

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

Appeal No. 22/2024 (WZ)

Rajendra Kumar Kamra

...Appellant

Versus

GCZMA & Ors.

...Respondents

REJOINDER OF THE APPELLANT TO THE REPLY DATED
19/02/2025 FILED BY RESPONDENT NO.3.

The Appellant most respectfully states and submits as under:

1. The Appellant is filing this rejoinder for the limited purpose of dealing-with the contentions raised by the Respondent No.3 in his Reply dated 19/02/2025 (*hereinafter referred to as the 'subject reply'*). The Appellant is therefore dealing-with the subject reply issue-wise and therefore any averment made in the subject reply, if not specifically dealt-with and/or denied by me herein, may not be deemed to have been admitted.



2. At the outset, the Appellant wishes to place on record the fact that the copy of the subject reply, as served upon the Appellant, is incomplete, with certain crucial pages/averments of the subject

Rajendra K

reply, missing therein. In the set of the subject reply, as served upon the Appellant, contents of paragraph 18 are incomplete and the contents of paras 19, 20 and 21 are missing. The subject reply, from the incomplete para 18, directly goes on to para 22. The Appellant therefore seeks directions from this Hon'ble Tribunal to the Respondent No.3 to supply the Appellant with a complete set of the subject reply along-with leave to file further response thereto.

3. Without prejudice, the Appellant submits that in the subject reply, the Respondent No.3 has produced as annexures, certain documents, which were not part of the record before the Goa Coastal Zone Management Authority ('GCZMA' for short) while deciding the Show Cause Notice. It is well settled-law that the appeal has to be decided based on documents which were part of the trial proceedings, unless leave of the Hon'ble Court is sought to produce additional documents at the appellate stage. In the present case, no application has been filed by the Respondent No.3 before this Hon'ble Tribunal seeking such leave. Therefore, it is respectfully submitted that this Hon'ble Tribunal ought not to refer-to, rely-upon or otherwise take cognizance of the said additional documents.

4. Without further prejudice, the Appellant submits that, in para 23 of the subject reply, the Respondent No.3 has proceeded to set-out

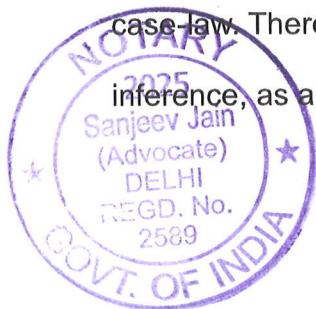


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certain prayers, which the Respondent No.3 is purportedly

seeking from this Hon'ble Tribunal, in the present appeal. It appears that the Respondent No.3 is unaware of the position of law that a respondent in an appeal cannot seek any substantial reliefs in his favour and the maximum that such respondent can pray-for, is dismissal of the appeal. The Appellant submits that for any such substantial reliefs/prayers, the Respondent No.3 is required to file independent legal proceedings. The so-called prayers enumerated in para 23 of the subject reply are therefore non-maintainable in the present appeal and ought to be completely disregarded.

5. With reference to para 1 of the subject reply, the contents thereof do not warrant any specific comments.
6. With reference to para 2A of the subject reply, the contents thereof are denied, as alleged. As far as the three items viz. walkway/pathway, sewage treatment plant and water harvesting pit (*forming subject-matter of the impugned order*) are concerned, it is the case of the Appellant that the same are not structures/constructions, for legal & technical purposes. Therefore, there was no reason for the Appellant to obtain any separate permission/s in respect of the same. The understanding of the Appellant is supported by legal provisions and decided case-law. Therefore, there is no question of drawing any adverse inference, as alleged.



