

**BEFORE THE NATIONAL GREEN TRIBUNAL**  
**WESTERN ZONE BENCH AT PUNE**  
**ORIGINAL APPLICATION NO. 97 OF 2019**  
(Under Sections 14 and 15 of the NGT Act, 2010)

**IN THE MATTER OF:**

Shri Dattaprasad Prabhugaonkar

....APPLICANT

Versus

GCZMA & Ors

....RESPONDENTS

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THROUGH



**RITWICK DUTTA**

**RAHUL CHOUDHARY MAITREYA GHORPADE**

**ADVOCATES FOR THE APPLICANT**

N-71, Lower Ground Floor,  
Greater Kailash-I, New Delhi - 110048

Mob: 09312407881

Email: [litigation.life@gmail.com](mailto:litigation.life@gmail.com)

**PLACE:**

**DATE:**

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**REJOINER ON BEHALF OF APPLICANT IN RESPONSE TO AFFIDAVIT-IN-COMPLIANCE DATED 23.11.2020 FILED BY RESPONDENT NO. 1 GOA COASTAL ZONE MANAGEMENT AUTHORITY****Most Respectfully Showeth:**

1. That the Applicants have by above titled Original Application 97 of 2019 raised questions related to environment arising out of non-compliance of the conditions of the Coastal Regulation Zone Clearance (CRZ) Permission dated 28.09.2015 granted to Public Works Department ('PWD') for construction of Canacona National Highway Bypass (hereinafter referred to as 'the impugned project') by Goa Coastal Zone Management Authority ('GCZMA'); and subsequent Clearance/Permission dated 01.09.2017 granted by GCZMA for felling of mangrove trees (44 nos.) existing on the bank of river Galgibag and construction of sound and light barriers across the Mashem Bridge and also, non compliance of GCZMA's Permission to undertaken temporary earth filling at dated 30.04.2019 pertaining to temporary earth filling in Galgibag River; as well as earth filling and construction of 6 metre width plum concrete wall in CRZ IV Areas.
2. The applicants were gravely concerned about the threat of large-scale destruction of the environment, Coastal sand dunes, sea and marine life, the

displacement of the local communities, absence of Public Purpose behind the construction and the failure to carry out mandatory studies before commencing the said works for the ongoing construction of Canacona National Highway bypass in CRZ-I and CRZ-III areas.

3. That vide order dated 14.10.2020 in the present Original Application, this Hon'ble Tribunal had directed the Respondents to submit current status of compliance and justification for why environmental compensation not be imposed for any non-compliance on the part of Respondents in adhering to the orders and conditions imposed via Coastal Regulation Zone Clearance (CRZ)/ Permission dated 28.09.2015, Goa Coastal Zone Management Authority's (GCZMA) No Objection Certificate (NOC) date 01.09.2017 and GCZMA's NOC dated 30.04.2019 pertaining to temporary earth filling in Galgibag River. Accordingly, this Hon'ble Tribunal had stated vide order dated 14.10.20 as follows:

*"2. The respondents are directed to submit current status with compliance of the conditions of EC and as to why the environmental compensation be not imposed for non-compliance of the orders and conditions. Latest status be submitted before the date of listing and the copy of the same be provided to the applicant on available email."*

4. Accordingly, GCZMA has submitted Site Inspection Report dated 20.10.2020 based on site inspection carried out on 19.10.2020. Thereafter, GCZMA has filed an Affidavit-In-Compliance dated 23.11.2020. It is submitted that the GCZMA has failed to carry out proper factual assessment of the current status of compliance of conditions imposed upon Public Works Department, and therefore, the following issues are apparent in Affidavit-In-Compliance dated 23.11.2020:

**MUD FILLING AND CONSTRUCTION OF CONCRETE WALL IN CRZ-IV AND NDZ AREAS BY PUBLIC WORKS DEPARTMENT WITHOUT PRIOR PERMISSION**

5. That the Applicant has previously submitted that mud filling and construction of plum concrete wall of 6 metre width has been undertaken by Public Works Department in CRZ IV (No Development Zone) Areas without any prior permission or CRZ Clearance obtained from the GCZMA. The Applicant has

previously submitted the Site Inspection Report dated 2.08.2019 as on **Pgs 28-30**, which clearly states the non-compliance of CRZ Notification, 2011, in the following manner:

*"Conclusion and Recommendation*

*i) The plum concrete wall of 06 m width which is being constructed presently towards the eastern side of the road made over the red murrum filling in the waterfront area at the confluence of Mashem and Galgibag River is falling in CRZ IV as well as in NDZ area of river, both of which are CRZ areas.*

