

BEFORE THE NATIONAL GREEN TRIBUNAL,

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WESTERN ZONE BENCH, PUNE.

Appeal No. 48 of 2022.



BETWEEN:

The Colva Civic and Consumer Forum

..... APPELLANT

V/S

Goa Coastal Zone Management Authority

and ORS.RESPONDENTS

AFFIDAVIT IN REJOINDER ON BEHALF OF THE
APPELLANT TO THE REPLIES FILED BY THE
RESPONDENT NOS. 1, 4, 9 AND 11.

1. I, Mrs. Judith A.B. Almeida, aged 67 years, daughter of late Mr. Joseph Henry Baptista, resident of H.No. 257/1, Bagdem, 3rd ward, Colva, Salcete – Goa 403 708, the Secretary of the appellant herein, do hereby state on oath and solemnly affirm as under:

2. I say that I am filing this Affidavit in Rejoinder to deal with the averments made by the Respondent Nos. 1, 4, 9 and 11 in their affidavits in reply.

3. I say that I have read and understood the contents of the affidavits in reply of Respondent No. 1, 4, 9 and 11 and deny whatever is said in their affidavit in reply which are not in consonance with the facts pleaded in our appeal and nothing not specifically dealt with or denied herein may be construed as deemed to have been admitted by me.

4. I say that the Respondent no. 1 is not aware of the fact that although the Appellant had filed an Intervener application in the proceedings before it, it was the Respondent No. 1 who directed the Appellant to file a fresh complaint which was accordingly filed on 27.10.2020 and thereafter the Respondent No 1 issued a Notice of Personal Hearing to this Appellant as a Complainant who joined the proceedings. The 237th meeting on page 100 in the order dated 19.09.2022 refers to this Appellant as a Complainant. It is therefore surprising that the Resp. Nos 9 and 11 in their Affidavits have questioned the locus standi of this Appellant. Annexed is a copy of the complaint dt 27.10.2020 as Annexure A.

5. I say if the document dt 08.09.1965 (Repair certificate) relied upon by the respondents is accepted then the survey plan prepared by the DSLR in the year 1972 Copy as Annexure B should have shown the existence of the structure in survey no 12/6 & 12/7 of village Sernabatim. This fact has been once again ignored and overlooked by the Resp. No. 1.

6. I say that the private Engineer's (Mr. Nilesh Laad) report which has been prepared at the instance of Respondent No 9



has not referred to the documents (Panchayat certificates) dated 08.09.1965 & 01.10.1985 which the Resp. nos 9 & 11 have been harping on throughout and which the Respondent No. 1 has relied on to pass the impugned order. These documents are not evidence of proof of existence of the structures prior to 19/2/1991 as the documents are not accompanied by previous authorized plans. The Engineer preferred to rely on the document of matrix no. 421 which is a revenue document for collection of revenue towards fruit bearing trees and has nothing to do with structures. Hence the matrix is not a document of proof of existence of any structures. Apart from that the matrix document in respect of property under matrix no.421 refers only to a plot of land, there is no reference to any structure existing on the said land as is misrepresented in the report of Shri Laad.

7. I further say that the DSLR survey plan of the year 1972 does not reflect any existing structure in survey no. 12/6 and 12/7 of village Sernabatim, which ought to have been the case if the said structure claimed by the respondents existed prior to the year 1965.

8. I say that the said structure is shown for the first time in the CRZ survey map of the DSLR prepared in the year 2006 as a new building in survey nos 12/6 and 12/7 in the map it is shown as " Sundance". In the DSLR CRZ map of the year 2022 is it shown as an extended structure with a new construction done in the NDZ , the 2022 plan is on record along with the



appeal at Exhibit D colly at page 51. The 2006 survey plan is *an* annexed herewith as Annexure C

9. I say that the respondents have not proved the legality of these structures with any permission from the statutory authorities. The structure is within 200 meters of the HTL (around 50 meters away from the HTL) in the No Development Zone of CRZ III of Sernabatim village, Salcete Taluka.

10. I say that with respect to the Closure Report filed by the Police in crime no. 57/1999, the same states that the signature of the former Sarpanch of the Village Panchayat of Colva, who allegedly signed the certificate dated 1/10/1985 was not established to be his, however the investigation came to a standstill as the identity of the person who signed the said document could not be established.

11. I say that the letters dated 30/10/2007 and 26/11/20027 of Maria Filomena Furtado (respondent no.8) and Joao Inacio Furtado clearly proves that the said structure was a temporary structure (store room) and there is no permission for the same. These letters are on record at Exhibit E colly to the appeal at pages 52 and 53.

12. I say that the Resp No 9 is making frivolous statements in the reply without showing a single government document that indicates that the structure existed prior to 19 February 1991, infact the orders issued by the Resp. No 1 dt 31.12.2008 makes it amply clear that the Respondent No. 1 is colluding with the Resp. No. 9 & 11 who are the children and siblings of



Resp. No 8 and 10 respectively who have suffered the demolitions order dt 31.12.2008. They had not produced a single document from the Competent Government Authority to show that the structure is authorized.

13. I say that it is pertinent to refer to the submissions made at para 12, Page 270 of the reply Resp. No 4, wherein they have referred to Anticipatory Bail application Nos 225/2009 and 226/2009 filed by the respondents 9 and 10 before the Sessions Court, South Goa at Margao, in the applications they have stated that in compliance with the directions of Respondent No. 1 they were effecting the demolition orders of the illegal structures in property surveyed under no 12/6 & 12/7 of village Sernabatim (anexures at page nos 304 to 317) It is clear that the Resp. no.1 Authority has either not done due diligence when referring to the documents produced before them or they have intentionally colluded with Resp. No. 9 & 11.

14. I submit that the report of Eng Neelesh Laad dated 2/4/2013 the report is prepared by a private engineer at the request of Respondent nos 9 & 11 and is bound to favour the respondents nos 9 & 11. The Resp. no 1 is a responsible Authority mandated by the MOEF & CC to act as a regulator of the CRZ areas under the Environment Protection Act 1986 and its subsequent Notifications which make it imperative that the structures in the CRZ area are authorized and regulated.

15. In any case the structures in 12/6 & 12/7 in the NDZ of



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CRZ III are not seen in the survey plan of 1972 which was promulgated in the year 1974, but are seen as new structures in the mapping of the year 2006 which was conducted by the DSLR under directions of the Hon'ble High Court of Bombay at Goa in SMWP 02/2006 and later are seen to be largely extended in the mapping undertaken in the months of January-February 2022 are per directions in PIL 10/2022 filed by this Appellant.

16. I say that with reference to para 1 of the reply of Respondent No 9 it is self explained that he himself is not a party to the original complaint and is pointing fingers at the Appellant. The Resp. No 9 has in fact moved an application dt 26.10.2020 before the respondent no.1 that he be permitted to participate in the proceeding in relation to properties in sy.nos 12/6 & 12/7 in village of Sernabatim and requested to issue notices to the interested parties and the names and addresses are given below, however it is important to note that he has made the said application in his own name and he sought impleadment of Respondent Nos 5,6,7,8,10 & 11 and another named Ms Linda Furtado (mother of Resp nos 5, 6 & &7). The Resp. No 9 has signed the letter in his name without obtaining the authorization from them or supporting documentary evidence of any of their names being reflected in government documents.

17. I say that it is surprising that on the very same day ie



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26.10.2020 the letter of the Respondent no 9 was inwards, the Member Secretary of Resp. No. 1 hurriedly on the same day issued notices to all the Respondents on plain paper (at page no 18 of the reply of the Resp no 9) and not on the letter head and it also does not bear the stamp of the Resp no. 1 which shows that this letter may not have been issued from the GCZMA office. It is even more surprising—as how could the notices have been issued and served to the Resp nos 5 -8 and 10-11-without proper addresses.