Respondent 4

7. With reference to para 2B of the subject reply is concerned, the contents thereof are denied, as alleged. In support of his contentions, the Respondent No.3 has purported to rely upon certain electronic evidence, such as purported extracts said to have been downloaded from website of the Appellant. However, the contents of the same cannot be considered since the same is not backed-up by the mandatory certificate u/s 63 of the Bharatiya Sakshya Adhiniyam, 2023. The contents of the same are not admitted and the Respondent No.3 is put to strict proof thereof.
8. With reference to para 2C of the subject reply is concerned, the contents thereof are denied. The Appellant states that, even assuming that the law mandates installation of STP for more than 25 cottages, nothing prevents the Appellant from voluntarily installing a STP for their lesser capacity temporary cottages, in the interest of scientific disposal of waste. From the submissions made by the Respondent No.3 in this para, the real motive of the Respondent No.3 stands exposed, as, if the Respondent No.3 was really concerned with the interests of environment, he would not have challenged the installation of the STP by the Appellant, in respect of his temporary cottage hotel.
9. The imputation that the 'RCC underground tank' is not a STP is emphatically denied. In fact, it is submitted that the STP/water-tank are not underground but placed above adjoining ground level. In this connection, the Appellant craves leave to refer to and



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rely upon copy of the Consent to Operate dated 09/02/2024 issued to the Appellant by the Goa State Pollution Control Board, in respect of his temporary cottage hotel and restaurant. The said Consent to Operate specifically requires the Appellant to install a sewage treatment system/plant. The Appellant has installed the said STP as per the terms & conditions laid down in the said Consent to Operate. Hereto annexed and marked as **ANNEXURE – A/1.**

10. With reference to para 2D of the subject reply, the Appellant denies the contents thereof. The Respondent No.3 is trying to mislead this Hon'ble Tribunal by not disclosing that during the hearing on the Show Cause Notice held on 22/06/2023, the GCZMA had only tentatively proposed a site-inspection of the said property on 30/06/2023. However, the exact date and time of the site inspection was not finalized during the said meeting. Therefore, the Advocate for the Appellant had called-upon the GCZMA to address a formal notice of site-inspection upon the concerned party *i.e.* the Appellant so that the Appellant was clearly made aware of the exact date and time of inspection and could remain present for the same, since the Appellant is a resident of Delhi. Therefore, the issue, as framed by the Respondent No.3 in para 2D itself is defective and factually incorrect and no findings ought to be given by this Hon'ble Tribunal on the issue, as framed by the Respondent No.3.

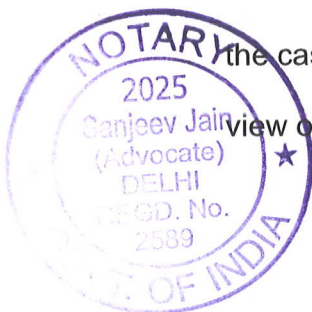


Rajendra L

11. With reference to para 2E of the subject reply, the contents thereof are denied. The Appellant maintains, repeats and reiterates that the photographs annexed to the site-inspection report dated 30/06/2023 do not pertain to the temporary cottages of the Appellant but relate to cottages put-up by other entities in adjoining plots, which development appears to be similar in nature. The factual and procedural defects in the site-inspection reports dated 10/01/2023 and 30/06/2023 have been elaborately brought-out by the Appellant in the Memo of Appeal and the same are not repeated herein, only to avoid burdening of record. However, all the averments/contentions raised therein, may be deemed to have been adopted herein.

12. With reference to paras 3 to 5 of the subject reply, the contents thereof do not warrant any specific comments.

13. With reference to para 6 of the subject reply, the contents thereof are denied. The Appellant states that the present matter is neither a case of title-dispute nor a case of illegal construction without any permission whatsoever. The limited allegation of the Respondent No.3 is that the Appellant has deviated from the permission/approved plan and used allegedly forbidden construction material. The Appellant has therefore brought on record, all the required documents which are sufficient to rebut



the case pleaded by the Respondent No.3 before the GCZMA. In view of the same, there was no need for the Appellant to produce

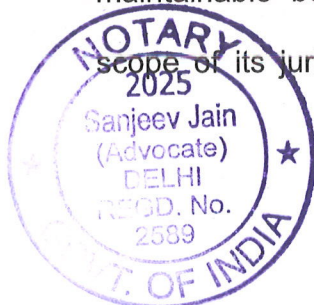
Respondent 4

any title documents, revenue record or any other documents, as alleged by the Respondent No.3 in the subject reply.

