

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

ORIGINAL APPLICATION No. 05 of 2023

**IN THE MATTER OF:**

SAGARDEEP SIRSAIKAR

...APPLICANT

VERSUS

GOA COASTAL ZONE MANAGEMENT

AUTHORITY & OTHERS

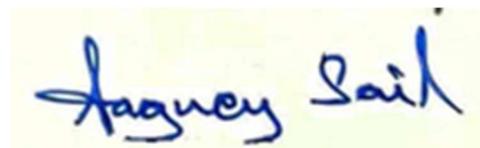
...RESPONDENTS

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**NEXT DATE: 18.01.2024**

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APPLICANT  
THROUGH



AAGNEY SAIL

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Filed on: 17.01.2024

Place: PUNE

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

ORIGINAL APPLICATION No. 05 of 2023

**IN THE MATTER OF:**

SAGARDEEP SIRSAIKAR

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**REJOINDER OF APPLICANT TO AFFIDAVIT DATED  
26.09.2023 OF RESPONDENT NO. 1 (GCZMA)**

MOST RESPECTFULLY SHOWETH:

1. That the affidavit on behalf of the the Respondent No. 1 (GCZMA) dated 26.09.2023 has been filed (hereafter 'affidavit of GCZMA' for short). At the outset the facts and averments in the said affidavit of GCZMA which are inconsistent with the pleadings in the present Original Application are denied. It is also stated that rejoinder is not being filed for each and every statement and averment made in the affidavit of GCZMA and nothing may be deemed to be admitted unless the same is specifically admitted herein, but should be treated as through the same has been set out seriatim and denied and disputed specifically.

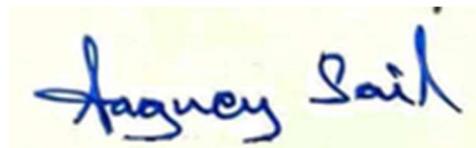
**PARAWISE REJOINDER:**

1. REJOINDER TO PARA 1: The contents of this paragraph needs no response.
2. REJOINDER TO PARAs 2 to 5: In response to these paragraphs, it is pertinent to mention that despite clear findings recorded in the site inspection report that there is concrete used in the structure and its foundation making it a permanent structure which is in direct violation of the various conditions of the GCZMA Approval

dated 31.05.2019, no action like revoking the approval, issuing stop commercial activity order, stoppage of electricity supply, water supply etc. has been taken till date by the GCZMA. This has resulted in the violators (Respondent Nos. 2 to 5) enjoying the commercial benefits/profits of their violations after site inspection carried out on 13.03.2023 till date.

3. REJOINDER TO PARAS 6 to 15: In response to these paragraphs, it is submitted that till date no proceedings of the present complaint (violation case) has been held by GCZMA after 16.08.2023. It is pertinent to mention that the said structure constructed at Survey Nos. 213/5 and 213/6 of Village Anjuna, Mandrem, Bardez Taluka has already been held to be built on enrichment on government land and has been directed to be removed by the Bombay High Court at Goa vide its orders dated 14.12.2023 and 15.01.2024. True and correct copies of the High Court orders dated 14.12.2023 and 15.01.2024 and the site inspection report are hereto marked and annexed as **ANNEXURE – R1/1(colly)**.

APPLICANT  
THROUGH



AAGNEY SAIL

**ADVOCATE FOR THE APPLICANT**

H. No. C-36, Rama World,  
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Filed on: 17.01.2024

Place: PUNE



**BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE**  
ORIGINAL APPLICATION No. 05 of 2023 (WZ)

**IN THE MATTER OF:**  
SAGARDEEP SIRSAIKAR

...APPLICANT

VERSUS

GOA COASTAL ZONE MANAGEMENT  
AUTHORITY & OTHERS

...RESPONDENTS

**AFFIDAVIT**

I, Sagardeep Sirsaikar, S/o Audumber Sirsaikar, aged about 46 years, R/o H. No. 308, Chapora, Dabolwado, Anjuna, Bardez, Goa - 403509, do hereby solemnly state and affirm that:

1. That I am the Applicant in the above mentioned Original Applicant and I am aware of the facts of the present case and as such am competent to swear this affidavit.
2. That I have understood the accompanying Rejoinder to Reply of Respondent No. 1 dated 26.09.2023 which has been drafted on my instructions and its content read over and explained to me. I say that the facts stated therein are true to my knowledge, belief and legal advice.
3. That the Annexure R1/1 to R1/ of the Rejoinder are true and correct copy of their respective originals.

**DEPONENT**

**VERIFICATION:**

Verified that the contents of paras 1 to 3 of my above affidavit are true to my knowledge and its content is read and explained to me in the vernacular, no part of it is false and nothing material has been concealed therefrom.

Verified on 17<sup>th</sup> day of January, 2024 at Goa.

**DEPONENT**

Solemnly affirmed  
Before me

N.C. Gaonkar  
Advocate & Notary  
Mapusa Bardez - Goa  
Sr. No. 1757/2024

17 JAN 2024



**ANNEXURE R1/1**

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA  
WRIT PETITION NOS. 834 AND 825 OF 2023****WRIT PETITION NO. 834 OF 2023**

Mr. Antonio D'Souza, s/o. Mariano D'Souza,  
Major of age, business, 50 years, r/o. Vagator,  
Anjuna, Bardez, Goa.

Through his Power of Attorney holder, Mr.  
Robert Coutinho, s/o. Antonio Coutinho, Major  
of age, Indian National, H. No. 548, Coutinho  
Vaddo, Anjuna, North Goa, Goa-403509. ... Petitioner

*V e r s u s*

Department of Tourism, Government of Goa,  
through its Director Paryatan Bhavan, Patto, ... Respondents  
Panaji-Goa – 403001.

**A N D**

**WRIT PETITION NO. 825 OF 2023**

Mr. Nilesh Phadte, son of Ratnakar Phadte,  
Aged 32 years, Traditional Fisherman, Indian  
National, Resident of Chapora, Dabholwada, ... Petitioner  
Bardez, Goa.

*V e r s u s*

1. The State of Goa, through The Chief Secretary, Secretariat, Porvorim, Bardez, Goa.
2. The Director of Tourism, Paryatan Bhavan, Patto, Panaji, Goa.
3. Mr. Antonio D' Souza, Major in Age, Indian National, Resident of Ozran, Vagator-Anjuna, ... Respondents Bardez, Goa.

**Mr. S. S. Kantak, Senior Advocate** with *Mr. Jitendra Supekar and Mr. Amey Phadte, Advocates for the Petitioner in WP No. 834 of 2023 and Respondent no. 3 in WP No. 825 of 2023.*

**Mr. D. J. Pangam, Advocate General** with *Mr. Deep Shirodkar, Additional Government Advocate for Respondents-State.*

**Mr. Hrudaynath S. Shirodkar, Advocate** for the *Petitioner in WP No. 825 of 2023.*

**CORAM: M. S. SONAK &  
VALMIKI SA MENEZES, JJ.**

**Reserved on: 13<sup>th</sup> DECEMBER 2023  
Pronounced on : 14<sup>th</sup> DECEMBER 2023**

### **JUDGMENT**

1. Heard Mr. S. S. Kantak, learned Senior Advocate, who appears for the Petitioner and Mr. D. J. Pangam, learned Advocate General, who appears for the Respondent-State in Writ Petition No. 834 of 2023.
2. Heard Mr. Hrudaynath Shirodkar, learned Counsel for the Petitioner in Writ Petition no. 825 of 2023, Mr. D. J. Pangam, learned Advocate General for Respondent nos. 1 and 2-State and Mr. S. S. Kantak, learned Senior Advocate for Respondent no. 3 in Writ Petition no. 825 of 2023.
3. The Petitioner, in Writ Petition no. 825 of 2023, seeks a writ of mandamus to the Director of Tourism to demolish the construction put up by the third Respondent on the beach by encroaching the land

belonging to the Goa Tourism Department (Government of Goa), in front of the property surveyed under nos. 213/4 & 213/5 of Village Anjuna.

4. Writ Petition no. 834 of 2023, is instituted by Respondent no.3 in Writ Petition no. 825 of 2023, challenging the notice dated 27.10.2023 issued by the Director of Tourism directing him to demolish the structures put up by encroaching upon the property of Goa Tourism (Government of Goa) beyond the property surveyed under no. 213/4 & 213/5 of Village Anjuna.

