BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE

ORIGINAL APPLICATION NO. 66 OF 2014

IN THE MATTER OF:

COLVA CIVIC AND CONSUMER FORUM … APPLICANT

VERSUS

GOA COASTAL ZONE MANAGEMENT AUTHORITY & ORS. … RESPONDENTS

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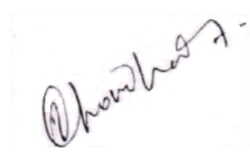

RITWICK DUTTA **RAHUL CHOUDHARY**
ADVOCATES
COUNSELS FOR THE APPLICANT
N-73, Lower Ground Floor
Greater Kailash-I,
New Delhi- 110048
Email: dclaw160@gmail.com

PLACE: NEW DELHI/PUNE

DATE:- 11.04.2024

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REJOINDER TO THE COUNTER AFFIDAVIT BY RESPONDENT NO.1 DATED 19.01.2024 ON BEHALF OF THE APPLICANT

MOST RESPECTFULLY SHOWETH:

1. That the Applicant had filed the above-titled Original Application regarding the blatant violation of the Coastal Regulation Zone Notification, 1991 (hereinafter referred to as 'CRZ Notification, 1991') arising out of the construction of a resort of Respondent No. 3 and 4, i.e. M/s Tonia Estate Resorts Pvt. Ltd. and Shri Alexio Sequeira (hereinafter referred to as 'Project Proponent') in Survey No. 23/13 and 23/17 in Colva Village, Salcete Taluka, Goa. The said resort had been constructed in the prohibited zone of No Development Zone within 200 m of the High Tide Line in CRZ-III area of the CRZ Notification, 1991.

2. That this Rejoinder is being filed in response to the Counter Affidavit dated 19.01.2024 by the Respondent No. 1, i.e. Goa Coastal Zone Management Authority. At the outset, the Applicant denies the contents of the Counter Affidavit filed by the Respondent No. 1 unless expressly admitted or are a matter of record. The Applicant reiterate that all facts and submissions made in the Original Application, to be true and correct and same may be read as part of the instant rejoinder and are not being repeated for the sake of brevity.

PRELIMINARY SUBMISSIONS AND OBJECTIONS:

3. That the Applicant is making the following preliminary submissions and objections to the contentions of the Respondent No. 1 raised in the Counter Affidavit:

I. The GCZMA deliberately concealed that Structures present in Survey No. 23/13 and 23/17 were not granted any valid permission by any of the authority till 1991:

a. That no valid permission was granted by any authority for the purpose of construction at Survey No. 23/13 and 23/17 of Colva Village, Salcete Taluka, Goa. Any permission granted was withdrawn or lapsed and never came into effect. It submitted that on the contrary there are letters which expressly stated that no valid permission could be granted for construction on the site in question in the light of the fact that the area falls within No Development Zone. For the purpose of understanding the brief background of the case, the following events would be important for consideration:

i. 5.05.1981: The Respondent No. 2, Office of the Village Panchayat, Colva-Salcete had issued a construction license for a tourist resort at Colva Beach to the M/s Progressive Estate Developers.

A copy of the Construction License dated 5.05.1981 along with a true typed copy is annexed herewith as **ANNEXURE A-1.**

ii. 1.06.1981: Thereafter, conversion sanad was issued by the Collector of Goa in favour of the M/s Progressive Developers for the construction of a 'Tourist Complex'. It is submitted that only a part of the land bearing Survey No. 23/13 and 23/17 was allowed to be converted. Further, the Conversion Sanad also mentioned a conditional which required that the construction in the permitted plot must be completed within one year of the issuance of the Sanad, failing which the Sanad would be deemed to be lapsed. The relevant portion is reproduced below:

> *"4. Building time limit—The applicant shall within one year from the date hereof, complete the said plot construction of building of a substantial and permanent, description, failing which the said period is extended by the Collector from time to time, the permission granted is deemed to be lapsed."*

It is further submitted that the Conversion Sanad dated 1.06.1991was issued with the condition that a land of 3.3 mtr from all side of the plot boundary would be given access over to the Government. The relevant portion is reproduced below:

> *"7. …*
> *The conversion is allowed leaving 3.3 m from all sides of the plot boundary with a condition that permission for construction of building will not be given until an access to the property is made available, after acquisition of land by the Government."*

A copy of the Conversion Sanad dated 1.06.1981 along with a true-typed copy is annexed herewith as **ANNEXURE A-2.**

iii. 11.08.1981: The Chief Town Planner sent a letter to the Sarpanch of Village Panchayat, Colva- Salcete objecting to the license issued to M/s Progressive Developers. It was stated that the Section 5 of the Village Panchayat Rules require that both land development and building plans were required to be approved by the Town Planning Department. Therefore, they requested to send the file of the concerned project to the relevant department for verification. Thereafter, the Office of the Village Panchayat sent the concerned file to the Town Planning Department on 26.09.1981.

A copy of the letter dated 11.08.1981 sent by the Chief Town Planner to the Sarpanch of Village Panchayat, Colva- Salcete along with a true typed copy is annexed herewith as **ANNEXURE A-3.**

iv. 18.11.1981: The Chief Town Planner wrote a letter to the Office of Village Panchayat stating that the license should not have been issued unless some part of the Survey No. 23/13 and 23/17 of the proposed project was

acquired by the Government. The file was returned to the Village Panchayat Office. Relevant portion of the letter is reproduced below:

> *"With reference to the subject cited above, this is to inform you that the conversion of use of land for the const. of the hotel building in sub-division no. 13 and 17 or S.No. 23 of Colva was recommended under condition that the permission for const. of building will not be given until an access to the plot is made available after acquisition of land by the Government. The same condition has been incorporated on the sanad issued by the Collector.* ***As such the license should not have been issued until the land under proposed access is acquired by the Government. This is contrary to the Sanad issued.***
>
> *…*
> *The file is returned herewith keeping one set for this office records."*

A copy of the letter dated 18.11.1981 sent by the Chief Town Planner to the Office of Village Panchayat along with a true typed copy is annexed herewith as **ANNEXURE A-4.**

v. 5.12.1981: The Office of the Village Panchayat sent a letter to M/s Progressive Developers stating that in view of the above-mentioned letter dated 18.11.1981, the license should not have been issued until the land under proposed access was acquired by the Government. Such issuance of the construction license was contrary to the Sanad issued. The concerned Project Proponent was further directed to comply with the said conditions, and apply for a new construction license. The relevant portion is reproduced below:

> *"That the conversion of use of land for the conversion of the Hotel Sub-division No. 13 & 17 Survey No. 23 Colva was recommended under condition that permission for construction of building will not be given until an access to the plot is made available after acquisition of land by the Govt. The said condition has been incorporated on the Sanad issued by the Collector. As is applicable, the license should not have been issued until the land under proposed*

> *access is acquired by the Government. This is contrary to the Sanad issued.*
>
> *…*
> *In view of what is stated above this Panchayat hereby request you to comply with the above requirements before starting the construction.*
> *Therefore, you are requested to comply with above observations raised by Town Planning Dept. and apply to this office for necessary fresh construction license. This Panchayat regrets for the inconvenient caused to you."*

A copy of the letter dated 5.12.1981 sent by the Office of Village Panchayat to the M/s Progressive Developers along with a true typed copy is annexed herewith as **ANNEXURE A-5.**

vi. 7.03.1985: The Chief Town Planner sent a letter to the Under Secretary, Department of Law complaining that the Village Panchayat had informed the Chief Town Planner that no extension to the construction license had been issued. Further, it was also mentioned that the CTP directed the Village Panchayat to not issue the construction license. However, the Village Panchayat office renewed the construction license for the project on 15.09.1984 without abiding by the instructions issued by the Town Planning office. The relevant portion is reproduced below:

> *"Further to add that the Village Panchayat of Colva vide their letter ref. no. VPCR/69/84-85 dt. 18.5.84 informed this office that no extension to the construction licenses has been issued by them and under letter ref. no. DJ/3782/3695/84 dt. 4.8.84 the Panchayat was directed not to give permission for the same if/any attempt to construct the buildings is made by the applicant.*
>
> ***Inspite of our clear instructions, it is noticed that the Village Panchayat has renewed the license for the same project under letter ref. no. VP/SVC/135/84 dt. 15.9.84. it is noticed that the Village Panchayat does not abide to the instructions issued by this office. Hence action, if any, may be taken against the V.P. at your end.***
> *Recently, the M/s Progressive Estate Developers have submitted revised plans of proposed project. These plans have to be placed first before ECC/EDC for their approval.*
> *…"*

A copy of the letter dated 7.03.1985 sent by the Chief Town Planner to the Under Secretary, L.A.W.D. along with a true typed copy is annexed herewith as **ANNEXURE A-6.**

vii. 24.02.1986: The Chief Town Planner sent a letter to the Office of Village Panchayat stating that they had no objection to the construction of the structures with certain conditions. The condition no. 1 and 3 mentioned in the letter was that

"1. The Applicant should cede the land in the north with total of 3,500 sq.mzts. to the Govt. for open space (3100 sq. mts including 6 m wide road).

3. The Party should obtain necessary permission for conversion from the Collector of Goa and other concerned departments and also obtain license from the local authority."

It is submitted that until that point, even after repeated reminders as stated above, no new conversion sanad was issued and the concerned land has not been converted till date.

A copy of the letter dated 24.02.1986 sent by the Chief Town Planner to the Office of Village Panchayat along with a true typed copy is annexed herewith as **ANNEXURE A-7.**

viii. 8.12.1988: The Hon'ble High Court of Bombay- Panaji Bench in a case titled ***Prof. Sergio Carvalho v. State of Goa & Ors.*** **in W.P. No. 367 of 1988** directed that the Government authorities would ensure that no construction is made on 200 meters stretch of high tide line. The relevant part of the order is reproduced here for reference:

> *"16. ... We hope that hereafter the Government authorities would ensure that in no case any construction of development is made on this stretch of 200 metres from high tide line and the authorities should enforce this rule strictly not only in the case of project of respondent No. 3 but any other project which is undertaken or will be undertaken hereafter in the State of Goa. Restrictions*

> *must be strictly enforced as long as Government of India has not relaxed the condition of "no development zone within the area of 200 metres."*

A copy of the relevant portion of the judgement dated 8.12.1988 in W.P. No. 367 of 1988 titled *Prof. Sergio Carvalho v. State of Goa & Ors.* is annexed herewith as **ANNEXURE A-8.**

ix. 28.03.1990: The Chief Town Planner sent a letter to the then Science, Technology and Environment Department mentioning the proposal for swimming pool and ancillary uses in the portion of land which was earlier meant to be surrendered to the Government. The letter clearly stated that the entire plot is within 200 of HTL, and restriction of 200 mts came in force with effect from 22.08.86 and no construction is permitted. However, in Para 7 of the letter it is stated that:

> *"7) However, after detailed scrutiny of the plans, it was found that the whole plot falls within 200 mts. of HTL and the decision regarding 90 mts./200 mts. was yet to be finalized by the Government at that time. It was also observed that the plans have to be submitted to the IMC for approval.*
>
> *Meanwhile, the restriction of 200 mts. came into force (with effect from 22/8/86). As per this, no construction/development is to be permitted within 200 mts. of HTL. The opinion of Law Department was also sought vide this office letter dated 22/5/89 for approval of swimming pool within 200 mts. of HTL with reference to High Court judgement in Ramada case. The same is awaited."*

A copy of the letter dated 28.03.1990 sent by the Chief Town Planner to the STE Department along with a true typed copy is annexed herewith as **ANNEXURE A-9.**

x. 8.05.1990: The Southern Planning and Development Authority undertook a site inspection on 8.5.1990 and observed that the structures had extended and constructed more cottages. Therefore,

the said Department issued a show-cause notice alleging *'extension and construction of cottages'.* Further, the Hon'ble High Court in the above-mentioned judgement dated 8.12.1988 in *Prof. Sergio Carvalho (Supra)* had clearly denied any construction to be undertaken within the 200 m HTL. Despite that direction in the said case, the then Project Proponent undertook construction activity, and hence, show cause notice was issued.

A copy of the show-cause notice dated 8.05.1990 along with a true typed copy is annexed herewith as **ANNEXURE A-10.**

xi. 19.02.1991: The Coastal Regulation Zone Notification, 1991 was notified by the Ministry of Environment and Forest under which coastal stretches influenced by tidal action (in the landward side) up to 500 m from the High Tide Line were declared as Coastal Regulation Zone. According to the Para 6(2), CRZ-III (ii) in Annexure I, CRZ Notification, 1991, the area up to 200 m of the High Tide Line is to be earmarked as No Development Zone and no construction is permitted within this NDZ except for *"repairs of existing authorized structures not exceeding existing FSI, existing plinth area and existing density.* "The relevant provision is reproduced below:

"6(2) …
CRZ-III

(i) The area upto 200 metres from the High Tide Line is to be earmarked as 'No Development Zone'. No construction shall be permitted within this zone except for repairs of existing authorised structures no exceeding existing FSI, existing plinth area and existing density. However, the following uses may be permissible in this zone- agriculture, horticulture, gardens, pastures, parks, playfields, forestry and salt manufacture from sea water."

A copy of the CRZ Notification, 1991 is annexed herewith as **ANNEXURE A-11.**

xii. 21.02.1991: The Southern Planning and Development Authority undertook another site inspection on 21.02.1991 and observed that there was unauthorized construction of buildings, cottages, compound wall and swimming pool on the concerned plot without undertaking permission from the said authority and hence, issued a show-cause notice alleging *'construction of buildings, cottages, compound wall and swimming pool without prior approval of this authority'*.

A copy of the show-cause notice dated 21.02.1991 along with a true typed copy is annexed herewith as **ANNEXURE A-12.**

xiii. 27.03.1991: That based on the above-mentioned site inspection undertaken on 21.02.1991 mentioned in the above show-cause notice 21.02.1991, the Southern Planning and Development Authority issued another show-cause notice alleging "*(a) carrying out development of construction of main building consisting of G plus 1 story & portion of which is having a basement floor; (b) construction of number of structures such as power house, dressing room, check post etc., (c) construction of swimming pool and (d) addition to the existing villas*."

A copy of the show-cause notice dated 27.03.1991 along with a true typed copy is annexed herewith as **ANNEXURE A-13.**

b. That from the above series of documents submitted by the Applicant, it can be seen that at no point of time any permission was granted and the Respondent No. 1 was aware about the documents submitted. Further, based on the above letters no construction of the structures could have been raised as no authority had granted permission for the same. Further, the above-

mentioned judgement in *Prof. Sergio Carvalho v. State of Goa & Ors.* as well as the Para 6(2), CRZ-III (ii) in Annexure I, CRZ Notification, 1991 had clearly denied construction of any structure within 200 m of the HTL. Yet, new structures were constructed including swimming pool and others, after the passing of the above-mentioned judgement of the Hon'ble High Court and the enforcement of the CRZ Notification, 199, which are a clear violation of the same and therefore, show-cause notices were issued.

c. That it is pertinent to note that the Respondent No. 1 has failed to respond to the illegalities raised in the Show Cause Notices mentioned above.

II. Respondent No. 1 failed to note that the CRZ Notification did not permit reconstruction in CRZ III area, only repair:

a. That without prejudice to the above submissions and objections that any structure that may have come up prior to the enforcement of the CRZ Notification, 1991 was illegal, it is submitted that allowing reconstruction of the structure on the Survey Number 13/23 and 17/23 falling within 200 meters of HTL is in violation of CRZ Notification, 1991.

b. That as per Para 6(2), CRZ-III (ii) in Annexure I, CRZ Notification, 1991, it is stated that the area up to 200 m of the High Tide Line is to be earmarked as No Development Zone and no construction is permitted within this NDZ except for *"repairs of existing authorized structures not exceeding existing FSI, existing plinth area and existing density.* "Thus, CRZ Notification of 1991 only allowed repair of existing authorized structures within 200 m NDZ if they were authorized before 1991. The relevant provision is reproduced below:

"6(2) …
CRZ-III

> *(i) The area upto 200 metres from the High Tide Line is to be earmarked as 'No Development Zone'. No construction shall be permitted within this zone except for repairs of existing authorised structures no exceeding existing FSI, existing plinth area and existing density. However, the following uses may be permissible in this zone- agriculture, horticulture, gardens, pastures, parks, playfields, forestry and salt manufacture from sea water."*

Therefore, it is pertinent to note that the illegal structures cannot claim any relief of repair. Further, reconstruction is not allowed in authorized structures.

c. It is submitted that in the present case, the existing structures are illegal since before the 1991 CRZ Notification was enforced. Further, the Respondent No. 1 also failed to note that the Project Proponent had entirely demolished the concerned structures in the name of repair, and reconstructed structures with an evidently larger plinth area.

d. It is submitted that from the Map annexed in Annexure-17 makes it clear that the entire structures were changed in size and shape from the original plans. Therefore, it can be seen from the map that the Project Proponent had undertaken reconstruction in the name of repair, which is a clear violation of the above-mentioned provision of the CRZ Notification, 1991.

e. That according to the Hon'ble Supreme Court judgement dated 27.02.2013 titled ***Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai*, [(2013) 5 SCC 357]**, equitable jurisdiction for regularization of illegal and unauthorized construction cannot be encouraged.

> *56. In view of the above discussion, we hold that the petitioners in the transferred case have failed to make out a case for directing the respondents to regularise the construction made in violation of the sanctioned plan. Rather, the ratio of the above noted judgments and, in particular,* Royal Paradise Hotel (P) Ltd. v. State of Haryana [(2006) 7 SCC 597] *is clearly attracted in the present case. We would like to reiterate that no authority administering municipal laws and other similar laws can*

> *encourage violation of the sanctioned plan.* ***The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas."***

Therefore, based on the above-mentioned judgement, such illegal construction undertaken by the Project Proponent cannot claim equity.

A copy of the relevant portion of the judgement dated 27.02.2013 titled ***Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai*, [(2013) 5 SCC 357]** is annexed herewith as **ANNEXURE A-14.**

f. That further according to the ***Shanti Sports Club v. Union of India*** **[(2009) 15 SCC 705],** the Hon'ble Supreme Court held that authorities must take a serious view of the menace of illegal and unauthorised constructions as such activities are causing irreparable harm to the planned development. The relevant portion is reproduced below:

> *74. …This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc. [K. Ramadas Shenoy v. Town Municipal Council, Udipi [(1974) 2 SCC 506] , G.N. Khajuria v. DDA [(1995) 5 SCC 762] , M.I. Builders (P) Ltd. v. Radhey Shyam Sahu [(1999) 6 SCC 464] , Friends Colony Development Committee v. State of Orissa [(2004) 8 SCC 733] , M.C. Mehta v. Union of India [(2006) 3 SCC 399] and S.N. Chandrashekar v. State of Karnataka [(2006) 3 SCC 208]].*
> *75. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc. have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of*

> *the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."*

In light of the above-mentioned judgement of the Hon'ble Supreme Court, the unauthorized construction of the Project Proponent cannot be regularized as it has not been granted any permission even before the CRZ Notification, 1991 was enforced.

A copy of the relevant portion of the judgement in ***Shanti Sports Club v. Union of India*** **[(2009) 15 SCC 705]** is annexed herewith as **ANNEXURE A-15.**

PARA WISE REPLY:

22. That the contents of Para 1 and 2 are a matter of record and do not warrant a response from the Applicant.

23. That the contents of Para 3 are a matter of record. However, the concerned structures which have been indicted at the site in question by the Respondent No. 1, are illegal and no permission for such structures as stated in Para 3(I)(a) of this Rejoinder have been granted. Further, the Hon'ble High Court in the above-mentioned order have denied for allowing any construction within the 200 m HTL.

24. That the contention made in of Para 4 of the reply that reconstruction is permissible within the CRZ-III area is denied. According to the Para 6(2), CRZ-III (ii) in Annexure I, CRZ Notification, 1991, it is stated that the area up to 200 m of the High Tide Line is to be earmarked as No Development Zone and no construction is permitted within this NDZ except for *"repairs of*

existing authorized structures not exceeding existing FSI, existing plinth area and existing density. "Thus, it is clear from the above quoted provisions of the CRZ Notification that only repairs can be permitted of existing structures within 200 m NDZ if they were authorized before 1991. No reconstruction is permissible within the 200 m HTL.

25. That the contents of Para 5 are a matter of record and not denied, except the statement that the structure was approved and constructed between 1986 and 1988. Such a statement is patently incorrect and false. It is submitted that construction of such structures were not given approval by the Chief Town Planner according to the letter dated 28.03.1990 in light of the judgement dated 8.12.1988 of the Hon'ble High Court of Bombay in *Prof. Sergio Carvalho (Supra).* Further, according to the letter dated 28.03.1990, the Chief Town Planner had clearly stated that no construction can be allowed within the 200 mts. of the High Tide Line, and awaited the response from the Law Department, pending approval for the added constructions.

