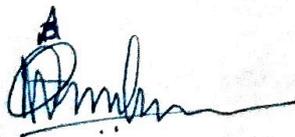
through Auth. Representative

VERIFICATION

I, Sachin Vishwanath Naik, major of age, Indian National, Director & Auth. Representative of M/s Riva Resorts Pvt. Ltd., the Appellant herein, having office at House No. 503, Junaswada, Mandrem, Pernem, Goa – 403512, do hereby solemnly verify that the contents of paras 1, 2, 4 to 6, 10 and 15 to 24 of this Objection is true to my own knowledge/based on documentary record and the contents of the remaining paras 3, 7 to 9, 11 to 14 and 25 to 30 thereof, are based on legal submissions, which I believe to be true and correct.

Solemnly affirmed at Mapusa, Goa, on this 31<sup>st</sup> day of May, 2024.

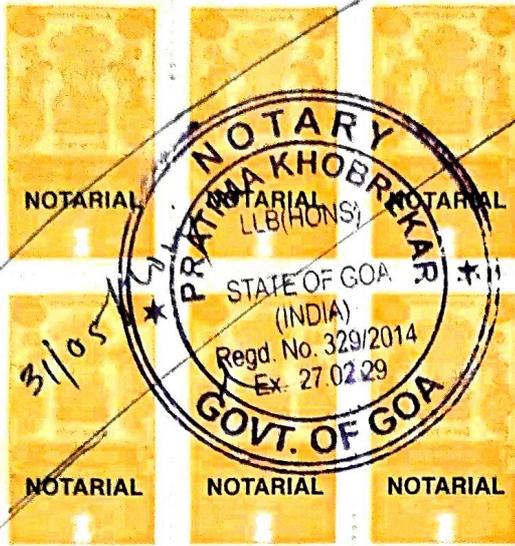
Identified by



[Adv. pankaj  
Pai verified]

  
DEPONENT





Solemnly affirmed before me by the Deponent/s who has been identified Before me by Adv. Pratikaj Pai vernekar Known by me personally at Mapusa on 31/05/2024

*Pratikaj*  
- 31/05/2024

PRATIMA KHOBREKAR  
LLB (HONS)  
-NOTARY  
STATE OF GOA

Reg. No. 1846/2024