5. Considering the above circumstances, both these Petitions were taken up and considered together. Accordingly, it is only proper that a common Judgment and Order disposes of both Petitions.

6. Rule is accordingly issued in both the Petitions, and the Rule is made returnable immediately by consent of learned Counsel for the parties.

7. Writ Petition no. 825 of 2023 stands worked out with the issuance of notice dated 27.10.2023 by which the Director of Tourism has directed the Respondent no.3 in the said Petition and the Petitioner in Writ Petition no. 834 of 2023, to demolish the constructions put up in the encroached portion and restore the Government land i.e. the

public breach in its original position. This was the main relief that the Petitioner sought in Writ Petition no. 825 of 2023. In Writ Petition no. 834 of 2023, however, the Petitioner, who was impleaded as third Respondent in Writ Petition no. 825 of 2023, has challenged the Director's impugned notice dated 27.10.2023.

8. Mr Kantak, learned Senior Advocate for the Petitioner in Writ Petition no. 834 of 2023, submitted that the constructions put up by the Petitioner are entirely within their property surveyed under no. 213/5 of village Anjuna, and no part of the structure encroaches on the public beach or the property of the Director of Tourism (Government of Goa). He submitted that no proper notice was given to the Petitioner, and the material based upon which encroachment is alleged was also not furnished to the Petitioner. He, therefore, submitted that there is a violation of natural justice, and the impugned notice dated 27.10.2023 is required to be interfered with.

9. Mr Kantak referred to our Order dated 06.12.2023 in Writ Petition no. 834 of 2023 and submitted that on 08.12.2023, no survey was conducted by the officials from DSLR, but only an inspection was held. He submitted that there was a breach of the directions issued by us in our order dated 06.12.2023 since no survey was conducted at the site. He submitted that the Petitioner, through his attorney, has filed an affidavit that no survey was conducted.

10. Mr. Kantak submitted that on behalf of the Petitioner, a statement was made that in case any portion of the structure is found to be beyond the property surveyed under no. 213/5, the Petitioner would remove the encroachment immediately. He submitted that on behalf of the Petitioner, a statement was already made that the Petitioner has no concern with the encroachment beyond the property surveyed under no. 213/4 or the property surveyed under no. 213/4 and that the present Petition was restricted only to survey no. 213/5 of Village Anjuna.

11. Mr. Kantak submitted that without a proper survey, the Director of Surveyor was not entitled to conclude that there was any encroachment by the Petitioner. He submitted that the impugned notice warrants interference on this ground. Mr. Kantak also produced some photographs of the construction and its location. Based on all these submissions, Mr Kantak submitted that the impugned notice dated 27.10.2023 be set aside.

12. Learned Advocate General submitted that pursuant to Court directions, a detailed survey was carried out in which it was found that there were several encroachments on the public beach, which belongs to the Director of Tourism (Government of Goa). Accordingly, notices were issued to several encroachers, pursuant to which even

demolition/action of removal of encroachment has been carried out. Learned Advocate General submitted that the impugned notice dated 27.10.2023 is one such notice issued to the Petitioner after it was found that Petitioner has encroached on the public beach to the extent of almost 476 square metres and further, this encroached area is used for commercial purposes of a Bar and Restaurant on the beach.

13. Learned Advocate General submitted that the officials from the DSLR conducted the inspection and survey on 08.12.2023. He submitted that neither the Petitioner nor his attorney chose to remain present on the site at the time of survey and inspection. He submitted that the Petitioner deputed some Surveyor to remain at the site. Learned Advocate General pointed out that this Surveyor has filed no affidavit. Still, the Petitioner's attorney, who was not present at the site, has filed an affidavit claiming falsely that no survey was ever held. He pointed out that this affidavit does not even disclose the fact that the Affiant was not present at the time of the inspection and survey.

14. The Learned Advocate General submitted that the survey clearly reveals encroachment to the extent of 476 square metres on the public beach. Learned Advocate General also produced photographs to show that the encroachment is right on the public beach, and the encroached portion almost touches the sea and the rocks on the beach.

15. The Learned Advocate General submitted that this is a clear case of encroachment on a public beach to the extent of almost 476 square metres. He submitted that the Petitioner, consistent with his undertaking, must remove the encroachment and demolish the construction on the encroached portion. He submitted that the entire purpose for instituting this Petition is to delay in removal of encroachment and, in the meantime, to use this property for commercial purposes during the peak season.

16. The Learned Advocate General, therefore, submitted that this Writ Petition no. 834 of 2023 may be dismissed and Writ Petition no. 825 of 2023 may be disposed of since the Director of Tourism has already initiated action against the encroachment made by Antonio D'Souza.

17. Mr Shirodkar submitted that the Petitioner in W.P. No. 834/2023 has brazenly encroached on the public beach, which is government property and is using the structure in this encroached portion as a Bar and Restaurant. He pointed out some plans and photographs showing the position of the structures qua the public beach. He submitted that because the Authorities were not taking any action or were only making a pretence of action, W.P. No. 825/2023 had to be instituted. He submitted that directions should be issued to

restrain Antonio from carrying out commercial operations in the encroached portions.

18. The rival contentions now fall for our determination.

19. On behalf of the Petitioner, in Writ Petition no. 834 of 2023, a solemn statement was made that the Petitioner is running a Bar and Restaurant in the structure put up by him on survey no. 213/5 after procuring “*all requisite permissions*’. However, no permissions were annexed with the Petition. The Petitioner had asserted that the property surveyed under no. 213/5 belongs to the Petitioner, but no material was placed on record even to *prima facie* substantiate this aspect.

20. Accordingly, an Order was made on 29.11.2023, in which the statement of the Counsel for the Petitioner was recorded that a detailed affidavit accompanied by all requisite permissions would be filed in this Court by 06.12.2023 without seeking any adjournments. In the said Order, the statement of the Petitioner’s Counsel that the Petitioner had no concern with the property surveyed under no. 213/4, or the construction beyond the said survey number, was also recorded. Accordingly, the interim Order obtained by the Petitioner during vacations without annexing any permissions or property documents

was modified as inapplicable to the construction/encroachment in survey no. 213/4 or beyond.

**21.** On 06.12.2023, the Counsel for the Petitioner, on instructions, asserted that the construction put up by the Petitioner was restricted within survey no. 213/5 of Village Anjuna, and no part of the Petitioner's structure encroached beyond survey no. 213/5, i.e. on the public beach belonging to the Government of Goa. The Counsel for the Petitioner, on instructions, made a further statement that in case any portion was found to be encroaching beyond the property surveyed under no. 213/5, the Petitioner would remove the encroachment immediately. On 06.12.2023, the Petitioner's Counsel made a request that a surveyor be appointed to inspect the site to ascertain the position of the alleged encroachment. The Petitioner's Counsel submitted that the Surveyor should be appointed from the Office of DSLR, Government of Goa.

**22.** On 06.12.2023, Mr Shirodkar, learned Additional Government Advocate, produced a Google map to show how the structure put up by the Petitioner was beyond the property surveyed under no. 213/5 and how the same had encroached upon the public beach. Nevertheless, Shri Shirodkar agreed to the Petitioner's Counsel's suggestion about the survey through the Surveyors from the DSLR.

**23.** Accordingly, on 06.12.2023, we made the following order:

“P.C.

Mr. Supekar, learned Counsel, on instructions, states that the structures put up on the area which is used by the Petitioner is entirely within survey no. 213/5 of Anjuna Village. On instructions, he states that no part of the Petitioner's restaurant encroaches beyond Survey no. 213/5.

2. Mr. Supekar, on instructions, states that if any portion is found to be encroaching beyond the property surveyed under no. 213/5, the Petitioner will remove the encroachment immediately.

3. Mr. Supekar states that a Surveyor may be appointed to inspect the site and to ascertain the position about the alleged encroachment. He suggests that the Surveyor should be from the office of DSLR, Government of Goa.

4. Mr. Shirodkar, learned Additional Government Advocate, submits that from the Google Map, it is very evident that the Petitioner has encroached beyond the property surveyed under no. 213/5 and on to the public beach. He states that Surveyors from DSLR will go to the site on 08.12.2023 at 10.00 a.m. and in the presence of the Petitioner to undertake the survey. If the Petitioner does not remain present at the site at 10.00 a.m., there is no question of the Petitioner then complaining of any failure of natural justice.