26. That the contents of Para 6 are matter of record. However, the Applicant submits that the Respondent No. 1 has conveniently referred to specific letters only which cannot be relied upon on the basis of submissions made in preliminary submission. The Respondent No. 1 has failed to consider the letters dated 18.11.1981 wherein the Chief Town Planner had raised objections that the construction license could not have been issued without giving access of 3,500 sq. m of land to the Government. It was only on noting that the Respondent No. 2 defied the instructions of the Chief Town Planner, that it sent a complaint to the Under Secretary, Department of Law on 7.03.1985. Further, the reliance of Respondent No. 1 on the letter dated 24.02.1986 is also incorrect as the concerned letter was granted with the condition that a land of 3,500 sq. m would be handed over to the Government and necessary conversion sanad would be required to be obtained from Collector. However, no new conversion sanad was issued and the concerned

land has not been converted till date. The Respondent No. 1 has also erred in not relying on the letter dated 28.03.1990 of the Chief Town Planner, who had categorically denied permission in light of the judgement of the Hon'ble High Court of Bombay in *Prof. Sergio Carvalho (Supra)* as well as the show cause notices dated 8.05.1990, 21.02.1991 as well as 27.03.1991 issued by the Southern Planning and Development Authority.

27. That the contents of Para 7 are a matter of record. However, it is pertinent to note that the Respondent No. 1 has not annexed any document which could show that the concerned structures were authorized even before the CRZ Notification, 1991 was enforced. Further, the Respondent No. 1 has conveniently referred to specific letters to show that the structures were authorized, and failed to refer to the letters mentioned in the previous Para, despite being aware about the existence of the same.

28. That the contents of Para 8 to 9 are a matter of record. However, without prejudice to the submission by the Applicant that the structures were illegal even before the CRZ Notification, 1991 was enforced and permission for repair and renovation could have been granted, it is submitted that the Project Proponent, has in the name of 'repair/renovation' **(Annexure 2, Pg. 19)** had completely demolished the previous structures and in place constructed new and expanded version of the old structures, effectively exceeding the plinth area. The Applicant had in Original Application annexed a superimposed Map dated 13.08.2013 prepared by Architect Jose Carlos Da Veiga Gracias and submitted to the Respondent No. 2- Village Panchayat **(Annexure 14, Pg. 57)** showing the structures that were claimed to be approved in 1986, and plans approved in 2006 and 2007. It is clear from the said map that the entire design of the original buildings constructed in 1986 had been razed down, and new buildings with expanded area were constructed. Even the direction of the original buildings were changed from

a semi-circle formation to uniform rows. The Applicant is annexing coloured maps alongwith a map prepared by the Applicant for clarity.

A copy of the letter dated 18.05.2006 issued by the Respondent No. 1 along with a true typed copy is annexed herewith as **ANNEXURE A-16.**

A copy of the coloured map prepared by the Architect and submitted to the Village Panchayat, along with a computerized version of the same as prepared by the Applicant is annexed herewith as **ANNEXURE A-17.**

29. That it is clear from the above diagram, that as per the original plans only five structures named 'B' and building named 'X' were approved for construction. The Respondent No. 1 had granted permission for repairs and renovations of the structures existing in Survey No. 23/13 and 23/17 of Colva village, Salcete Taluka, Goa vide letter dated 18.05.2006 **(Annexure 2, Pg. No. 19).** However, the concerned Respondent failed to note that such a construction was not 'repair', and involved demolition and reconstruction of the entire structures, which is violative of the Para 6(2), CRZ-III (ii) in Annexure I, CRZ Notification, 1991.

30. That the Respondent No. 1 further failed to note that the reconstruction of the structures in the name of repair had exceeded the existing plinth area. It is submitted that the Hon'ble Supreme Court had upheld the findings of the Hon'ble Tribunal in judgement dated 7.10.2016 in ***Anil Hoble v. Kashinath Jairam Shetye & Ors.*** **[2016 SCC Online SC 1124]** that the concerned structure purchased in 1992, and the complaint made against such structure was substantially different in terms of shape, size and also location for which reason the Hon'ble Tribunal issued direction to remove the same. The relevant portion is reproduced below:

> *"13. The moot question then is : whether the structure as it existed when the respondents moved the Tribunal complaining about violation within the CRZ area was the same structure as*

> *on 19-2-1991 when the CRZ Policy came into being?* ***That finding of fact has been answered against the appellant by the Tribunal and we must agree with the same. For, the structure as it existed when the plot was purchased by the appellant on 3-8-1992 was a small structure at the corner of the subject plot and was used only as a garage or for repairs of vehicles and allied activity. The structure in respect of which complaint has been made before the Tribunal was completely different in shape, size and also location for which reason the Tribunal issued direction to remove the same.*** *The view taken by the Tribunal relying on the decision of the Bombay High Court, which the Tribunal was bound to follow, permitted retention of only dwelling units within CRZ (III) area and constructed prior to 19-2-1991."*

A copy of the judgement dated dated 7.10.2016 in *Anil Hoble v. Kashinath Jairam Shetye & Ors.* [2016 SCC Online SC 1124] is annexed herewith as **ANNEXURE A-18.**

31. That the contents of Para 10 and 11 are a matter of record. However, the Respondent No. 1 has failed to note herein that although the DSLR has provided the plinth size of the structures present, yet they have not confirmed that such a plinth size is final. The plinth size of the structures have only been calculated on 26.12.2011 only after the 'repair' and 'renovation' work, essentially reconstruction of the structures have been completed by the Project Proponent, which was in 2006 and 2008. Further, the DSLR in its letters dated 26.12.2011 and 30.07.2012 have clearly mentioned that the DSLR office does not have any information regarding year/duration of constructions of newly surveyed structures, i.e. whether constructed prior to 1991 or after 1991 and the structures shown on the plan are features existing during the period of CRZ survey. The DSLR has also given a clarification that the plan enclosed can only be used for reference purposes. The relevant portion of the letters dated 26.12.2011 and 30.07.2012 is reproduced below:

> *"Please note that the legality/ Illegality of all structures shown on the plan enclosed herewith is not known to this Directorate and therefore the plan enclosed shall not be used for any purpose such as development of structures/ vacant areas shown on this plan, revenue survey matters, obtaining licenses, permissions, conversion of land, etc., and whatsoever other work relating to development of the area. The plan enclosed herewith is particularly issued only for reference and understanding purpose.*
>
> ***Further, it is also informed that this office does not have any information regarding year/duration of constructions of newly surveyed structures, i.e. whether constructed prior to 1991 or after 1991 and the structures shown on the plan are features existing during the period of CRZ survey**."*

A copy of the DSLR letters dated 26.12.2011 and 30.07.2012 is annexed herewith as **ANNEXURE A-19 (Colly).**

32. It is further submitted in light of the above, that the said plinth area mapped by the DSLR cannot be relied upon, as it does not give any accuracy on the size of the plinth area. The plinth mentioned is only based on the final structures built post 2006 in the name of 'repair' and 'renovation'. It does not have any precise information of the structures present before the 1991 Notification. However, as per the plan submitted to the Village Panchayat dated 13.08.2013 (annexed as Annexure A-17 in the Rejoinder), it can be clearly seen the change in the shape and size of the structures from the 1986 approval to the 2006 approvals. The Respondent No. 1 has erred in relying on the plan submitted by the DSLR when the said authority clearly has denied that such a plan should be used for any purpose such as development of structures/ vacant areas shown on this plan, revenue survey matters, obtaining licenses, permissions, conversion of land, etc., and whatsoever other work relating to development of the area.

33. That the content of Para 12 are a matter of record. However, it is submitted that the Respondent No. 1 has erred in relying on the DSLR plan mentioned

above to provide its findings in the Inquiry Committee Report dated 19.10.2015. Such report must not be relied upon, as it does not provide any information on the plinth area of the structures before the CRZ Notification, 1991 was enforced.

A copy of the Inquiry Committee report dated 19.10.2015 is annexed herewith as **ANNEXURE A-20.**

34. That the contents of Para 13 to 15 are a matter of record. It is submitted that the Hon'ble Supreme Court, requested the Hon'ble Tribunal to decide the above-titled Application vide order dated 3.10.2023. The Hon'ble Apex Court further granted liberty to all parties to raise all contentions, objections to be as available under law and file the replies and documents before this Hon'ble Tribunal, and hence, directed the matter to be heard without prejudice.

35. That the contents of Para 16 are denied. It is submitted that Respondent No. 4 is the Managing Director of Respondent No. 3 resort. He has been a member of the 2nd Legislative Assembly of Goa (1994-1999), 3rd Legislative Assembly of Goa (1999-2000), 4th Legislative Assembly of Goa (2002-2007) and 5th Legislative Assembly of Goa (2007-2012). He has held office as a Cabinet Minister of the Government of Goa, inter alia as Minister of Environment from 2007-2012, and therefore, in control of the Respondent No. 1 authority as well.

36. That the contents of Para 17 is denied. It is submitted that based on the above submissions and objections, it is clear that the Respondent No. 1 has erred in considering the inconsistencies and illegalities in the documents submitted by the Project Proponent.

37. That therefore, the Hon'ble Tribunal, in the interest of justice may consider the above submissions and objections on behalf of the Applicant for further adjudication of the matter.

38) Pass any other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the instant case.

APPLICANT

THROUGH

RITWICK DUTTA **RAHUL CHOUDHARY**

ADVOCATES

COUNSELS FOR THE APPLICANT
N-73, LOWER GROUND FLOOR,
GREATER KAILASH-I,
NEW DELHI-110048
MOBILE NO: 9312407881
Email: dclaw160@gmail.com

Place: New Delhi/Pune

Date: 10.04.2024

VERIFICATION:

Verified by Judith Almeida, d/o Joseph Henry Baptiste, aged about 68 years, R/o H. No. 257/1, Bagdem, Ward 3, Colva, Salcete, Goa, that the contents of Paragraphs 1 to 19 are true to my personal knowledge and nothing material has been concealed therefrom.

APPLICANT

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE

ORIGINAL APPLICATION 66 OF 2014

IN THE MATTER OF:

COLVA CIVIC AND CONSUMER FORUM ... APPLICANT

VERSUS

GOA COASTAL ZONE MANAGEMENT AUTHORITY & ORS. ... RESPONDENTS

AFFIDAVIT

I, Mrs. Judith Almeida, aged 68 years, d/o late Joseph Henry Baptiste, R/o H. No. 257/1, Bagdem, Ward 3, Colva, Salcete, Goa, do hereby solemnly affirm and declare as under:

1. That I am the authorized representative of the Applicant in the above titled Original Application and conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.

DEPONENT

VERIFICATION

Verified on this 10th day of APRIL, 2024 that the contents of the present affidavit are true and correct to my knowledge and belief and nothing material has been concealed therefrom.

PLACE MARGAO-GOA

DEPONENT

Solemnly affirmed before me by
Judith Almeida.
Who is identified to me by
Election no - KNX3050465
~~to whom I personally know on~~
this 10th day of April 2024

Reg No. 6984/2024

KSavita

SAVITA G. KURTARKER
NOTARY
MARGAO-GOA

NOTARY
SAVITA G. KURTARKER
Reg. No. 262
Exp. Dt.:
27/02/2029
SK
SALCETE TALUKA
GOVT. OF GOA (INDIA)

NOTARIAL NOTARIAL NOTARIAL

NOTARIAL NOTARIAL NOTARIAL

NOTARY
SAVITA G. KURTARKER
SK
Reg. No. 262
Exp. Dt.:
27/02/2029
SALCETE TALUKA
GOVT. OF GOA (INDIA)

Office of t ... at

Sernabatim ... Colva.

Construction Licence No. 88/81-82

INFORMATION ISSUED UNDER RTI ACT, 2005

~~Smt/Shri/Kum~~ M/s. Progressive Estate Developers

from Old Market, Margao ~~Vrndr~~ is hereby granted licence for the construction of a Tourist Resort at Colva Beach.

in terms of the resolution No. 6.f taken in the Panchayat meeting dated 26.4.1981, as per the plans in triplicate/duplicate attached to his/her application under inward No. 63 Plans 4 dated 29.4.81. One copy of the plans concerned, with the approval note carrying the embossed seal of this Panchayat and duly signed, is returned to the interested party, who shall comply with the following conditions.:

1) To limit himself/herself to the Plans approved and statements therein.
2) The construction shall be as per plan approved by this Village Panchayat and condition inposed on it.
3) To inform the Panchayat when the construction has been completed upto Plinth level.
4) To inform the Panchayat as soon as the construction is completed.
5) Not to inhabit the building without the prior permission of this Panchayat
6) To abide by the other related provisions in force.
7) That the building or construction is carried out as per the allignment given and the Plinth level fixed by the Panchayat.
8) The construction licence shall be revoked:
   a) if the construction work is not executed as per the plans approved and statements therein;
   b) wherever there is any false statement or any misrepresentation of any material passed, approved or shown in the application on which the permit was based.
9)
10)

This Certified copy is a copy of the Photocopy submitted to this Office Which is available in this Office records

Public Information Officer
GCZMA/DSTE

12)

The licence shall be valid for a period of ~~ONE/TWO/~~THREE year/s beginning from to-day. He has paid the respective ~~tax~~/fees to the tune of Rs. 8697.48 by Receipt No. 75/44 dated 5-5-1981.

This carries the embossed seal of this Panchayat.

Office of the Village Panchayat ... Colva

V. Panchayat Secretary

Sarpanch

TYPED COPY OF ANNEXURE R-1

THE VILLAGE PANCHAYAT
Sernabatim, Vanelim, Colva
Construction License No. 88/81-82

M/s Progressive Estate Developers from Old Market, Margao, is hereby granted license for the construction of a Tourist Resort at Colva Beach. _____in terms of the Resolution No. _____taken in the Panchayat meeting dated _____, as per the plans in triplicate/duplicate attached to his/her application under inward No. 63 Plans 4 dated 29.04.1981. One copy of the plans concerned, with the approval note carrying the embossed seal of this Panchayat and duly signed, is returned to the interested party, who shall comply with the following conditions:

1. To limit himself/herself to the Plans approved and statements therein.
2. The Construction shall be as per plan approved by this Village Panchayat and condition imposed on it.
3. To inform the Panchayat when the construction has been completed upto plinth level.
4. To inform the Panchayat as soon as the construction is completed.
5. Not to inhabit the building without the prior permission of this Panchayat.
6. To abide by the other related provisions in force.
7. That the building or construction is carried out as per the alignment given and the plinth level fixed by the Panchayat.
8. The construction license shall be revoked:
   a. If the construction work is not executed as per the plans approved and statements therein.
   b. Wherever there is any false statement or any misrepresentation of any material passed, approved or shown in the application on which the permit was based.
9. ----------
10. ----------
11. ----------
12. ----------

The license shall be valid for a period of one/two/three year/s beginning from today. He has paid the respective tax/fees to the tune of Rs. 8,697.48 by receipt No. 75/44 dated 05.05.1981.
This carries the seal of this Panchayat.

t.t.c

Office of the Village Panchayat, Sernabatim, Vanelim and Colva 5th May, 1981

Sd
Sarpanch

.....
V. Panchayat, Secretary

//True Copy//

Annexure A-2

INFORMATION ISSUED UNDER RTI ACT, 2005

This certified copy is a copy of the Plan submitted to this Office Which is available in this Office records

Braganza
Public Information Officer
GCZMA / DSTE

No. RB/CNV/ 302/81
Government of Goa, Daman and
OFFICE OF THE COLLECTOR OF
Panaji, P. O. C. No. 4030

Dated: 1-6-1

Read:

APPLICATION UNDER SUB-SECTION (1) OF SECTION 32 OF THE GOA, DAMAN AND DIU LAND REVENUE CODE, 1968.

SANAD

SCHEDULE-II

[See Rule 7 of the Goa, Daman and Diu Land Revenue (Conversion of use of land and non-agricultural Assessment) Rules, 1969.]

Whereas an application has been made to the Collector of Goa (hereinafter referred to as "the Collector" which expression shall include any Officer whom the Collector shall appoint to exercise or perform his powers and duties under this grant) under Section 32 of the Goa, Daman and Diu Land Revenue Code, 1968 (hereinafter referred to as "the said Code" which expression shall, where the context so admits include the rules and orders thereunder) by Shri/Smt. M/S PROGRESSIVE ESTATE DEVELOPERS (FELIX DIAS) PROPRIETOR, Fatorda-Salcete being the occupant of the plot registered under ..... known as " ..... " situated at Colva-Salcete registered under No. SURVEY No. 23/13 (Part) 37 (hereinafter referred to as "the applicant" which expression shall, where the context so admits include his/her heirs, executors, administrators or assigns) for the permission to use the plots of land (hereinafter referred to as the "said plots") described in the Appendix I hereto, forming a part of Survey No. 23/13 (Part) 37 and admeasuring 2347 square metres be the same a little more or less for the purpose of Tourist complex.

Now, this is to certify that the permission to use for the said plots is hereby granted, subject to the provisions of the said Code, and rules therunder, and on the following conditions, namely:—

1. *Levelling and clearing of the land* — The applicant shall be bound to level and clear the land sufficiently to render suitable for the particular non-agricultural purpose for which the permission is granted to prevent injurious conditions.

2. *Assessment* — The applicant shall pay the non-agricultural assessment when fixed by Collector under the said Code and rules thereunder with effect from the date of the sanad.

3. The applicant shall not use the said land and building erected or to be erected there for any purpose other than residential/Industrial/any other non-agricultural purpose, without previous sanction of the Collector.

4. *Building time limit* — The applicant shall within one year from the date hereof, commence the said plot construction of building of a substantial and permanent description, failing which the said period is extended by the Collector from time to time, the permission granted shall be deemed to have lapsed.

5. *Liability for rates* — The applicant shall pay all taxes, rates and cesses leviable on the said land.

6. *Penalty clause* — (a) If the applicant contravenes any of the foregoing conditions he may, without prejudice to any other penalty to which the applicant may be liable under the provisions of the said Code continue the said plot in the occupation of the applicant on payment of such fine and assessment as he may direct.

(b) Notwithstanding anything contained in sub-clause (a) it shall be lawful for the Collector to direct the removal or alteration of any building or structure erected or use contrary to the provisions of this grant within such time as specified in that behalf by the Collector, and on the removal or alteration not being carried out and recover the cost of carrying out the same from the applicant as an arrears of land revenue.

CERTIFIED BY :-

SECRETARY
Village Panchayat

INFORMATION ISSUED UNDER RTI ACT, 2005

7. *Code provisions applicable* — Save as hereinafter provided the grant shall be subject to the provisions of the said Code and rules thereunder.

APPENDIX — I

Length and Breadth		Total Superficial Area	Forming (part of) Survey No. or Hissa No.	BOUNDARIES	Remarks
North to South	East to West			North, South, East and West	
1	2	3	4	5	6
120.90 mts.	19.60 mts.	2347 sq. mts.	Survey No. 23, Sub. Div.No. 13(Part) and 17 (Part).	N: Survey No. 23, Sub. Div.No. 13. S: Survey No. 23, Sub. Div.No. 17. E: Survey No. 23, Sub. Div.No.13 and 17. W: Survey No. 23, Sub. Div.No. 13 and 17.-	
	The conversion is allowed leaving 3.3 mts. from all sides of the plot boundary with a condition that permission for construction of building will not be given until and access to the property is made available, after acquisition of land by the Government.				

In witness whereof the Collector of Goa, has hereunto set his hand and the seal of his Office

On behalf of the Administrator of Goa, Daman and Diu and the applicant M/s Progressive Estate

also hereto set his hand this ....18.... day of ....June.... 19 Inácio (Felix Dias) 1981, Proprietor, Fatorda-Goa

(Signature of the applicant)

Inácio Dias alias Felix Dias, Proprietor Progressive Estate Developers.

Signature and designation of Witnesses

1. .....
2. .....

Collector of Goa, Additional Collector of Goa

Signature of Witnesses

1. .....
2. .....