18. I further submit that it is observed from the Notice dt 26.10.2020 that the Resp. No 1 stated that “ whereas the Authority had taken up the matter pertaining to illegal construction carried out in the property bearing no 12/7 of village Sernabatim in Salcete Taluka based on the remand order passed by the Hon’ble High Court passed in WP no 145/2009 And whereas during the course of 232nd hearing held on 22/10/2020 the Respondent was represented through his son Nixon Furtado who brought to the notice of the Authority that the Show Cause Notice was in respect of the property bearing sy.no. 12/7 and not in respect of property bearing sy.no. 12/6 of village Sernabatim in Salcete Taluka, although the said structure is located in both the properties. And whereas, the Authority in the meeting held on 22/10/2020 decided that the said show cause notice and order of demolition was limited to the property bearing s.no. 12/7 of village Sernabatim and hence it decided that the same would stand to get corrected so as to



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include both the survey numbers i.e. 12/6 & 12/7 of Village Sernabatim in Salcete Taluka. And whereas the Authority also decided to issue notices to all the interested parties whose names are recorded in the property bearing survey nos. 12/6 and 12/7 of village Sernabatim in Salcete Taluka” . this clearly proves that despite the Form I & XIV of survey nos 12/6 and 12/7 not having the names recorded of the Respondent Nos 5 to 11, the then Member Secretary of the GCZMA Mr. Johnson Bedy Fernandes connived in aiding the Respondents 5,6 , 7, 8 10 and 11 to be joined as parties to the ongoing proceedings.

19. I further state that it must be seen that in the hurry to issue the notice dt 26.10.2020 the Member Secretary of Resp. No 1 failed to include the name of the original Complainant to whom the notice should have also been served.

20. I say that The Respondent no 9 in para 5 has the audacity to paint the Appellant (Colva Civic and Consumer Forum) to be acting in a vindictive manner with ulterior motives by not complaining about other structures that have been demolished and reconstructed when this Resp. no 9 himself is an active member of the village Panchayat of Sernabatim, Vanelim Colva and Gandaulim he is the Ward Panch of the same ward where the illegal structures in 12/6 & 12/7 are being assailed , he is himself a violator and at the same time holds office in the Panchayat.

21. I say that respondent nos. 5 to 11 have not produced a



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single license/approval plan to show that the structures presently existing in the property bearing survey no. 12/6 and 12/7 of village Sernabatim are authorized constructions. They are unable to explain as how such a large permanent structure came to be constructed in these survey nos. where as per the letter sent to the authorities indicates that a small temporary structure is existing in survey no. 12/ 6 of village Senarbatim.

22. I submit that the GCZMA being in possession of all government records has not referred to the Google Images or the DSLR survey maps of the years 1972, 2006, 2022, as also a report of Remote Sensing Instruments Hyderabad which shows that there are no structures existing in the property bearing survey no. 12/6 and 12/7 of village Sernabatim. This report is dt 05.04.2011.

Annexed hereto is the copy of the relevant pages which include the Table and Map in the RSI report for the year 2008 and marked **as Annexure D.**

23. I further place reliance on a judgment of this Hon'ble Tribunal (WZ) in the case of Jovek Cardozo and another VS GCZMA and others in Appeal no. 16/2022(WZ) , relevant paragraphs 16 to 20.

24. I further place concerning the judgment in the matter of Angelo Fernandes Vs GCZMA & Ors in Appeal 16/2022 before the Hon'ble NGT [WZ] Pune and Another Armand Cardozo since deceased through Mr. Jovek Cardozo and Ors



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Vs GCZMA and others passed by the Hon'ble Tribunal (Principal Bench at New Delhi) in Appeal no. 16/2022, relevant paragraphs 9 to 11.

25. Both the aforesaid judgments have been upheld by the Hon'ble Supreme in Appeal, copies of the same are annexed herewith as **Annexure E colly**.

26. I therefore pray that the delay in filing this rejoinder be condoned as this Appellant has been unwell and under treatment for over a month and the same be taken on record.

27. I pray that our Rejoinder be allowed.

I do hereby solemnly affirm that the contents of Paragraphs 1 to 25 of this affidavit in rejoinder are true to my personal knowledge and the contents of Paragraphs 26 and 27 of the affidavit in rejoinder are legal submissions, which I believe to be true.

Solemnly affirmed at Margao, Goa on 5th day of April 2023.

J. Almeida
DEPONENT



Solemnly affirmed before me by
Judith Almeida
Who is identified to me by
EPIC No. KN43050465
to whom I personally know on
this 05 day of April 2023

Reg No. 6202/2023

Savita G. Kurtarker
SAVITA G. KURTARKER
NOTARY
MARGAO-GOA

Annexure 'A'

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COLVA CIVIC AND CONSUMER FORUM

Reg. No. 268/GOA/2009

House No. 257/1, Bagdem, Ward 3, Colva, Salcete - GOA 403 708

Mob. No 9823085206
Tel: 2781193

Ref.: CCCF/GCZMA/14/2020-21

Date: 27/10/2020

To,
The Chairman/Member Secretary,
Goa Coastal Zone Management Authority,
1st Floor, Pandit D.D.U.Bhavan,
Porvorim, Goa

O/o. Member Secretary
Goa Coastal Zone Management Authority
Go. Department of Science, Technology
& Env.
1st Floor, Pandit D.D.U. Bhavan
Pundalk Nagar, Porvorim, Goa - 403 708
27/10/2020

Sub : Complaint against illegal construction in Sy. No 12/6 & 7 against Mr. Lindo Furtado of Sernabatim Village, Salcete,

Sir,

The Colva Civic and Consumer Forum is an intervenor respondent in SMWP 02 of 2006. Several complaints have been filed of violations against the CRZ Notification 1991 & 2011. It has been found during our research that there is an illegal structure in property bearing Sy. No. 12/6 & 7 of Sernabatim village, Salcete. This structure was observed in 45th meeting of the GCZMA to have been ordered to be demolished under Section 5 of the Environment Protection Act 1986. The order has not been taken to its logical end as the structure continues to stand thus violating the EPA Act 1986 causing damage to the environment. Hence this forum requests that the GCZMA take action to immediately order the demolition of the structure and have the land restored to its original state.

Thanking you,
Sincerely,

Judith Almeida



True copy JA



GOVERNMENT OF GOA
 Directorate of Settlement and Land Records
 Office of Inspector of Survey and Land Records
 MARGAO-GOA

