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**BEFORE THE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE AT PUNE.**

Appeal No. 35/2022

Francis @ Francisco Rodrigues ...Appellant

Versus

GCZMA & Ors. ...Respondents

AFFIDAVIT IN REJOINDER OF APPELLANT

I, Francis @ Francisco Rodrigues, major of age, Indian National, son of Antonio Lourenco Rodrigues, married, fisherman, residing at House No. 3/86D, Tivai Vaddo, Calangute, Bardez, Goa - 403516, the Appellant above-named, do hereby say on oath and solemn affirmation as under:

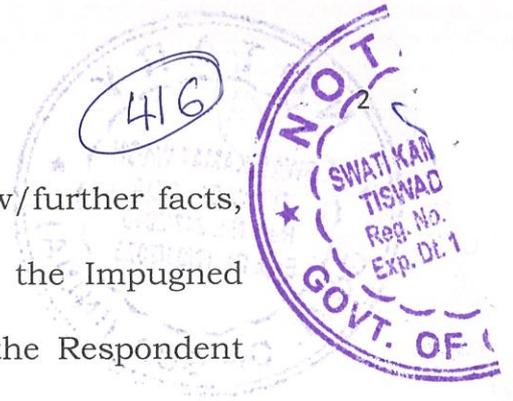
1. I say that I have read & perused the copies of the Affidavit-in-Reply dated 15/10/2022 filed by the Respondent No. 3 and the Affidavit-in-Reply dated 28/11/2022 filed by the Respondent No. 1 (hereinafter referred to as the 'said replies'). I am filing this composite rejoinder, dealing with the said replies, only

to the extent they purport to raise new/further facts, not covered-by the trial pleadings or the Impugned Order dated 25/07/2022 passed by the Respondent No.1.

2. In the circumstances aforesaid, I am not dealing-with the said replies in a para-wise manner. As such, any contention or averment made in the said replies, if not specifically dealt-with and/or denied by me herein, may not be deemed to have been admitted.

RESPONSE TO THE REPLY OF RESPONDENT NO. 3
DATED 15/10/2022.

3. With reference to para 1 thereof, it is denied that the suit house belonging to me, is a completely new construction or that the documents produced by me do not show existing structure prior to February 1991, as alleged or at all.
4. With reference to para 2 thereof, it is denied that I have constructed the suit house in rank illegality or that the suit house is a ground plus one floor structure, as alleged or at all. I maintain that the suit house is only a ground floor residential structure. I deny that I was the Sarpanch of the Calangute Panchayat during the





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last term from 2017-2022. I say that I was the Sarpanch of the Panchayat only for a term of one year during the afore-referred period. Further although it is true that I am a member of the Panchayat for the current term 2022-2027; Respondent No. 4 (who is the co-complainant along-with the Respondent No. 3) is also a member of the said Panchayat for the current term and moreover, the Sarpanch of the Panchayat. I deny having violated any law being a local representative, as alleged.

5. With reference to paras 3 and 4, the contents thereof are denied.

6. With reference to para 5 to 10, I say that the contents thereof, is a repetition of the contents of the Rejoinder dated 24/09/2022 filed by the said Respondent before the GCZMA (*Exhibit E Colly; Pg. 133 of the Appeal Paper-book*). The contents of the said Rejoinder have been dealt-with by me in the Sur-Rejoinder dated 12/05/2022 filed before the GCZMA (*Exhibit G Colly; Pg. 191 of the Appeal Paper-book*). In the circumstances, I am not dealing-with the contents of the paras under reference once again, in order to avoid repetition and my response contained in the afore-referred Sur-

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Rejoinder may be treated as being reproduced verbatim, in response to the contents of the paras under reference.

7. With reference to paras 11 to 44, I say that the contents of the same are mere denials of the case set-out by me in the appeal and therefore the contents thereof are summarily denied. The case set-out in the appeal is repeated and reiterated to that extent.