This Certified copy is a copy of the Photocopy submitted to this Office Which is available in this Office records

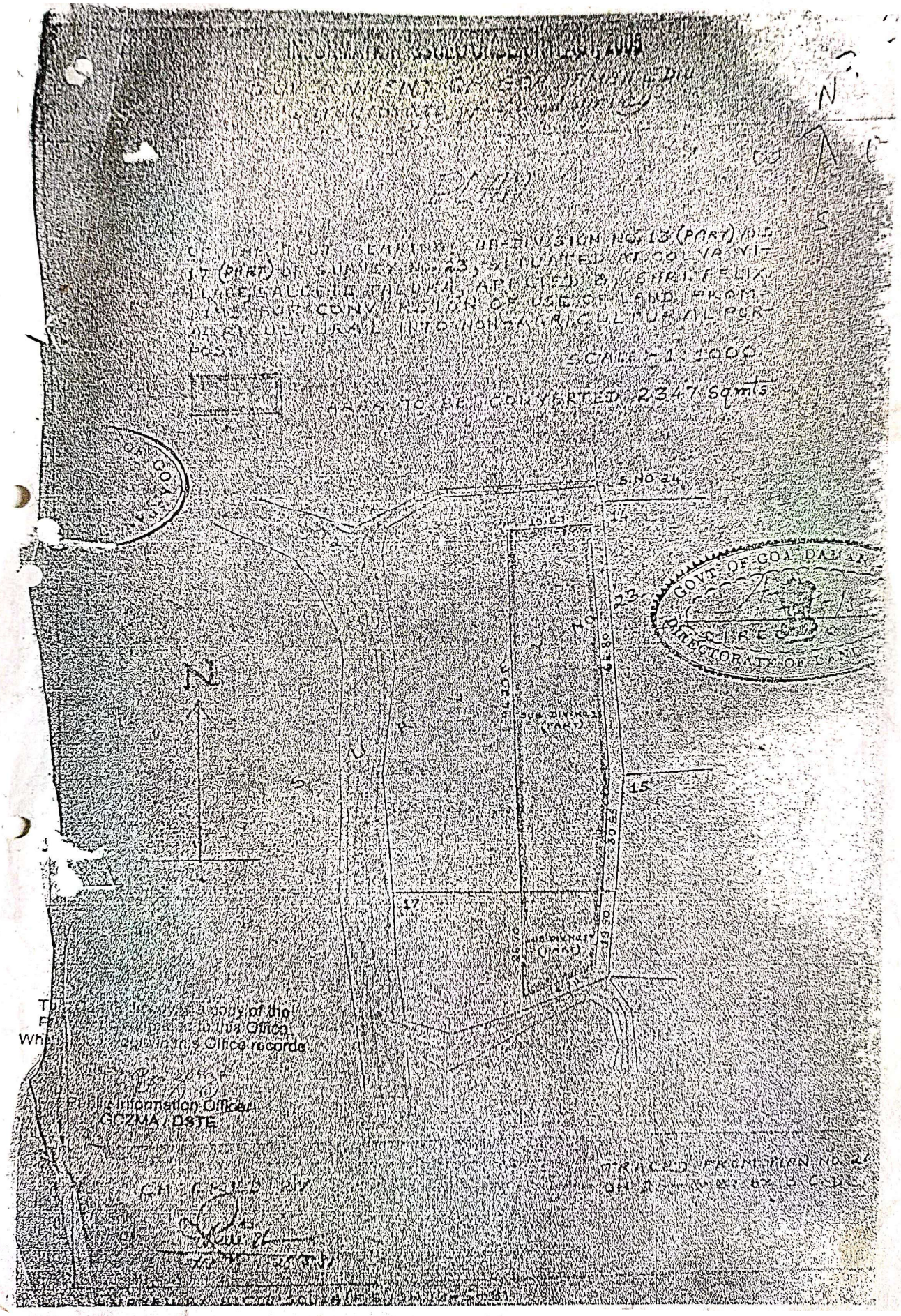
Public Information Officer GCZMA / DSTE

We declare that Shri/Smt. Inácio Dias alias Felix Dias, H.No.200, Fatorda, Goa who has signed this Sanad is, to our personal knowledge, the person he/she represents himself to and that he/she has affixed his/her signature hereto in our presence.

1. .....
2. .....

Govt. Ptg. Press, Panaji-Goa — 1271/20,000 — 11/1979

CERTIFIED BY


PLAN
OF THE PLOT BEARING SUB-DIVISION NO. 13 (PART) AND
17 (PART) OF SURVEY NO. 23, SITUATED AT COLVA VI-
LLAGE SALCETE TALUKA, APPLIED BY SHRI. FELIX
DIAS FOR CONVERSION OF USE OF LAND FROM
AGRICULTURAL (NON-AGRICULTURAL PUR-
POSE).
SCALE - 1 : 1000
AREA TO BE CONVERTED 2347 Sq.mts
S.NO 24
14
23
15
17
N
S
GOVT. OF GOA
GOVT. OF GOA DAMAN
DIRECTORATE OF
Public Information Officer
GCZMA / DSTE

No. RB/CNV/302/81
Government of Goa, Daman and Diu
OFFICE OF THE COLLECTOR OF
Panaji, P.O.C. No. 4030

Dated: 1-6-81

APPLICATION UNDER SUB-SECTION(1) OF SECTION 32 OF THE GOA, DAMAN AND DIU LAND REVENUE CODE, 1968

SANAD

SCHEDULE-II

[See Rule 7 of the Goa, Daman and Diu Land Revenue (Conversion of use of land and non-agricultural Assessment) Rules, 1969]

Whereas an application has been made to the Collector of Goa (hereinafter referred to as "the Collector" which expression shall include any Officer whom the Collector shall appoint to exercise and perform his powers and duties under this grant) under Section 32 of the Goa, Daman and Diu Land Revenue Code, 1968 (hereinafter referred to as "the said Code", which expression shall where the context so admits include the rules and orders thereunder) by M/S PROGRESSIVE ESTATE DEVELOPERS (FELIX DIAS) PROPRIETOR, being the occupant of the plot registered under Futardo, Salcete known situated at Colva-Salcete registered under No. Survey No. 23/13 (Part) 17 hereinafter referred to as "the applicant" which expression shall, where the context so admits, include his/her heirs, executors, administrators and assigns) for the permission to use for the plots of land (hereinafter referred to as the "said plot") described in Appendix I hereto forming a part of Survey No. 23/13 (Part) 17 admeasuring 2347 square metres be the same a little more or less for the purpose of Tourist complex.

Now, this is to certify that the permission to use for the said plot is hereby granted, subject to the provisions of the said Code, and rules thereunder, and on the following conditions, namely:—

1. Levelling and clearing of the land.— The applicant shall be bound to level and clear the land sufficiently to render suitable for the particular non-agricultural purpose for which permission is granted and to prevent insanitary conditions.

2. Assessment.— The applicant shall pay the non-agricultural assessment was fixed by Collector under the said Code and rules thereunder with effect from the date of the sanad.

3. Use.— The applicant shall not use the said land and building erected or to be erected thereon for any purpose other than residential/industrial/any other non-agricultural purpose, without the previous sanction of the Collector.

4. Building time limit.— The applicant shall within one year from the date hereof, commence on the said plot construction of building of a substantial and permanent, description, failing which unless the said period is extended by the Collector from time to time, the permission granted shall be deemed to have lapsed.

5. Liability for rates.— The applicant shall pay all taxes, rates and cesses leviable on the said land.

6. Penalty clause.— (a) If the applicant contravenes any of the foregoing conditions the Collector may, without prejudice to any other penalty to which the applicant may be liable under the provisions of the said Code continue the said plot in the occupation of the applicant on payment of such fine, and assessment as he may direct.

(b) Notwithstanding anything contained in sub-clause (a) it shall be lawful for the Collector to direct the removal or alteration of any building or structure erected or used contrary to the provisions of

this grant within such time as specified in that behalf by the Collector, and on such removal or alteration not being carried out and recover the cost of carrying out the same from the applicant as an arrears of land revenue.

7. Code provisions applicable.— Save as herein provided, the grant shall be subject to the provisions of the said Code and the rules thereunder.

APPENDIX-I

Length and Breadth		Total Superficial area	Forming (Part of) Survey No. or Hissa No.	BOUNDARIES	Remarks
North to South	East to West			North, South, East and West	
1	2	3	4	5	6
120.90 mts.	19.60 mts.	2347 sq. mts.	Survey No. 23, Sub. Div. Nos. 13 (Part) and 17 (Part).	N: Survey No. 23, Sub. Div. No. 13. S: Survey No. 23, Sub. Div. No. 17. E: Survey No. 23, Sub. Div. No. 13 and 17. W: Survey No. 23, Sub. Div. No. 13 and 17.	
The conversion is allowed leaving 3.3 mts. from all sides of the plot boundary with a condition that permission for construction of building will not be given until and access to the property is made available, after acquisition of land by the Government.					

In witness whereof the Collector of Goa, has hereunto set his hand and the seal of his Office on behalf of the Administrator of Goa,

Daman and Diu; and the applicant M/s Progressive Estate Developers (Felix Dias) Proprietor, Futardo, Salcete has also hereunto set his hand this 1st day of June, 1981.

Sd/- Illegible
(Signature of the applicant)
Illegible alias Felix Dias, Proprietor
M/s Progressive Estate Developers

(Signature and designation of Witnesses)

1. Sd/- Illegible
2. Sd/- Illegible

Sd/- Illegible
Collector of Goa/Additional Collector of Goa

We declare that illegible alias Felix Dias, illegible who has signed this Sanad is, to our personal knowledge, the person he/she represents himself to be, and that he/she has affixed his signature hereto in our presence.

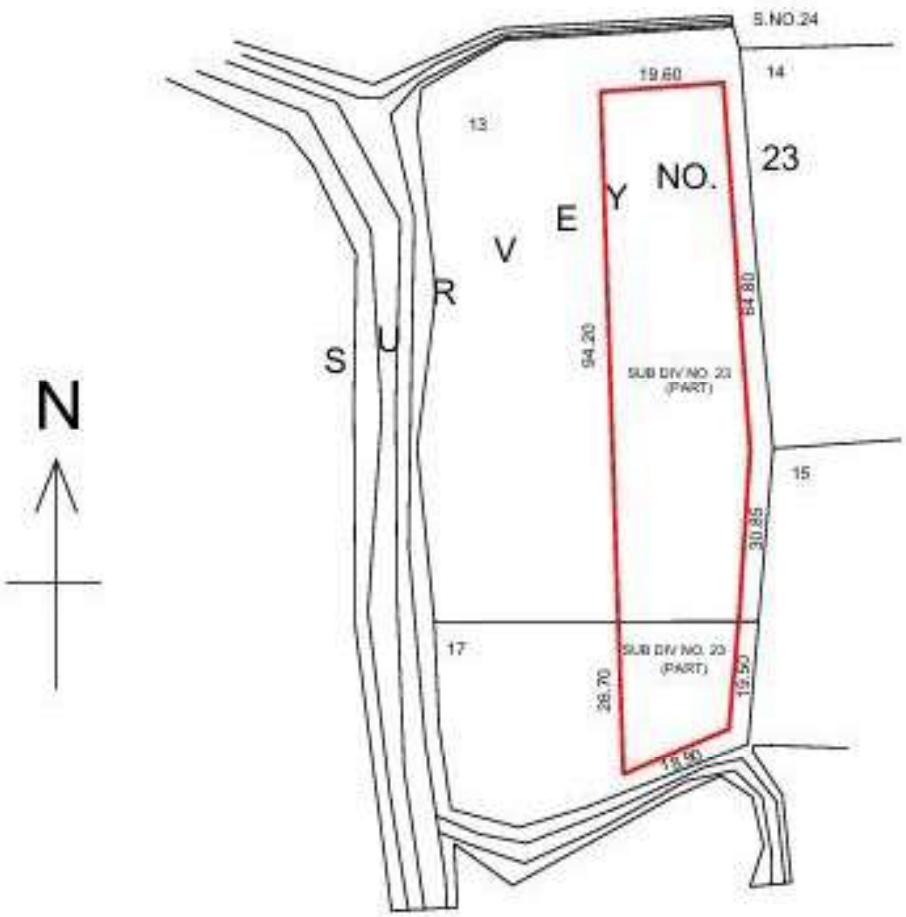
1. Sd/- Illegible
2. Sd/- Illegible

PLAN

OF THE PLOT BEARING SUB-DIVISION NO.13(PART) AND 17(PART) OF SURVEY NO.23, SITUATED AT COLVA VI--LLAGE, SALCETE TALUKA, APPLIED BY SHRI. FELIX DIAS FOR CONVERSION OF USE OF LAND FROM AGRICULTURAL TO NON-AGRICULTURAL PUR-POSE.

SCALE 1:1000

AREA TO BE CONVERTED 2347 Sq.mts



CHECKED BY

TRACED FROM PLAN NO.21

ON 25 BY B.C.D

t.t.c

Annexure A-3

Ref. No. DJ/3782/2170/81
Town and Country Planning Department
Government of Goa, Daman and Diu
Panaji, Goa.

Dated: 17/8/81

To:
The Sarpanch,
Village Panchayat,
Colva-Salcete.

INFORMATION ISSUED UNDER RTI ACT, 2005

Sub: Proposed Tourist Beach Resort at Colva Beach at S.No.23/13 & 17 by Progressive Estate Developers, Margao.
Ref: Your letter no.VP/SVC/149/81-82 dt.25.6.81.

Sir,

With reference to above mentioned subject, this is to inform you as follows:-

1. Sec.3 of Village Panchayat Rules clearly mention that both land development and Building plans have to be approved by Town Planning Dept. in case of villages included in appendix 'A' of village Panchayat Rules.
2. Whereas in this office letter no.31/3/81-TCP/5470 dt.27.2.81, only area alloted for Progressive Developers have been indicated. This does not mean that building plans also have been approved by this Dept.
3. Even if P.W.D.has sent the file directly to Panchayat, without referring the matter to Town Planning Dept., Panchayat should have referred the matter to this Dept., before issuing the license. Hence the License issued by the Panchayat in this matter without Technical approval of this Dept.is contrary to Rules.
4. Hence you are requested to send the file of Progressive Estate Developers for verification and return.

Yours faithfully,

J.A.D'Souza
Chief Town Planner

Copy to the Asst.Director of Panchayats, Panaji, with reference to letter no.4-64-80-LAWD dt.16.7.81 from Under Secretary (Revenue).

ado/6.8.81.

This Certified copy is a copy of the Photocopy submitted to this Office Which is available in this Office records

Braganza

Public Information Officer
GCZMA / DSTE

Dated:11/8/81

To:

The Sarpanch

Village Panchayat,

Colva-Salcete

Sub: Proposed Tourist Beach Resort at Colva Beach at Survey No. 23/13 and 17 by Progressive Estate Developments, Margao.

Ref: Your letter no. VP/SVC/81-82 dt. 25.6.81

Sir,

With reference to above-mentioned subject, this is to inform you as follows:

1. Sec 5 of Village Panchayat Rules clearly mention that both land development and Building plans have to be approved by Town Planning Dept. in case of village included in appendix 'A' of village Panchayat Rules.
2. Wherein in this office letter no. 31/3/81-TCF/5470 dt. 27.2.81, only area allotted for Progressive Developers have been indicated. This done not mean that building plans also have been approved by this Dept.
3. Even if P.W.D. has sent the file directly to Panchayat without referring to the matter to Town Planning Dept., Panchayat should have referred the matter to this Dept. , before issuing the license. Hence the License issued by the Panchayat in this matter is without Technical approval of this Dept. is contrary to Rules.
4. Hence you are requested to send the file of Progressive Estate Developments for verification and return.

Yours faithfully,

S.D.

J.A.D.' Souza

Chief Town Planner

Copy to the Asst. Director of Panchayats, Panaji , with reference to letter no. 4-64-80-LAWD dt. 16.7.81.

t.t.c

Ads/6.8.81

Annexure A-4

INFORMATION PROCURED UNDER RTI ACT, 2005

Ref. No. DJ/3782/3316/81
Town and Country Planning Department
Government of Goa, Daman and Diu,
Panaji, Goa.

Dated: 18/11/81

To
The Sarpanch,
V.P.Calva,
Salcete.

Subs:- Appl.of Progressive Estate Developers for the const.of Hotel Building at Calva.
Ref:- Letter no.VP/SVC/249/81-82 dated 26.9.81.

Sir,

With reference to the subject cited above, this is to inform you that the conversion of use of land for the const.of the hotel building in sub-division no.15 & 17 of S.No.23 of Calva was recommended under condition that the permission for const.of building will not be given until an access to the plot is made available after acquisition of land by the Government. The same condition has been incorporated on the sanad issued by the Collector. As such, the licence should not have been issued until the land under proposed access is acquired by the Government. This is contrary to the Sanad issued.

Further, the ceiling height 2.9m including the thickness of the slab is not permissible under rules. It should have been 3m excluding slab thickness to a max.building height of 8.0m. The details of parking the cars is to be shown on the site plan. The applicant may be informed accordingly.

The file is returned herewith keeping one set for this office for records.

Yours faithfully,

J.A.D'Souza, 18/11
Chief Town Planner.

Encl:- As above.

end/17.11.81.

This Certified copy is a copy of Photocopy submitted to this Office Which is available in this Office records
Braganza
Public Information Officer
GCZMA / DSTE

Ref. No. DJ/3782/3756/81
Town and Country Planning Department,
Government of Goa Daman and Diu,
Panaji, Goa
Dated: 18/11/81

To,
The Sarpanch,
V. P. Colva,
Salcete,

Sub:- Appl. Of Progressive Estate Developers for the const. Of Hotel Building at Colva.

Ref:- Letter No. VP / SVC /249 / 81-82 DATED 28.09.81

Sir,

With reference to the subject cited above, this is to inform you that the conversion of use of land for the const. of the hotel building in sub-division no. 13 & 17 of S. No. 23 of Colva was recommended under condition that the permission for const. of building will not be given until an access to the plot is made available after acquisition of land by the Government. The same condition has been incorporated on the sanad issued by the Collector. As such, the licence should not have been issued until the land under proposed access is acquired by the Government. This is contrary to the Sanad issued.

Further, the ceiling height 2.9m including the thickness of the slab is not permissible under rules. It should have been 3TE excluding slab thickness to a max. building height of 8.8m. The details of parking the cars is to be shown on the site plan. The applicant may be informed accordingly.

The file is returned herewith keeping one set for this office records.

Yours faithfully,

J.A. D'Souza, 18 /11
Chief Town Planner,

Encl:- As above.
End 17.11.81.

t.t.c

Annexure A-5

DS/3782

Phone: 3310

Office of the Village Panchayat

Sernabatim, Vanelim & Colva
SALCETEA - GOA

Ref. No. VP/SVC/398 /81-82.

Date 5th December, 1981.

INFORMATION ISSUED UNDER RTI ACT, 2005

To
The Progressive Estate Developers,
Old Market, Margao.

Sir,

With reference to the construction licence No.88/81-82 dt. 5th May,1981 issued to you for proposed construction of a Tourist Resort at Colva Beach, have to inform you that, the said licence was issued to you by this Panchayat based on the Technical approval of P.W.D. Works Div.VIII Sub-Div.I, Margao letter No.PWD/EES/SD.I/B&C(3)/ Constr.C25/20/81-82 dt.14.4.81. And after the the copies of plans was refered to the Town and Country Planning Department office letter No.VP/SVC/249/81-82 dt.26.9.81, and now the Town and Country Planning Department has returned the plan with following observation.

That the conversion of use of land for the constr. of the Hotel building Sub-division No.13 & 17 Survey No.23 Colva was recommended under condition the permission for construction of building will not be given untill an access to the plot is made available after acquisition of land by the Govt. The same condition has been incorporated on the Samd issued by the Collector. As the licence should not have been issued untill the land under proposed access is required by the Government. This is contrary to the Samd issued.

Further the ceiling height 2.9mts including the thickness of the slab is permissible under rules.It should have been 3 mts. excluding slab thickness a max. building height of 8.8. mts. The details of parking the cars is to be shown on the site plan.

In view of what is stated above this Panchayat hereby request you to comply with the above requirements before starting the construction.

Therefore you are requested to comply with above observations raised by Town Planning Dept. and apply to this office for necessary fresh construction licence. This Panchayat regretts for the inconveniant caused to you.

Yours faithfully,

Sarpanch.

Copy to:-

1) Town Planning Dept. Panaji, for information.
2) The Asst.Engineer,P.W.D. Works Div.VIII,SD-I, Margao for information.
3) B.D.O. Margao, for information.

OFFICE OF THE VILLAGE PANCHAYAT OF SERNABATIM

This Certified copy is a copy of the Photocopy submitted to this Office and is available in this Office records
Boreganz
Public Information Officer
GCZMA, OSIF

Office of the Chief Town Planner, TOWN & COUNTRY PLANNING DEPARTMENT Panaji - GOA.
Inward No. 7913
Date 14/12/87

5/1/82

Office of the Village Panchayat
Sernabatim, Vanelim & Colva
SALCETEA – GOA

Ref. No. VP / SVC / 398/ 81-82.

Date 5TH December 1981.

To,

The Progressive Estate Developers,
Old Market, Margao.

Sir,

With reference to the construction licence No. 88/81-82 dt. 5th May 19 issued to you for proposed construction of a Tourist Resort at Colva Beach have to inform you that, the said licence was issued to you by this Pancha based on the Technical approval of P.W.D. Works Div VIII Sub- Div I, Margao letter No. PWD / KES /SD-I/R&C(3) Constr.C25 / 20 /81-82 dt. 14.4.81. And after the copies of plans was referred to the Town and Country Planning Department office letter No. VP /SVC /249 /81-82 DT 26.9.81, and now the Town and Country Planning Department has returned the plan with following observation.