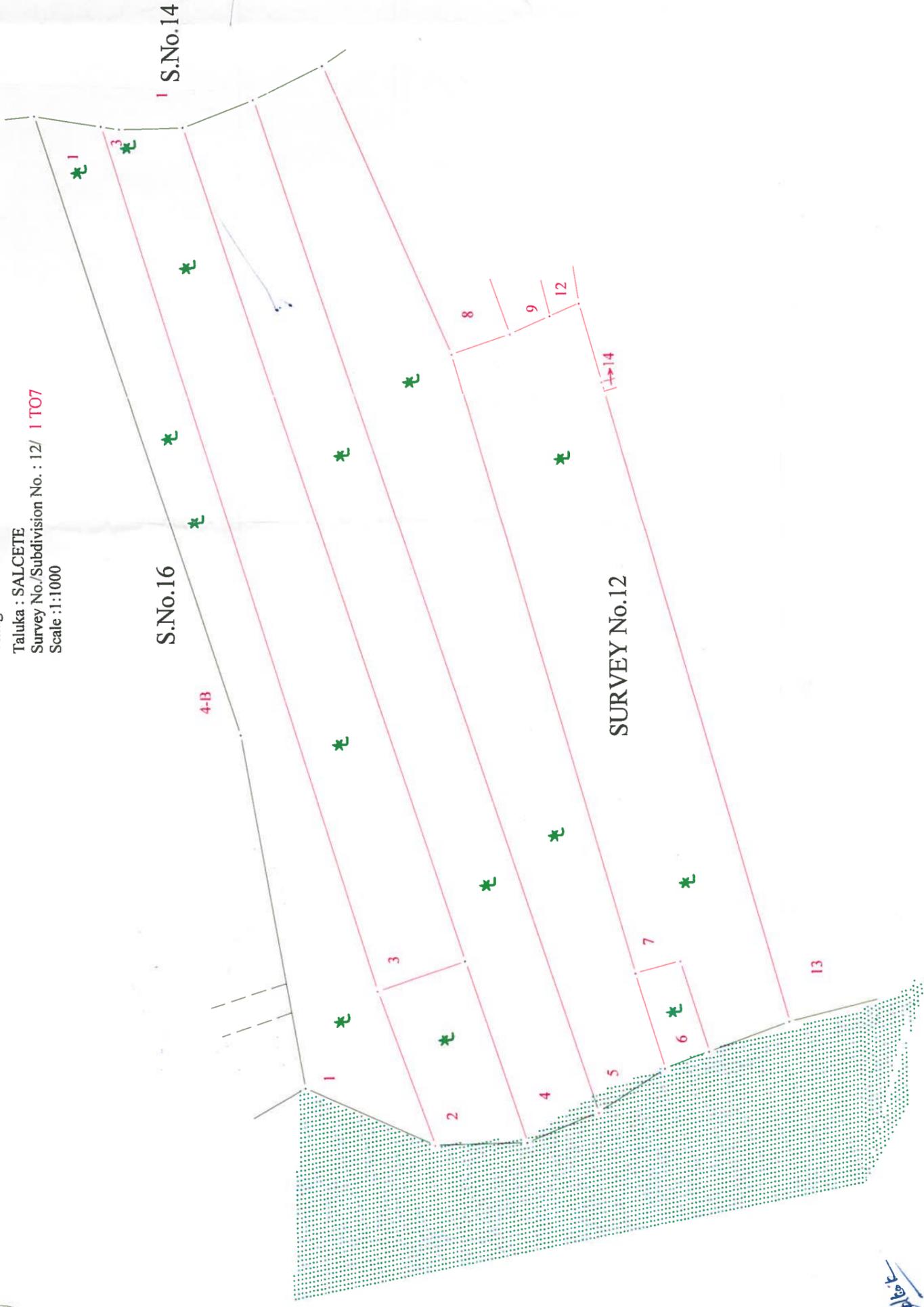
Annexure 'B' 348



Inward No.236

Plan Showing plots situated at
 Village : SERNABATIM
 Taluka : SALCETE
 Survey No./Subdivision No. : 12/ 1 T07
 Scale : 1:1000

[Signature]
 I.S.&L.R.



[Signature]
 Compared By:

[Signature]
 Generated By : RUCHITA MADKAIKAR
 On : 14-01-2015

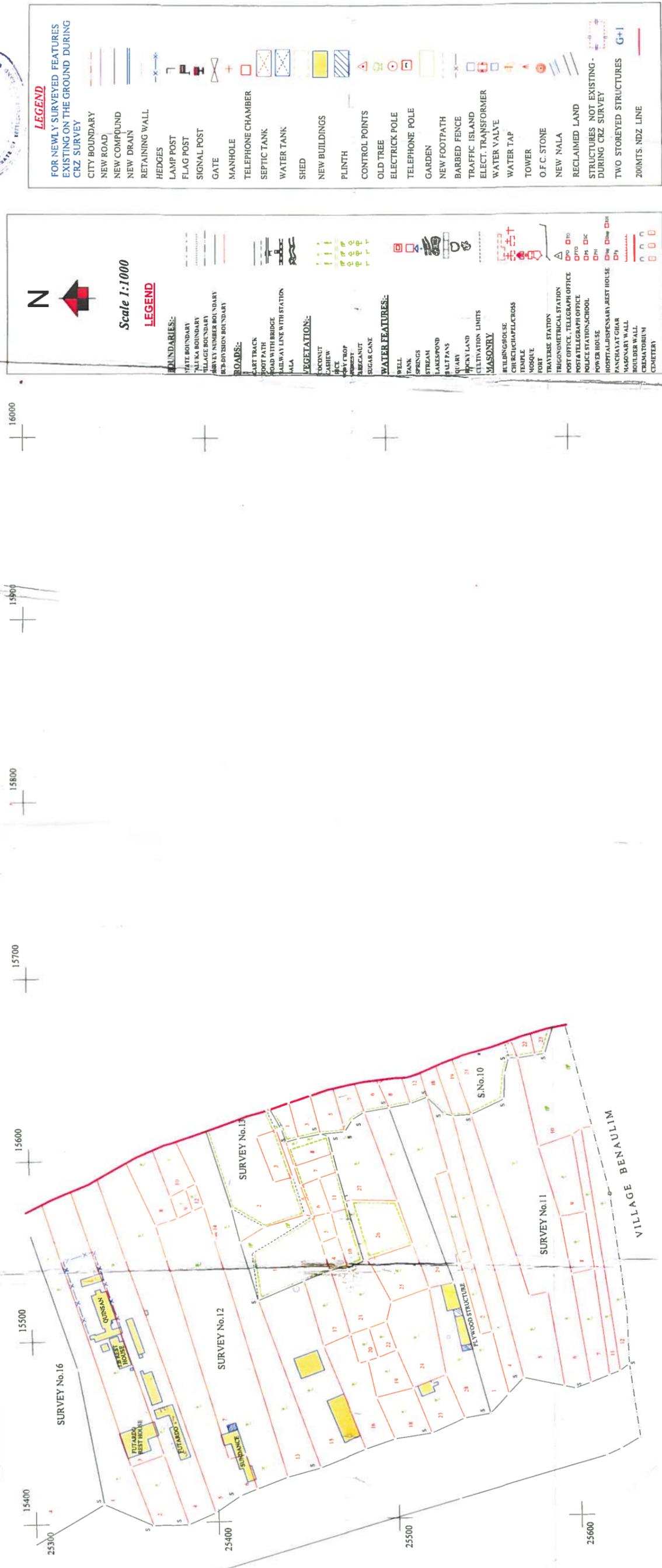
Annexure 'C' 349

GOVERNMENT OF GOA
DIRECTORATE OF SETTLEMENT & LAND RECORDS
PANAJI - GOA

UPDATED P.T. SHEET No. 11 AFTER CRZ AREA SURVEY

6	7	8
-	11	10
-	-	-

DISTRICT : SOUTH GOA
 TALUKA : SALCETE
 VILLAGE : SERNABATIM



LEGEND

FOR NEWLY SURVEYED FEATURES EXISTING ON THE GROUND DURING CRZ SURVEY

- CITY BOUNDARY
- NEW ROAD
- NEW COMPOUND
- NEW DRAIN
- RETAINING WALL
- HEDGES
- LAMP POST
- FLAG POST
- SIGNAL POST
- GATE
- MANHOLE
- TELEPHONE CHAMBER
- SEPTIC TANK
- WATER TANK
- SHED
- NEW BUILDINGS
- PLINTH
- CONTROL POINTS
- OLD TREE
- ELECTRICK POLE
- TELEPHONE POLE
- GARDEN
- NEW FOOTPATH
- BARBED FENCE
- TRAFFIC ISLAND
- ELECT. TRANSFORMER
- WATER VALVE
- WATER TAP
- TOWER
- O.F.C. STONE
- NEW NALA
- RECLAIMED LAND
- STRUCTURES NOT EXISTING DURING CRZ SURVEY
- TWO STOREYED STRUCTURES
- 200MTRS. NDZ LINE

LEGEND

BOUNDARIES:

- STATE BOUNDARY
- TALUKA BOUNDARY
- VILLAGE BOUNDARY
- SURVEY NUMBER BOUNDARY
- RE-DIVISION BOUNDARY

ROADS:

- CART TRACK
- FOOT PATH
- ROAD WITH BRIDGE
- RAILWAY LINE WITH STATION
- ALA

VEGETATION:

- COCONUT
- LARREW
- PIECE
- POSTY CROPP
- ALBERCAJUT
- SUGAR CANE

WATER FEATURES:

- WELL
- TANK
- SPRINGS
- STREAM
- LAKESPOND
- BULTANS
- QUARY
- ROCKY LAND
- CULTIVATION LIMITS

MASONRY

- BUILDINGHOUSE
- CHURCH/APPLACROSS
- TEMPLE
- MOSQUE
- PORT
- TRAVELER STATION
- TRIGONOMETRICAL STATION
- POST OFFICE, TELEGRAPH OFFICE
- POST TELEGRAPH OFFICE
- POLICE STATION/SCHOOL
- POPER HOUSE
- HOSPITAL/DISPENSARY/REST HOUSE
- PANCHAYAT GHAR
- MASONRY WALL
- BOULDER WALL
- CREMATORIUM
- CEMETERY

6	7	8
-	11	10
-	-	-

STRUCTURES EXISTING BETWEEN HIGH TIDE LINE (HTL) AND 200MTRS. LINE HAS BEEN SURVEYED BY :-
 1) SUDESH DESAI F.S.
 2) RAJESH BHOMKAR F.S.
 3) MOHAN K. GAONKAR F.S.