RESPONSE TO THE REPLY OF RESPONDENT NO. 1
DATED 28/11/2022.

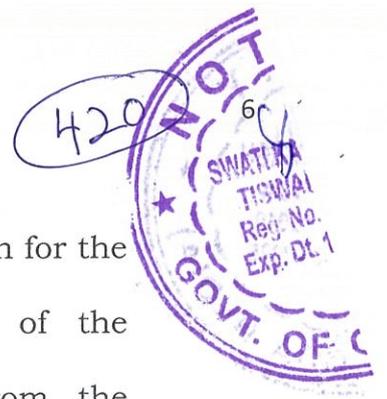
8. With reference to the issuance of the Site Inspection Notice bearing Ref. No. GCZMA/H.C.M/W.P.No.64/2020 dated 03/02/2020 by the Respondent No. 1, intimating the parties about holding of the proposed site inspection of the suit plot on 10/02/2020, I say that I along-with my family pre-planned a visit to Kochi-Kerala from 09/02/2020 to 19/02/2020, to attend wedding of the close family relative. As such, upon receipt of the aforesaid Notice, I had visited the Office of the Respondent No. 1 and orally informed the officials to postpone the inspection on or after 20/02/2020.



9. However, although, I was informed that the inspection would be differed and held upon my return, the officials of the Respondent No. 1 in fact conducted two site-inspections of the suit house, in quick succession i.e. on 10/02/2020 and 17/02/2020, both in my absence and with undue haste.

10. With reference to para 7 of the reply, although reference is made in the said para to the holding of site inspection of the suit plot on 10/02/2020, the facts relating to holding of the second site inspection of the suit plot on 17/02/2020 have been totally omitted in the entire reply. Further, the observations and recommendations stated in para 7 of the reply are not observations noticed during the site inspection of 10/02/2020 (as alleged) but in fact are observations noticed during the site inspection of 17/02/2020.

11. With reference to para 8 of the reply, I say and submit that the clubbing/tagging of the subsequent complaint dated 08/02/2021 filed by the Respondent No. 4, to the Show Cause Notice dated 19/03/2020 (*instituted based on the Complaint dated 27/12/2019 filed by the Respondent No.3*), was an exercise totally impermissible in law and in violation of natural justice.



12. I say and submit that the correct course of action for the Respondent No. 1 to adopt, upon receipt of the subsequent complaint dated 08/02/2021 from the Respondent No. 4, was to modify the Show Cause Notice dated 19/03/2020 to that extent or to issue a fresh Show Cause Notice, putting the Appellant to notice, about the exact alleged objections of the Respondent No. 1, based on the subsequent complaint of the Respondent No. 4.

13. In the absence of the aforesaid, the Show Cause Notice dated 19/03/2020 was rendered defective and beyond the scope of the complaint, in terms of which, it was issued.

14. With reference to paras 14 and 15 of the reply, I say that the Sale Deed dated 10/11/1999 pertained to another plot admeasuring 900 square meters and not the suit plot admeasuring 438 square meters. As such, there was no question of the Sale Deed dated 10/11/1999 making a reference to the suit house.

15. As far as the Sale Deed dated 20/11/2019 is concerned, I have explained the circumstances in which the same was executed only in the year 2019 (*although physical*



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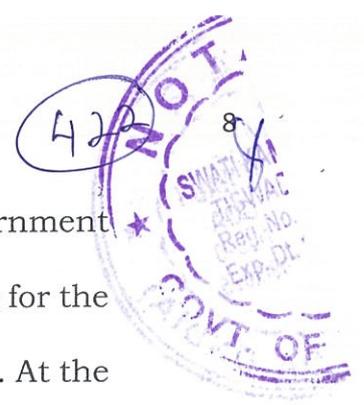
possession of the suit plot was handed-over by the original owners to the Appellant's family in the 1970's) and also why suit house may not have been specifically described in the Schedule to the Sale Deed dated 20/11/2019, although shown in the Plan annexed thereto. The related averments have been made in paras 17, 18, 19, 20 and 73(z) to 73(cc) of the appeal. The said contentions are hereby repeated and reiterated.