That the conversion of use of land for the constr. of the Hotel building Sub-division No 13 & 17 Survey no. 23 Colva was recommended under condition to the plot is, made available after acquisition of land by the Govt. The condition has been incorporated on the Sanad issued by the Collector. As the licence should not have been issued until the land under proposed acc is required by the Government. This is contrary to the Sanad issued.

Further the ceiling height 2.9mts including thickness of the slab permissible under rules. It should have been 3 mts. including slab thickness a max building height of 8.8 mts. The details of parking the cars is to shown on the site plan.

In view of what is stated above this Panchayat request you to ...ply with the above requirements before starting the construction.

Therefore, you are requested to comply with above observations raised Town Planning Dept. and apply to this office for necessary fresh construct licence. This Panchayat regrets for the inconvenient caused to you.

Your faithfully,
Sd/-
Sarpanch

Copy to:-
1) Town Planning Dept. Panaji, for information
2) The Asst. Engineer, P.W.D. Works Div. VIII,SD-I, Margao for information
3) B.D.O. Margao for information.

t.t.c

Ref. DJ/3782/1294/
Town and Country Planning Department,
Panaji-Goa, Daman and Diu.
Dated 7/3/85

To:
The Under Secretary (Revenue),
L.A.W.D.,
Panaji.Goa.

INFORMATION ISSUED UNDER RTI ACT, 2005

Sub: Proposed tourist Beach Resort at Colva application by M/s Progressive Estate Developers.
Ref: Y/L no.4/1/82/LAWD dt.14.2.85.

Sir,

Please refer to your above quoted letter. In this connection this is to inform you that the detail explanation of this case was given to you by this dept. under 1) Letter ref.no.DJ/3782/1935/81 dt.27.7.81 2) under letter ref.no.DJ/3782/4437/82 dt.17.8.82 and 3) under letter DJ/3782/2117/84 dt.25.4.84. (True copies of all three letters are enclosed herewith for ready reference).

Further to add that the Village Panchayat of Colva vide their letter ref.no.VPCR/GB/84-85 dt.18.5.84 informed this office that no extension to the construction licences has been issued by them and under letter ref.no.DJ/3782/3695/84 dt.4.8.84.the Panchayat was directed not to give permission for the same if/any attempt to construct the buildings is made by the applicant.

Inspite of our clear instructions, it is noticed that the Village Panchayat has renewed the licence for the same project under letter ref.no.VP/SVC/135/84 dt. 15.9.84. It is noticed that the Village Panchayat does not abide to the instructions issued by this office. Hence action, if any, may be taken against the V.P. at your end.

Recently, the M/s Progressive Estate Developers have submitted revised plans of proposed project. These plans have to be placed first before ECC/EDC for their approval. Meantime Govt.directives, if any, may be communicated in the matter. before 12.3.85

Any further information that may be required shall be given by the undersigned.

This Certified copy is a copy of the Photocopy submitted to this Office Which is available in this Office records
Braganza
Public Information Officer
GCZMA / DSTE

Yours faithfully,

J.A.D'Souza
Chief Town Planner

Copy to file no.DJ/3056.

ada/4.3.85

Ref: DJ/3782/294/85

Town and Country Planning Department,
Government of Goa Daman and Diu
Panaji Goa
7 /3/85

To,
The Under Secretary (Revenue),
L.A.W.D
Panaji Goa.

Sub: Proposed tourist Beach Resort at Colva Application by M/s Progressive Estate Developers.

Ref: Y/I. No. 4/1/82/LAWD dt. 14.2.85.

Sir,

Please refer your above quoted letter. In this construction this is to inform you that the detail explanation of this case was given to you by this dept under 1) Letter ref.no. DJ/3782/1935/81 dt. 27.7.81. 2) under letter ref. no. DJ/3782/4437/82 dt. 17.8.82 and 3) under letter DJ/3782/2117/84 dt. 25.4.84 (True copies of all three letters are enclosed herewith for ready reference).

Further to add that the Village Panchayat of Colva vide their letter ref. no. VPCR/68/84-85 DT 18.5.84 informed this office that no extension to the construction licences has been issued by them and under letter ref. no. DJ/3782/3695/84 dt 4.8.84. the Panchayat was directed not to give permission for the same if any attempt to construct the buildings is made by the applicant.

Inspite of our clear instructions, it is noticed that the village Panchayat has renewed the licence for the same project under letter ref. no. VP/SVC/135/84 dt. 15.9.84. It is noticed that the Village Panchayat does not abide to the

instructions issued by this office. Hence action, if any, may be taken against the V.P. at your end.

Recently, the M/s Progressive Estate Developers have submitted revised plans of proposed project. These plans have to be placed first before ECC/EDC for their approval. Meantime Govt. directives, if any, may be communicated in the matter before 12.3.85.

Any further information that may be required shall be given by the undersigned.

Yours faithfully,
Sd/-
J.A.D'souza
Chief Town Planner 5.3

Copy to file no. DJ/3056
Ada/4.3.85

t.t.c

Must/Urgent

To,
The Sarpanch,
V.P. Colva,
Salcete, Goa.

Sub: Construction of a hotel on S.No. 28/13 & 17 at Colva by M/s. Progressive Estate Developers.

Ref: 1) Minutes of VIIth EDC Meeting held on 30.9.85.
2) Letter no. LCS/EDC/86/758 dated 10.2.86 from the Secretary to L.G.

Sir,

In response to this office letter no. DO/3782/4698/85 dated 30.10.85, the applicant has submitted the revised plans complyi with the instructions given by the E.D.C. during the its meeti held on 30.9.85. The same was forwarded to the secretary to L for approval.

The Member Secretary to E.D.C. has conveyed his approval vide no. LCS/EDC/86/758 dated 10.2.86.

In light of the above, there is no objection from the planning of view to the construction of Hotel Project in S.No. 27/13&17 Colva village subject to the following conditions:

1. The applicant should cede the land in the north-with total of 9,300 sq.mts. to the Govt. for open space (3100 sq.Mts. cluding 6m wide road).

2. A 6 m.s. road passing in the east through the open space wi be regular access to the party which he should develop.

3. The party should obtain necessary permission for conversion the Collector of Goa & other concerned departments and also obtain licence from the local authority.

4. The plinth levels of doors and windows may be adjusted at level, if possible for better aesthetics.

Keeping a set of plans the rest are returned herewith.

This Certified copy is a copy of the Photocopy submitted to the Office Which is available in this Office records

Public Information Officer
GCZMA / DSTE

Yours faithfully,

(A.A. D'Souza)
Chief Town Planner

Encl: as above.

Copy to:-

1) The Member Secretary, E.D.C., Cabo Raj Niwas, Dona Paula.
2) The Director of Tourism, Panaji, Goa - His attention is inv to the para at Sr.No. 1 & 2 regarding open space and access road. He may take immediate action in consultation with co cerned authorities (Encl - 1).
3) Collector of Goa, Panaji.
4) Captain of Ports, Panaji.
5) Director, Land Survey Department, Panaji.
6) M/s. Progressive Developers, Colva.
7) Asst.Engineer, W.D.VI/S.D.I/P.W.D., Fatorda-Margao, Goa.

mf/24.2.86.

INFORMATION ISSUED UNDER RTI ACT, 2005

DJ/3782/828/
Town & Country Planning Department
Govt. of Goa Daman & Diu

MOST URGENT

24/2/86

To,
The Sarpanch,
V.P. Colva,
Salcete, Goa.

Sub: Construction of a hotel on S. No. 23/13 & 17 at Colva by M/s Progressive Estate Developers.

Ref: 1) Minutes of VIIth EDC Meeting held on 30.9.85.
2) Letter No. LGS/EDC/86/758 dated 10.2.86 from the Secretary of L.G.

Sir,

In response to this office letter No. DJ/3782/4698/85 dated 30.10.85, the applicant has submitted the revised plans complying with the instructions given by the E.D.C. during its meeting held on 30.9.85. The same was forwarded to the Secretary to L.G. for approval.

The Member Secretary to E.D.C. has conveyed his approval vide no. LGS/EDC/86/758 dated 10.2.86.

In light of the above, there is no objection from the planning of view to the construction of Hotel Project in S. No. 27/13 & 17 Colva village subject to the following conditions:

1. The Applicant should cede the land in the north with total of 3,500 sq. mts. to the Govt. for open space (3100 sq. mts. including 6 m wide road).

2. A 6 mts. road passing in the east through the open space will be regular access to the party which he should develop.

3. The party should obtain necessary permission for conversion the Collector of Goa and other concerned departments and also obtain licence from the local authority.

4. The lintel levels of doors and windows may be adjusted at level, if possible for aesthetics.

Keeping a set of plans the rest are returned herewith.

Yours Faithfully,
Sd/-
(J.A.D'Souza) 24/2
Chief Town Planner

Encl: as above.

Copy to:-

1) The Member Secretary, E.D.C. Cabo Raj Niwas, Dona Paula.

2) The Director of Tourism, Panaji, Goa – His attention is invited to the para at Sr.no. 1 & 2 regarding open space and access road. He may take immediate action to consultation with concerned authorities (Enc – 1 & 2)

3) Collector of Goa, Panaji.

4) Captain of Ports, Panaji.

5) Director, Land Survey Department, Panaji,

6) M/s Progressive Estate Developers, Colva.

7) Asst. Engineer, W.D.VI/S.D.I/P.W.D. Fatorda, Margao Goa.

Mf/ 24.2.86

t.t.c

.

Annexure A-8

the passing of the Judgment by the Division Bench in the aforesaid Writ Petitions. It is not necessary to emphasise the need to give wide publicity to such notices. The reason is obvious, namely, to give an opportunity to a great number of people to apply for the allotment of fair price shops, if they so desire. We hope and trust that, in future, the concerned authorities will bear this in mind and will give ample publicity as suggested by us to the notice inviting such kind of applications.

7. The grievance of the petitioner is that 550 card units which had been before allotted to his Fair Price Shop had been withdrawn and allotted to the fourth respondent without giving him an opportunity to represent against it. We agree with the learned counsel appearing for the petitioner that the decision communicated to the petitioner by the impugned Memorandum is vitiated as it, manifestly, violates the principles of natural justice. The petitioner had been allotted the aforesaid card units under the Rules and Guidelines which were prevailing in 1971, and apparently, there were no complaints against him.This being so, if there was a change of the policy of the Government which motivated the said instructions, one could have expected that the said policy would be prospective in its operation. Therefore, if its operation was to affect the interests already vested in some people, the minimum that was required was to give such persons an opportunity to represent against it. This was not done, and consequently, in our judgment the instructions or directions communicated to the petitioner by the impugned Memorandum cannot be sustained. They are, therefore, liable to be quashed and set aside.

8. Accordingly, we make the rule absolute in terms of prayer (a), with no costs in the circumstances of the case.

1989 (1) Goa Law Times (276)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY PANAJI BENCH

(Before Pendse and Couto, JJ)

PROF. SERGIO CARVALHO ... Petitioner

v/s

THE STATE OF GOA AND THREE OTHERS ... Respondents

(Writ Petition No. 367 of 1988 decided on 7 & 8.12.1988)

A. **CONSTITUTION OF INDIA ART. 226 (200 M FROM HIGH TIDE LINE BAN ON DEVELOPMENT OR CONSTRUCTION):** Relaxation from 500m to 200 m of high tide line ban on development or construction in Goa, Trivandrum, Mahabalipuram and Puri Konark was a policy decision taken by Government of India. Hence not permissible to exercise jurisdiction of Art. 226 and on examination, the policy decision of Govt. of India and Goa cannot be faulted with (para 10).

No construction or development including that of temporary nature or for temporary duration is to be made within 200 mts. from high tide line in case of project of No.3 or any other project which is undertaken or will be undertaken hereafter in the State of Goa so long as Government of India has not relaxed the condition of "no development zone" within the area of 200 mts. (para 16)

B. **DECISION OF ECO/DEVELOPMENT COUNCIL AND INTER MINISTERIAL COMMITTEE:** Not required to furnish reasons for reaching decision. There is presumption that the authorities act bonafide. All concerned authorities have applied their mind and sanctioned the project after careful consideration. (para 11)

C. **ENVIRONMENT (PROTECTION) ACT, 1986** - No provision under the Act has been cited whereby clearance is required for construction. Further there is more than substantial compliance with requirements of the Act. (para 11).

D. **GUIDELINES IN OFFICE MEMORANDUM:** Issued by Govt. of India, Ministry of Environment & Forest on 23.9.1988 were modified due to representation by subsequent memoranda (para 11).

Disputed questions of fact cannot be investigated in exercise of Writ jurisdiction (para 12)

Advocates appeared:

Smt. Indira Jaisingh, Sr. Advocate with G.V.Tamba for petitioner.

Shri V.B.Nadkarni, Advocate General with A.C.Navelkar for respondent No.1.

Shri C.U.Bhobe, standing counsel for respondent no.2

Shri A.H.Desai, Sr. Advocate with Shri I.M.Chagla, Sr. Advocate Aspi Chinoy, Shri S.V.Mehta, Smt. S. Albuquerque for respondent no.3.

authorities to ensure that nothing and nothing whatsoever is constructed or developed in that restricted zone. We are not impressed by the submission that the structures are of temporary nature and are for temporary duration. It is not permissible to cover up the defaults by claiming that it is not for a longer duration. Shri Desai very fairly stated that the construction raised would be removed within three days and the two walls marked as No.1 and 2 on the sketch prepared by the Commissioner would be filled up or sealed. The learned counsel also stated that the katcha road, which travels on the restricted zone would be again covered with sand. Shri Desai assures that this exercise would be completed within three or four days and the compliance would be reported to Mr. Advocate General. We hope that hereafter the Government authorities would ensure that in no case any construction or development is made on this stretch of 200 metres from high tide line and the authorities should enforce this rule strictly not only in the case of project of respondent No.3 but any other project which is undertaken or will be undertaken hereafter in the State of Goa. Restrictions must be strictly enforced as long as Government of India has not relaxed the condition of "no development zone" within the area of 200 metres. In view of the undertaking given by respondent No.3 through their counsel to remove the construction and seal the two walls and cover up the road with sand, we are not issuing directions to the respondent in that connection. It is required to be stated that if undertaking is not carried out, then we will again take up the matter and issue strict directions to the respondents.

17. Accordingly, petition fails and rule is discharged, but in the circumstances of the case the parties are left to bear their respective costs.

Ms. Jaisingh applies for continuation of interim relief for period of four weeks to enable the petitioner to approach Supreme Court. We are not inclined to continue the interim relief any longer as interim relief causes serious hardship every day to respondent No.3. Accordingly, prayer is refused.

Petitioner and respondent No.3 had deposited Rs.2000/- each towards fees and expenses of Commissioner Dr. Deshpande. After taking into consideration the time spent and the work undertaken by the Commissioner, we feel that amount of Rs.4000/- should be paid to the Commissioner towards his fees and expenses. Accordingly, Special Officer is directed to forward the amount to Dr. Deshpande with thanks.

CITIZENS WORKING CENTRE
S.P. Raiturker, Opp. State Bank of Mysore

INFORMATION ISSUED UNDER RTI ACT, 2005

No. 80/3282/1599
Town & Country Planning Department
Government of Goa,
Panaji - Goa.
Date: 28/3/90

C-166

To,

Under Secretary (STE)
STE Deptt.,
Secretariat PANAJI

SUB: Construction of Penthouse Beach Resort.

REF: Your letter no. 1-1-87-TIT (Tourism)/Part dt. 26/2/

Sir,

With reference to the above, please find below the parawise comments:-

1) The plot was acquired from Shri Felix Dias by Shri Joey D'Sou who was also the Architect/Engineer for the project.

2) The plot under reference was earmarked for public open space in the Zoning Plan of Colva. It was decided in the meeting h on 30/4/80 with the Tourism Minister that half of the propert could be released for Tourism Development by the owner if he surrenders. The remaining half to the Government for developm of park.

3) The hotel projevt was approved by the E.D.C. in its 8th meeti held on 30/9/85 with condition that the applicant in view of obstructing another Tourism hotel behind, cede the land in th north with total area of 3500 sq. mts. to the Govt. for open space.

4) A writ petition was filed by the party at the High Court of Bombay challenging the Covenant.

5) The Under Secretary (Tourism) vide his letter no. 1-1-87-TIT-Tourism dated 3/11/89, informed that the Government has now decided to withdraw the condition no. (1) specified in the clearance letter no. DJ/3782/828/86 dtd. 24/2/86 regarding ceding of the land in the north of total area of 3500 sq.mts. to the Government. The same was communicated to the party and S.P.D.A. vide this office letter dated 8/2/90.

6) The proposal for swimming pool and ancillary uses in the portion of the land meant to be surrendered to the Govt. was discussed in the 28th ECC meeting held on 28/4/88. The genera consensus of the Committee was that the plansare as per norms of ECC and P.D.A. regulations and it should be agreed to.

The case was placed before the EDC in its 13th meeting held on 17/7/88 and the Council approved the swimming pool in open space alongwthh permissible ancillary uses as per plans.

.... 2/-

30-4-80 with the Tourism Minister that half of the property could be released for Tourism Development

This Certified copy is a copy of the Photocopy submitted to this Office Which is available in this Office records
Bragança
Public Information Officer
CCZMA / DSTE

INFORMATION ISSUED UNDER RTI ACT, 2005

7) However after detailed scrutiny of the plans, it was n that the whole plot falls within 200 mts. of HTL and the decision regarding 90 mts./200 mts. was yet to be finalis by the Government at that time. It was also observed the the plans have to be submitted to the IMC for approval.

Meanwhile, the restriction of 200 mts. came into force (with effect from 22/2/86). As per this, no construction/ development is to be permitted within 200 mts. of HTL. The opinion of Law Department was also sought vide this office letter dated 22/3/89 for approval of swimming pool within 200 mts. of HTL with reference to High Court judgement in Remedo case. The same is awaited.

Yours faithfully,

(N.PANDALAI)
Chief Town Planner

This Certified copy is a copy of the Photocopy submitted to this Office Which is available in this Office records

Braganza
Public Information Officer
GCZMA / DSTE

rm/19.3.90

To,'

Under Secretary (STE)

STE Dept.

Secretariat, PANAJI

SUB: Construction of Penthouse Beach Resort

REF: Your letter no. 1-1-87-TIT (Tourism)/Part dt. 26/2/..

Sir,

With reference to the above, please find below the parawise comments-

1) The plot was acquired from Shri Felix Dias by Shri Joey D'Souza who was also the Architect/Engineer for the project.

2) The plot under reference was earmarked for public open space in the Zoning Plan of Colva. It was decided in the meeting held on 30/4/80 with the Tourism Minister that half of the property could be released for Tourism Development by the owner if he surrenders. The remaining half to the Government for development of park.

3) The hotel project was approved by the E.D.C. in its 8th meeting held on 30/9/85 with condition that the applicant in view of is obstructing another Tourism hotel behind, cede the land in the north with total area of 3500 sq. mts. to the Govt. for open space.

4) A writ petition was filed by the party at the High Court of Bombay challenging the Covenant.

5) The Under Secretary (Tourism), vide his letter no. 1-1-87-TIT- Tourism dated 3/11/89. Informed that the Government has now decided to withdraw the condition no.s (1) specified in the clearance letter no. DJ/3782/828/86 dtd. 24/2/86 regarding ceding of the land in the north of total area of 3500 sq.mts. to the Government. The name was communicated to the party and SP.D.4. vide this office letter dated 8/2/90.

6) The proposal for swimming pool and ancillary uses in the portion of the land meant to be surrendered to the Govt. was discussed in the 28th ECC meeting held on 28/4/88. The genera: consensus of the Committee was that the plans are as per norms of ECC and R&D.A. regulations and it should be agreed to.

The case was placed before the EDC in its 13th meeting held on 17/7/88 and the Council approved the swimming pool in open space along with permissible ancillary uses as per plans.

7) However, after detailed scrutiny of the plans, it was that the whole plot falls within 200 mts. of HTL and the decision regarding 90 mtr./200 mts. was yet to be finalised the plans have to be submitted to the IMC for approval. by the Government at that time. It was also observed that the plans have to be submitted to the IMC for approval.

Meanwhile, the restriction of 200 mts. deme into force (with affect from 22/8/86). As per this, no construction/ development is to be permitted within 200 mts. of HTL The opinion of Law Department was also sought vide this office letter dated 22/3/09 for approval of swimming pool within 200 mts. of HTL with reference to High Court judgement in Ramada case. The same is awaited.

Yours faithfully,

S.D.

N. Pandalai

Chief Town Planner

t.t.c.