DURATION OF SURVEY - 13-10-2006

Annexure 'D'

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RSI is a long standing player in the field of Geomatics and provide total solutions which include precise hardware, software and technology for the Remote Sensing and GIS users of India.

Open Plot Identification on CRZ-III Area of GOA



*GeoSpatial
Solutions
Group*

05 April, 2011

Issued to: **Member Secretary, GCZMA,
Goa, India.**

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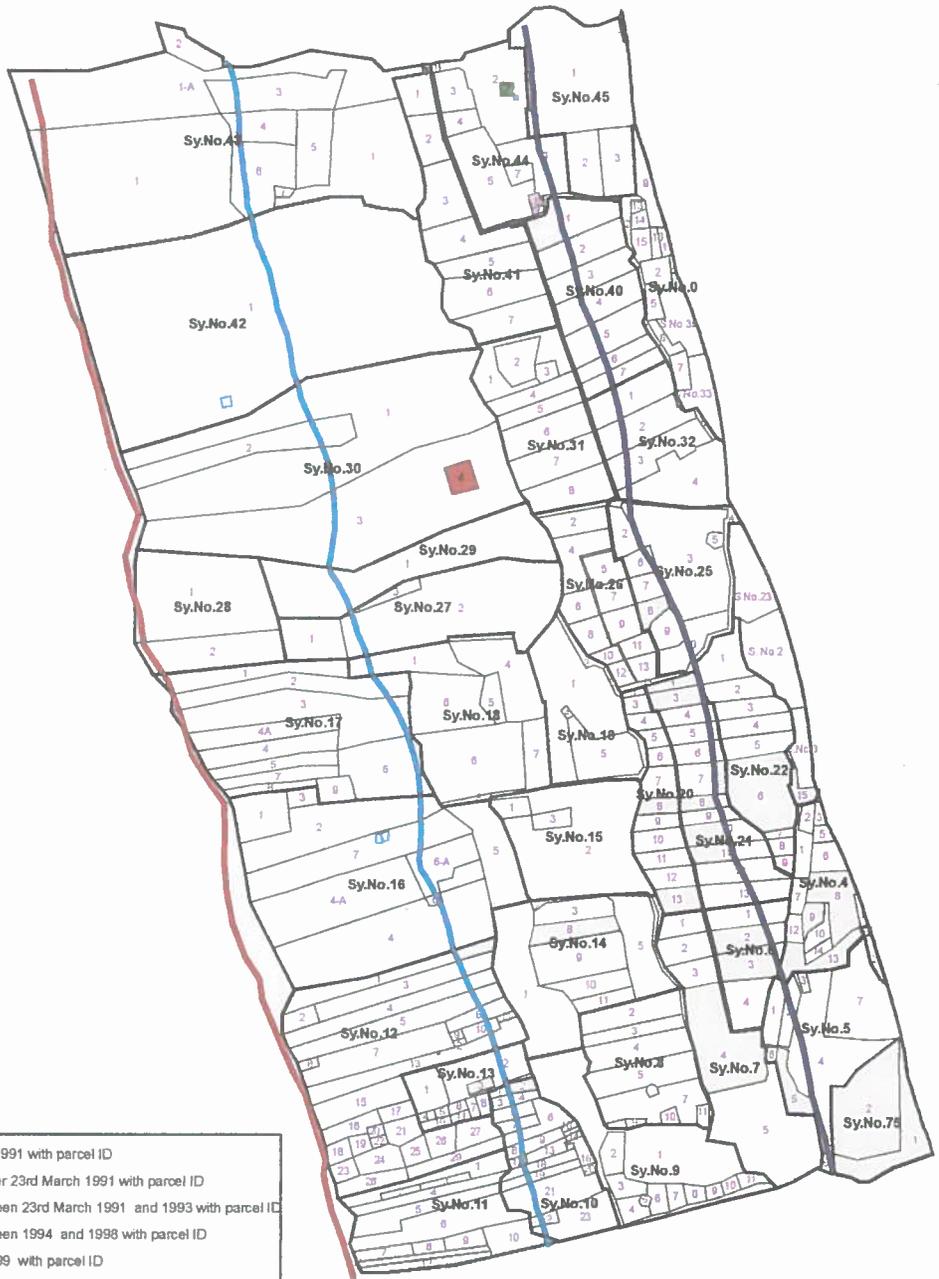
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Taluka	Village Name	Survey No	Sub-division No	1991	1993	1998	1999	2002	2003	2005	2006
SALCETE	Colva	37	2	0	1	0	0	0	0	1	0
SALCETE	Colva	77	7	0	0	1	0	0	0	0	0
SALCETE	Colva	30	4	1	0	0	0	0	0	0	0
SALCETE	Colva	77	3	1	0	1	0	0	0	1	0
SALCETE	Colva	34	3	1	1	0	0	0	0	0	1
SALCETE	Colva	34	1	2	0	1	0	0	0	0	0
SALCETE	Colva	35	10	0	0	0	0	0	0	0	1
SALCETE	Colva	24	8	0	1	0	0	0	1	0	0
SALCETE	Colva	35	19	0	0	1	0	0	0	0	0
SALCETE	Colva	31	1	0	0	1	0	0	0	0	0
SALCETE	Colva	40	2	0	1	0	0	0	0	0	0
SALCETE	Colva	57	1	0	0	0	0	0	6	4	0
SALCETE	Colva	55	3	0	0	6	0	0	0	0	0
SALCETE	Colva	29	7	0	0	18	0	0	0	0	0
SALCETE	Colva	76	1	1	0	0	0	0	0	0	0
SALCETE	Gonsua	9	2	0	0	0	0	0	0	3	2
SALCETE	Gonsua	9	7	1	0	0	0	0	3	1	0
SALCETE	Majorda	71	5	1	0	0	0	0	0	0	0
SALCETE	Majorda	62	2	4	0	0	0	0	5	0	1
SALCETE	Majorda	67	5	0	0	0	0	0	0	0	1
SALCETE	Majorda	67	4	0	0	0	0	0	0	0	3
SALCETE	Majorda	67	2	0	0	0	0	0	0	0	1
SALCETE	Majorda	74	4	1	0	0	0	0	0	0	0
SALCETE	SemaBatim	30	3	0	0	0	0	0	0	0	1
SALCETE	SemaBatim	44	8	0	0	0	0	0	1	0	0
SALCETE	SemaBatim	44	2	1	0	0	0	0	0	0	0
SALCETE	SemaBatim	41	1	0	1	0	0	0	0	0	0
SALCETE	Utorda	45	3	0	0	0	0	0	1	0	0
SALCETE	Utorda	37	1	0	0	0	0	0	1	0	0
SALCETE	Utorda	33	8	0	0	0	0	0	1	0	0
SALCETE	Utorda	51	7	0	0	0	0	0	1	0	0
SALCETE	Utorda	51	8	0	0	0	0	0	1	0	0
SALCETE	Utorda	34	1	0	3	0	0	0	7	0	0
SALCETE	Utorda	33	1	0	0	0	0	0	6	0	0
SALCETE	Utorda	33	2	0	0	0	0	0	2	0	0
SALCETE	Utorda	52	5	2	0	0	0	0	0	1	0
SALCETE	Utorda	82	18	1	0	0	0	0	2	0	0
SALCETE	Utorda	44	2	0	0	0	0	0	1	0	0
SALCETE	Utorda	44	4	1	0	0	0	0	0	0	0
SALCETE	Utorda	77	16	0	0	3	0	0	0	0	0
SALCETE	Utorda	67	5	0	0	0	0	0	0	0	1
SALCETE	Utorda	51	9	0	0	0	0	0	1	0	0
SALCETE	Utorda	76	6	0	0	1	0	0	0	0	0
SALCETE	Utorda	68	10	1	0	0	0	0	0	0	0
SALCETE	Utorda	68	9	0	0	2	0	0	0	1	0
SALCETE	Utorda	68	14	0	0	1	0	0	0	0	0