*ii) Since both the filling done and the construction of plum concrete wall going on at site are falling in CRZ areas, the permission from GCZMA is very much required.*

*...*

*vii) As per the CRZ Regulation. Within NDZ and in CRZ IV area of river, no filling is permissible."*

6. However, the GCZMA has provided no current factual status regarding such violation clearly mentioned in the present Application, as on **Para 11-12, Pgs 7-8**. That the construction of plum concrete wall and red murrum filling in CRZ-IV areas is expressly prohibited as per Para 3(iv) and 3(vii). Such Paras accordingly state as follows:

*"3. Prohibited activities within CRZ,- The following are declared as prohibited activities within the CRZ –*

*(iv) Land reclamation, bunding or disturbing the natural course of seawater except those,- (a) required for setting up, construction or modernisation or expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, bridges, sealink, road on stilts, and such as meant for defence and security purpose and for other facilities that are essential for activities permissible under the notification; (b) measures for control of erosion, based on scientific including Environmental Impact Assessment (hereinafter referred to as the EIA) studies (c) maintenance or clearing of waterways, channels and ports, based on EIA studies; (d) measures to prevent sand bars, installation of tidal regulators, laying of storm water drains or for structures for prevention of salinity ingress and freshwater recharge based on carried out by any agency to be specified by MoEF.*

*...*

*(vii) Dumping of city or town wastes including construction debris, industrial solid wastes, fly ash for the purpose of land filling and the like and the concerned authority shall implement schemes for phasing out any existing practice, if any, shall be phased out within a period of one year from date of commencement of this notification"*

7. It is therefore submitted that there is a direct violation of the abovementioned provisions of Para 3(iv) and 3(vii) of the CRZ Notification, 2011. However, no

mention of the same has been made by the GCZMA in Affidavit-In-Compliance dated 23.11.2020.

**ON FAILURE TO ENSURE REMOVAL OF MUD FILLING**

8. It is submitted that the Applicant had detailed in the present Application as to the manner in which the Public Works Department ('PWD') has failed to adhere to the conditions mandating removal of earth/mud filling undertaken during construction of the impugned project.
9. It is further submitted that at present, the Galgibag river has been further polluted and damaged owing to the compounded effect of dumping of debris and filling of mud at various locations along the river Galgibag and in the river Galgibag estuary by the PWD.
10. Such excessive and illegal mud filling and dumping done by the PWD has resulted in changing the course of river Galgibag, and has caused the Sand Bar that separated the Arabian Sea with the Galgibag river to get breached, causing the Arabian Sea water to flow directly into the river Galgibag. Such has resulted in the entire area that was erstwhile protected by the Sand Bar, to get more prone to intense flooding and damage to ecology and environment. Copies of Satellite Images from 2002, 2015, and 2021 clearly showing the breach of Sand bar and Photographs of such Sand bar breach as taken in June-July 2021 are collectively annexed as **ANNEXURE A-9**.
11. That the GCZMA Permission dated 30.04.2019 for temporary earth filling in Galgibag River, annexed as **ANNEXURE A-3 Pg 17**, had specific condition mandating the Respondent No. 3 Public Works Department remove of earth filling by 15.05.2019, however, such has admittedly not been done. GCZMA Permission dated 30.04.2019 had explicitly stated as follows:

*"6. Upon completion of the work filling should be removed within 15 days and in no event later than 15<sup>th</sup> May 2019 keeping in view the approaching monsoon season and to ensure smooth water flow in river."*

12. That the Applicant had previously submitted that Public Works Department has failed to clear mud filling from the sites of construction of bridges for the impugned project for several months past the mandated deadline.

13. It is submitted that with respect to removal of mud filling, the Site Inspection Report on **Para 1, Pg 83**, states the following:

*"1. Mr. Adpaikar showed me the site below the Galgibaga bridge where mud filling was done between the PR No. 10 and 11. It is observed that the mud has been removed from the site..."*

14. However, it is difficult to arrive at a conclusion that mud has been removed from the site as high water level makes it very difficult to ascertain the extent of compliance of removal of mud filling. Such high water level is evident in the Site Inspection Report itself, as on **Para 2, Pg 83**, the Report states:

*"2. Regarding the compensatory plantation of mangroves. Mr Adpaikar showed me the site of plantation which is below the Galgibaga bridge. Saplings planted were seen at the site. Most of the saplings were seen submerged into the water hence counting of each individual sapling was difficult..."*

15. That the GCZMA has relied on statements made by representative of Respondent no.2 Public Works Department, Mr Nagraj Adpaikar. That such is clearly indicative of potential conflict of interest, and therefore, the GCZMA ought to have carried out an independent assessment of the factual situation.