SOUTHERN PLANNING
AND DEVELOPMENT AUTHORITY
Datta Prasad Building, 2nd Floor,
Panjifond, Margao

Ref. No. SPD/P/ 3947/ 567 /90-91 Date: 8-5-91

SHOW CAUSE NOTICE

The site inspection carried out on 8/5/90 at 1.30 p.m. by the official of this Authority revealed that you have carried out illegal development, on Chalta No. 22 of P. T. Sheet No. ..... (surveyed No. 23 Sub-division No. 13 & 17 in the area zoned as ..... in Outline Development Plan/Zoning Plan/Regional plan without prior permission of this Authority as required under Section 44 of the Town and Country Planning Act, 1974 and which illegal development consists of :

Extension and construction of cottage.

Hence, you are hereby directed to show cause within 15 days from the receipt of this notice, why action under Section 52 of the Town and Country Planning Act 1974 namely Demolition of the said construction, should not be initiated, for the above referred to illegal development as in provided under the said Section 52 of the Act.

Please note, that if no reply is received from you within 15 days this Authority shall proceed to take further steps as provided under the said Act. Hence take notice

This Certified copy is a copy of the
Photocopy submitted to this Office
Which is available in this Office records
Public Information Officer
GCZMA / DSTE

J. F. Coutinho
(MEMBER SECRETARY)

To,
Mr./Mrs./Miss. Penthouse Builders Pvt Ltd.
Near The Canara Bank,
Luis Miranda Road, Margao Goa.

Copy to : 1. The Chief Town planner, Panjim, Goa.
2. The Chief Officer, MMC, Margao/Chief Officer, PMC, Ponda.
3. The Sarpanch, Office of the Village Panchayat of Cuelva.

(C. Ro Cooperated)

with a request to take cognizance of this show Cause notice and take suitable action after due inspection.

INFORMATION ISSUED UNDER RTI ACT, 2005

SOUTHERN PLANNING AND DEVELOPMENT AUTHORITY

Datta Prasad Building, 2nd Floor,

Pajifond, Margao

Ref. No. SPDP/3947/567 /90-91 Date: 8-5-90

SHOW CAUSE NOTICE

The site inspection carried out on 8/5/90 at 1.30 pm. by the official of this Authority revealed that you have carried out illegal development, on Chalta No. _____ of P.T. Sheet No. _____ _____surveyed No.23 Sub-division No. 13 & 17 in the area zoned as _____ in Outline Development Plan/Zoning Plan/Regional plan without prior permission of this Authority as required under Section 44 of the Town and Country Planning Act, 1974 and which illegal development consist of:

Extension and construction of cottages

Hence, you are hereby directed to show cause within 15 days from the receipt of this notice, why action under Section 52 of the Town and Country Planning Act 1974 namely Demolition of your said construction should not be initiated, for the above referred to illegal development as in provided under the said Section 52 of the Act.

Please note, that if no reply is received from you within 15 days this Authority shall proceed to take further steps a provided under the said Act. (Hence take notice.

J.P. Coutinho
(MEMBER SECRETARY)

To,

Mr/Mrs/Miss Panthouse Builders Pvt Ltd,

Near The Canara Bank, Luis Miranda Road, Margao Goa

(Received)

Copy 1. The Chief Town planner, Panjim, Goa	)	with a request to take
2. The Chief Officer, MMC,	)	cognizance of this show
Margao/Chief Officer PMC, Ponda	)	Cause notice and take
3. The Sarpanch, Office	)	suitable action after due
of the Village Panchayat, of Colva	)	inspection

t.t.c

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MINISTRY OF ENVIRONMENT & FORESTS

(Department of Environment, Forests & Wildlife)

NOTIFICATION UNDER SECTION 3(1) AND SECTION 3(2)(v) OF THE ENVIRONMENT (PROTECTION) ACT, 1986 AND RULE 5(3)(d) OF ENVIRONMENT (PROTECTION) RULES, 1986, DECLARING COASTAL STRETCHES AS COASTAL REGULATION ZONE (CRZ) AND REGULATING ACTIVITIES IN THE CRZ.

New Delhi, the 19th February, 1991

S.O. 114(E).—Whereas a Notification under Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986, inviting objections against the declaration of Coastal Stretches as Coastal Regulation Zone (CRZ) and imposing restrictions on industries, operations and processes in the CRZ was published vide S.O. No. 944 (E) dated 15th December, 1990.

And whereas all objections received have been duly considered by the Central Government ;

Now, therefore, in exercise of the powers conferred by Clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, and all other powers vesting in its behalf, the Central Government hereby declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 metres from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL as Coastal Regulation Zone; and imposes with effect from the date of this Notification, the following restrictions on the setting up and expansion of industries, operations or processes etc. in the said Coastal Regulation Zone (CRZ). For purposes of this Notification, the High Tide Line (HTL) will be defined as the line upto which the highest high tide reaches at spring tides.

Note.—The distance from the High Tide Line (HTL) to which the proposed regulations will apply in the case of rivers, creeks and backwaters may be modified on a case by case basis for reasons to be recorded while preparing the Coastal Zone Management Plans (referred to below) ; however, this distance shall not be less than 100 metres or the width of the creek, river or backwater whichever is less.

2. Prohibited Activities :

The following activities are declared as prohibited within the Coastal Regulation Zone, namely :

(i) setting up of new industries and expansion of existing industries, except those directly related to water front or directly needing foreshore facilities ;

(ii) manufacture or handling or storage or disposal of hazardous substances as specified in the Notifications of the Government of India in the Ministry of Environment & Forests No. S.O. 594(E) dated 28th July, 1989, S.O. 966(E) dated 27th November, 1989 and GSR 1037(E) dated 5th December, 1989 ;

(iii) Setting up and expansion of fish processing units including warehousing (excluding hatchery and natural fish drying in permitted areas) ;

(iv) setting up and expansion of units/mechanisms for disposal of wastes and effluents, except facilities required for discharging treated effluents into the water course with approval under the Water (Prevention and Control of Pollution) Act, 1974 ; and except for storm water drains ;

(v) discharge of untreated wastes and effluents from industries, cities or towns and other human settlements. Schemes shall be implemented by the concerned authorities for phasing out the existing practices, if any, within a reasonable time period not exceeding three years from the date of this notification ;

(vi) dumping of city or town waste for the purposes of landfilling or otherwise ; the existing practice, if any, shall be phased out within a reasonable time not exceeding three years from the date of this Notification ;

(vii) dumping of ash or any wastes from thermal power stations ;

(viii) land reclamation, bunding or disturbing the natural course of sea water with similar obstructions, except those required for control of coastal erosion and maintenance or cleasing of waterways, channels and ports and for prevention of sandbars and also except for tidal regulators, storm water drains and structures for prevention of salinity ingress and for sweet water recharge ;

(ix) mining of sands, rocks and other substrata materials, except those rare minerals not available outside the CRZ areas ;

(x) harvesting or drawal of ground water and construction of mechanisms therefor within 200 m of HTL ; in the 200 m to 500 m zone it shall be permitted only when done manually through ordinary wells for drinking, horticulture, agriculture and fisheries ;

(xi) construction activities in ecologically sensitive areas as specified in Annexure-I of this Notification ;

(xii) any construction activity between the Low Tide Line and High Tide Line except facilities for carrying treated effluents and waste water discharges into the sea, facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this Notification ; and

(xiii) dressing or altering of sand dunes, hills, natural features including landscape changes

for beautification, recreational and other such purposes, except as permissible under this Notification.

3. Regulation of Permissible Activities :

All other activities, except those prohibited in para 2 above, will be regulated as under :

(1) Clearance shall be given for any activity within the Coastal Regulation Zone only if it requires water front and foreshore facilities.

(2) The following activities will require environmental clearance from the Ministry of Environment & Forests, Government of India, namely :

(i) Construction activities related to Defence requirements for which foreshore facilities are essential (e.g. slipways, jetties etc.); except for classified operational component of defence projects for which a separate procedure shall be followed. (Residential buildings, office buildings, hospital complexes, workshops shall not come within the definition of operational requirements except in very special cases and hence shall not normally be permitted in the CRZ);

(ii) Operational constructions for ports and harbours and light houses requiring water frontage; jetties wharves, quays, slipways etc. (Residential buildings & office buildings shall not come within the definition of operational activities except in very special cases and hence shall not normally be permitted in the CRZ);

(iii) Thermal power plants (only foreshore facilities for transport of raw materials facilities for in-take of cooling water and outfall for discharge of treated waste water| cooling water); and

(iv) All other activities with investment exceeding rupees five crores.

(3) (i) The coastal States and Union Territory Administrations shall prepare, within a period of one year from the date of this Notification. Coastal Zone Management Plans identifying and classifying the CRZ areas within their respective territories in accordance with the guidelines given in Annexures-I and II of the Notification and obtain approval (with or without modifications) of the Central Government in the Ministry of Environment & Forests;

(ii) Within the framework of such approved plans, all development and activities within the CRZ other than those covered in para 2 and para 3(2) above shall be regulated by the State Government, Union Territory Administration or the local authority as the case may be in accordance with the guidelines given in Annexures-I and II of the Notification; and

(iii) In the interim period till the Coastal Zone Management Plans mentioned in para 3(3)(i) above are prepared and approved, all developments and activities within the CRZ shall not violate the provisions of this Notification. State Governments and Union Territory Administrations shall ensure adherence to these regulations and violations, if any, shall be subject to the provisions of the Environment (Protection) Act, 1986.

4. Procedure for monitoring and enforcement :

The Ministry of Environment & Forests and the Government of State or Union Territory and such other authorities at the State or Union Territory levels, as may be designated for this purpose, shall be responsible for monitoring and enforcement of the provisions of this notification within their respective jurisdictions.

[N. K-15019|1|84-IA-III (Vol. II)]

R. RAJAMANI, Secy.

ANNEXURE-I

COASTAL AREA CLASSIFICATION AND DEVELOPMENT REGULATIONS

Classification of Coastal Regulation Zone :

6(1) For regulating development activities, the coastal stretches within 500 metres of High Tide Line of the landward side are classified into four categories, namely :

Category I (CRZ-T) :

(i) Areas that are ecologically sensitive and important, such as national parks|marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, corals|coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty|historical|heritage areas, areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government or the concerned authorities at the State|Union Territory level from time to time.

(ii) Area between the Low Tide Line and the High Tide Line.

Category-II (CRZ-II) :

The areas that have already been developed upto or close to the shore-line. For this purpose, "developed area" is referred to as that area within the municipal limits or in other legally designated urban areas which is already substantially built up and which has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains.

Category-III (CRZ-III) :

Areas that are relatively undisturbed and those which do not belong to either Category-I or II. These

will include coastal zone in the rural areas (developed and undeveloped) and also areas within Municipal limits or in other legally designated urban areas which are not substantially built up.

Category-IV (CRZ-IV)

Coastal stretches in the Andaman & Nicobar, Lakshadweep and small islands except those designated as CRZ-I, CRZ-II or CRZ-III.

Norms for Regulation of Activities.

6(2) The development or construction activities in different categories of CRZ areas shall be regulated by the concerned authorities at the State|Union Territory level, in accordance with the following norms :

CRZ-I

No new construction shall be permitted within 500 metres of the High Tide Line. No construction activity, except as listed under 2(xii), will be permitted between the Low Tide Line and the High Tide Line.

CRZ-II

(i) Buildings shall be permitted neither on the seaward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) nor on seaward side of existing authorised structures. Buildings permitted on the landward side of the existing and proposed roads|existing authorised structures shall be subject to the existing local Town and Country Planning Regulations including the existing norms of FSI|FAR.

(ii) Reconstruction of the authorised buildings to be permitted subject with the existing FSI|FAR norms and without change in the existing use.

(iii) The design and construction of buildings shall be consistent with the surrounding landscape and local architectural style.

CRZ-III

(i) The area upto 200 metres from the High Tide Line is to be earmarked as 'No Development Zone'. No construction shall be permitted within this zone except for repairs of existing authorised structures not exceeding existing FSI, existing plinth area and existing density. However, the following uses may be permissible in this zone—agriculture, horticulture, gardens, pastures, parks, playfields, forestry and salt manufacture from sea water.

(ii) Development of vacant plots between 200 and 500 metres of High Tide Line in designated areas of CRZ-III with prior approval of MEF permitted for construction of hotels|beach resorts for temporary occupation of tourists|visitors subject to the conditions as stipulated in the guidelines at Annexure-II.

(iii) Construction|reconstruction of dwelling units between 200 and 500 metres of the High Tide Line permitted so long it is within the ambit of traditional rights and customary uses such as existing fishing villages and goathans. Building permission for such construction|reconstruction will be subject to the conditions that the total number of dwelling units shall not be more than twice the number of existing units ; total covered area on all floors shall not exceed 33 per cent of the plot size ; the overall height of construction shall not exceed 9 metres and construction shall not be more than 2 floors (ground floor plus one floor).

(iv) Reconstruction|alterations of an existing authorised building permitted subject to (i) to (iii) above.

CRZ-IV

Andaman & Nicobar Islands :

(i) No new construction of buildings shall be permitted within 200 metres of the HTL ;

(ii) The buildings between 200 and 500 metres from the High Tide Line shall not have more than 2 floors (ground floor and 1st floor), the total covered area on all floors shall not be more than 50 per cent of the plot size and the total height of construction shall not exceed 9 metres ;

(iii) The design and construction of buildings shall be consistent with the surrounding landscape and local architectural style.

(iv) Corals and sand from the beaches and coastal waters shall not be used for construction and other purposes :

(v) Dredging and underwater blasting in and around coral formations shall not be permitted; and

(vi) However, in some of the islands, coastal stretches may also be classified into categories CRZ-I or II or III, with the prior approval of Ministry of Environment and Forests and in such designated stretches, the appropriate regulations given for respective Categories shall apply.

Lakshadweep and small Islands :

(i) For permitting construction of buildings, the distance from the High Tide Line shall be decided depending on the size of the islands. This shall be laid down for each island, in consultation with the experts and with approval of the Ministry of Environment & Forests, keeping in view the land use requirements for specific purposes vis-a-vis local conditions including hydrological aspects erosion and ecological sensitivity;

(ii) The buildings within 500 metres from the HTL shall not have more than 2 floors (ground floor and 1st floor), the total covered area on all floors shall not be more than

50 per cent of the plot size and the total height of construction shall not exceed 9 metres;

(iii) The design and construction of buildings shall be consistent with the surrounding landscape and local architectural style.

(iv) Corals and sand from the beaches and coastal waters shall not be used for construction and other purposes;

(v) Dredging and underwater blasting in and around coral formations shall not be permitted; and

(vi) However, in some of the islands, coastal stretches may also be classified into categories CRZ-I or II or III, with the prior approval of Ministry of Environment & Forests and in such designated stretches, the appropriate regulations given for respective Categories shall apply.

Lakshadweep and small Islands :

(i) For permitting construction of buildings, the distance from the High Tide Line shall be decided depending on the size of the islands. This shall be laid down for each island, in consultation with the experts and with approval of the Ministry of Environment & Forsts, keeping in view the land use requirements for specific purposes vis-a-vis local conditions including hydrological aspects, erosion and ecological sensitivity;

(ii) The buildings within 500 metres from the HTL shall not have more than 2 floors (ground floor and 1st floor), the total covered area on all floors shall not be more than 50 per cent of the plot size and the total height of construction shall not exceed 9 metres;

(iii) The design and construction of buildings shall be consistent with the surrounding landscape and local architectural style.

(iv) Corals and sand from the beaches and coastal waters, shall not be used for construction and other purposes.

(v) Dredging and under water blasting in and around lagoons and coral formations shall not be permitted; and

(vi) However, in some of the Islands, coastal stretches may also be classified into categories CRZ-I or II or III with prior approval of the Ministry of Environment & Forests. In such designated stretches the appropriate regulations given for respective categories shall apply.

ANNEXURE-II

GUIDELINES FOR DEVELOPMENT OF BEACH RESORTS|HOTELS IN THE DESIGNATED AREAS OF CRZ-III FOR TEMPORARY OCCUPATION OF TOURIST|VISITORS, WITH PRIOR APPROVAL OF THE MINISTRY OF ENVIRONMENT & FORESTS

7(1) Construction of beach resorts|hotels with prior approval of MEF in the designated areas of CRZ-III for temporary occupation of tourists| visitors shall be subject to the following conditions :

(i) The project proponents shall not undertake any construction (including temporary constructions and fencing or such other barriers) within 200 metres (in the landward side) from the High Tide Line and within the area between the Low Tide and High Tide Line;

(ii) The total plot size shall not be less than 0.4 hectares and the total covered area on all floors shall not exceed 33 per cent of the plot size i.e. the FSI shall not exceed 0.33. The open area shall be suitably landscaped with appropriate vegetal cover;

(iii) The construction shall be consistent with the surrounding landscape and local architectural style;

(iv) The overall height of construction upto the highest ridge of the roof, shall not exceed 9 metres and the construction shall not be more than 2 floors (ground floor plus one upper floor);

(v) Ground water shall not be tapped within 200 m of the HTL; within the 200 metre-500 metre zone it can be tapped only with the concurrence of the Central|State Ground Water Board;

(vi) Extraction of sand, levelling or digging of of sandy stretches except for structural foundation of building, swimming pool shall not

be permitted within 500 metres of the High Tide Line;

(vii) The quality of treated effluents, solid wastes, emissions and noise levels etc. from the project area must conform to the standards laid down by the competent authorities including the Central|State Pollution Control Board and under the Environment (Protection) Act, 1986;

(viii) Necessary arrangements for the treatment of the effluents and solid wastes must be made. It must be ensured that the untreated effluents and solid wastes are not discharged into the water or on the beach; and no effluent|solid waste shall be discharged on the beach;

(ix) To allow public access to the beach, atleast a gap of 20 metres width shall be provided between any two hotels|beach resorts; and in no case shall gaps be less than 500 metres apart; and

(x) If the project involves diversion of forest land for non-forest purposes, clearance as required under the Forest (Conservation), Act, 1980 shall be obtained. The requirements of other Central and State laws as applicable to the project shall be met with.

(xi) Approval of the State|Union Territory Tourism Department shall be obtained.

7(2) In ecologically sensitive areas (such as marine parks, mangroves, coral reefs, breeding and spawning grounds of fish, wildlife habitats and such other areas as may be notified by the Central|State Government|Union Territories) construction of beach resorts|hotels shall not be permitted.

t.t.c

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INFORMATION ISSUED UNDER RTI ACT, 2005

21781 & 2171

THE SOUTHERN PLANNING AND DEVELOPMENTAUTHORITY

Dattra Prasad Building, 2nd Floor, Pajifond,
MARGAO - GOA

Ref:- No. SPD/P/ 3947 /4/ 4 / 90-91

Date : 2-2-91

Registered A/D

NOTICE

(Under Section 53 of Town and Country Planning Act, 1974)

The site inspection carried out on 21/2/91 at 3.00 P.M. by the official of this Authority verified that you are carrying on illegal development, without the prior permission of this Authority as required under Section 44 of the Town & Country Planning Act, 1974 and which illegal development consists of:-

Construction of buildings, cottages, compound wall and swimming pool without prior approval of this Authority.

This Certified copy is a copy of the
Photocopy submitted to this Office
Which is available in this Office records

Braganza
Public Information Officer
GCZMA / DSTE

You are hereby directed to stop illegal development and the development work should be discontinued with immediate effects.

Further, take note that you will have to pay penalties as envisaged under the said Act for continuing the illegal development and also for having carried out the illegal development, without prior permission from this Authority and as such you will be prosecuted for the recovery of the same.

MARGAO

22/2/91
B. N. Roy
(MEMBER SECRETARY)

To,
Mr./Mrs. Miss. [illegible]

Copy to :-
1. The Chief Town Planner, Town & Country Planning & Development, Panjim.
2. The [illegible], M.M.C./ [illegible]
3. The [illegible], Office of the Village Panchayat, [illegible]
4. [illegible] is requested to [illegible]

22/2/91
B. N. Roy
(MEMBER SECRETARY)

SOUTHERN PLANNING AND DEVELOPMENT AUTHORITY

Datta Prasad Building, 2nd Floor,

Pajifond, Margao

Ref. No. SPDP/3947/567 /90-91 Date: 21-2-91

NOTICE

(Under Section 53 of Town and Country Planning Act, 1974)

The site inspection carried out on 21/2/91 at 3.00 P.M by the official of this Authority verified that you are carrying out illegal development, without the prior permission of this Authority as required under Section 44 of the Town and Country Planning Act, 1974 and which illegal development consist of: Construction of buildings, cottages, compound wall and swimming pool without prior approval of this Authority.

You are hereby directed to stop illegal development and the development work should be discontinued with immediate effect.