14. Further, due to the series of legal proceedings mala-fide foisted upon the Appellant by the Respondent No.3 for extraneous reasons, the Appellant has been continuously incurring losses in operating the temporary cottages. In any case, considering the nature of the present appeal, there was no valid reason for the Appellant to make any statement concerning profit generation, profit sharing or statements concerning the business affairs of Oralia Resort etc., as alleged. The Appellant denies that any case is made-out for imposition of environmental compensation on the Appellant, as alleged.

15. The Appellant submits that the present appeal has been filed on very limited grounds and the GCZMA vide its impugned order dated 17/01/2024 read-with 29/01/2024 has not imposed any environmental compensation upon the Appellant. Therefore, environmental compensation ought not to be awarded in the present appeal.

16. With reference to paras 7.1 to 7.4 of the subject reply, the contents thereof are emphatically denied. With reference to para 7.5 of the subject reply, the submissions made in that regard are not maintainable before this Hon'ble Tribunal, being beyond the scope of its jurisdiction. Without prejudice, it is submitted that



Rejinder

temporary structures are not reckoned as 'buildings' for the purposes of the Goa Land Development and Building Construction Regulations, 2010 and therefore the provisions of Regulation 6A.4 and Annexure XI-A of the said Regulations are totally inapplicable in the present case.

17. With reference to para 8.1 of the subject reply, the contents thereof are denied. There is no misunderstanding on the part of the Appellant, as alleged. The reference to para 8(i)(III)(B)(i) of the CRZ Notification, 2011, is totally misplaced. The Appellant reiterates that its building proposal has been approved as temporary cottages/restaurant and the commercial user is as a 'hotel'. Mere reference to the user of the temporary cottages as 'hotel' does not mean that para 8 (i)(III)(B)(i) of the CRZ Notification, 2011, is attracted to the present case.

18. With reference to paras 8.2 to 8.5 of the subject reply, the contents thereof are denied. Without prejudice, the submissions made in the said paras cannot be countenanced as no challenge to the legality or validity of the CRZ Permission dated 23/07/2021 or the NOC of the Village Panchayat is involved in the present appeal. In any event of the matter, even those irrelevant documents have now been produced on record by the Respondent No.3 through the subject reply and therefore the submissions regarding suppression of documents or drawing of adverse inference against the Appellant, does not survive for consideration.



Rejinder h

19. With reference to para 9 of the subject reply, the contents thereof are denied. The contents of foregoing para 6 of this rejoinder are repeated & reiterated.

20. With reference to paras 10.1 to 10.5 of the subject reply, the contents thereof are denied, as alleged. It is apparently clear from the contents of the site inspection reports dated 10/01/2023 and 30/06/2023 itself, that the survey team of the GCZMA has inspected the neighboring properties and the cottages constructed therein and the photographs are of those other cottages. This *modus-operandi* appears to have been adopted by the Respondent No.3 in order to mislead the survey team of the GCZMA, taking advantage of the absence of the Appellant, during the said inspections.

21. Therefore, mere purported use of so-called superior surveying instruments by the team of officials does sanctify the factual errors committed by the survey team in the course of inspections. The Appellant does not admit to operating any swimming pool in the subject property, as alleged. The extracts of electronic evidence, said to have been downloaded from the website of the Appellant, are not admitted and the Respondent No.3 is put to strict proof. The said extracts are not supported by a Certificate u/s 63 of the Bharatiya Sakhya Adhinyam, 2023 and are resultantly inadmissible in evidence.



Rejoinder 4

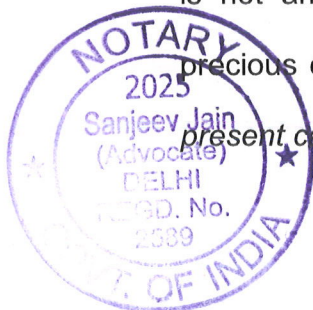
22. With reference to paras 11 & 12 of the subject reply, the contents thereof do not warrant any specific response.

23. With reference to paras 13.1 and 13.2 of the subject reply, the contents thereof are denied and the contents of foregoing para 10 of this rejoinder are repeated & reiterated.

