

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE
EXECUTION APPLICATION NO. 01 OF 2023
IN
ORIGINAL APPLICATION NO. 16 OF 2016**

IN THE MATTER OF:

SALU D'SOUZA & ANR.

...APPLICANTS

VERSUS

GOA COASTAL ZONE MANAGEMENT

AUTHORITY & ORS.

...RESPONDENTS

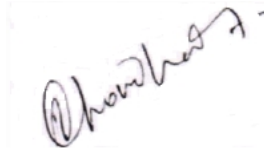
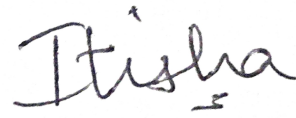
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Through

RITWICK DUTTA

RAHUL CHOUDHARY

ITISHA AWASTHI**ADVOCATES**

COUNSEL FOR THE APPLICANT

N-73, Lower Ground Floor, Greater Kailash-1

New Delhi-110048

Email ID:- dclaw160@gmail.com

Place:- Delhi/Pune

Dated:- 12.09.2024

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**REJOINDER TO RESPONDENT NO.5. ON BEHALF OF THE
APPLICANT**

1. That the above-titled Application has been filed before this Hon'ble Tribunal under Section 25 of the National Green Tribunal Act, 2010 seeking execution of the Order dated 11.05.2022 of the Hon'ble Tribunal in Original Application No. 16 of 2016 (*Salu D'Souza & Ors v. Goa Coastal Zone Management Authority & Ors.*) which contained directions for stoppage of activities in violation of Coastal Regulation Zone, 2011, payment of compensation by the violators and restoration of the area in and around Cortalim Creek in South Goa where the action of illegal anchoring of ships by 7 private parties in violation of the CRZ Notification, 2011 led to destruction of ecology of the area.

2. That this Order has attained finality in light of the Order dated 26.08.2022 of the Hon'ble Supreme Court passed in Civil Appeal Nos. 5335-5336 of 2022 (*M/S A.V. Salgaoncar Cortalim Shipyard And Engineers Pvt. Ltd. v. Goa Coastal Zone Management Authority & Ors.*) filed by Respondent No. 7 wherein the Hon'ble Supreme Court upheld the Order of this Hon'ble Tribunal and dismissed the Civil Appeal.

3. That Respondent No. 5 has filed Reply to the Execution Application highlighting the following points:
- (i) Admission to the fact that the activities are going on without CRZ Clearance, which is clear from the list of permissions given by Respondent No. 5 that have been obtained from statutory authorities;
 - (ii) Admission that operations are conducted during monsoon season;
 - (iii) That no vessels have been anchored in CRZ-I area;
 - (iv) That no pollution has been caused by the unit;
 - (v) That GCZMA has discharged the unit and has come to the conclusion that activities are not in contravention of permissions granted.

4. That the Applicant has filed a Response to the Joint Committee Report on 11.03.2024 and Rejoinder dated 22.05.2024. The contents of the Response and Rejoinder may be read as a part and parcel of the present Rejoinder.

Response of the Applicant

5. That at the outset, it is submitted that the contents of the Reply by Respondent No. 5 are denied, except facts admitted by Respondent No. 5 or expressly admitted by the Applicant herein. Further, it is submitted that the final Order dated 11.05.2022 of this Hon'ble Tribunal is clear in its finding regarding the violations committed by the Respondents and the directions in Para 17 of the Order. These directions have also been upheld by the Hon'ble Supreme Court. Therefore, in this Execution Application, grounds raised by Respondent No. 5 that are settled by this Hon'ble Tribunal in Original Application cannot be contended.
6. The Applicant has the following response to the grounds raised by Respondent No. 5:

A. Admission to the fact that operations are continuing in violation of the Order of this Hon'ble Tribunal

7. That the Respondent No. 5 has expressly admitted to the fact that work is still continuing, despite clear orders from the Hon'ble Tribunal vide its final Order dated 11.05.2022 that activities in contravention of CRZ Clearance have to be completely stopped.
8. That Respondent No. 5 states the following in its Reply:

"3. With regards to execution of Order of this Hon'ble Tribunal in OA 16/2016, it is humble submitted that unit is in operation only during monsoon season and conducts its operation/ business based on permissions referred earlier hereinabove."

9. That this statement is an express admission to the fact that the work is being undertaken, without obtaining requisite clearance under CRZ Notification.