5. A report should be filed based upon the survey on 11.12.2023. The statement made by Mr. Supekar based on instructions from the Petitioner is accepted as an undertaking to this Court.

6. Mr. Shirodkar pointed out that Writ Petition no. 825 of 2023 has been instituted complaining about encroachment carried out by this Petitioner on the public beach. He pointed out that this Petition is scheduled to come up on 11.12.2023. Accordingly, he points out that

the Petitioner is a party in this Petition. Mr. Supekar, however, states that no notice has been served upon the Petitioner. However, we direct the Petitioner to remain present in this Court on 11.12.2023 so that he can accept the notice.

7. Mr. Supekar with either the Petitioner or his duly instructed Counsel will remain present. A copy of Writ Petition no. 825 of 2023 is now furnished to Mr. Supekar, who accepts the same on behalf of the Petitioner.

8. Stand over to 13.12.2023.”

24. The learned Advocate General has produced on record the Order dated 07.12.2023 issued by the Deputy Director of Tourism directing the officials to carry out survey/inspection on 08.12.2023 at 10.00 a.m. at the site in question. The Order dated 06.12.2023 had made it clear that no separate notice had to be issued to the Petitioner and that the Petitioner would remain present for the inspection/survey at the site.

25. Mr Kantak, learned Senior Advocate for the Petitioner, admitted that neither the Petitioner nor his Attorney remained present at the site for the survey or inspection scheduled on 08.12.2023 at 10.00 a.m. However, Mr. Kantak submitted that one Surveyor remained present on the Petitioner's behalf. Mr Kantak submitted that the CCTV cameras at the site also captured what transpired on the site. Neither has this surveyor filed any affidavit, nor has any footage from any CCTV been produced.

26. Mr. Kantak submitted that the Surveyors carried out no survey. He submitted that the Surveyors merely relied upon the plan prepared earlier and stated that the earlier plan stands confirmed. Based on this, Mr. Kantak submitted that there was a breach of the directions issued by us in our Order dated 06.12.2023. Mr. Kantak pointed out that the Petitioner's attorney has filed an affidavit to the effect that the survey officials held no survey.

27. The Petitioner, through his attorney, Mr Robert Coutinho, has indeed filed an affidavit on 13.12.2023 claiming that no survey was held at the site on 08.12.2023 at 10.00 a.m. In the affidavit, neither the Petitioner nor his attorney disclosed that they were not present at the site on 08.12.2023 at 10.00 a.m., i.e. the time scheduled for the inspection and survey. Further, it was admitted during arguments that neither the Petitioner nor his attorney, who has filed an affidavit, were present at the site at the time of survey and inspection. Neither has this surveyor, who was present at the site, filed any affidavit, nor has any footage from any CCTV been produced in support of the contention that no survey was held.

28. The affidavit claiming that there was no survey held on 08.12.2023 has been verified by the Petitioner's attorney in paragraph 13 by stating that the entire contents of paragraphs 1 to 12 "*are true to*

*my own personal knowledge and as per available records which are believed to be true”.*

**29.** Since, admittedly, neither the Petitioner nor his attorney was present at the site on 08.12.2023 at the time when this Court scheduled the survey/inspection, we fail to understand how the Petitioner’s attorney can on affidavit, make factual statements based upon his “*own personal knowledge*”. Besides, whether the survey was held or not cannot be established by “*available records*”. Accordingly, we cannot accept the Petitioner’s or, rather, his attorney’s contention that no survey was held at all on 08.12.2023. The Petitioner now seeks to wriggle out from the solemn statement made by his Counsel based upon his instructions that if the survey reveals any encroachment, the same would be immediately removed by the Petitioner. Only to avoid compliance with this solemn statement duly recorded in our order dated 06.12.2023, the Petitioner now alleges that no survey was held. This defence cannot be accepted.

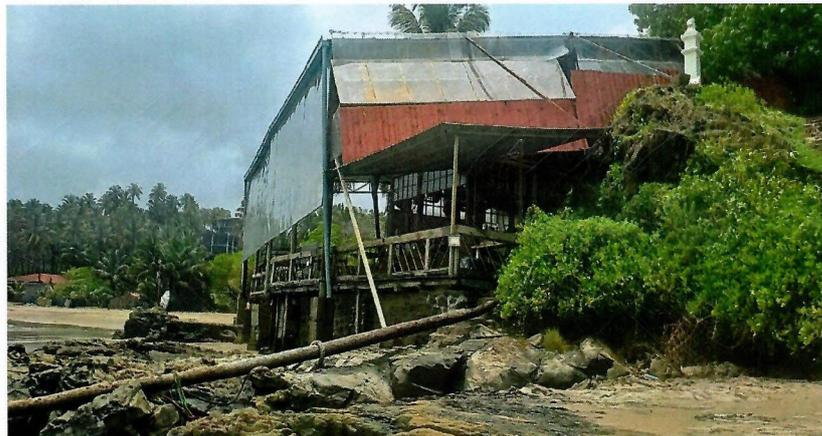
**30.** Mr Kantak submitted that there is no difference between the earlier plan showing some alleged encroachment brought by the Surveyors and the plan now produced after the alleged survey, which is dated 08.12.2023. He submitted that from this, it is apparent that no

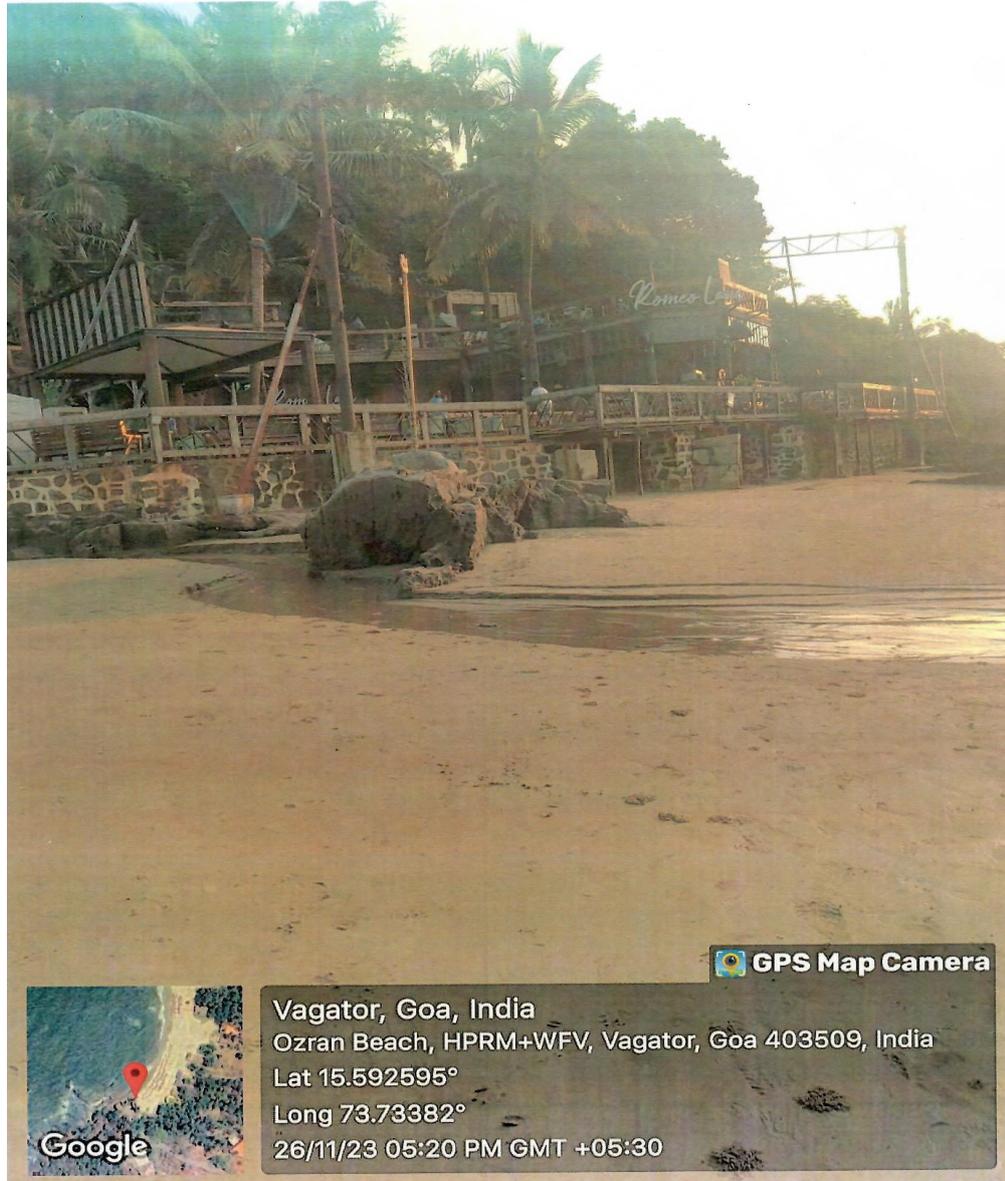
survey was conducted, but the Surveyors merely inspected the site and concluded that their earlier prepared plan was correct.