24. With reference to paras 13.3 and 13.4 of the subject reply, the contents thereof are denied and the contents of foregoing para 11 of this rejoinder are repeated & reiterated.

25. With reference to para 14 of the subject reply, the contents thereof are repetitive and therefore summarily denied. The Appellant submit that merely because there is a term in the GCZMA Approval permitting site-inspection, it does not mean that such inspections have to be carried-out in the absence of interested parties or otherwise without following proper procedure in terms of law.

26. It is a wholly misconceived submission that the necessity of serving notice of site-inspection arises only when the site to be inspected is an abandoned site, which is locked or inaccessible. It is not understood on what basis the aforesaid submission has been made in the subject reply. It is submitted that site-inspection is not an empty-formality since it could adversely affect the precious civil & proprietary rights of the parties (*such as in the present case*).



Rejoinder 5

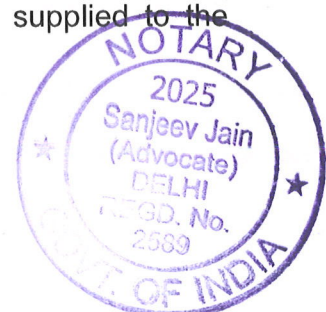
27. Thus, issuance of notice of site-inspection was an essential feature of natural justice and fair procedure, which the Respondent No.1 failed to comply-with in the present case. The contention raised in the subject reply that this Hon'ble Tribunal should reverse the burden of proof upon the Appellant, is totally preposterous and misconceived as the Appellant cannot be expected to prove the negative of a fact, which has never occurred.

28. With reference to paras 15 and 16 of the subject reply, the contents thereof are repetitive and therefore summarily denied.

29. With reference to para 17 of the subject reply, the contents thereof are denied. The use of concrete in the walkway/pathway is denied.

30. With reference to para 18 of the subject reply, the contents thereof are apparently incomplete. As such, the Appellant is unable to adequately understand the contentions raised therein and/or appropriately deal-with the same. The Appellant seeks liberty from this Hon'ble Tribunal to file a further response to the missing contents of the para 18 and the missing paras 19 to 21 of the subject reply. In any event of the matter, whatever contents of the para 18 are existing in the copy of the reply supplied to the Appellant, are denied.

Rajendra h



31. The Appellant has already stated that the Consent to Operate dated 09/02/2024 granted by the Goa State Pollution Control Board, for the Appellant's temporary cottages and restaurant, mandates installation of the Sewage Treatment Plant.

32. With reference to para 22 of the subject reply, the contents thereof do not warrant any specific comments.

33. With reference to para 23 of the subject reply, the contents thereof are denied. The so-called prayers sought by the Respondent in the present appeal are non-maintainable as it is an elementary principle of law that a respondent in an appeal cannot claim any substantive reliefs in his favour. For that purpose, the respondent has to file an independent legal proceeding. Without prejudice and in the alternative, the Appellant submits that the present appeal has been filed on very limited grounds and as the GCZMA vide its impugned order dated 17/01/2024 read-with 29/01/2024 has not imposed any environmental compensation upon the Appellant, there is no occasion for imposition of such costs/compensation by this Hon'ble Tribunal in the present appellate proceedings.

34. In view of the foregoing facts, it is respectfully submitted that the prayers sought by the Appellant in the present appeal be granted

Rajinder



VERIFICATION

I, Rajendra Kumar Kamra, major of age, Indian National, son of Leela Krishan Kumar, residing at House No. 76, 3rd floor, Pocket No. 27, Sector 24, North West Delhi – 110085, the Appellant above-named, do hereby solemnly affirm and state that the contents of paras 1, 5, 6(p), 8 to 12, 14, 17(p), 19, 20, 21(p), 22 to 25 and 28 to 32 are true to my own knowledge and the contents of the remaining paras 2 to 4, 6(p), 7, 13, 15, 16, 17(p), 18, 21(p), 26, 27, 33 and 34 thereof, are based on legal submissions, which I believe to be true and correct.

Solemnly affirmed at 24 MAR 2025 on this 24 day of March, 2025.



Rajendra K
DEPONENT



ATTESTED
[Signature]
Notary Public Delhi

24 MAR 2025