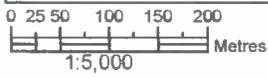
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LEGEND

	Structures as on 23rd March 1991 with parcel ID
	1991 Structures Extended after 23rd March 1991 with parcel ID
	Structures that came up between 23rd March 1991 and 1993 with parcel ID
	Structures that came up between 1994 and 1998 with parcel ID
	Structures that came up in 1999 with parcel ID
	Structures that came up between 1999 and 2002 with parcel ID
	Structures that came up in 2003 with parcel ID
	Structures that came up between 2004 and 2005 with parcel ID
	Structures that came up in 2006 upto Oct with parcel ID
	200 Meters Line from High Tide Line
	500 Meters Line from High Tide Line
	High Tide Line
	Structures as per Cadastral Survey Map
	Sub Division Number With Boundary
	Survey Number With Boundary



True Copy

Annexure 'E Colly'

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Item Nos. 07

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Appeal No. 16/2022
(Earlier Appeal No. 09/2022 (WZ))
(I.A. No.29/2022 (WZ))

Agnelo Fernandes & Anr.

Appellant(s)

Versus

GCZMA & Ors.

Respondent(s)

Date of hearing: 02.09.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Appellant: Mr. Dhruv Mehta, Senior Advocate with Mr. Shankar Swaminathan, Advocate

Respondent(s): Mr. Sangramsingh R. Bhonsle & Ms. Samridhi S. Jain, Advocates for R - 2
Mr. Pankaj Pai Vernekar, Advocate for R - 3

ORDER

1. This appeal has been preferred against order dated 11.02.2022 passed by the GCZMA under Section 5 of the Environment (Protection) Act, 1986 directing demolition of illegal constructions raised by the appellant in violation of the CRZ Notification.

2. The operative part of the order is reproduced below:-

"NOW THEREFORE, the GCZMA in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 (Central Act 29 of 1986) read with sub-rule (3) (a) of Rule 4 of the Environment (Protection) Rules 1986, and read with power vested with the GCZMA vide Order S.O. 3975 (E) dated 31/10/2019 issued by the Ministry of

True Copy M

Environment & Forests, Government of India, hereby directs **M/s Zinho's Beach Resort through Proprietor Mrs Conceicao Fernandes and Mr Agnelo Fernandes; M/s Zinhos (L) Beach Resort through Proprietor Mrs Filomena Fernandes; M/s Zinhos 1 Beach Resort through Proprietor Mrs Conceicao Fernandes**, all resident of House No.7/3, Saunta Vaddo, Calangute, Bardez, Goa; to demolish all the structures herein: i.e. (i) **Illegally constructed three storied (G+2) Guest House used for commercial purpose;** (ii) **Illegally constructed 15 Rooms, named as M/s Zinhos (L) Beach Resort.** (iii) **Illegally constructed 10 Rooms named as M/s Zinhos 1 Beach Resort.** (iv) **Illegally constructed 07 Rooms named as M/s Zinho's Beach Resort.** (v) **Illegally constructed Restaurant, and (vi) Illegally constructed a Swimming Pool of the Respondent**, located in the property bearing Sy. No. 243; 243/13; 243/13A and 243/4 of the Village of Calangute, Bardez, Goa as identified in Plan drawn by DSLR dated 26/03/2021; annexed hereto and as decided in the 287th GCZMA meeting held on 27/01/2021 and further to restore the land to its original condition, within **30 days** from the date of receipt of this order. The Dy. Collector & S.D.O, Bardez, Mapusa, Goa to verify if the said structures are demolished as per these directives failing which the concerned Deputy Collector/ S.D.O shall demolish all the structures to enable restoration of land to its original state within 15 days and recover the expenses incurred from **Mrs Conceicao Fernandes and Mr Agnelo Fernandes, Mrs Filomena Fernandes; Mrs Conceicao Fernandes** as the arrears of land revenue. Further, Dy. Collector & S.D.O, Bardez, Mapusa, Goa is required to submit a compliance report in respect of above directions to the GCZMA within next 3 days of expiry of the aforementioned time period of 30 days."

3. The impugned order shows that acting upon the complaint of Respondent No. 2, GCZMA constituted a Committee to ascertain facts and thereafter issued show cause notice to the appellant on 18.11.2020 to show cause as to why illegal construction be not demolished.

4. The matter was considered in the meeting held on 21.09.2021 and considered the defence of the appellant that the structure existed prior to 1991, before publication of CRZ notification and was not thus liable to be demolished. The appellant relied upon letter of the village Panchayat dated 10.08.1992 by which the Panchayat gave NOC to run a guesthouse. Another document relied upon was license dated 31.03.1990 by the Panchayat for repairs. Letter of Tourism Department dated 11.03.1993 permitting to run hotel was also produced. It was further

claimed that the structure existed since 1971 and the Mamlatdar had registered the structure as *Mundkar* on 27.07.1987. On consideration, the GCZMA did not accept the stand of the appellant that the structure existed prior to 19.02.1991.

5. The GCZMA framed the following issues for consideration:-

- (I) *Whether the property under Sy No. 243/13-A and 243/4 of Calangute Village of the Respondents falls within NDZ area?*
- (II) *Whether the offending development in Sy No 243/13-A and 243/4 of Calangute Village was existing prior to 19/02/1991?*
- (III) *Whether the area occupied by development/structure existing as on 19/02/1991 would be saved from demolition?"*

6. On first issue, it was held that the area fell in NDZ. On second issue, it was held that the structure did not exist prior 19.02.1991. On third issue it was held that since there was redevelopment post 19.02.1991, the structure was illegal.

7. Relevant extracts from the impugned order are as follows:-

"The Authority noted that even though it shows that there existed a small structure on site at the time of promulgation of the survey records; no benefit can be given to the Respondents as the old structures existing as shown in the survey plan are no longer in its original condition; as shown in the mapping carried out by the DSLR in 26/03/2021.

The Respondents have taken a plea that the structure in the property bearing Survey No, 243/13A, was a Mundkarial Structure and that Mr. Angelo Fernandes was a Mundkar therein respect to the suit property. The Respondents in support of his statement that he is a Mundkar had produced a scanned copy printout of the letter dated 16/03/1990; made to the Mamlatdar of Bardez at Mapusa, Goa for the purpose of Registration of a Mundkar.

*The Authority noted that, firstly, the document produced was merely an application signed by the party (Mr. Agnelo alias Albert Fernandes) but does not bear any inward stamp of the Mamlatdar of Bardez, to prove that the application was inwarded in the Office of the Mamlatdar for the purpose of registration as a Mundkar. Secondly, the Respondents have also failed to produce the order issued by the Mamlatdar of Bardez pursuant to the said application. Presuming that the application was of 1990; the Respondents should have been declared as Mundkar **considering the fact that we are now in the***

year 2022. Further, the said application for registration as Mundkar does not contain the survey number of the property wherein mundkarship is claimed. The Authority noted that for the purpose of declaration as a Mundkar the survey number of the property to which he seeks registration is a must which the Respondents have failed to mention. Neither does the document mention the area of the structure existing as on its date. Be that as it may, the purported application dated 16/03/1990 is incomplete and does not assist the case of the Respondents and the same cannot be relied on account of the discrepancies mentioned above.

The Respondents sought to rely on a letter from the Office of the Mamlatdar of Bardez dated 27/07/1987; issued to Emilian Fernandes and in the letter, it makes reference to application dated 21/06/1978. It is pertinent to note that reliance cannot be placed on this letter, as this letter does not prove any connection with this matter in issue. The Respondents have miserably failed to establish any connection of this letter with this case. The Respondents have also failed to produce the purchase document on record even though he has made a statement in his reply stating that the property wherein the structure is standing was indeed purchased by him.