16. It is further submitted that GCZMA has failed to carry detailed appraisal of the present facts and circumstances with respect to aspect of clearance of earth filling in the areas upto 100 meters in length and about 30 meters in width on the southern side of Mashem bridge in CRZ IV Area.

17. Furthermore, the Site Inspection Report acknowledges that excavated mud under Mashem bridge has remained there without any action for removal undertaken. Accordingly, Para 3 states as follows:

*"3. Excavated mud under the Mashem bridge was remained there. Upon asking, Mr. Adpaikar informed me that there is an intervention application from the villages in the Hon. High Court of Bombay at Goa and the Hon. Court has asked to keep 10 metres buffer zone. The PWD is waiting for the final result to act in this matter."*

18. It is submitted that no such order has been passed by the Hon'ble High Court of Bombay, and the Public Works Department has misrepresented the existing factual situation. That the following order passed by Hon'ble High Court of Bombay in PIL W.P. 12 of 2018 and W.P. No. 391 of 2019 vide order dated 6.06.2019 is being misrepresented by the Public Works Department:

*"3. In the companion petition, a grievance is voiced on behalf of the petitioners by learned Counsel appearing for them that whilst carrying out the work, their structures should not be affected, since they are in close proximity with the site where the work is being carried out.*

*4. Learned Advocate General assures the Court, after taking instructions from the Chief Engineer, Public Works Division of the State, that the respondents shall leave a buffer of at least 10 metres between the petitioner's structures and the water line. The statement is accepted."*

A copy of the said order dated 6.06.2019 in PIL W.P. 12 of 2018 and W.P. No. 391 of 2019 is annexed herewith as **ANNEXURE A-10**.

19. It is submitted that the 10 metre buffer is for the northern side of Maxem bridge on the Galgibag river estuary, as per the above mentioned Order of the Hon'ble High Court of Bombay at Goa. That such order was passed due to specific intervention application filed by certain private parties having private property in the Northern side of Maxem Bridge. That such order does not apply to the filling of earth and mud done 100 metres on the southern side of Maxem Bridge. That there are no houses situated on the southern side, and therefore, the PWD has misrepresented the facts and circumstances, which ought to have been inspected by the GCZMA. It is submitted such is merely a distortion of facts as far as southern side is concerned, as there is earth filling which was previously undertaken on the southern side which has not been inspected.

20. It is therefore evident that GCZMA has merely relied on the statement made by Mr Adpaikar, representative of Respondent No. 2 Public Works Department, without any independent application of mind.

#### **ON CONSTRUCTION OF LIGHT BARRIERS**

21. It is submitted that the GCZMA Clearance/Permission for felling of mangrove trees dated 1.09.2017 clearly mandated the PWD to ensure that there are light

barriers constructed to protect turtle nesting sites which are in close proximity to certain areas of the impugned project. Accordingly, such Clearance/Permission dated 1.09.2017, annexed at Pg 15, clearly states the following:

*"The Authority also decided that since on section of the project site is within 300-500 metres from the turtle nesting site restriction for lighting with cover to the seaward side and No Horn Zone may be imposed while granting the permission."*

22. However, the PWD have failed to ensure compliance with such condition, as is evident as per Site Inspection Report Para 5 and 6, which accordingly read as follows:

*"5. With respect of light barriers on the poles, PWD has not complied to this condition. The light poles are in East to West direction. Each pole has two LED fixture. Mr. Adpaikar informed me that the light distance covered by each of the fixture is not more than 30 metres. 6. I informed Mr. Adpaikar that turtles are highly sensitive to the light. In order to reduce light falling into the water, it is recommended to change the direction of the fixtures to North-South direction. The same should be complied within a day..."*

23. It is submitted that such observation in Para 5 clearly states that there is non-compliance on the part of PWD with regards to installation of light barriers. However, the recommendation given by GCZMA for change in direction of light poles is bereft of any scientific rationale. There is no justifiable reason for why the light would not scatter to all areas and such recommendation given by GCZMA is patently arbitrary and unscientific.