**31.** The above contention cannot be accepted because, as was pointed out by the Learned AG, there is some difference between the earlier plan and the plan dated 08.12.2023. The plan dated 08.12.2023 placed on record by the learned Advocate General indicates in some details the location as also dimensions of the encroached portion. There is a difference between the earlier plan and this plan after the fresh survey by the DSLR officials pursuant to the Court order. Measurements have been provided, and even the shape of the encroachment is clear. All this exercise was not possible without a survey. Therefore, the Petitioner's contention that there was no survey at all cannot be accepted. Based upon such a contention, the Petitioner cannot avoid compliance with the statement made on his behalf that the encroached portion would be removed and the construction to the extent it encroaches upon the public beach would be demolished.

**32.** Mr Kantak, the Learned Advocate General, and Mr Shirodkar have all produced photographs on record. From the photographs, it is evident that the Petitioner has, with impunity, encroached upon the public beach. The construction is right on the public beach and very close to the seashore and the rocks on the beach. Mr. Kantak, the

learned Senior Advocate for the Petitioner, did submit that beyond the Petitioner's property surveyed under no. 213/5 is the public beach belonging to the Government of Goa, followed by the sea. However, from the photographs placed on record, it is evident that the construction is right upon the beach by encroaching upon the Government property. Some of the photographs produced by the learned Counsel for the parties are made part of this order.





33. Thus, the survey reports establish encroachment by the Petitioner to the extent of 476 square metres on the public beach, i.e. property belonging to the Director of Tourism (Government of Goa). The photographs corroborate this position. The defence that no survey was carried out and, therefore, there was some breach of the directions

issued by us in our Order dated 06.12.2023 deserves no acceptance. This defence was raised only to back out from the solemn statement made on behalf of the Petitioner that the encroached portion would be cleared if the survey shows encroachment. Even though the Google map produced by Mr. Deep Shirodkar, learned Additional Government Advocate, clearly establishes encroachment on the public beach. Thus, there is more than ample material on record to establish encroachment on the public beach to the extent of 476 square metres.

34. The Petitioner produced some permissions on record. One of the permissions was from the Goa Coastal Zone Management Authority (GCZMA) for the erection of “*temporary wooden Shack & Huts in the property bearing survey no. 213/5*”. The learned Advocate General pointed out that clause (4) of this permission made it clear that the proposed temporary seasonal structure should be made of wooden material, and as per the recommendation of the Beach Carrying Capacity report, no cement/concrete should be used for flooring and that no structure of permanent nature shall be erected/constructed.

35. Mr. Kantak submitted that the GCZMA has already issued a show cause notice to the Petitioner, and the GCZMA is considering the Petitioner’s response. Be that as it may, we must record the learned Advocate General’s submission that, at least from the photographs it is

apparent that the terms and conditions of GCZMA's permission have been breached. A concrete platform has been put up as a foundation right on the beach, and the deck and a structure are put up on the same even though the permission was only for a temporary, seasonal structure without using any cement or concrete.

**36.** Mr Kantak, based on instructions from the Attorney, submitted that this cement concrete platform already existed, and a wooden deck is now provided. This defence is completely frivolous because no such constructions are permitted on public beaches and in No Development Zones. In any case, the permission produced by the Petitioner does not refer to the existence of any such structure/platform. If the concrete structure were already existing, then this would have been the first thing that the Petitioner would have indicated in the plans seeking permission from GCZMA. Therefore, we do get the impression that all such defences are being raised without any responsibility or regard for the truth, only to foil the Government's drive to remove rampant encroachments on the public beach at least till the peak season passes.

**37.** This Petition is instituted through a power of attorney, Robert Coutinho. Since the GCZMA and some other permissions produced by the Petitioner were also in the name of Robert Coutinho in his personal capacity and not his power of attorney, we inquired with the said Robert Coutinho, who was present in the Court whether he had any

agreement with the Petitioner to operate the beach resort, the Bar and restaurant. Mr Coutinho replied that he has taken the Petitioner's property on rent, paying an amount of Rs.3,00,000/- per month to the Petitioner. All this may not be strictly speaking relevant. Still, we think that the authorities granting the permissions must at least *prima facie* ascertain whether the party applying for the permissions has some ownership or other tangible rights before such permissions are granted. This is important because there are rampant violations of the CRZ Notification. Once the tourist season concludes, none of the violators assume any responsibility. In this matter, the alleged owner of the property surveyed under no. 213/5 appears nowhere in the picture. The Petition is instituted through the Attorney who admitted that he is operating the resort, bar, and restaurant. Surprisingly, it is this attorney who is raising one frivolous defence after another.

**38.** In our Order dated 29.11.2023 in Writ Petition no. 834 of 2023, we had observed that this Petition was filed without annexing any permissions and without producing any material on record to even *prima facie* substantiate interest in the property surveyed under no. 213/5 of Village Anjuna. Though some permissions were later produced, no material was produced to show any interest in survey no. 213/5 by this attorney. Still, without annexing any documents, this Petition was instituted, and an ad-interim order was obtained during

the vacations on 15.11.2023. If all such materials were to be placed before the Court, perhaps no ad-interim relief was liable to be granted.

**39.** This is not a case of any breach of principles of natural justice or fair play. There is nothing like technical observance of principles of natural justice. There is ample material showing encroachment on the public beach. As if this was not sufficient, at the request made on behalf of the Petitioner, the DSLR officials were appointed to conduct the survey in the presence of the Petitioner. The Petitioner or his attorney refused to remain present or avoided remaining present for the survey. Afterwards, an allegation is made that no survey was conducted. The affidavit, as noted earlier, inspires no confidence, particularly since the affidavit was filed by the attorney who was admittedly not present at the site. Still, the attorney claimed that no survey was conducted based on his alleged personal knowledge. In such circumstances, no case is made out to interfere with the impugned notice based on any alleged violations of principles of natural justice or fair play.

**40.** As pointed out by the learned Advocate General, action is going on and has been completed in respect of several encroachments on the public beach. The scourge of illicit construction especially within the eco-sensitive CRZ must be dealt with an iron hand. Various judgments

of this court, as well as the Hon'ble Supreme Court, have asserted the same sentiment.

41. In *Goa Foundation, Goa v. North Goa Planning and Development, Panaji Goa and others*.<sup>1</sup> The division bench of this court noted that, we have to keep in mind that the provisions of the CRZ Notification have been conceived to maintain high public purpose to subserve in protecting the ecology and conserving the environment and that the Division Bench of this Court in the case of *Overseas Chinese Cuisine (India) Pvt. Ltd., & another v. The Municipal Corporation of Greater Bombay & others*, reported in 2000 (1) Bom CR 341 held that the CRZ Notification embodied the principle of 'containment' and 'toleration' and that the building activity permitted under the Notification in CRZ II area shall be frozen to the laws and norms existing on the date of the Notification.

42. Further, that no consideration should be shown to the builder or any other person when the construction is illegal and unauthorised. This dicta is now almost a rule of law. Finally, that, the primary concern of the Court is to eliminate the negative impact. The construction activity which comes within the CRZ area has to be eliminated as otherwise it would affect the environmental conditions in ecologically vulnerable areas.