The Authority noted that the Respondents in the reply had stated that the structure standing in Sy. No 243/13 A; consisted of ground plus two floors, wherein part of the ground floor was used as his residence and somewhere in the year 1986-87; the remaining part of the Ground Floor, the First Floor and the Second Floor was let out to guests. Further, the Respondents to substantiate their case; sought reliance on the letter dated 31/03/1990 issued by the Village Panchayat of Calangute, stating that vide resolution no.4 (VII)3; the Village Panchayat of Calangute had unanimously resolved to issue permission for repairs and renovation of the existing floors of the guest house and a kitchen in Sy No. 243/13. The Authority noted that the NOC granted by the Village Panchayat for repairs was for the structure situated in Sy No 243/13 and the Respondents in reply have categorically stated that the structure is located in Sy. No 243/13A. Moreover, the plan drawn by the DSLR dated 26/03/2021 also clearly shows that the structure falls in Sy No. 243/13-A. The Authority noted that there is no corroboration between the reply and the document produced and in view of the same the document cannot be considered as the Respondents have failed to prove beyond doubt that the structure in question was standing prior to 1991.

Furthermore, it may be noted that the Respondents have produced yet another document which raises a doubt in the mind of the Authority; wherein the letter dated 10/08/1992, which is supposedly issued by the Sarpanch of the Village Panchayat of Calangute; but what surprises this Authority is that the same letter dated 10/08/1992; strangely is not issued on the letterhead of the Village Panchayat of Calangute.

The Complainant raised the authenticity of the documents produced and stated that the same were manipulated, fabricated and manufactured for the purpose of saving the structures of the Respondents. The Authority however decided to verify the authenticity of the documents/ permission granted by the Village Panchayat of Calangute given to the Respondents Mr. Angelo Fernandes and his wife Mrs. Conceicao Fernandes and this Authority wrote a letter to the Village Panchayat of Calangute directing them as under,

"The Respondent has relied on the documents mentioned herein below: (i) letter dated 10/8/1992 bearing no CAL/F-71/802/92-93.(ii) Village Panchayat of Calangute letter bearing no. VP/Cal/F-62/89-90/2018 dated 31st March 1990.

In view of above, you are hereby directed to verb the authenticity of the approval granted to from your records and submit a copy maintained by your office, register wherein a resolution was taken by the Authority in granting the approval; Outward register extract wherein permission is given to Mr. Angelo Fernandes and Mrs. Conceicao Fernandes; along with your reply in form of an Affidavit giving the details. A detailed report in affidavit may be submitted within two days, so as to take further action in the matter".

The Village Panchayat of Calangute through its Secretary had replied vide letter dated VP/CAL/F-GCZMA/21-22/3213 dated 23/11/21 stating that the Panchayat had granted the approvals. The Panchayat has failed to support its statement by backing with any evidence or documentary proof as requested for by this Authority. This Authority had specifically requested for copies from the records of the Panchayat, the Outward Register wherein the letter was outwarded; the copy of the Resolution taken in its respective meeting for grant of an approval and a reply in affidavit form from the Village Panchayat of Calangute so as to prove the authenticity and to back their statement with documents and evidence on record to which the Panchayat has also failed to submit such relevant documents. This raises a doubt in the mind of the Authority regarding the authenticity and genuineness of the respective letter produced by the Respondents hence the Reply Letter of the Panchayat dated 23/11/2021 cannot be taken on records.

The Respondents produced Certificate of Registration of the respective Hotel with the Tourism Department standing in the name of Conceicao Fernandes, and the same stands registered and is valid upto 31/03/1993; which clearly indicates and means the hotel was registered only after the year 1991.

The Respondents failed to produce on record the Repair License issued along with the appropriate approved plans. The letter relied upon by the Respondents dated 31/03/1990; is only a resolution passed to issue permissions but whether the permission was actually granted or not by the Village

Panchayat of Calangute would have been proved only if the Respondents had produced the Repair License along with the Approved Plan; to which the Respondents have again failed to produce and thus failed to prove that the structure was existing prior to 1991.

Without prejudice caused, the Authority noted that since this letter is actually dated 31/3/1990; it could be the last insertion of the respective letter in the books of the Village Panchayat of Calangute; as it is the financial year ending and closing books for that financial year for all practical purposes.

The Respondents state that with regard to the swimming pool the Respondents admits that the same was constructed without any approvals and leaves it to the Authority to decide. The Respondents also admit that the Restaurant is run without any approvals and that the same is illegal. However, the Authority has decided to demolish the swimming pool and the restaurant.

The Authority noted that the Deputy Collector & SDO Mapusa had submitted details regarding the verification of the structures in the property bearing Sy No 243/13, 243/13A and 243/4 of Village Calangute, Bardez Goa. The Deputy Collector relies on the report of the Talathi who has stated that upon enquiry it is noted that (i) There exists two structures on the plan dated 28/11/2003.(ii) The Talathi had stated that the Respondents had produced two receipts of house tax for both the structures and (iii) the Respondents had also produced the Copy of the Tourism License used by the Respondents for using the structure for commercial purpose. (iv) That the area shown for both the structures on the Form I & XIV is 370 sq mts. (v) That the Talathi stated that the Respondents had erected the Swimming pool without obtaining necessary permissions.

With regards to the Talathi's report, firstly, the Authority observed that the contentions of the Talathi that there exist two structures in Sy No 243/13-A as shown on the Survey Plan dated 28/11/03 cannot be relied upon as when the Authority perused the report and maps drawn by the RSI, it revealed that a small single structure with dotted line was shown on the RSI map. The Draft CZMP also shows a single dotted structure. Moreover the recent mapping carried out by the DSLR dated 26/03/2021 also shows a single dotted small structure. Hence, this contention of the Talathi that there are two structures in Sy No. 243/13A cannot be taken into consideration.

Secondly, the Talathi to affirms his statement that there exist 2 structures relies on the house tax receipts issued by the Village Panchayat of Calangute i.e. One bearing Receipt Book no. 622 receipt

no 8 and the other bearing receipt book no 695 receipt no 22. If one peruses the receipt both refer to the same house no 7/3 and the 2 receipts are tax paid for the years 1983 to 1985 and the second for the year 1986 to 1988. However this does not justify that there are two structures as claimed by the Talathi of Calangute. However it is pertinent to realize and understand the blatant fact that, in the years 1986, 1988 and in the Year 1992 and 2021 that there is a variation in the Official Rubber Seal of the Village Panchayat of Calangute.

Thirdly, the Talathi seeking reliance on the Certificate issued by the Tourism Department. The Tourism permission has to be renewed every year. This certificate produced on record is valid till 31/03/1993 which means it was issued in 1992 i.e after the CRZ Notification came in force; however, the use of the structure for commercial purpose does not establish that the structure standing the property was erected with approvals.

Fourthly, that the uncultivable area shown on the Form I & XIV of the property bearing Sy. No 243/13A is 370 sq mts as per the Form I & XIV maintained by the Talathi (the Hand Written One) and on the Computerized Form I & XIV of the property bearing Sy No 243/13-A has the uncultivable area shown as 203 sq mts. Hence based on this discrepancy the contention of the Talathi that both the structures shown on the Survey Plan dated 28/11/2003 together have an area of 370 sq mts; cannot be relied upon based on the above mentioned discrepancy and hence the findings of the Talathi cannot be taken into consideration to conclude that the structure is legal.

Fifthly, the issue with regards to the Swimming Pool; the Talathi has also verified that the swimming pool has been illegally erected.

The Authority also considered the import and relevance of the report and maps prepared by Remote Sensing Instruments (RSI) Hyderabad commissioned by this Authority pursuant to directions of Hon'ble High Court in WP nos. 422/98 and 99/99. The report and maps were submitted to the Hon'ble Court which directed that they be placed on the Authority's website for information of the public. The data is in the public domain since 2009. Hence, the findings of study are binding on the Authority. The RSI map only shows a single structure existing pre-1991 that corresponds to the structure shown on the survey plan. It is yet another indication that the structure existing today has come up after the appointed day.

The Authority resolved that the Respondents have failed to establish or justify or conclude without concrete evidence placed on record, the very existence of the structures in Survey No.243/13-A and 243/4 of Calangute Village, was prior to 1991.

The Respondents have even failed to produce title document merely relying on the application filed does not confer that the erection of the structure is with valid permissions.