B. CRZ Clearance is mandatory and other permissions from statutory authorities have to be taken in addition to the CRZ Clearance

10. That Respondent No. 5 has stated that requisite permissions from statutory authorities have been obtained and therefore, the work being carried out by them is in accordance with these permissions.
11. The Applicant submits that even though Respondent No. 5 has permissions, the work is still being carried on without a CRZ Clearance, a fact that was stated by this Hon'ble Tribunal in its Order dated 11.05.2022 in the Original Application, in the following manner:

"15. On due consideration of rival contentions, we find that foreshore activities are involved in respect of vessels in question. Vessels are birthed not merely for repairs but have

been there for years without requisite CRZ clearance. Permission granted by the Captain of Port for use of water frontage is not be a substitute for the CRZ Clearance, statutorily required as per CRZ Notification."

12. That the Hon'ble Tribunal had directed, vide final Order dated 11.05.2022 that no activity can continue without obtaining CRZ Clearances:

"16. In view of the above, without CRZ clearance activities of the private respondents are not permissible. Mere fact that the CZMP has not been prepared cannot be a ground to continue the said activity as the matter will be governed by already finalized CZMP on 27.09.1996, according to which the area falls under CRZ-I (inter tidal area) calling for CRZ Clearance for regulated activities.

...

17. Accordingly, dropping of proceedings against the private respondents by CZMA on the ground of pendency of clearances before SEIAA is not justified. Mere pendency of application for CRZ Clearance cannot be treated as permission to continue such activities. The said activities which are not permissible without CRZ clearance are thus directed to be discontinued within three months from today."

13. Therefore, even though other statutory permissions were obtained, these activities were being undertaken without prior CRZ Clearance in violation of CRZ Notification, 2011.

C. Vessels were found to be anchored in CRZ-I area, in violation of CRZ Notification, 2011

14. That Respondent No. 5 has stated no vessels have been anchored in CRZ-I area. It is submitted that vide final Order dated 11.05.2022, the Hon'ble Tribunal has given the finding that vessels have been found to be anchored in the creek for several years:

"15...Vessels are birthed not merely for repairs but have been there for years without requisite CRZ clearance."

15. That the Applicant had also annexed a map along with the Original Application at Page 72 showing encroachments in CRZ-I area, as on 10.12.2022. This map makes it clear that encroachments were present in CRZ-I area despite clear directions from this Hon'ble Tribunal that activities which are in violation of CRZ Notification are to be discontinued within 3 months from the date of Order.

16. That further, the Joint Committee Report and Reply of Goa Coastal Zone Management Authority also corroborate the fact that illegal encroachments have been found in CRZ-I area.

17. That the Joint Committee Report notes (at Page 393) that the DSLR map found encroachments:

*"The DSLR, Government of Goa carried out the resurvey of the Cortalim Creek during 3rd to 5th October, 2023. Latest resurvey layout of the project areas is enclosed as **Annexure-3.***

The DSLR representative during the meeting, submitted that there were no encroachments in the 7 projects. However, DSLR observed encroachments in the riverine area."

18. That the GCZMA, in its Reply dated 12.01.2024 has also stated that further extensions have been done by the Respondents (Page 411):

"5. I further say and submit that accordingly, GCZMA issued directions to DSLR to conduct site inspection of areas at Cortalim Creek South Goa and DSLR has submitted detailed report before GCZMA after conducting site inspection of Cortalim Creek South Goa.

6. I say and submit that at the time of the site inspection, the Joint Committee has observed violations as project proponents have done further extension in the areas as allotted to them by Captain of Ports.

7. I say and submit that The Authority is also of the opinion that as per joint committee report project proponents except M/s A. V. Salgaonkar Works, are still in operation in Cortalim Creek despite of order of Hon'ble NGT hence same need to be stopped from operating in Cortalim creek."

19. That therefore, the contention of Respondent No. 5 that no vessels are anchored in CRZ-I area is incorrect and misleading.

D. Evidence of pollution by the violating units have been found

20. That Respondent No. 5 has stated in its Reply that the polluter pays principle should not be made applicable on them, since no pollution is being caused by them.

21. It is the submission of the Applicant that the fact that pollution was caused by the units is clear from the Affidavit of Goa State Pollution Control Board filed in Original Application 16 of 2016, as recorded in Para 8 of the Order in the following manner:

"8. The stand of the State PCB is that violation of Air (Prevention and Control of Pollution Act, 1981 and the Water (Prevention and Control of Pollution Act, 1974 was found and direction was issued to the units in question to take remedial action."

22. That the Inspection Report of Captain of Ports dated 14.06.2016, as recorded in Para 10 of the final Order also notes that pollution was caused by the units. The Order records the relevant part of the Report in the following manner:

"During the above said inspection, the physical verification carried out and observed that about 10 Nos. old/damage condition vessels/pontoon was parked in front of M/s. A.V. Salgaocar workshop out of which pontoon Balvan is grounded and causing water pollution and same is to be remove immediately. The other unused/damage vessels also to be

removed to avoid further grounding and river frontage to be maintain in pristine condition."