Further, take note that you will have to pay penalties as envisaged under the said Act for continuing the illegal development and also for having carried out the illegal development without prior permission from the Authority and as such you will be prosecuted for the recovery of the same.

22/2//91
R. N. Ray
(MEMBER SECRETARY)

To,
Mr/Mrs/Miss Panthouse Builders Pvt Ltd,
Near The Canara Bank, Luis Miranda Road, Margao Goa

Copy 1. The Chief Town planner, Panjim, Goa
2. The Chief Officer, MMC,
Margao/Chief Officer PMC, Ponda
3. The Sarpanch, Office
of the Village Panchayat, of Colva

22/2//91
R. N. Ray
(MEMBER SECRETARY)

t.t.c

"GA" 21/02

SOUTHERN PLANNING & DEVELOPMENT AUTHORITY
Dona Paula Building, 2nd Floor, Pajifond
MARGAO - 403 601
GOA

Date 23/1/3/91

SPD/ P/3947/ 5361 /90-91

SHOW CAUSE NOTICE

Whereas the site inspection carried out on 21-2-1991 at 3.00 by the Officials of this Authority revealed that you have carried the development without permission under Section 44 of the Town & Planning Act, 1974 on Survey No. 23 Sub-division No.13 and 17 at and which development consists of:

1) Construction of main building consisting of G plus 1 Stru and a portion of which is having a basement floor.

2) Construction of number of structures such as power house, dressing room, check post etc.

3) Construction of Swimming Pool and

4) Addition to the existing villas.

Whereas having carried out the aforesaid development without val under Section 44 of the Town & Country Planning Act, 1974 as the said development so carried out by you isliable to be demolis

Now, therefore you are hereby directed to show cause within from the receipt of this Notice why the aforesaid development car by you should not be demolished. This Notice is being issued to y Section 52 of the Act.

Please note that is no reply is received from you within a p of 15 days from the receipt of this Notice this Authority shall p to take further steps as provided under said Act which please not

(R.N.RAY)
MEMBER SECRETARY

To,

M/s: Penthouse Builders Pvt.Ltd.,
Near the Canara Bank,
Luis Miranda Road, Margao.

Copy to: 1) The Chief Town Planner - Panaji - Goa.

2) The Sarpanch, Office of the Village Panchayht, Colva, Salcete Goa.

af/26.3.

This Certified copy is a copy of the Photocopy submitted to this Office Which is available in this Office records

Braganza
Public Information Officer
GCZMA / DSTE

INFORMATION ISSUED UNDER RTI ACT, 2005

SOUTHERN PLANNING AND DEVELOPMENT AUTHORITY
Datta Prasad Building, 2nd Floor,
Pajifond, Margao, GOA

Ref. No. SPDP/3947/5361 /90-91 **Date: 27-3-91**

SHOW CAUSE NOTICE

Whereas the site inspection carried out on 21-2-1991 at 3 P.M. by the Officials of this Authority revealed that you have carried out the development without the permission under Section 44 of the Town & Planning Act, 1974 on Survey No.23 Sub-division No. 13 & 17at and which development consist of:

1) Construction of main building consisting of G plus 1 structure and a portion of which is having a basement floor.

2) Construction of number of structures such as power house, dressing room, check post etc.

3) Construction of Swimming Pool and

4) Addition to the existing villas.

Whereas having carried out the aforesaid development without val under Section 44 of the Town & Country Planning Act, 1974 as the said development so carried out by you is liable to be demolished.

Now, therefore you are hereby directed to show cause within from the receipt of this Notice why the aforesaid development carrie3d out by you should not be demolished. This Notice is being issued to you under Section 52 of the Act,

Please note that is if no reply is received from you within a period of 15 days from the receipt of this Notice this Authority shall proceed to take further steps as provided under the said Act which please note.

27/3/91
(R. N. RAY)
MEMBER SECRETARY

To,
M/s. Penthouse Builders Pvt. Ltd.,
Near the Canara Bank, Luis Miranda Road, Margao.

Copy to: 1) The Chief Town Planner – Panaji – Goa.

2) The Sarpanch, Office of the Village Panchayat, Colva, Salcete, Goa

At 26.3.91

t.t.c.

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(2013) 5 Supreme Court Cases 357

a (BEFORE G.S. SINGHVI AND S.J. MUKHOPADHAYA, JJ.)

ESHA EKTA APARTMENTS COOPERATIVE HOUSING SOCIETY LIMITED AND OTHERS . . Appellants;

Versus

b MUNICIPAL CORPORATION OF MUMBAI AND OTHERS . Respondents.

Civil Appeals No. 7934 of 2012† with Nos. 7935 of 2012‡, 7936 of 2012††, 7937 of 2012†‡, 7938 of 2012‡† and Transferred Case (C) No. 55 of 2012, decided on February 27, 2013

A. **Town Planning — Illegal construction — Demolition order — Regularisation of illegal construction and quashment of demolition order — Entitlement, if any — Authorities rejecting developer's prayer for grant of additional FSI (which was not permissible under the then law) — Developers without permission and despite stop-work notice, carrying on with illegal residential constructions and selling them to individual buyers and with the passage of time, said individual buyers seeking regularisation of said illegal constructions and also seeking quashment of demolition orders — Courts below rejecting flat owners'/flat buyers' contention that they had no knowledge of illegal constructions — Law existing (DC Rules, 1967) at the time of rejection of developer's/builders' prayer for grant of additional FSI, not permitting such constructions — Circular dt. 4-2-2001 not applicable in present case — Held, said illegal constructions cannot be regularised and demolition orders cannot be quashed — Authorities, therefore, directed not to put any hurdle in implementation of demolition orders — Further held, buyers are free to avail appropriate remedy against developers/builders — Transfer of Property Act, 1882 — Ss. 55(1)(a) and 55(2) — Development Control Regulations for Greater Bombay, 1991 — Cl. 35(2)(c) — Applicability — Maharashtra Development Control Rules, 1967 — Rr. 9 and 10(2) — Bombay Municipal Corporation Act, 1888 (3 of 1888) — Ss. 351 and 354-A — Demolition order, directed to be implemented — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) — Ss. 44 to 47 and 52 to 56 — Consumer Protection Act, 1986, Ss. 2(1)(o) & (g) and 14**

B. **Town Planning — Illegal construction — Claim of regularisation on ground of equity and on ground that flat buyers could not be made to suffer for illegality committed by developers — Tenability — Flat buyers buying flats and occupying the same with full awareness that revised plans for their flats had been rejected by authorities — Said plea of flat buyers, held, is not**

† Arising out of SLP (C) No. 33471 of 2011. From the Judgment and Order dated 24-8-2011 of the High Court of Judicature of Bombay in Appeal from Order No. 1124 of 2010

‡ Arising out of SLP (C) No. 33601 of 2011

†† Arising out of SLP (C) No. 33940 of 2011

†‡ Arising out of SLP (C) No. 35402 of 2011

‡† Arising out of SLP (C) No. 35324 of 2011

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residual FAR (FSI) in the plot or the layout not consumed will be available to the promoter till the registration of the society. Whereas after the registration of the society the residual FAR (FSI), shall be available to the society.'

18. The above clauses 3 and 4 are declared to be statutory and mandatory by the legislature because the promoter is not only obliged statutorily to give the particulars of the land, amenities, facilities, etc., he is also obliged to make full and true disclosure of the development potentiality of the plot which is the subject-matter of the agreement. The promoter is not only required to make disclosure concerning the inherent FSI, he is also required at the stage of layout plan to declare whether the plot in question in future is capable of being loaded with additional FSI/floating FSI/TDR. In other words, at the time of execution of the agreement with the flat takers the promoter is obliged statutorily to place before the flat takers the entire project/scheme, be it a one-building scheme or multiple number of buildings scheme. Clause 4 shows the effect of the formation of the society.

19. In our view, the above condition of true and full disclosure flows from the obligation of the promoter under MOFA vide Sections 3 and 4 and Form V which prescribes the form of agreement to the extent indicated above. This obligation remains unfettered because the concept of developability has to be harmoniously read with the concept of registration of society and conveyance of title. Once the entire project is placed before the flat takers at the time of the agreement, then the promoter is not required to obtain prior consent of the flat takers as long as the builder puts up additional construction in accordance with the layout plan, building rules and Development Control Regulations, etc."

55. It is thus evident that the 1963 Act obligates the promoter to obtain sanctions and approvals from the authority concerned and disclose the same to the flat buyers. The Act also provides for imposition of penalty on the promoters. However, the provisions contained therein do not entitle the flat buyers to seek a mandamus for regularisation of the unauthorised/illegal construction.

56. In view of the above discussion, we hold that the petitioners in the transferred case have failed to make out a case for directing the respondents to regularise the construction made in violation of the sanctioned plan. Rather, the ratio of the abovenoted judgments and, in particular, *Royal Paradise Hotel (P) Ltd.* v. *State of Haryana*[2] is clearly attracted in the present case. We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would

2. (2006) 7 SCC 597

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encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas.

57. In the result, the appeals and the transferred case are dismissed and it is declared that there is no impediment in the implementation of notices issued by the Corporation under Section 351 of the 1888 Act and order dated 3-12-2005/8-12-2005 passed by the competent authority. The Corporation is expected to take action in the matter at the earliest.

58. We also direct that the State Government and its functionaries/officers as also the officers/employees of the Corporation shall not put any hurdle or obstacle in the implementation of notices issued under Section 351 of the 1888 Act.

59. It is needless to say that the flat buyers shall be free to avail appropriate remedy against the developers/builders.

[CITED CASE]

(2013) 5 Supreme Court Cases 395

(BEFORE G.S. SINGHVI AND S.J. MUKHOPADHAYA, JJ.)

ESHA EKTA APARTMENTS COOPERATIVE HOUSING SOCIETY LIMITED AND OTHERS ... Petitioners;

Versus

MUNICIPAL CORPORATION OF MUMBAI AND ANOTHER ... Respondents.

SLPs (C) No. 33471 of 2011[1] with Nos. 33601, 33940, 35324 and 35402 of 2011, decided on March 16, 2012

Constitution of India — Arts. 136, 139-A, 142, 226, 21 and 14 — (a) Suo motu transfer of proceedings for analogous hearing, and (b) impleadment of necessary parties and service of notice on necessary parties — Transfer for analogous hearing regarding same subject-matter and same issues (i.e. issues relating to regularisation of illegal constructions), directed — Builders/Developers involved in said illegal constructions impleaded — Petitioners directed to serve notice to said builders/developers failing which their SLPs would stand automatically dismissed — Town Planning — Illegal Construction — Validity of demolition order and question of regularisation — Transfer of proceedings for analogous hearing, impleadment of necessary parties and service of notice — Civil Procedure Code, 1908 — S. 25 — Practice and Procedure — Transfer (Paras 1 to 5)

t.c.

Esha Ekta Apartments CHS Ltd. v. *Municipal Corpn. of Mumbai*, (2012) 4 SCC 689 : (2012) 2 SCC (Civ) 669, *relied on*

SS-D/51491/CV

1. From the Judgment and Order dated 24-8-2011 in Nom. No. 4807 of 2005, LCS No. 5563 of 2005 and AFO No. 1124 of 2010 of the High Court of Bombay

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Annexure A-15

(2009) 15 Supreme Court Cases 705

(BEFORE B.N. AGRAWAL AND G.S. SINGHVI, JJ.)

a SHANTI SPORTS CLUB AND ANOTHER . . Appellants;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

Civil Appeals Nos. 8500-501 of 2001† with CPs Nos. 252-53 of 2001, decided on August 25, 2009

b A. **Land Acquisition Act, 1894 — Ss. 4, 6, 11 & 16 — Power of landowner after acquisition of land to transfer that land to another person — Validity and effect of such transfer — Rights of transferee — Once the land is acquired by following due process of law, it cannot be transferred by landowner to another person — Any such transfer is void and not binding on State — Transferee of acquired land can, at best, step into the shoes of** c **landowner and lodge claim for compensation — Transfer of Property Act, 1882 — Ss. 6, 7 & 55**

B. **Land Acquisition and Requisition — Delhi Lands (Restrictions on Transfer) Act, 1972 (30 of 1972) — S. 3 — Applicability of — Transfer of land subsequent to acquisition thereof under Land Acquisition Act, 1894, by landowner to another person — Validity of — Held, is void in view of** d **prohibition contained in S. 3 — Transfer of Property Act, 1882, Ss. 6 & 7**

C. **Land Acquisition Act, 1894 — S. 48(1) — Power/discretion under, to withdraw from acquisition — Refusal to exercise — Acquisition of land for public purpose [housing project] — Withdrawal from, sought by appellant Club which got possession of said land under an agreement with landowners subsequent to acquisition and unauthorisedly/illegally constructed sports** e **complex thereon despite having knowledge of said acquisition — Refusal by Government to withdraw from acquisition — Challenge to — Tenability of**

— Having regard to: (i) the law prohibiting transfer of an acquired land by landowner, (ii) construction of sports complex on acquired land having been made in absence of sanction of building plan, and (iii) appellants undertaking commercial activities in said complex, held, Government's f **decision not to withdraw from acquisition cannot be faulted — Appellants cannot plead equity and seek court's intervention for protection of said unauthorised constructions — Contention raised by appellants that Government ought to have notified the land in question in view of substantial amount spent on said constructions, not acceptable — Land Acquisition and Requisition — Delhi Lands (Restrictions on Transfer) Act, 1972 (30 of 1972), S. 3**

g D. **Equity — Seeking court's intervention raising plea of, for protection of unauthorised acts done — Impermissibility of — Constitution of India — Arts. 226, 32, 136 & 142 — Equity jurisdiction**

Dismissing the appeals filed against the order of the Division Bench of the High Court, which refused to interfere with the Central Government's decision

h

† Form the Judgment and Order dated 21-8-2001 of the High Court of Delhi at New Delhi in CWPs Nos. 4777 of 1993 and 3277 of 2000

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cities and urban areas, enforcement thereof has been extremely poor and the people have violated the master plans, zoning plans and building regulations and bye-laws with impunity.

74. In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorised constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls, etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc.—*K. Ramadas Shenoy* v. *Town Municipal Council, Udipi*[38], *G.N. Khajuria (Dr.)* v. *DDA*[39], *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*[40], *Friends Colony Development Committee* v. *State of*

38 (1974) 2 SCC 506
39 (1995) 5 SCC 762
40 (1996) 6 SCC 464

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Orissa[41], *M.C. Mehta* v. *Union of India*[42] and *S.N. Chandrashekar* v. *State of Karnataka*[43].

75. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.

76. In the result, the appeals are dismissed. However, by taking note of the submission made by Shri Mukul Rohatgi that some time may be given to his clients to vacate the land, we deem it proper to grant three months' time to the appellants to hand over possession of the land to the authority concerned of DDA. This will be subject to the condition that within two weeks from today an affidavit is filed on behalf of the appellants by an authorised person that possession of the land will be handed over to DDA by 30-11-2009 and during this period no encumbrances whatsoever will be created by the appellants or their agents and that no compensation will be claimed for the construction already made. Needless to say that if the required undertaking is not filed, the authorities concerned of DDA shall be entitled to take possession of the land and, if necessary, take police help for that purpose.

Contempt Petitions Nos. 252-53 of 2001

77. We have dismissed the civil appeals by the above order. Hence, the contempt petitions are dismissed.

---

t.c.

41 (2004) 8 SCC 733
42 (2006) 3 SCC 399
43 (2006) 3 SCC 208

GOA COASTAL ZONE MANAGEMENT AUTHORITY

C/o Department of Science, Technology & Environment,
Opp. Saligao Seminary, P.O..Saligao, Bardez, Goa - 403 511
Phone: (0832) 2407186, 2407187, 2407189 Fax: (0832) 2407186

REF. NO.: GCZMA/S/311/1539 DATE: 18/05/2006

To,

Shri Aleixo Sequeira,
Ermelinda Resorts Pvt. Ltd.,
446, Raia, Salcete - Goa 403 720.

Sub: Proposed repairs and renovation of an existing Beach Resort in Survey No. 23/13 and 23/17 of Colva village, Salcete Taluka.

Sir,

This has a reference to your application No. NIL dated January 16, 2006 seeking the approval of the Goa Coastal Zone Management Authority (GCZMA) for the above cited proposal. The said proposal was processed and placed for the consideration of the GCZMA in its 25th meeting held on 20th April 2006. After examining the site inspection report vis-à-vis the earlier approvals granted to the Resort, the GCZMA was pleased to grant its approval for the proposed repairs and renovation of the said existing Beach Resort in Survey No. 23/13 and 23/17 of Colva village, Salcete Taluka.

This approval is subject to the following conditions:

1. The permission is granted as per the endorsed plan hereby annexed.

2. Prior to the commencement of the 'repairs/renovation' work, it will be incumbent upon the applicant to obtain the licence from the Village Panchayat of Sernabatim, Vanelim, Colva & Gandaulim.

3. This permission is liable to be revoked if it is found, at any stage, that the application contained false information/wrong plans/calculations/documents or any other incorrect/wrong accompaniments.

4. The completion of the repair work should be informed to this office for the purposes of verification.

...2/-

20

The Resort should adopt all possible eco-friendly measures suggested below:

i) Use of non-conventional and renewable sources of energy should be promoted (eg. Solar water heating system, Solar photo-voltaic lighting system etc.)

ii) Roof harvesting of rainwater and its storage for supplementary use.

iii) An appropriate system of collection, segregation treatment and/or disposal of solid waste through the following measures:

a. 'Vermi-composting/composting' of all biodegradable wastes ad its use for gardening within the Resort area.

b. Segregation of all recyclable wastes and promotion of recycling through appropriate arrangements.

c. Aiming for a plastic-free Resort by abandoning the use of bags, wrappers, cups, bottles etc. made of non-biodegradable materials.

d. Sale of all reusable items.

iv) Use of drip irrigation, sprinkler irrigation, mulching, etc. for judicious use of water for gardening, plantations etc., wherever feasible.

v) Use of compost and organic manures instead of chemical fertilizers.

6. Public access to the beach, if any, in the vicinity of the Resort should be left free of any obstruction.

7. Prior to its operationalisation, the Resort should make all arrangements for the full treatment of sewage and other waste waters and should obtain the Consent to Operate from the Goa State Pollution Control Board (GSPCB).

Yours faithfully,

(Dr. N.P.S. Varde)
Member Secretary, GCZMA

Copy to the Panchayat Secretary, Village Panchayat of Sernabatim, Vanelim, Colva & Gandaulim, Salcete - Goa.

Public Information Officer
GCZMA/DSTE

GOA COASTAL ZONE MANAGEMENT AUTHORITY

C/o Department of Science, Technology & Environment.

Opp. Saligao Seminary, P.O. Saligao, Bardez, Goa 403 511

Phone: (0832) 2407186, 2407187, 2407 189 Fax 90832) 2407186

REF NO: GCZMA/S/311/1539 DATE: 18/05/2006

To,

Shri Alexio Sequeira,
Ermelinda Resorts. Pvt. Ltd
446, Raia, Salcete – Goa 403 720

Sub: Proposed repairs and renovation of an existing Beach Resort in Survey No. 23/13 & 23/17 of Colva village, Salcete Taluka

Sir,

This has reference to your application No. NIL dated January 16. 2006 seeking the approval of the Goa Coastal Zone Management Authority (GCZMA) for the above cited proposal. The said proposal was processed and placed for the consideration of the GCZMA in its 25th meeting held on 20th April 2006. After examining the site inspection report vis-a-vis the earlier approvals granted to the Resort, the GCZMA was pleased to grant its approval for the proposed repairs and renovation of the said existing Beach Resort in Survey No. 23/13 and 23/17 of Colva village, Salcete Taluka.

This approval is subject to the following conditions:

1. The permission is granted as per the endorsed plan hereby annexed.

2. Prior to the commencement of the 'repairs/renovation' work, it will be incumbent upon the applicant to obtain the licence from the Village Panchayat of Sernabatim, Vanelim, Colva and Gandaulim.

3. Thia permission is liable to be revoked if it is found, at any stage, that the application contained false information/wrong plans/calculations/documents or any other incorrect/ wrong accompaniments.

4. The completion of the repair work should be informed to this office for the purposes of verification

5. The Resort should adopt all possible eco-friendly measures suggested below:

i). Use of non-conventional and renewable sources of energy should be promoted (e.g. Solar water heating system, Solar phot-voltaic lighting system etc)

ii) Roof harvesting of rainwater and its storage for supplementary use.

iii) An appropriate system of collection, segregation treatment and disposal of solid waste through the following measures:

a. 'Vermi-composting/composting' of all biodegradable wastes and its use for gardening within the Resort area.

b. . Segregation of all recyclable wastes and promotion of recycling through appropriate arrangements.

c. Aiming for a plastic free Resort by abandoning the use of bags, wrappers, cups, bottles etc. made of non-biodegradable materials.

d. Sale of all reusable items.

iv) Use of drip irrigation, sprinkler irrigation, mulching etc., wherever feasible.

v) Use of compost and organic manures instead of chemical fertilizers.