<sup>1</sup> (2016) 2 Mah LJ 566

43. In ***Piedade Filomena Gonsalves vs. State of Goa and ors.***<sup>2</sup>, the Hon'ble Supreme Court 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 construction raised in violation of such regulations cannot be lightly condoned.* That was a case where the Petitioner indulged in the misadventure of raising a construction within 200 meters of the HTL, without obtaining any permissions from the GCZMA. The Hon'ble Supreme Court, in express terms, rejected the request of regularization of such structure within the highly eco-sensitive NDZ.

44. The ruling in ***Piedade Filomena Gonsalves*** (supra) was once again followed by the Hon'ble Supreme Court in ***Kerala State Coastal Zone Management Authority vs. State of Kerala, Maradu Municipality, and ors.***<sup>3</sup> where unauthorized constructions were carried out by the builders on the shores of the backwaters in Ernakulam in the State of Kerala which supports exceptionally large biological diversity and constitutes one of the largest wetlands in India. The Hon'ble Supreme Court observed that the construction activities were taking place in critically vulnerable coastal areas notified as CRZ-III.

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2 (2004) 3 SCC 445

3 (2019) 7 SCC 248

45. In the specific context of the CRZ Notification, the Hon'ble Supreme Court held that the Notifications issued under the Environment Protection Act are meant to protect the environment and bring about sustainable development. It is the law of land. It is meant to be obeyed and enforced. The constructions in violation of the Coastal Regulation Zone Regulations are not to be viewed lightly and who breaches its terms, does so at his own peril. The fait accompli of constructions being made which are in the teeth of the Notification, cannot present, but a highly vulnerable argument. The Supreme Court approved the decision of the Kerala High Court in ***Ratheesh K.R. vs. State of Kerala***<sup>4</sup>.

46. The present Petitioner, without disclosing all documents, did obtain an ad-interim order during vacations. This Petition is now liable to be dismissed, and this ad-interim Order is liable to be vacated.

47. For all the above reasons, we dispose of Writ Petition no. 825 of 2023 but dismiss Writ Petition no. 834 of 2023. The ad-interim Order granted on 15.11.2023 is hereby vacated. The concerned Authorities must take immediate steps to remove the encroachment from the public beach in terms of the impugned notice, and the Petitioner in W.P. No 834/2023 must stop using this encroached portion for any commercial purposes pending the removal of encroachment. The

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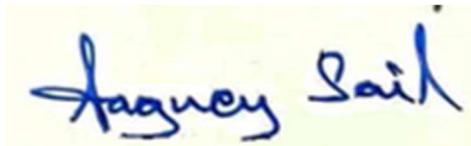
4 2013 SCC OnLine Ker. 14359

Authorities must ensure this so that no premium is drawn based on frivolous defences or inaction.

48. The Rule in Writ Petition no. 825 of 2023 is disposed of, and the Rule in Writ Petition no. 834 of 2023 is discharged. There shall be no order as to costs.

**VALMIKI SA MENEZES, J.**

**M. S. SONAK, J.**

A handwritten signature in blue ink on a light yellow background. The signature reads "Jagney Sain".

-- TRUE COPY --

Maria S

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**CONTEMPT PETITION NO.76 OF 2024(FILING)**  
**IN**  
**WRIT PETITION NO.825 OF 2023**

Nilesh Phadte

**...Petitioner**

*Versus*

State of Goa through Chief Secretary And 2  
Others

**... Respondents**

**Mr Hrudaynath S. Shirodkar, Advocate for the Petitioner.**

**Mr Devidas J. Pangam, Advocate General with Mr Deep D. Shirodkar, Additional Government Advocate for Respondent State.**

**CORAM: M. S. SONAK &  
VALMIKI SA MENEZES, JJ.**

**Date: 15<sup>th</sup> JANUARY 2024**

**P.C.:**

1. Heard Mr Hrudaynath S. Shirodkar, learned counsel for the Petitioner and Mr Devidas J. Pangam, learned Advocate General appears for the State.

2. By our judgment dated 14.12.2023 in Writ Petition No.825/2023 and Writ Petition No.834/2023, we had directed the authorities to take immediate steps to remove the encroachment from the public beach in terms of the impugned notice. Further, we

had directed the and the Petitioner in W.P. No 834/2023 to stop using the encroached portion for any commercial purposes pending the removal of encroachment. The Authorities were also directed to ensure this so that no premium is drawn based on frivolous defences or inaction.

3. Though this order was made on 14.12.2023, the petitioner complains that Mr Antonio D'Souza or Robert Coutinho neither stopped the commercial activities nor has he demolished the encroached portion of the structure. Similarly, the petitioner complains that the Director of Tourism also did nothing to ensure that Antonio/Robert stop the commercial activity forthwith or to demolish the encroached portion. As a result, the Petitioner complains that Antonio/Robert continued commercial activity through the encroached and unauthorised portion without any action from the Director of Tourism.

4. This matter had come up before us on 10.01.2024 and we had requested the learned Advocate General to find out whether our order was complied with or not. Today, learned Advocate General states that on 12.01.2024 the Director of Tourism has issued a notice to stop all commercial activities. A copy of this notice was also addressed to the Police Inspector concerned.

5. Thus, the above, prima facie, indicates that the Director of Tourism did nothing from 14.12.2023 even though our directions were clear that immediate action had to be taken at least to stop the

commercial activities. Even as of today, there is no clarification whether the commercial operations are stopped or not.

6. Learned Advocate General now states that by today evening the necessary police officials will be deputed to the site and it will be ensured that all commercial activities cease in the encroached portion which is ordered to be demolished. The compliance report will be filed by tomorrow before this Court.

7. In the above circumstances, we issue notice to Mr Suneel Anchipaka, Director of Tourism, to show cause as to why action under Contempt of Court Act, 1971 should not be initiated. The notice to be issued in Form-I of the Contempt Rules, immediately. The Registrar (Judicial) must ensure that this notice is issued at the earliest.

8. We grant the Petitioner leave to implead Mr Robert Coutinho, H.No.548, Vagator, Anjuna, Bardez-Goa, in this petition. This leave to is granted because it was pointed out to us that though Antonio D'Souza is the owner of the structure, it is Mr Robert Coutinho who is carrying out the operations by paying rent of Rs.3 lakhs per month to the Petitioner. This information was disclosed by Mr Robert Coutinho who was present in the Court and also recorded by us in paragraph 37 of the judgment dated 14.12.2023.

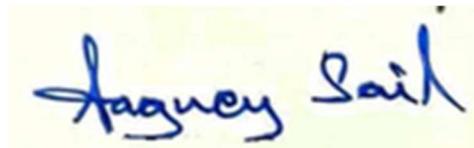
9. Accordingly, we also issue notice to Mr Robert Coutinho and to Mr Antonio D'Souza in Form-I to show cause as to why action under Contempt of Court Act should not be taken.

10. The Registrar (Judicial) must ensure that even this notice is issued at the earliest.

11. We direct that these notices be made returnable on 29.01.2024.

**VALMIKI SA MENEZES, J.**

**M. S. SONAK, J.**

A handwritten signature in blue ink on a yellow background. The signature reads "Jagney Sain".

-- TRUE COPY --

1406  
16-10

INSPECTION REPORT

Department of Tourism  
Paryatan Bhavan, Patto-Panaji  
Inward No.: 11555  
Date: 6/10/23

DDR

Reference: Order No. 7/7(916)/2023/DT/2593 dated 04.10.2023

11/10

12/10  
DDR  
13/10  
16/10  
BD

1. In pursuance to the above mentioned order, the team comprising of officials of the Department of Tourism conducted site visit on 05.10.2023. A copy of the Order is enclosed as Annexure - I.
2. **Following officials were present during the site visit:**
  - 1) Shri Bhavesh Dhawaskar, Information Asstt (Revenue)
  - 2) Shri Shivanand Kambli, Field Surveyor (Planning)
3. During the inspection, it was observed that the Boundary Stones laid down by Department of Tourism has been moved from their original location as per the survey plan. The stones indicated as D25 has been moved photographs of the current location of the boundary stones are enclosed at Annexure - II
4. The inspection of the encroachment shown as per the survey plan was carried out. The name of the establishment is **Romeo Lane** after inspection the Field Surveyor has estimated that the total area of the encroachment is 476.0 sq mt. the said survey plans showing the extend of encroachment may be seen at Annexure - III
5. The google image of encroachment may be seen at Annexure - IV