23. That these Affidavits were accepted by the Hon'ble Tribunal while hearing the Original Application and a finding was given in Para 15 of the Order. Therefore, the contention of Respondent No. 5 that no pollution has been caused by them is incorrect.

24. That the Joint Committee was constituted by the Hon'ble Tribunal for "*remedial action for past violations and restoration*" and the issues of violations and the resultant environmental damage are already settled by the Hon'ble Tribunal vide Order dated 11.05.2022 (Para 15 and 16).

25. The compensation has also been calculated by the Joint Committee in line with the CPCB formula, which is calculated for the number of days of violation (operating without consents), irrespective of the pollution caused.

E. Discharge of units by GCZMA is not a conclusion that activities are not in contravention of CRZ Notification, 2011

26. That Respondent No. 5 has stated that GCZMA has discharged the unit and has come to the conclusion that their activities are not in contravention of permissions granted.

27. It is the submission of the Applicant that the final Order of the Hon'ble Tribunal, as also upheld by the Hon'ble Supreme Court has clarified that the activities could not have been undertaken in the Cortalim Creek, as the same falls in CRZ-I area.

28. That discharge of proceedings by GCZMA was prior to the final Order of this Hon'ble Tribunal and the Hon'ble Tribunal had clarified that since the activities were being undertaken in violation of the CRZ Notification, therefore, dropping of such proceedings against them, only because the clearances were pending, is incorrect.

29. That in light of the above facts and circumstances, the Hon'ble Tribunal may pass appropriate orders.

30) Pass any other order as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.



APPLICANT NO. 1

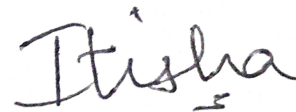
THROUGH



RITWICK DUTTA



RAHUL CHOUDHARY



**ITISHA AWASTHI
ADVOCATES**

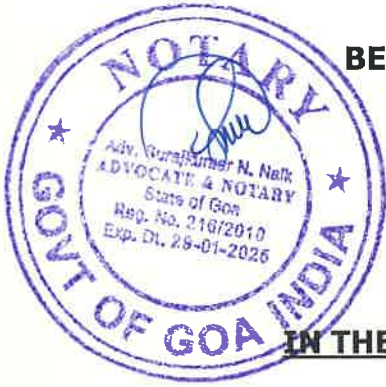
COUNSELS FOR THE APPLICANTS
N-73, LGF, Greater Kailash - 1,
New Delhi - 110048
Mobile: +91 9312407881
Email: dclaw160@gmail.com

VERIFICATION

Verified by Salu D'Souza, S/O Inacio D'Souza, R/O H. No. 905, Maddant Cortalim, Cortalim, South Goa- 403710, do hereby verify that the contents of Paragraphs 1 to 30 are true to my personal knowledge and nothing material has been concealed therefrom.



APPLICANT NO. 1



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...RESPONDENTS

AFFIDAVIT

I, Salu D'Souza, S/O Inacio D'Souza, R/O H. No. 905, Maddant Cortalim, Cortalim, South Goa- 403710, do hereby solemnly affirm and declare as under:

1. That I am the Applicant No. 1 in the above titled Application, and hence well conversant with the facts and circumstances described in the present case and as such 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 11th day of September 2024 that the contents of the present Affidavit are true and correct to my knowledge and belief and nothing material is concealed therefrom.

DEPONENT



Executed before me
 by Salu D Souza

which is attested
D.L. GA 06 20090051576
 Adv. Nalk

Adv. Surajkumar N. Nalk
 NOTARY
 STATE OF GOA
 36, Ground Floor, Apna Bazar, Bldg.
 VASCO-DA-GAMA, GOA - 403 802

Date : 11/09/2024

Reg. No.: 16560/2024



847

DC Law Chambers <dclaw160@gmail.com>

Copy of Rejoinder on behalf of the Applicant in EA No. 01 of 2023 Salu D'Souza & Anr. Versus Goa Coastal Zone Management Authority & Ors.

1 message

DC Law Chambers <dclaw160@gmail.com>

Thu, Sep 12, 2024 at 11:02 AM

To: Manasi Joshi <adv.manasi.joshi@outlook.com>, Aniruddha Kulkarni <aniruddha1488@gmail.com>, adv.bhobeoffice@gmail.com, Pushkal Mishra <pushkalm6@gmail.com>, shivshankar.swaminathan@yutilaw.com, preetam talaulikar <preetam.talaulikar@gmail.com>, ms-gspcb.goa@nic.in

Dear All,

Please find attached-Copy of Rejoinder on behalf of the Applicant in EA No. 01 of 2023 Salu D'Souza & Anr. Versus Goa Coastal Zone Management Authority & Ors.

Thanks & Regards

Counsel for the Applicant

**Rejoinder on behalf of Applicant.pdf**

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