16. With reference to para 17 of the said reply, I say and submit that the hearing held before the GCZMA on 24/09/2020 was only a preliminary hearing where the issues were only partly addressed. At the time of the said Meeting, even the Rejoinder/Sur-Rejoinder of the parties were not on record. Further certain material documents such as the Survey Plan annexed to the Site Inspection Report dated 22/02/2020 was also not supplied to the Appellant by then. It is because the matter was inconclusive during the said hearing that the same was adjourned for '*further deliberations*' on subsequent date/s.

17. With reference to para 18 of the said reply, it is denied that any arguments on behalf of the Appellant were heard by the GCZMA during the 303rd Meeting held on

12/05/2022. During the said hearing, an adjournment was requested on behalf of the Advocate appearing for the Appellant, which was turned-down by the GCZMA. At the said meeting, submissions advanced solely by the Advocate for the Complainants were heard and the matter was closed for orders without affording fair opportunity of being heard to the Appellant. All these facts were recorded in the Letter dated 13/05/2022 addressed by the Appellant to the GCZMA. It is therefore factually incorrect to say that *'the Authority heard the parties and posted the matter for order'*.

18. With reference to paras 19 and 20 of the reply, I deny that the same are legally tenable grounds for ordering the impugned demolition.
19. With reference to para 21(d) of the reply, I specifically deny that the Advocate for the Appellant was heard at length on 17/09/2020, 24/09/2020, 24/02/2022, 03/03/2022 or 12/05/2022, as alleged or at all. As far as the GCZMA Meetings held on 17/09/2020 and 24/09/2020 are concerned, I reiterate that they were only preliminary hearings where the issues were only partly addressed. At the time of the said hearing, even the Rejoinder/Sur-Rejoinder of the parties were not on

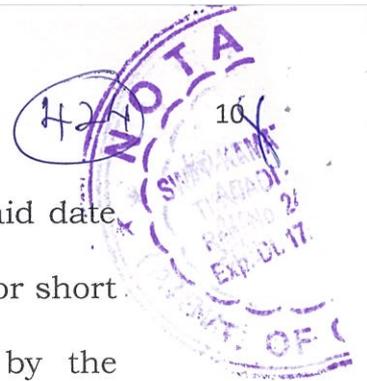




record. Further certain material documents such as the Survey Plan annexed to the Site Inspection Report dated 22/02/2020 was also not supplied to the Appellant by then. It is because the matter was inconclusive during the said hearing that the same was adjourned for '*further deliberations*' on subsequent date/s.

20. Without prejudice to the foregoing submission, I submit that it is well settled law that no matter can be decided on the basis of written or oral arguments advanced almost two years prior to the ultimate passing of the order. As such, purported submissions heard by the GCZMA during the Meetings held on 17/09/2020 and 24/02/2020 cannot be taken into account, while deciding the question whether fair and adequate opportunity of hearing was given to the Appellant, prior to passing of the impugned order, ultimately on 25/07/2022.

21. As far as the GCZMA Meetings held on 24/02/2022 and 03/03/2022 are concerned, the record itself would indicate that the hearings were *simplicitor* adjourned on one or the other procedural ground and no effective arguments were heard by the GCZMA on those dates. As far as the GCZMA Meeting held on 12/05/2020 is concerned, I have already stated that no arguments on



behalf of the Appellant were advanced on the said date, due to absence of the Advocate and the request for short adjournment was unreasonably turned-down by the GCZMA.