6. Public access to the Beach, if any, in the vicinity of the Resort should be left free of any obstruction.

7. Prior to its operationalisation, the Resort should make all arrangements for the full treatment of sewage and other waste waters and should obtain the Consent to Operate from the Goa State Pollution Control Board (GSPCB).

Yours faithfully

Sd/-

(Dr. N.P.S.Varde)

Member Secretary, GCZMA

Copy to the Panchayat Secretary, Village Panchayat of Sernabatim, Vanelim, Colva and Gandaulim.

t.t.c

Annexure A-17

ARCH. JOSE CARLOS DA VEIGA GRACIAS
54 Borda Fatorda Goa 403602
Ph.: 2705520/9850471243
Date : 13/11/12

14/11/12
2118

To,
The Sarpanch,
Village Panchayat of Sernabatim, Vanelim, Colva and Gandaulim,
Colva – Salcete – Goa.

Sub.: Submission of plans in respect of project approved in property surveyed under no.23/13 & 17 of Colva village further to our site inspection of the same.

Sir,

Further to our inspection of the property surveyed under no.23/13 & 17 of Colva village and the project approved in it on 07/11/12, along with other panch members, Panchayat Secretary and the owner's representative, please find herewith a plan prepared by me showing the boundary and other dimensions of the same as taken at site vis-à-vis those shown in or scaled from the approved plan. I am also enclosing a copy of the survey plan of the property with the boundary dimensions and one random width dimension (as taken at site) scaled by me. Also enclosed please find the plan used by me to note down the dimensions taken at site.

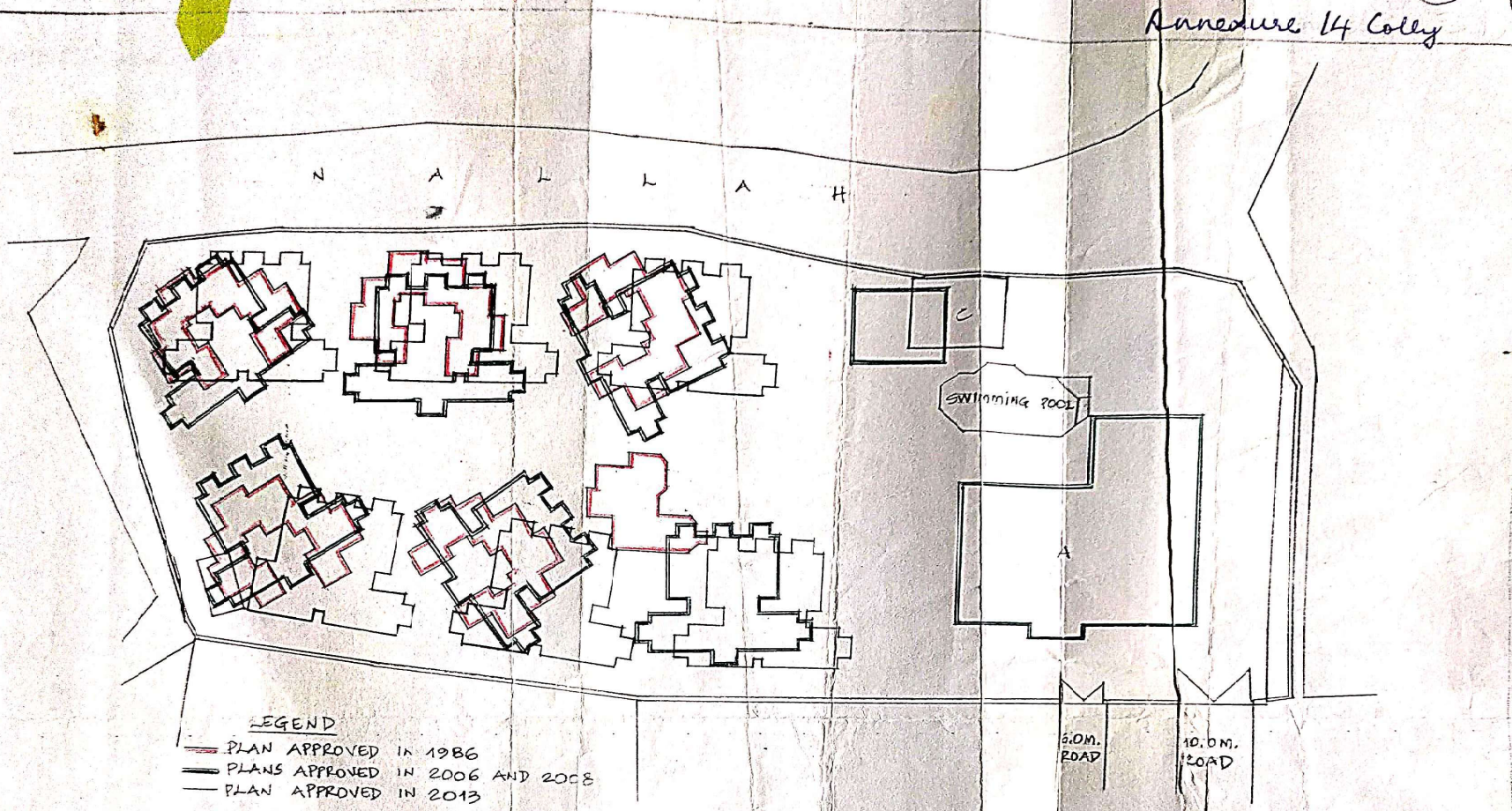
Yours sincerely,

Jose Carlos da Veiga Gracias
Architect
H. No.: [illegible] - Goa.

CERTIFIED BY :-
SECRETARY
Village Panchayat
SERNABATIM, VANELIM
COLVA & GANDAULIM

Annexure 14 Colly

(57)



LEGEND
PLAN APPROVED IN 1986
PLANS APPROVED IN 2006 AND 2008
PLAN APPROVED IN 2013

PLAN SHOWING SUPERIMPOSITION OF THE PLANS OF THE BEACH RESORT PROJECT APPROVED IN PROPERTY SURVEYED UNDER S.No. 23/13 & 17 OF COLVA VILLAGE, SALCETE TALUKA, IN THE YEARS 1986, 2006, 2008 AND 2013. SC.: 1:500 DT.: 13/08/13.

ARCH.:
CARLOS GRACIAS
54 BORDA MARGAO

CERTIFIED BY

SECRETARY
Village Panchayat
SERNABATIM, VANELIM
COLVA & GANDAULIM

Jose Carlos da Veiga Gracias
Architect
H. No.: 54, Borda, Margao - Goa.
MMC 109
PWD / ARCH / 29 / 86
SPDA / RA / 69 / 83-84

Following is the digital version of the map that was annexed in Annexure 14, Pg. 57 of the Original Application:

1. **Following map shows the original structures that were proposed to be constructed prior to the enforcement of CRZ Notification, 1991**

2. **Following map shows the structures that were reconstructed by the Project Proponent based on permissions for 'repair and renovation' issued in 2006 and 2008 by the Respondent No. 1:**

3. **Following map is the latest reconstruction of the structures undertaken by the Project Proponent based on the Technical Clearance issued on 15.04.2013**

tc.

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(2016) 10 Supreme Court Cases 701

(BEFORE DR T.S. THAKUR, C.J. AND A.M. KHANWILKAR AND DR D.Y. CHANDRACHUD, JJ.)

a

ANIL HOBLE .. Appellant;

Versus

KASHINATH JAIRAM SHETYE AND OTHERS .. Respondents.

b

Civil Appeal Diary No. 26024 of 2016, decided on October 7, 2016

A. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court against orders of NGT — Reappreciation of evidence — Only where it is demonstrated that decision of Tribunal suffers from error apparent on face of record or is perverse (Paras 9, 15 and 16)**

c

B. **Environment Law — Water/River/Coastal Pollution — Coastal Areas/ Wetlands/Coastal Regulation Zone Notifications — CRZ Policy dt. 19-2-1991 — Unauthorised construction falling within prohibited area, endangering river and coastal ecosystem — Demolition of, upheld — Further held, permission granted by Goa Coastal Zone Management Authority (GCZMA) would not be of any assistance as it was contrary to directions of High Court**

d

— Respondent contended before NGT that building of appellant constructed in violation of Coastal Regulation Zone was leading to pollution of coastal and river ecosystem — Tribunal concluded that building was unauthorised and should be demolished — Sustainability of

e

— Held, when appellant purchased plot it had a small structure standing thereon used as garage but now there stood a different structure — It was unauthorisedly developed after 19-2-1991 the day from which notification of Coastal Regulation Zone (CRZ) Policy came into force — This structure was within 100 m from high tide line — That structure was different from what was originally purchased — CRZ Policy prohibits construction within 200 m from high tide line treating it to be "No Development Zone" — Only activity permissible was repairs of authorised structures — There is no reason to doubt correctness of finding of fact recorded by Tribunal that this unauthorised structure fell within 100 m of high tide line — Further, Tribunal was correct in holding that plot purchased by appellant and structure about which respondents complained of were one and same — As long as directions issued by High Court in *Goa Foundation*, WP No. 422 of 1998, order dt. 13-10-2006 (Bom), were in force, any permission granted contrary to these directions was nullity and non est — Thus, permission granted to appellant by Goa Coastal Zone Management Authority (GCZMA) would not be of any assistance as it was contrary to directions of High Court — Since structure being unauthorised, it could not be used for whatever purpose and, therefore, it is required to be demolished — Issue whether CRZ Policy prohibits change in use of structure not considered — Hence, appeal dismissed — National Green Tribunal Act, 2010, Ss. 14 and 22 (Paras 9 to 16)

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Kashinath Jairam Shetye v. *Srinet Kotwlae*, 2015 SCC OnLine NGT 117; *Anil Hoble* v. *Kashinath Jairam Shetye*, MA No. 180 of 2015 in Review Application No. 15 of 2015, decided on 14-12-2015 (NGT), *affirmed*

Goa Foundation v. *Panchayat of Condolim*, WP No. 422 of 1998, order dated 13-10-2006 (Bom), *referred to*

Appeal dismissed G-D/57613/C

Advocates who appeared in this case :
A. Venayagam Balan, Advocate, for the Appellant.

Chronological list of cases cited ***on page(s)***

1. 2015 SCC OnLine NGT 117, *Kashinath Jairam Shetye* v. *Srinet Kotwlae* 702*c-d*, 706*f-g*
2. MA No. 180 of 2015 in Review Application No. 15 of 2015, decided on 14-12-2015 (NGT), *Anil Hoble* v. *Kashinath Jairam Shetye* 702*d*, 704*c*
3. WP No. 422 of 1998, order dated 13-10-2006 (Bom), *Goa Foundation* v. *Panchayat of Condolim* 703*e-f*, 706*f-g*

The Judgment of the Court was delivered by

A.M. KHANWILKAR, J.— Delay condoned. This appeal arises from the final judgment and order passed by the National Green Tribunal (Western Zone) Bench, Pune dated 29-5-2015 in *Kashinath Jairam Shetye* v. *Srinet Kotwlae*[1] and dated 14-12-2015 in *Anil Hoble* v. *Kashinath Jairam Shetye*[2].

2. Respondents 1-4 had filed an application before the Tribunal under Section 14(1) read with Section 14(3) of the National Green Tribunal Act, 2010 complaining about degradation of environment on account of unauthorised construction on plot of land falling within CRZ (III) (No Development Zone — in short "NDZ").

3. According to the said respondents (original applicants), the appellant (original Respondent 3) was responsible for construction of a commercial building on plot of land bearing Chalta No. 1/PTS No. 10, Panjim City and Survey No. 65/1-A, Village Morombio Grande in Merces Panchayat, without obtaining necessary permission from the authorities concerned. That construction is detrimental to the coastal ecosystem and river ecosystem; and is also likely to cause pollution of river water due to the commercial activities of the bar and restaurant. It was alleged that the appellant exerted political influence to facilitate construction of the unauthorised structure on the said plot.

4. The appellant opposed the said application by raising preliminary objections. Firstly, that the subject application was not maintainable—as remedy of appeal under Section 16 against the decision of the authority could be preferred. Secondly, the applicants had failed to comply with the procedure prescribed under Rule 13 of the National Green Tribunal (Practices and Procedure) Rules, 2011. Thirdly, the application was barred by limitation — as the cause of action had arisen soon after the construction work was commenced in the year 2011. The application, however, was not filed within 6

1 2015 SCC OnLine NGT 117
2 MA No. 180 of 2015 in Review Application No. 15 of 2015, decided on 14-12-2015 (NGT)

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months therefrom. Further, a writ petition for similar challenge was filed before the High Court and has since been withdrawn. No liberty has been given by the High Court to the applicants to pursue the same cause of action. On merits, it was asserted that the structure was in existence prior to 19-2-1991 when the CRZ Policy came into force. It was used as a garage at the relevant time. The appellant after purchasing the plot and the structure standing thereon vide registered sale deed dated 3-8-1992, initially used it for motor garage and allied activity. The same structure after repair and renovation was used as restaurant and bar. In substance, the stand of the appellant was that since the structure was in existence prior to 19-2-1991, the change of user after taking permission of the authorities concerned would not make the same unauthorised. The appellant had taken due permission of the competent authority for re-roofing and re-flooring of the structure. It was not a case of construction of a new structure within the No Development Zone (NDZ) as is contended.

5. The Tribunal after analysing the documentary evidence including the survey reports brought on record by the parties, negatived the plea of the appellant that the structure as it exists at present was constructed prior to 19-2-1991. The Tribunal recorded that finding on the basis of the contents of the registered sale deed dated 3-8-1992 executed in favour of the appellant by the original owner of the plot, the House Property Revenue Records, settlement of land records, no-objection certificate given by the panchayat, Inspection Report dated 2-5-2012, and also the contents of the affidavit filed by the appellants. The Tribunal held that the structure as existed prior to 19-2-1991, on plot of land bearing Survey No. 65/1-A or in Survey No. 83/2-A of Village Morombio Grande in Merces Panchayat, falling within 100 m distance [in CRZ (III) area], was a small structure at the corner of the said plot and was used as a garage.

6. The Tribunal then relied on the decision of the High Court of Bombay in *Goa Foundation* v. *Panchayat of Condolim*[3], in which directions were issued to the State Authorities to take action against such unauthorised structures and constructions put up on the land falling within CRZ (III) area in Goa, village or town-wise after 19-2-1991; and further that permission can be granted "only" for repair and renovation of the existing "dwelling units" in such areas. The Tribunal following that decision observed that the structure other than the original structure as existed on 19-2-1991, standing on land Survey No. 65/1-A or in Survey No. 83/2-A of Village Morombio Grande in Merces Panchayat in South Goa be demolished forthwith after following the due process.

7. The directions given by the Tribunal read thus:

> "(*a*) All the structures, including restaurant and bar/pub and allied structures standing in the land Survey No. 65/1-A or in Survey No. 83/2-A of Village Morombio Grande, shall be demolished by Deputy Collector, South Goa, within the period of six (6 weeks).

3 WP No. 422 of 1998, order dated 13-10-2006 (Bom)

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(*b*) We direct Respondent 3 Anil to pay amount of Rs 20 (twenty) lakhs as costs of degradation of environment and violation of CRZ Notification, 1991, within six (6) weeks to the Environment Department, Government of Goa along with costs of Rs 5000 (five thousand) as litigation costs, which be equally disbursed in favour of all the applicants.

(*c*) GCZMA is directed to hold enquiry regarding houses/illegal structures of CRZ area about which permission might have been obtained without following due procedures and to take appropriate action against the violators of CRZ Notifications.

(*d*) The compliances about demolition of illegal structures of Respondent 3 and payment of costs, shall be reported to the Tribunal within six (6) weeks.

(*e*) The application is accordingly disposed of."

The appellant thereafter filed review petition before the Tribunal which, however, was dismissed on 14-12-2015[2], thus reiterating the direction already issued by the Tribunal.

8. Aggrieved, the appellant has filed the present appeal challenging both the judgments on the original application and the review application. According to the appellant, the finding of fact recorded by the Tribunal with regard to the status of the structure standing on the subject plot is manifestly wrong. It was then contended that even the finding of the Tribunal that permission can be granted only for repair or renovation of dwelling units, was contrary to the CRZ Policy document. Further, the CRZ Policy document does not restrict the user of the existing structure or disallow the change of user therein. Further, the appellant having taken due permission of the competent authority to use the structure as restaurant and bar must prevail. In the alternative, it is submitted that the appellant was entitled to repair and renovate the original structure as it existed on 19-2-1991 and use it for the purpose/activity permissible after taking approval of the competent authority in that behalf. The learned counsel for Respondent 5 invited our attention to the relevant documents, in particular to the show-cause notice issued by Goa Coastal Zone Municipal Authority (GCZMA) dated 25-5-2012 and the Report of the Enquiry Committee (GCZMA) dated 30-2-2014 which concluded that there was no violation of the CRZ Regulation.

9. The appellant has not seriously pursued the preliminary objections which were otherwise raised in the reply to the application filed before the Tribunal and rejected by the Tribunal. The principal argument of the appellant is that the factual finding recorded by the Tribunal about the status of the structure on the subject plot is manifestly wrong. In the first place, merely because remedy of appeal is provided against the decision of the Tribunal before this Court that does not mean that this Court must reappreciate the entire evidence on record and specially when the same has already been analysed by the Tribunal, unless

2 *Anil Hoble* v. *Kashinath Jairam Shetye*, MA No. 180 of 2015 in Review Application No. 15 of 2015, decided on 14-12-2015 (NGT)

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the appellant is able to demonstrate that the finding recorded by the Tribunal suffers from error apparent on the face of the record or is perverse. Nevertheless, we permitted the appellant to refer to the relevant contemporaneous record which has already been extensively analysed by the Tribunal. On going through the said documents, we are not in a position to take a view different than the view already taken by the Tribunal.

10. We find that when the appellant purchased the subject plot vide registered sale deed dated 3-8-1992, only a small structure at the corner of the said plot was in existence and was used as a garage and which was indisputably within 100 m from the high tide line. On this finding, it necessarily follows, that the structure as it exists now is quite different — both in shape, size and location being in the middle of the plot. Obviously, it is an unauthorised structure constructed after 19-2-1991. The CRZ Policy dated 19-2-1991 prohibits any construction up to 200 m from the high tide line. It is to be treated as "No Development Zone", except for repairs of existing "authorised structures" not exceeding specific permissible FSI, plinth area and other norms for permissible activities including facilities essential for such activity under the Notification.

11. The relevant clause in the said Notification, dealing with land area falling within CRZ (III) area reads thus:

> "...
>
> CRZ (III)
>
> (*i*) The area up to 200 m from the high tide line is to be earmarked as "No Development Zone". No construction shall be permitted within this zone except for repairs of existing authorised structures not exceeding existing FSI, existing plinth area and existing density, *and for permissible activities under the Notification including facilities essential for such activities. An authority designated by the State Government/Union Territory Administration may permit construction of facilities for water supply, drainage and sewerage for requirements of local inhabitants.* However, the following used (*sic* users) may be permissible in this zone: agriculture, horticulture, gardens, pastures, parks, play fields, forestry and salt manufacture from sea water.
>
> (*ii*) Development of vacant plots between 200 and 500 m of high tide line in designated areas of CRZ (III) with prior approval of Ministry of Environment and Forests (MoEF) permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in guidelines at Annexure II.
>
> (*iii*) Construction/Reconstruction of dwelling units between 200 and 500 m of the high tide line permitted so long it is within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans. Building permission for such construction/reconstruction will be subject to the conditions that the total number of dwelling units shall not be more than twice the number of existing units; total covered area on all floors shall not exceed 33 per cent of the plot size; the overall height of construction shall not exceed 9 m and construction shall not be more than 2 floors—ground floor plus one floor. *Construction is allowed for permissible activities under the Notification including facilities essential for such activities. An authority designated by*

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State Government/Union Territory Administration may permit construction of public rain shelters, community toilets, water supply, drainage, sewerage, roads and bridges. The said authority may also permit construction of schools and dispensaries, for local inhabitants of the area, for those panchayats the major part of which falls within CRZ if no other area is available for construction of such facilities.

(*iv*) Reconstruction/Alterations of an existing authorised building permitted *subject to (i) to (iii) above*." (emphasis supplied)

12. Relying on sub-clauses (*i*), (*iii*) and (*iv*) of the Notification, it was contended that the Tribunal committed error in law on two counts. Firstly, in assuming that the structure within CRZ area can be used only as a dwelling unit, and secondly, that repairs and renovation permission can be given only to such dwelling units. This submission does not commend us. Sub-clause (*i*) plainly mandates that "no construction" of any kind be permitted within 200 m from the high tide line. That area has to be treated as "No Development Zone", except for repairs of "existing authorised structures" (on the date of the Notification i.e. 19-2-1991) and not exceeding the permissible FSI, plinth area and density and for permissible activities. Sub-clause (*iii*) deals with CRZ area between 200 to 500 m of the high tide line with which we are not concerned in the present case. Inasmuch as, the finding of fact by the Tribunal about the location of the plot is that the plot was within 100 m from the high tide line. There is nothing to doubt the correctness of this finding.