The Authority agrees with submission of Ld Adv S Bhosle on behalf of the Complainant that the Goa Town & Country Planning Act came into force in 1974, and that it was mandatory to obtain prior written approval of the competent authority for carrying out any development. And that the Respondents had failed to produce any such permissions. The Authority also noted that the Goa Land Revenue Code 1968 was also in force and mandates prior permission (conversion sanad) from the Collector for any development involving change of land use to non-agricultural purpose. The Authority also noted that the Goa Daman & Diu (Village Panchayats Regulation of Buildings) Rules 1971 inter alia required prior written permission of the village Panchayat for carrying out any development within the village as also for grant of occupancy certificate.

The Respondents have miserably failed to produce the requisite documents including the Conversion Sanad, Panchayat Construction License and Occupancy Certificate, permission from GCZMA or GSCCE and Town and Country Planning Department, to prove that the structures thereon existing in property bearing Survey No. 243/13A and 243/4 of Calangute Village, have been approved by the respective Government Authorities.

The Authority relies on the decision of the Hon'ble Supreme Court in the matter of *Piedade Gonsalves vs. State Of Goa*(2004) 3 SCC 445; wherein the Hon'ble SC has held that the Coastal Regulation Zone Notifications have been issued in the interest of protecting the environment and ecology in the coastal areas. The constructions raised in violation of such regulations cannot be lightly condoned.

In the present matter, the Respondents claim to be in possession of a small structure in the property bearing Sy. No 243/13A located within the jurisdiction of Village Panchayat of Calangute. It is the Respondents case that earlier there existed a small structure and subsequently he has constructed a structure of G+2 made of laterite stone, which structure was used by guests prior to 1991. However, the Respondents have miserably failed to prove any or place on record any documentary evidence of the construction having carried out prior to 1991. However, the Authority noted that in place of the said old structure, the Respondents erected a G+2 RCC structure in place of the old structure and that too entirely within the NDZ and moreover, raised without any permission or approvals whatsoever thereby indulging in misadventure of raising a construction without securing permission from the competent authorities.

Hence, the issue regarding the offending development in Sy No 243/13-A and 243/4 of Calangute Village existing prior to 19/02/1991 is answered in the negative.

The last issue that arises is whether the (plinth) area of the structure shown to be existing on the survey plan would be exempted or saved from demolition. Incidentally, the submission was canvassed by counsel for the complainant.

The Authority is unable to agree with submission of learned counsel. Once the pre-1991 structure was demolished and replaced with the G+2 structure, the original structure lost protection of the CRZ Notification 1991. The CRZ Notification protects or tolerates the development or structure, not the land on which it was once standing on.

The CRZ Notification 1991 adopts what is called as "Doctrine of Toleration" that development already carried out and in existence in accordance with laws and norms that then existed, had to be tolerated. Simultaneously, the legislative policy is also reflected in what can be styled as the "Doctrine of Containment", which means that even though what existed on the date of the notification is to be tolerated, it should not be permitted to grow beyond the dimensions upto which it was tolerated.

In the present case, the structure existing on the appointed day is no longer in existence but has been totally demolished and reconstructed with both horizontal and vertical extensions. Therefore, in the Authority's considered opinion, the entire structure is in violation and must be demolished. Accordingly, the issue is answered in the negative.

In view of the foregoing discussions, and since the Respondents have failed to produce any documentary evidence of any approvals obtained nor even prove that the structure was in existence before 1991; and moreover the old structure shown on the Survey Plan is not in the same condition as on 26/03/2021 (date of survey plan obtained from the DSLR); the Authority decided to issue a Demolition Order against all the structures herein: i.e. (i) Illegally constructed three storied (G+2) Guest House used for commercial purpose; (ii) Illegally constructed 15 Rooms, named as M/s Zinhos (L) Beach Resort. (iii) Illegally constructed 10 Rooms named as M/s Zinhos 1 Beach Resort. (iv) Illegally constructed 07 Rooms named as M/s Zinho's Beach Resort. (v) Illegally constructed Restaurant, and (vi) Illegally constructed a Swimming Pool of the Respondents, namely M/s Zinho's Beach Resort through Proprietor Mrs Conceicao Fernandes and Mr Agnelo Fernandes; M/s Zinhos (L) Beach Resort through Proprietor Mrs Filomena Fernandes; M/s Zinhos 1 Beach Resort through Proprietor Mrs Conceicao Fernandes; all together located in the property bearing Survey Nos. 243; 243/13; 243/13A and 243/4 of the Village of Calangute, Bardez, Goa".

NOW THEREFORE, the GCZMA in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986

(Central Act 29 of 1986) read with sub-rule (3) (a) of Rule 4 of the Environment (Protection) Rules 1986, and read with power vested with the GCZMA vide Order S.O. 3975 (E) dated 31/10/2019 issued by the Ministry of Environment & Forests, Government of India, hereby directs **M/s Zinho's Beach Resort through Proprietor Mrs Conceicao Fernandes and Mr Agnelo Fernandes; M/s Zinhos (L) Beach Resort through Proprietor Mrs Filomena Fernandes; M/s Zinhos 1 Beach Resort through Proprietor Mrs Conceicao Fernandes**, all resident of House No.7/3, Saunta Vaddo, Calangute, Bardez, Goa; to demolish **all the structures herein: i.e. (i) Illegally constructed three storied (G+2) Guest House used for commercial purpose; (ii) Illegally constructed 15 Rooms, named as M/s Zinhos (L) Beach Resort. (iii) Illegally constructed 10 Rooms named as M/s Zinhos 1 Beach Resort. (iv) Illegally constructed 07 Rooms named as M/s Zinho's Beach Resort. (v) Illegally constructed Restaurant, and (vi) Illegally constructed a Swimming Pool of the Respondent**, located in the property bearing Sy. No. 243; 243/13; 243/13A and 243/4 of the Village of Calangute, Bardez, Goa as identified in Plan drawn by DSLR dated 26/03/2021; annexed hereto and as decided in the 287th GCZMA meeting held on 27/01/2021 and further to restore the land to its original condition, within **30 days** from the date of receipt of this order. The Dy. Collector & S.D.O, Bardez, Mapusa, Goa to verify if the said structures are demolished as per these directives failing which the concerned Deputy Collector/ S.D.O shall demolish all the structures to enable restoration of land to its original state within 15 days and recover the expenses incurred from **Mrs Conceicao Fernandes and Mr Agnelo Fernandes, Mrs Filomena Fernandes; Mrs Conceicao Fernandes** as the arrears of land revenue. Further, Dy. Collector & S.D.O, Bardez, Mapusa, Goa is required to submit a compliance report in respect of above directions to the GCZMA within next 3 days of expiry of the aforementioned time period of 30 days."

8. We have heard learned counsel for the parties.

9. Shri Dhruv Mehta, learned Senior counsel for the appellant submitted that Panchayat documents could not have been ignored and satellite image could not be taken as conclusive. It should thus be held that structure in question existed prior to the relevant date of 1991 and the impugned order be set aside. On the other hand, learned Counsel for the complainant, Mr Bhonsle supports the impugned order and submits that documents relied upon by the appellant do not match with the nature and extent of the structure in question. What the said documents show is that a small structure existed while the structure in question is a

massive structure with G+2 building with 36 rooms with swimming pool. Thus, satellite image is fully reliable which establishes that the structure is post 1991. Further, environmental issues are governed by precautionary principle and reverse burden.

10. We have considered the rival submissions and are unable to accept the stand of the appellant. The documents relied upon by the appellant have been duly considered and found not reliable to show that the structure in question is pre 1991. At best the said documents show that some structure existed. On the other hand, satellite image shows that the structure in question did not exist prior to 1991. It is not disputed that area is in NDZ. It is also fairly stated that the swimming pool is constructed later. Further, the appellant has no evidence to show that prior to 1991 G+2 structure with 36 rooms existed. Even if there was some structure, the structure in existence is not the same, as rightly found in the impugned order under issue No. 3. Assumption that some structure existed prior to 1991 is only for the sake of argument to test the alternative point of the said structure being demolished and replaced by current G+2 structures subsequent to 1991. The present structure is thus new construction which is against the CRZ notification. As already noted, even according to the PP swimming pool has been constructed later. There is nothing to show that 36 rooms for commercial purposes existed prior to 1991.