6. As per the inspection it is observed that the encroachment carried out by **Romeo Lane** consist of following structures: *Annexure IV*

A- The concrete flooring along with concrete staircase

B- Metal staircase

C- Bar counter

D- The wooden flooring for placing chairs and tables

E- Metals poles supporting GI/Metal roofing

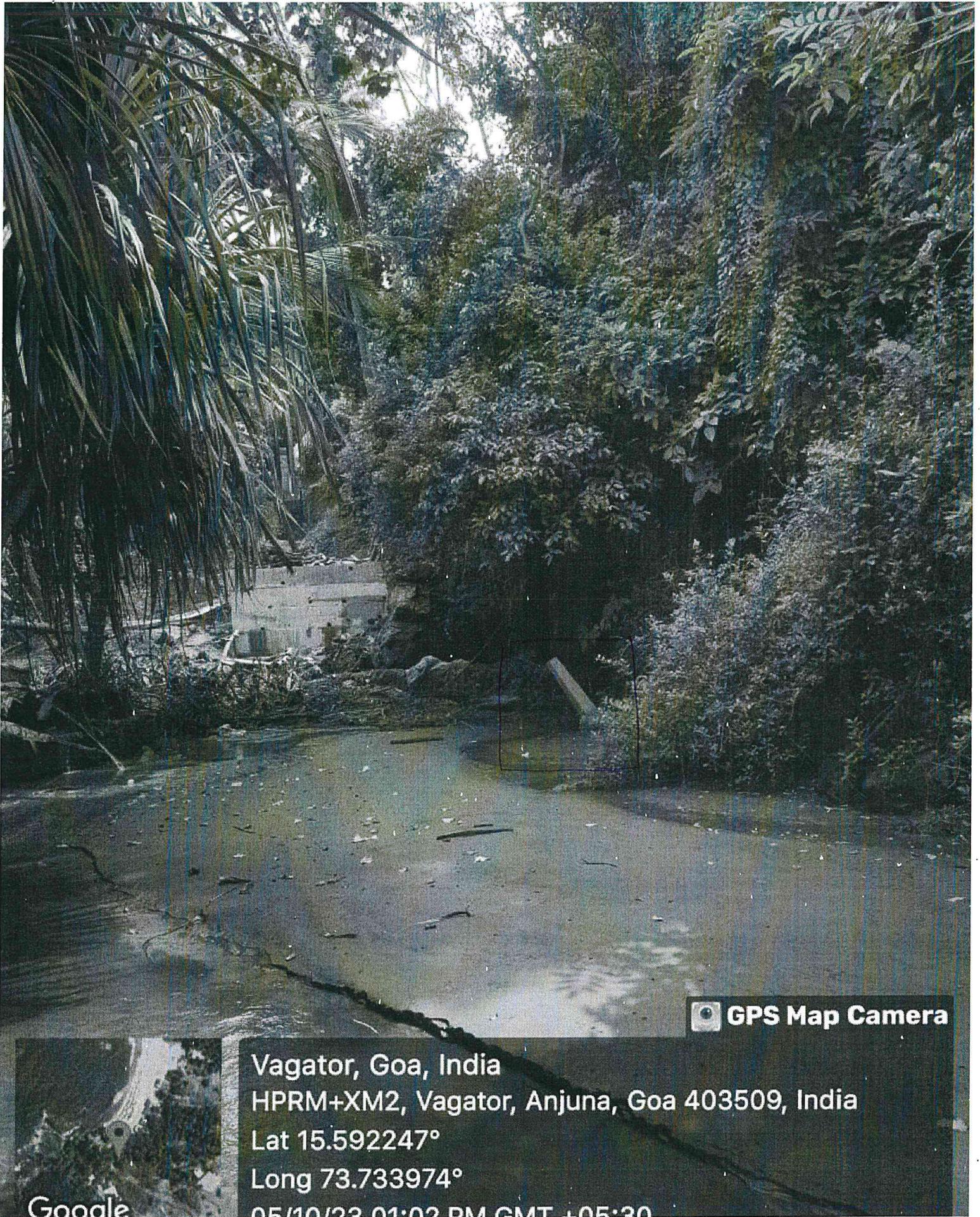
7. As regard to the encroachment alleged by Shri Nilesh Phadte in his complaint, after site visit it has been ascertained that there is clear encroachment made by the Romeo Lane in Government property in front of Survey No. 213/4 and 213/5. also as per the survey plan the boundary stones D22, D23 and D24 were not located in the premises as per the said plan. *As per Annexure VI*

Shri Bhavesh Dhawaskar, Information Asstt (Revenue) 

Shri Shivanand Kambli, Field Surveyor (Planning) 

To  
The Director  
Department of Tourism  
Government of Goa





GPS Map Camera

Vagator, Goa, India  
HPRM+XM2, Vagator, Anjuna, Goa 403509, India  
Lat 15.592247°  
Long 73.733974°  
05/10/23 01:02 PM GMT +05:30

Google

Boundary Stones Marked in a Box.



GPS Map Camera



Vagator, Goa, India  
HPRM+XM2, Vagator, Anjuna, Goa 403509, India  
Lat 15.592199°  
Long 73.734083°  
05/10/23 01:30 PM GMT +05:30

Google

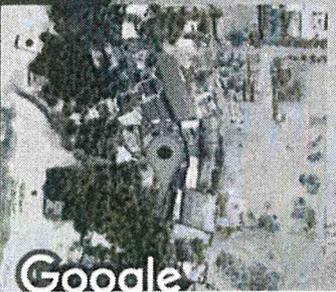
Annexure IV



Romeo Lane .