13. The moot question then is: whether the structure as it existed when the respondents moved the Tribunal complaining about violation within the CRZ area was the same structure as on 19-2-1991 when the CRZ Policy came into being? That finding of fact has been answered against the appellant by the Tribunal and we must agree with the same. For, the structure as it existed when the plot was purchased by the appellant on 3-8-1992 was a small structure at the corner of the subject plot and was used only as a garage or for repairs of vehicles and allied activity. The structure in respect of which complaint has been made before the Tribunal was completely different in shape, size and also location for which reason the Tribunal issued direction to remove the same. The view taken by the Tribunal relying on the decision of the Bombay High Court, which the Tribunal was bound to follow, permitted retention of only dwelling units within CRZ (III) area and constructed prior to 19-2-1991. The direction given by the High Court in *Goa Foundation*[3] have been reproduced by the Tribunal in para 12 of the impugned judgment, which reads thus: (*Kashinath Jairam case*[1], SCC OnLine NGT)

"*12.* The Hon'ble High Court summarised findings and gave directions in para 32 as follows:

(A) To conduct survey and enquiry as regards the number of dwelling units and all other structures and constructions which were

3 *Goa Foundation* v. *Panchayat of Condolim*, WP No. 422 of 1998, order dated 13-10-2006 (Bom)
1 *Kashinath Jairam Shetye* v. *Srinet Kotwlae*, 2015 SCC OnLine NGT 117

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existing in the CRZ-III zone in Goa, village or town-wise as on 19-2-1991 and increase in number thereof thereafter, datewise.

a (B) To identify on the basis of permission granted for construction of the dwelling units which are in excess of double the units with regard to those which were existing on 19-2-1991.

(C) To identify all types of structures and constructions made in CRZ-III zone, except the dwelling units, after 19-2-1991 in the locality comprised of the dwelling units and to take action against the same for b their demolition in accordance with the provisions of law.

(D) To identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilisation thereof before they are being allowed to be utilised for such construction activities.

c (E) Till the survey and enquiry is completed, as directed above, no new licence for any type of construction in CRZ-III zone shall be issued or granted and no new structure of whatsoever nature shall be allowed to be constructed in CRZ-III zone, except repairs and renovation of the existing houses which shall be subject to the appropriate order on completion and result of the survey and enquiry to be held as directed above and this should be specifically stated in the licences to be granted d for the purpose of repairs and/or renovation of the existing houses.

(F) Respondent 5 to conduct an enquiry and fix responsibility for the violation of the CRZ notification in relation to Clause III of CRZ-III zone and to take appropriate action against the persons responsible for such violation of the provisions of the Environmental Protection Act and the said notification in relation to the CRZ-III zone.

e (G) All these directions stated above are in relation to the CRZ-III zone in Goa in terms of the said notification.

(H) The survey and enquiry should be conducted as expeditiously as possible and should be concluded preferably within a period of six months, and in any case, by 30-5-2007, and report in that regard should f be placed before this Court in the first week after the summer vacation of 2007, for necessary further order.

(I) Meanwhile, on conclusion of the survey and the inquiry, necessary action should proceed against the offending structures and report in that regard also should be placed along with the above referred report.

g (J) Respondents 3 and 4 shall ensure prompt compliance with the directions given in this judgment and shall be responsible for submitting the report required to be submitted as stated above.

(K) All the records relating to the survey and the inquiry should be made available to the public and in that regard a website should be opened and the entire material should be displaced on the website.

h

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Respondent 3 should ensure due compliance with this direction by 10-6-2007.

(L) Respondents 1 and 3 shall pay costs of Rs 10,000 in each of the petitions to the petitioners.

(M) Report to be received from the respondents should be placed before this Court in the third week of June, 2007.

(N) Rule is made absolute in above terms."

So long as these directions are in force, the State Authorities or municipal authorities were bound by the same and they could not have granted permission to any applicant in breach thereof. Any permission given contrary to those directions must be viewed as nullity and non est, having been given in complete disregard of the directions of the High Court. Thus, the permission granted to the appellant by GCZMA would be of no avail, as it is not consistent with the directions of the High Court.

14. The fact remains that the structure directed to be demolished by the Tribunal, was obviously erected after 19-2-1991. That being an unauthorised structure within the meaning of sub-clause (*i*) quoted above, could not be used for any purpose whatsoever and was required to be demolished. Therefore, the finding recorded by the Tribunal and the consequential directions given in that behalf are unassailable.

15. In this view of the matter, it is not necessary for us to dilate on the argument as to whether the CRZ Policy prohibits change of user of the structure which was in existence on 19-2-1991, so as to be used as a restaurant and bar. In our opinion, on the facts of the present case, no substantial question of law much less of great public importance arises for our consideration.

16. Hence, this appeal must fail and the same is, therefore, dismissed with no order as to costs.

Annexure A-19 (Colly).

No. 19/DSLR/Resurvey Cell/CRZ-Survey/09/09/ 140203
Government of Goa,
Directorate of Settlement &
Land Records, Panaji-Goa.

Date: 26/12/2011.

To,

The Member Secretary,
Goa Coastal Zone Management Authority,
Saligao, Bardez – Goa.

Sub: Construction in Survey No. 23/13 & 23/17 of Colva village of Salcete Taluka.

Sir,

I am directed to refer to your letter No.GCZMA/S/311/999 dated 05/12/2011 requesting to carry out resurvey of structures in CRZ area in respect of Survey No. 23/13 & 23/17 of Colva village of Salcete Taluka to verify the present plinth area vis-à-vis survey conducted earlier pursuant to directions of Hon'ble High Court in Writ Petition No. 150/1998 and Suo-Moto W.P. No. 2/2006. In this regard, please find enclosed herewith copy of plan showing structures resurveyed on 15/12/2011 alongwith plinth area of the structures.

Please note that the legality/ illegality of all structures shown on the plan enclosed herewith is not known to this Directorate and therefore the plan enclosed shall not be used for any purpose such as development of structures/ vacant areas shown on this plan, revenue survey matters, obtaining licenses, permissions, conversion of land, etc. and whatsoever other work relating to development of the area. The plan enclosed herewith is particularly issued only for reference and understanding purpose.

Further, it is also informed that this office does not have any information regarding year/duration of constructions of newly surveyed structures, i.e. whether constructed prior to 1991 or after 1991 and the structures shown on the plan are features existing during the period of CRZ survey.

Yours faithfully,

(D.V.Pednekar)
Supdt. of Survey & Land Records
Panaji – Goa.

Encl: As above(~~01copies~~)

GOVERNMENT OF GOA
Directorate of Settlement and Land Records
PANAJI - GOA

Plan showing structures re-surveyed during survey conducted as per the directions of Goa Coastal Zone Management Authority vide letter No. GCZMA/S/311/999 dtd. 05/12/2011 in Survey No. 23 / 13, 17 of Colva village of Salcete Taluka, falling within the distance of 200mts. from High Tide Line extracted from certified CRZ map of village Colva.

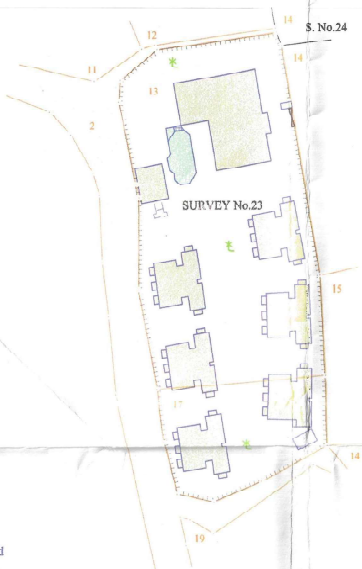
Scale 1:1000

N

Superintendent of Survey
Land Records, Panaji

NOTE:-

THE LEGALITY / ILLEGALITY OF STRUCTURES SHOWN ON THIS PLAN IS NOT KNOWN AND THEREFORE THIS PLAN SHALL NOT BE USED FOR ANY PURPOSE SUCH AS DEVELOPMENT OF STRUCTURES, REVENUE SURVEY MATTERS, OBTAINING LICENSES, PERMISSIONS, CONVERSION OF LAND, ETC. THIS PLAN SHALL BE USED FOR REFERENCE PURPOSE ONLY.



LEGEND:-

- STRUCTURES RE-SURVEYED DURING SURVEY IN THE MONTH OF DECEMBER,2011.
- EXISTING SWIMMING POOL .
- POOL DECK
- EXISTING SECURITY CABIN.
- STP UNIT.
- COMPOUND WALL
- GATE

PLINTH AREA DETAILS

TOTAL PLINTH AREA OF ALL STRUCTURES AS PER SURVEY CONDUCTED ON 07/04/2009 – 2117 m^2.	TOTAL PLINTH AREA OF ALL STRUCTURES AS PER SURVEY CONDUCTED ON 15/12/2011 – 2030 m^2 .
AREA OF SWIMMING POOL AS PER SURVEY CONDUCTED ON 07/04/2009 = 115 m^2.	AREA OF SWIMMING POOL AS PER SURVEY CONDUCTED ON 15/12/2011 = 115 m^2.

Note :
This plan shall be read in conjunction with the letter No.19/DSLR/Resurvey cell/CRZ-Survey/09/09/ 140203 dtd. 26/12/2011 .

Surveyed on 15/12/2011 by :-
Shri Patrick Gonsalves (H.S.)
Shri Rajesh Harmalkar (F.S.)

Prepared by :- Clancy Fernandes (F.S.)

Computer Generated On 22-12-2011

Compared by :- K.Pangam (Supervisor)

File No.19/DSLR/Resurvey cell/CRZ-Survey/09/09

Exhibit "F"
ANNEXURE R-4/6

Annexure R1/4

Member Secretary
G.C.Z.M.A.
Inward No. 1027/L
Date 03/08/12

No. 19/DSLR/Resurvey Cell/CRZ-Survey/09/09/ 2358
Government of Goa,
Directorate of Settlement &
Land Records, Panaji-Goa.

Date: 30/07/2012.

To,

The Member Secretary,
Goa Coastal Zone Management Authority,
Saligao, Bardez – Goa.

Sub: Repairs & Renovation /Reconstruction of an existing beach resort in Survey No. 23/13 & 23/17 of Colva village of Salcete Taluka.

Sir,

I am directed to refer to your letter No.GCZMA/S/311/482 dated 23/07/2012 requesting to carry out mapping of structures in respect of Survey No. 23/13 & 23/17 of Colva village of Salcete Taluka to compare earlier details maintained by this office vis-à-vis maps submitted by project proponent. In this regard, please find enclosed herewith copy of plan showing structures verified and resurveyed on 25/07/2012 alongwith plinth area details given in the tabular column which is self explanatory.

Please note that the legality/ illegality of all structures shown on the plan enclosed herewith is not known to this Directorate and therefore the plan enclosed shall not be used for any purpose such as development of structures/ vacant areas shown on this plan, revenue survey matters, obtaining licenses, permissions, conversion of land, etc. and whatsoever other work relating to development of the area. The plan enclosed herewith is particularly issued only for reference and understanding purpose.

Further, it is also informed that this office does not have any information regarding year/duration of construction of surveyed structures, i.e. whether constructed prior to 1991 or after 1991 and the structures shown on the plan are features existing during the period of present survey.

Yours faithfully,

(Ajit S. Talaulikar)
Supdt. of Survey & Land Records
Panaji – Goa.

Encl: As above(two copies)

GOVERNMENT OF GOA

Directorate of Settlement and Land Records

PANAJI - GOA

Plan showing structures existing during verification survey conducted as per the directions of the Coastal Zone Management Authority vide letter No. CZM/A/301/1/482 dtd. 23/07/2012 in Survey No. 23 / 13 . 17 of Colva Village of Salcete Taluka. Within the distance of 200mts. from High Tide Line derivated from certified CRZ map of village Colva.

Scale 1:1000

NOTE:-

THE LEGALITY / ILLEGALITY OF STRUCTURES SHOWN ON THIS PLAN IS NOT KNOWN AND THEREFORE THIS PLAN SHALL NOT BE USED FOR ANY PURPOSE SUCH AS DEVELOPMENT OF STRUCTURES, REVENUE SURVEY MATTERS, OBTAINING LICENSES, PERMISSIONS, CONVERSION OF LAND, ETC. THIS PLAN SHALL BE USED FOR REFERENCE PURPOSE ONLY.

LEGEND:

- STRUCTURES VERIFIED DURING SURVEY ON 25/07/2012.
- EXISTING SWIMMING POOL.
- POOL DECK.
- STP UNIT.
- COMPOUND WALL
- GATE

PLINTH AREA DETAILS

SOVEREIGN AREA OF ALL STRUCTURES AS PER SURVEY CONDUCTED ON 25/07/2012 = 2217 m².	TOTAL PLINTH AREA OF ALL STRUCTURES AS PER SURVEY CONDUCTED ON 18/12/2011 = 2658 m².	TOTAL PLINTH AREA OF ALL STRUCTURES AS PER VERIFICATION SURVEY CONDUCTED ON 25/07/2012 = 2658 m².
AREA OF SWIMMING POOL AS PER SURVEY CONDUCTED ON 18/12/2011 = 115 m².	AREA OF SWIMMING POOL AS PER SURVEY CONDUCTED ON 18/12/2012 = 114 m².	AREA OF SWIMMING POOL AS PER VERIFICATION SURVEY CONDUCTED 25/07/2012 = 115 m².

Note :-
This plan shall be read in conjunction with the letter No.19/DSLR/Resurvey cell/CRZ-Survey/09/09/ 2752 dtd. 30/07/2012

Surveyed on 25/07/2012 by :-
Shri Patrick Gonsalves (H.S.)
Shri Rajesh Mormallker (F.S.)

Prepared by :- Classy Fernandes (F.S.)

Computer Generated On 30-07-2012

Compared by :- K.Pai (Supervisor)

File No.19/DSLR/Resurvey/CRZ-Survey/09/09

MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

Annexure A-20

BEFORE THE INQUIRY COMMITTEE

GCZMA

Case No. GCZMA/GEN/MISC/13-14/

In the matter of Order dated 15-01-2015 of the Hon'ble High Court in Suo Moto W.P. No.2/2006 directing GCZMA to examine the documents relied by the Village Panchayat of Colva in respect of structures existing in No Development Zone of CRZ-III.

REPORT

1. As the direction was to examine the documents only personal hearing was given to the concerned parties. This case pertains to M/s Tonia Estates and Resorts Pvt.Ltd (to be referred as "the affected party") situated in the property surveyed under Sy.No. 23/13 and 23/17 of Village Colva. Mrs. Judith Almeida appeared for Colva Civic and Consumer Forum.Adv. Sahish Mahambrey for the affected party submitted the reply and documents.

2. In the reply the affected party states that the affected party is not a party in Suo Moto W.P. No.2/2006, that the GCZMA has itself come to the conclusion that the existing structure in survey no.23/13 and 23/17 of Colva Village were prior to 19-02-1991 that the GCZMA has granted approval for repairs/reconstruction of the existing structure by permission dated 18-05-2006 and 31-01-2006 that the permission granted by GCZMA has been questioned by one Theodore Fernandes in W.P.No.751/2008 filed before the Hon'ble High Court in which there is also a challenge to repairs/reconstruction carried out by the affected party; that there is another W.P.No.469/2014 pending before the Hon'ble High Court wherein the proceeding filed by Colva Civic and Consumer Forum before the National Green

Tribunal against the affected party in respect of same subject matter are stayed and that Colva Civic and Consumer Forum is a party in the said Writ Petition.

3. The letter dated 18-05-2006 of GCZMA is in respect of approval of proposed repairs and renovation of an existing Beach Resort in survey no.23/13 and 23/17 of Village Colva. The letter dated 18-05-2006 along with approved plan are marked as Annexure A (Colly). As GCZMA did not considered the approval for repairs and reconstruction of two existing structures marked Block A & C in the plan attached to letter dated 18-05-2006 Annexure A (Colly), by letter dated 30-01-2008, GCZMA granted approval for repairs and reconstruction of two structures Block A and Block C in survey no.23/13 and 23/17 of Village Colva. The letter dated 30-01-2008 is marked as Annexure B.

4. The affected party produced extracts of the Minutes of the 25th GCZMA meeting held on 20-04-2006 and the Case no.3 is in respect of proposed repairs and renovation of an existing Beach Resort in survey no.23/13 & 17 of Colva Village. The extracts of 25th meeting are marked as Annexure C (Colly). There is reference to the decision on the Case no.3 stating that the proposed repairs and renovations of the 1st phase of the existing resort which is in a dilapidated condition was approved by examining the original approvals granted in the year 1981, 1986 and 1988 i.e. prior to the enforcement of the CRZ Notification of 1991. In the extracts at Annexure 'C colly' there is reference to the background of the proposed repairs and renovations stating that the first phase of the Resort was originally approved on 05-05-1981 by the Colva Panchayat. The Town and Country Planning Department subsequently approved the revised first phase plan on 24-02-1986 and that the erstwhile Ecological Development Council (EDC) in its 13th Meeting approved the swimming pool alongwith ancillary items on 19-07-1988.

5. The affected party produced letter dated 23-08-2012 of GCZMA and letter dated 30-07-2012 alongwith survey plan of DSLR which are marked as Annexure D (Colly).The letters and plan at Annexure D (Colly) confirms that repairs and renovation were carried as per approved plan and within the plinth area. The affected party produced the Technical Clearance Order dated 15-04-2013 by which revised Technical Clearance is granted by the Town and Country Planning Department for carrying out the work of repairs and renovation/reconstruction of existing resorts Block A, Block B (6 nos.) and Block C in survey no.23/13 and 23/17. The Technical Clearance Order dated 15-04-2013 along with approved plans are marked as Annexure E (Colly).

6. The affected party produced the Completion Order dated 16-04-2013 of Town and Country Planning Department certifying the completion of repairs, renovation/reconstruction of existing resort (Block A, Block B (6 units) and Block C. The completion order dated 16-04-2013 is marked as Annexure F. The Village Panhayat of Colva granted Occupancy Certificate to the Construction of Renewal and Revised approval for repairs and renovation/reconstruction of existing Resort (Block A, Block B (6 units) and Block C of premises bearing H.No.424 and H.No.424/1. The occupancy certificate dated 13-02-2014 is marked as Annexure G.

7. The existing Beach Resort at Colva falls within the area of 200 mtrs from the HTL in the No Development Zone of CRZ-III. By taking into considerations that within the area of 200 mtrs from HTL in No Development Zone, repairs and reconstruction of existing structure is permissible but without exceeding the plinth area; that the repairs and renovation/reconstruction were carried in the existing Beach Resort and within the plinth area; that the affected party obtained approvals from GCZMA at Annexure B (Colly), Minutes of GCZMA Meeting Annexure C

(Colly), survey plan of DSLR at Annexure D (Colly), Technical Clearance Order of Town and Country Planning Department at Annexure E (Colly), Completion order of Town and Country Planning Department at Annexure F and Occupancy Certificate of Village Panchayat of Colva at Annexure G, the repairs and renovation/reconstruction of existing Resort Block A, Block B (6 units) and Block C in survey no.23/13 and 23/17 of Village Colva and having H.No.424 and H.No.424/1 were carried within the plinth area and in accordance with law.

Dated: 19 /10/2015

(Afonso Araujo)
CHAIRMAN

(Kanchan M. Lotlikar)
MEMBER

(Caetano Joaquim de Braganza)
MEMBER

Gmail

DC Law Chambers <dclaw160@gmail.com>

Copy of Rejoinder on behalf of the Applicant in OA No. 66 of 2014 Colva Civic & Consumer Forum V/s Tonia Estate & Resorts Pvt. Ltd. Ors

1 message

DC Law Chambers <dclaw160@gmail.com> Thu, Apr 11, 2024 at 6:48 PM
To: shivshankar.swaminathan@yutilaw.com, goacoastalzone@gmail.com, "anturkarandassociates@gmail.com" <anturkarandassociates@gmail.com>
Cc: shreepurnadasgupta <shreepurnadasgupta@proton.me>

Rejoinder to Counter Affidavit R-1 on behalf of the Applicant.pdf

Dear Sir,
Please find attached- Copy of Rejoinder on behalf of the Applicant in OA No. 66 of 2014 Colva Civic & Consumer Forum V/s Tonia Estate & Resorts Pvt. Ltd. Ors
Thank & Regards
Counsel for the Applicant