11. In view of the above, we do not find any merit in the appeal. The appeal is dismissed.

12. On request of learned Senior counsel for the appellant, we suspend operation of the order for two weeks to enable to appellant to take any

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other remedy as per law and to remove the structures, failing which the GCZMA may execute the impugned order.

I.A. No. 29/2022(WZ) also stands disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

September 02, 2022
Appeal No. 16/2022
(Earlier Appeal No. 09/2022 (WZ))
(I.A. No.29/2022 (WZ))
A

True Copy JA



BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

365

(By Video Conferencing)

Appeal No. 16/2022(WZ)

Caveat No. 05/2022(WZ)

I.A. No. 50/2022(WZ) & I.A. No. 99/2022(WZ)

IN THE MATTER OF:

MR. ARMAND CARDOZO

(Since deceased), through

1. **MR. JOVEK CARDOZO,**
Resident of House No. 107/A,
Ambeaxir Ward, Sernabatim,
Colva, Salcete, Goa- 403 708.
2. **MRS. MARIA LETICIA CARDOZO**
Ambeaxir Ward, Sernabatim,
Colva, Salcete, Goa- 403 708.

.....Appellant(s)

Versus

1. **Goa Coastal Zone Management Authority**
Through its Member Secretary
Office at C/o. Department of Science, Technology,
& Environment, Government of Goa,
Opposite Saligao Seminary, P.O.
Saligao, Bardez, Goa- 403 511.
2. **The Collector & District Magistrate,**
Office at 3rd floor, Matanna Saldana,
Administrative Complex, Near KTC Bus Stand,
Margao, Goa- 403 601.
3. **The Dy. Collector,**
Office at 1st floor, Matanna Saldana,
Administrative Complex,
Near KTC Bus Stand, Margao,
Goa- 403 601.
4. **The Secretary**
Village Panchayat of Sernabatim,
Velim, Colva and Gaudaulim,
Pin code- 403708.
5. **Mr. Suvam Bandekar,**
Resident of Swatantra Path,
P.O. Box No. 11, Vasco-da-Gama,
Goa- 403 802.

.....Respondent(s)

True copy of A

Counsel for Appellant(s):

Mr.Parag Rao, Advocate along-with Mr. Shivshankar Swaminathan,
Advocates

Counsel for Respondent(s):

Mr. Surjendu S. Das, Advocate for R-1, 2 & 3
Mr. Shailesh Henriques, Advocate for R-5

PRESENT:

Hon'bleMr. Justice Dinesh Kumar Singh (Judicial Member)

Hon'bleDr. Vijay Kulkarni (Expert Member)

Reserved on : 06.09.2022

Pronounced on : 21.10.2022

JUDGMENT

1. The present Appeal has been filed by the Appellant under Section 16 read with Section 18(1) of the National Green Tribunal Act, 2010 against the order dated 25.03.2022 passed by Respondent No.1/GCZMA directing demolition of all existing structures located in Survey No. 16/7, Sernabatim Village, Salcete Taluka, Goa and restore the land to its original condition.

2. The facts in brief of this Appeal as per the Appellants are as follows:-

(i) On account of disputes having arisen between the Appellants and Respondent No. 6 in the present case Mr. Suvarn Bandekar (the Complainant before GCZMA) in respect of property bearing Survey No. 76/1, admeasuring approximately 43,600 sq. mtrs., the Complainant has been targeting the Appellants in respect of their structures existing on the said survey number. In fact, the said structures are argued to be in existence since 1984.

(ii) Earlier, the Complainant had filed two suits regarding the same land before Civil Judge Senior Division at Margao-Goa, alleging that fresh construction/new construction was being done by the

respect of existing structures but all were discarded erroneously by the Respondent No.1. Had there been no structure existing why the electricity connection would have been taken and its bill would have been paid. The electric meter, in respect of Xavier Bar and Restaurant, is admittedly in Survey No. 16/7.

(ix) The Respondent No. 1 has committed the same mistake which it had committed in passing the earlier order dated 05.12.2014 by recording that the Appellants have failed to produce any document which could be considered as a permission/license/approval and or/conversion sanad from the competent authority to establish the legality of the structures existing in the property in question admeasuring more than 750 sq. mtrs.

(x) If at all, the Respondent No.1 had any doubts regarding the existence of the structures on Survey No. 16/7 or Survey No. 76/1, it was incumbent upon it to get an inspection carried out which would have brought correct position of the spot. The house number was also allotted in 1986, which would be sufficient to infer that license was granted in Survey No. 76/1, Ambeaxir which is 400 mtrs. away from the beach as stated in the letter dated 26.08.1985 of the excise department, hence, it is prayed that impugned order be set aside.

4. The stand taken by **Respondent No.1/GCZMA** in its Affidavit dated 19.08.2022 is as follows:-

(i) The Appellants are the owners of the property bearing Survey No. 16/7, admeasuring approximately more than 3200 sq. mtrs. (Subject Property) and are also owners of the property bearing Survey No. 76/1, wherein they are running Bar and Restaurant since prior to 1991 with requisite licenses/approvals/ permissions. However, the Appellants have not only been using the aforesaid licenses for the Subject

Property (Survey No. 16/7) but have also undertaken additional structures there-on after 1991, without obtaining prior approvals/permissions/licenses which is in violation of the Coastal Regulation Zone Notification, 2011.

- (ii) The Subject Property lies entirely within 200 meters of the High Tide Line (HTL), hence, falls in No Development Zone (NDZ) of the CRZ Area which is evident from three plans prepared by the Directorate of Settlement and Land Records (DSLRL) dated 16.12.2010, 05.09.2012 and 27.03.2014. Therefore, no construction shall be permitted within the said area.
- (iii) The Answering Respondent had issued to the Appellants various show cause notices for unauthorized structures and thereafter had referred the matter to the Inquiry Committee which conducted inspection and submitted its report on 12.08.2014 but its recommendations were not accepted for the reasons mentioned in the notice of personal hearing dated 05.12.2014 issued to the Appellants and ordered Appellants to demolish all the structures (except one structure) found identified on the subject property. The said order was challenged before the NGT and was set aside vide its order dated 20.12.2018, remanding the matter back to Respondent No.1 for reconsideration. Thereafter, again after hearing the parties and perusing the documents on record, the answering Respondent passed the impugned order directing the Appellant to demolish all the existing structures on the subject property and restore the land to its original condition.
- (iv) During the proceedings, the Respondent No.1 had given various opportunities to the Appellant to produce documents showing permission/license/approval and/or Conversion Sanad from a competent authority to establish the legality of the said structures but it had failed to provide the same.

- (v) The Appellants placed reliance on documents such as, application dated 29.03.1985 made to the Excise Department for Excise License, Excise License dated 20.08.1986, Application dated 30.11.1984 to the Panchayat for NOC for Bar and Restaurant which was decided on 02.11.1984, Government Survey Plan, plans prepared by the DSLR, receipts and licenses, but all these neither establish the legality of the structures nor do they prove that the structures existed from 1984 i.e. prior to 1991.
- (vi) It is further submitted that Appellants did not mention the survey numbers in respect of which the Electricity Bills, Trade Tax, House and Lighting Tax Receipts, NOC, Excise License etc. had been issued. Moreover, the plans made by DSLR between the years 2010 and 2014 show that the structures had varied in size and dimensions but the Appellants failed to produce any permission/license/approval for the said changes. In view of this, it was inconceivable to hold that the Appellants would not have a single construction license from the Village Panchayat prior to the year 1991 for the said structures.
- (vii) Even the Plans submitted by the Appellant did not correspond to the subject property as there was no main road touching the subject property nor is there any mention made of any structure existing on the subject property, in the sale deed.
- (viii) The averment of the Appellants that by inadvertence they could not place the order dated 25.03.1982 passed by the DC in case no. 43, which was in respect of re-survey of the subject property is erroneous. However, it is evident from the said order that there were only two structures existing on the Subject Property i.e. (i) House admeasuring 25 sq. mtrs.; and (ii) Well admeasuring 25 sq. mtrs.

June 2017 JA