GPS Map Camera

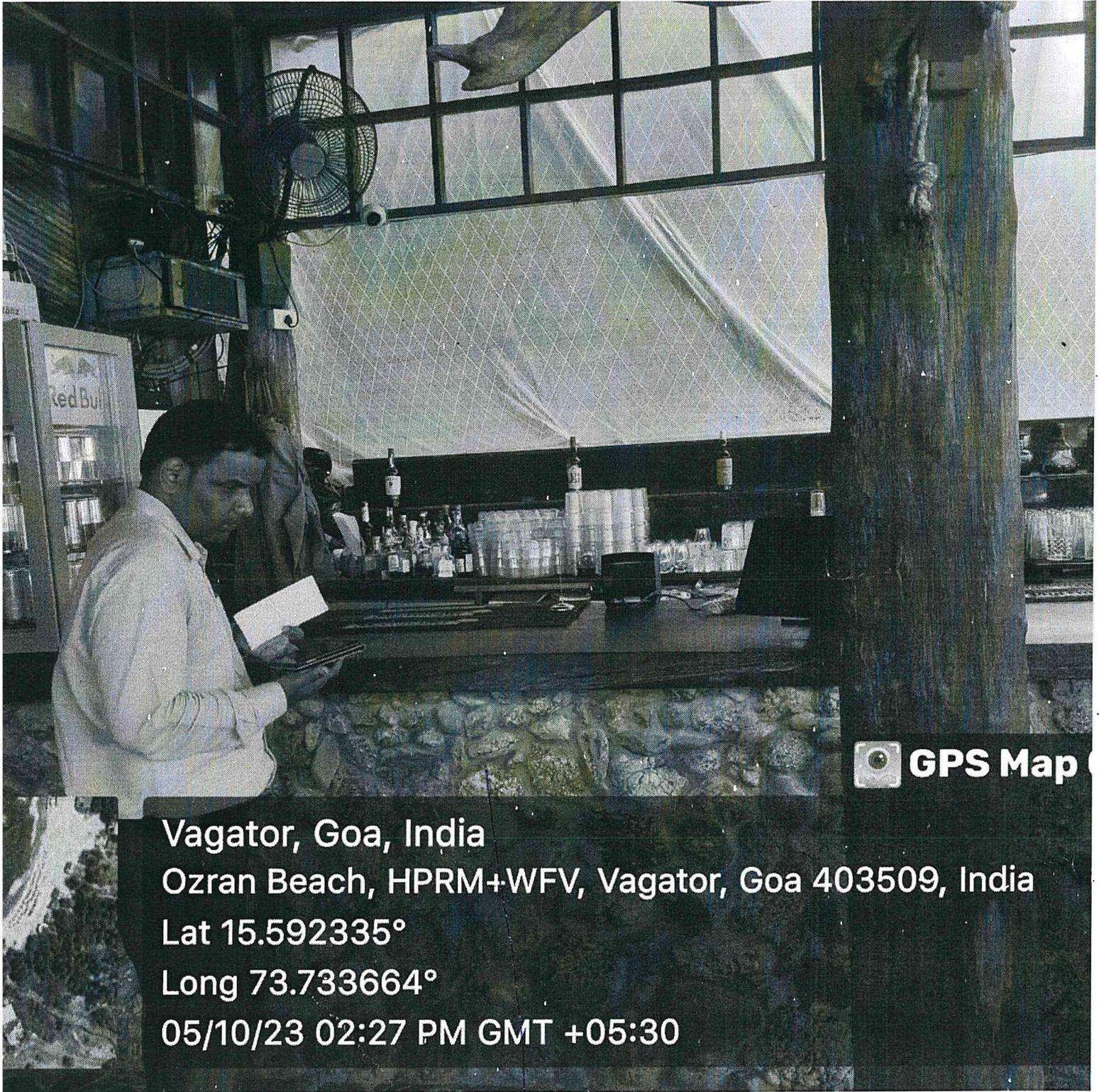


Vagator, Goa, India  
 HPVP+Q68, Vagator, Goa 403519, India  
 Lat: 15.593716°  
 Long 73.73534°  
 05/10/23 02:20 PM GMT +05:30

Concrete flooring  
 Concrete Staircase

(A)

Annexure IV (E)



Vagator, Goa, India  
Ozran Beach, HPRM+WFV, Vagator, Goa 403509, India  
Lat 15.592335°  
Long 73.733664°  
05/10/23 02:27 PM GMT +05:30

↓  
Bar Counter

Annexure IV (B)



metal staircase

Annexure IV(D)

 **GPS Map**

Vagator, Goa, India

Ozran Beach, HPRM+WFV, Vagator, Goa 403509, India

Lat 15.592296°

Long 73.733617°

05/10/23 02:28 PM GMT +05:30



GPS Map Camera

Vagator, Goa, India  
Ozran Beach, HPRM+WFV, Vagator, Goa 403509, India  
Lat 15.592296°  
Long 73.733617°  
05/10/23 02:29 PM GMT +05:30

Google

Annexure V(E)

 **GPS Map****Vagator, Goa, India****HPRM+XM2, Vagator, Anjuna, Goa 403509, India****Lat 15.592475°****Long 73.734007°****05/10/23 01:04 PM GMT +05:30**

Annexure IV



GOVERNMENT OF GOA  
DIRECTORATE OF SETTLEMENT AND LAND RECORDS  
OFFICE OF THE INSPECTOR OF SURVEY AND LAND RECORDS  
MAPUSA GOA

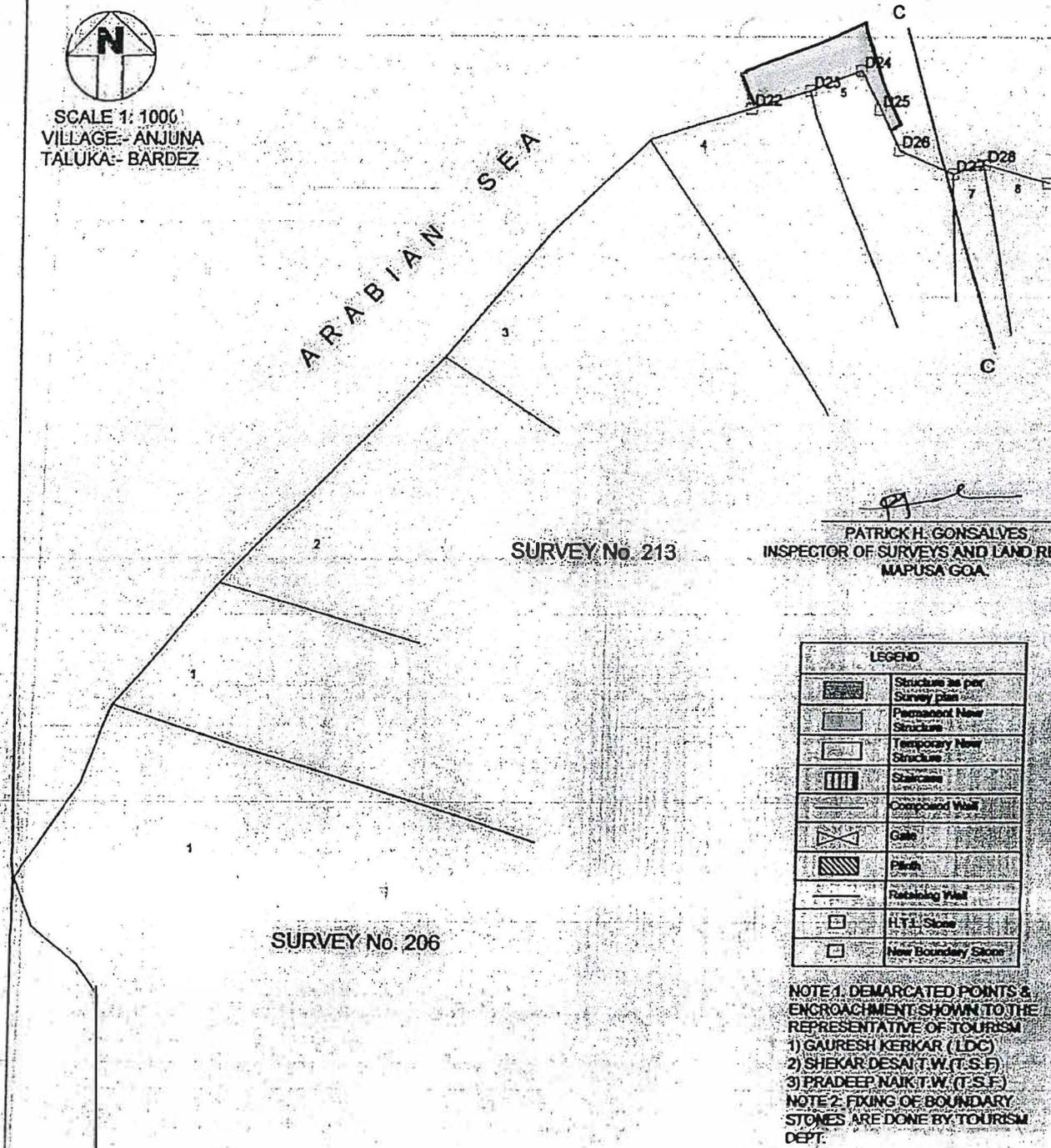
SKETCH

SHOWING THEREIN THE DEMARCATED BEACH STRETCH OF THE PROPERTY SITUATED AT ANJUNA VILLAGE OF BARDEZ TALUKA, HEREBY SHOWING THE ENCROACHMENT IF ANY, AND ALSO THE DEMARCATED BOUNDARY STONES/POINTS, AS PER THE ORDER NO. 77(757)/2022/DT DATED 05/09/2022 FROM DSLR, PANAJI GOA.

9  
21



SCALE 1: 1000  
VILLAGE:- ANJUNA  
TALUKA:- BARDEZ



*[Signature]*

PATRICK H. GONSALVES  
INSPECTOR OF SURVEYS AND LAND RECORDS  
MAPUSA GOA.

LEGEND	
	Structure as per Survey plan
	Permanent New Structure
	Temporary New Structure
	Staircase
	Compound Wall
	Gate
	Pit
	Retaining Wall
	HTI Stone
	New Boundary Stone

NOTE 1: DEMARCATED POINTS & ENCROACHMENT SHOWN TO THE REPRESENTATIVE OF TOURISM  
1) GAURESH KERKAR (LDC)  
2) SHEKAR DESAI T.W. (T.S.F)  
3) PRADEEP NAIK T.W. (T.S.F)  
NOTE 2: FIXING OF BOUNDARY STONES ARE DONE BY TOURISM DEPT.

PREPARED BY:  
VIVEK A. BUDE (F.S.)  
SANTOSH CHODANKAR (F.S.)  
SAHEEL GAD (F.S.)