22. With reference to paras 21(e) to (i) of the said Reply, the contents thereof are denied. I say and submit that Respondent No. 1 has avoided answering/explaining certain vital inconsistencies between the Mamlatdar's Report and the 1st and 2nd site inspections conducted by the members of the GCZMA. It is the case of the Appellant that these inconsistencies make it apparent that the concerned authorities have inspected some other structure altogether, situated in property bearing Sy. No.158/2 and not the suit plot/suit house belonging to the Appellant. However, from the reading of the contents of the paras under reference, it is clear that the Respondent No. 1 wishes to place reliance on both – the Mamlatdar's Report as well as the site inspection reports prepared by its own members; the contents of which are mutually destructive.

23. With reference to paras 21(l) and (n) of the said reply, it is emphatically denied that the Extract of the Gatbook produced on record does not record the existence of the suit house, or that the suit structure is existing at a



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different position from that shown in the Gatbook, as alleged. In fact, both the submissions made by the Respondent No. 1 are contrary to each other. I however maintain that the suit house is very much depicted in the Gatbook at the same location where it is actually existing and these facts can be ascertained even by appointment of a Court Commissioner or directing a re-inspection by the Government Field Surveyors, under directions of this Hon'ble Tribunal.

24. With reference to para 21(q) of the said reply, I respectfully submit that reliance on the judgment of the Hon'ble Supreme Court in the case of **Anil Hoble v. Kashinath Jairam Shetye**, reported in 2016 (10) SCC 701, is misplaced because in that matter, the plan annexed to the sale deed indicated existence of a smaller structure compared to what was noticed as on the date of the impugned proceedings.

25. In the present case, the structure shown in the plan appended to the Sale Deed is of same size as presently existing; only the structure has not been referred-to in the Schedule-II to the Sale Deed.

SWORN BEFORE ME

26. In view of the foregoing facts and circumstances, it is respectfully submitted that the present appeal be allowed

STATE OF GOA (INDIA)
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and the matter be remanded to the GCZMA for fresh consideration, including conducting of fresh site inspection of the suit plot/suit house, in accordance with law.

27. I say that the contents of the foregoing paras 1 to 9, 14, 15, 16(part), 17, 19, 21 to 23, 25 and 26 of the present Rejoinder are based on my own knowledge and the contents of the remaining paras 10 to 13, 16(part), 18, 20 and 24 thereof, are based on legal submissions, which I believe to be true and correct.

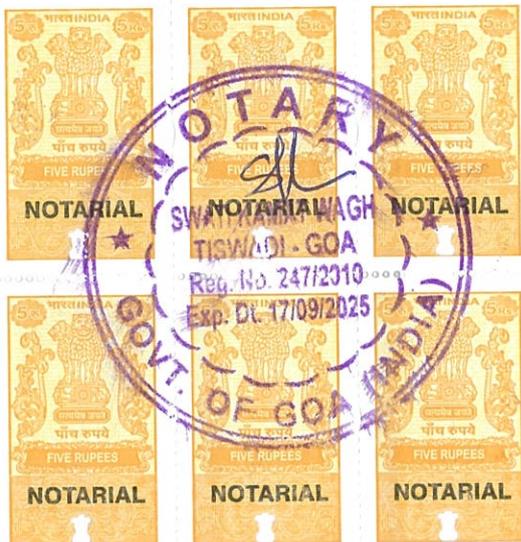
Solemnly affirmed at Panaji, Goa, on this 23rd day of January 2023. F.R

Francisco Rodrigues
DEPONENT

Identified by me:

Pankaj Poni Vernekar
Pankaj Poni Vernekar
(Adv. for Appellant)

I hereby attest the signature /L.H.T.I. of Shri /Smt. / Miss. Francisco Rodrigues, resident of House No. 3/86 D, Jivai Vaddo, Calongute, Bunder Goa, who has been identified before me by.....
.....who is personally known to me registered under No. 3258
Date: 23/01/2023



SWORN BEFORE ME
Swati Kamat Wagh
SMT. SWATI KAMAT WAGH
NOTARY FOR TISWADI TALUKA
STATE OF GOA (INDIA)