SEEN BY: *[Signature]*  
20/05/23  
YESHANT K. KADKAR  
(HEAD SURVEYOR)



**Government of Goa**  
 Directorate of Settlement and Land records  
 Survey Plan  
 Taluka / Village Name : BARDEZ / Anjuna

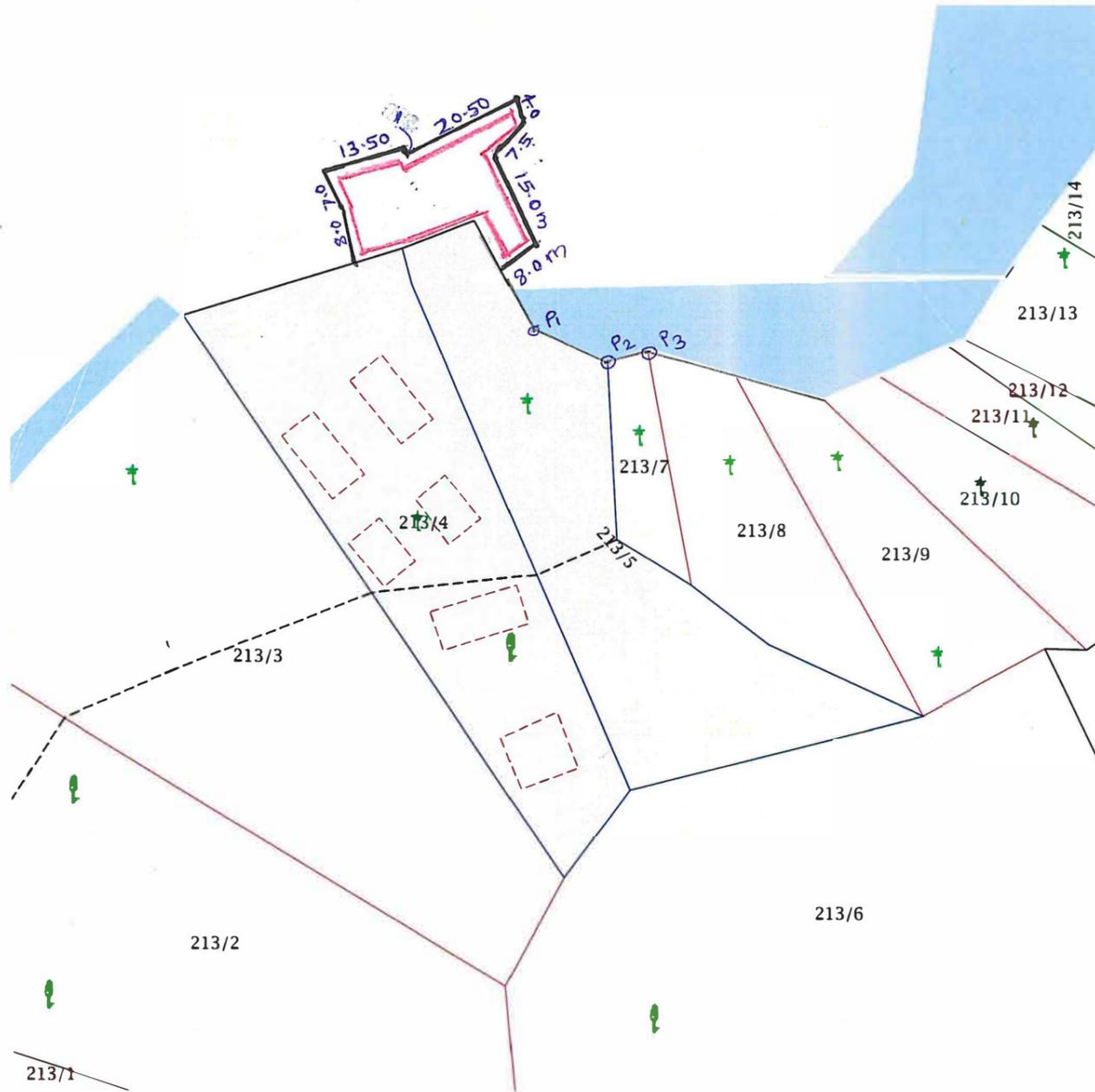
Survey / Subdiv No. : 213/4,213/5

Appln Date :

Ref. No.:



Scale 1:1000



AREA OF ENCROACHMENT ≈ 476.0 M<sup>2</sup>



*Jagney Sain*

-- TRUE COPY --

*Annexure IV*

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**Rejoinder to GCZMA reply - OA No. 05/2023 - Next Date 18.01.2024**

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Aagney Sail &lt;aagneysail@gmail.com&gt;

Wed, Jan 17, 2024 at 9:26 PM

To: czma gczma <goacoastalzone@gmail.com>, Abhay Anturkar <anturkarandassociates@gmail.com>, beinglifehospitality@gmail.com, dir-env.goa@nic.in, Pushkal Mishra <pushkalm6@gmail.com>, Shivshankar Swaminathan <shivshankar.swaminathan@yutilaw.com>, secy-moef@nic.in

To,

1. GOA COASTAL ZONE MANAGEMENT AUTHORITY (GCZMA), THROUGH ITS MEMBER SECRETARY, 1st FLOOR, PANDIT DEENDAYAL UPADHYAY BHAVAN, NEAR PUNDALIK DEVASTHAN, PUNALIK NAGAR, PORVORIM, GOA – 403521.

EMAIL: [goacoastalzone@gmail.com](mailto:goacoastalzone@gmail.com), [anturkarandassociates@gmail.com](mailto:anturkarandassociates@gmail.com)

PHONE: (0832)2951089 ...RESPONDENT NO. 1

2. MR. ROBERT F. COUTINHO, R/O H. NO. 548, VAGATOR, ANJUNA VILLAGE, BARDEZ TALUKA, NORTH GOA DISTRICT, GOA.

Email: [beinglifehospitality@gmail.com](mailto:beinglifehospitality@gmail.com)

PHONE: 07974436003, 08793243882...RESPONDENT NO. 2

3. MR. ANTONIA D'SOUZA, SY. NO. 213/5, VILLAGE ANJUNA, BARDEZ TALUKA, NORTH GOA DISTRICT, GOA.

Email: [beinglifehospitality@gmail.com](mailto:beinglifehospitality@gmail.com)

PHONE: 07974436003, 08793243882...RESPONDENT NO. 3

4. MR. NELSON BRITTO, SY. NO. 213/5, VILLAGE ANJUNA, BARDEZ TALUKA, NORTH GOA DISTRICT, GOA.

Email: [beinglifehospitality@gmail.com](mailto:beinglifehospitality@gmail.com)

PHONE: 07974436003, 08793243882 ...RESPONDENT NO. 4

5. BEING LIFE HOSPITALITY PVT. LTD. THROUGH ITS MANAGING DIRECTOR, HAVING ITS REGISTERED OFFICE AT: H. NO. 122/6/1, GROUND FLOOR, SANT NAGAR VILLAGE, BURARI CITY, NORTH DELHI DISTRICT, DELHI – 110084

EMAIL: [beinglifehospitality@gmail.com](mailto:beinglifehospitality@gmail.com)...RESPONDENT NO. 5

6. DEPARTMENT OF ENVIRONMENT & CLIMATE CHANGE, THROUGH ITS DIRECTOR, GOVERNMENT OF GOA, IVth FLOOR, DEMPO TOWERS, PATTO – PANAJI, GOA – 403001.

PHONE: (0832)2951089.

EMAIL: [dir-env.goa@nic.in](mailto:dir-env.goa@nic.in) ...RESPONDENT NO. 6

7. NATIONAL COASTAL ZONE MANAGEMENT AUTHORITY (NCZMA), THROUGH ITS MEMBER SECRETARY, JOINT SECRETARY (Coastal Regulation Zone CRZ), MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE CHANGE, INDIRA PARYAVARAN BHAVAN, JORBAGH, NEW DELHI – 110003.

PHONE: (011)20819398, 20819340.

EMAIL: [secy-moef@nic.in](mailto:secy-moef@nic.in), Adv. Pushkal Mishra [pushkalm6@gmail.com](mailto:pushkalm6@gmail.com)

...RESPONDENT NO. 7

Madam / Sir,

Please find attached the rejoinder to GCZMA reply in the abovementioned Original Application No. 05/2023 (WZ) for your record and necessary action

Please acknowledge receipt of the same via email.

Best,

Adv. Aagney Sail,  
Counsel for the Applicant,  
Mobile: +91.9810076618.