**ON ENVIRONMENTAL COMPENSATION PAYABLE BY GCZMA AND PUBLIC WORKS DEPARTMENT FOR RIVER POLLUTION CAUSED**

24. It is submitted that GCZMA has not provided any justification whatsoever for why environmental compensation ought not to be levied against the Respondents for failure to comply with the permissions granted and other violations mentioned in the present Application. That this Hon'ble Tribunal had explicitly stated *"The respondents are directed to submit current status with compliance of the conditions of EC and as to why the environmental compensation be not imposed for non-compliance of the orders and conditions"* vide order dated 14.10.20, however, there has been a direct and evident non-adherence of this order.

25. No justification has been provided by the GCZMA in Affidavit-In-Compliance dated 23.11.2020 for why environmental compensation should not be levied on the GCZMA and PWD for failure to ensure adherence to such condition.
26. That the Applicant has highlighted the various violations as carried out by the PWD in execution of the impugned project in the present Application 97/2019 as well as via the present Rejoinder to Affidavit-in-compliance dated 23.11.2020. That as per the Polluter Pays Principle enshrined in Section 20 of the National Green Tribunal Act, 2010, clearly makes the PWD as well as GCZMA liable to pay environmental compensation for pollution caused and damage to river ecology.
27. Furthermore, the Hon'ble Supreme Court has held that the Polluters Pays Principle includes the cost of compensation to the victims and restoration of environmental degradation is **Vellore Citizens Forum v. Union of India and Ors.** reported in **1996 5 SCR 241** which states:

*"The Polluter Pays" principle has been held to be a sound principle by this Court Indian Council for Enviro- Legal Action vs. Union of India J.T. 1996 (2) 196. The Court observed, "We are of the opinion that any principle evolved in this 'behalf should be simple practical and suited to the conditions obtaining in this country". The Court ruled that "Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on". Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays" principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."*

28. The deficiencies as above and failure to adhere to the laid down procedures of the joint inspection clearly brings out the bias meant only to support the offender and violations to continue at the detriment of the environment and its ecology.
29. Due to the filling of the Galgibag river estuary (about 350 mtrs) and Maxem river filling (100 mtrs) since the year 2000, Galgibag and Maxem riverine ecosystem

has undergone many changes such as sea level rise, rise in water salinity level, erosion, sand deposition, change in the flow of river, formation of new sand bars etc. It is also seen that the river fillings and the rise in the river base during impugned project construction is also responsible for the changes in the topology of the coast as the deposition of sand continuously takes place near the confluence of Galgibag and Maxem rivers. The Google earth images of the year 2002 and of 2021 as annexed at **ANNEXURE A-9**, clearly shows the sand bar strengthening and sand deposition leading to obstruction to the natural flow of water from Galgibag river during tides and monsoon. This resistance and the recent cyclone has opened up the beach and the Galgibag river has now totally changed its course and flowing directly into Arabian sea.

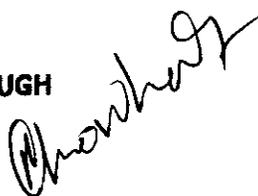
30. That failure to restore the Galgibag river by removal of temporary filling done in Galgibag river estuary and in Maxem river will cause extensive ecological damage due to change in riverine topology. This is all the more important because of global warming, sea level rise and more frequent extreme weather patterns.
31. The Galgibag beach opening up has led to massive sand deposition along the Galgibag river as now the river is communicating directly into Arabian sea. The sand thus carried by the sea waves has buried the aerial roots of Mangroves. This sand deposition has the ability to limit the Oxygen intake, which will eventually lead to mangrove mortality. The change in waves and currents has also caused erosion and loss of Mangrove. Drainage of the Mangrove area leads to rapid breakdown of organic matter as oxygen available in soil, which causes further subsidence. Salinity increases as the ocean water enters the Mangroves and it is the main cause of abiotic stress as it limits the growth. Photographs showing damage caused to Mangroves is annexed herewith **ANNEXURE A-11**.
32. Therefore, it is very clear the disastrous effects of the sand deposition on riverine ecosystem is mainly due to the obstruction of flow due to the cumulative effect of bridge piers, the temporary filling carried out in Galgibag river estuary and Maxem river. This Hon'ble Tribunal may accordingly pass orders as prayed for in the present Original Application.

Pass any such Order deemed fit by this Hon'ble Tribunal in the facts and circumstances of the case.



APPLICANT

THROUGH



RITWICK DUTTA RAHUL CHOUDHARY MAITREYA GHORPADE

COUNSEL FOR THE APPLICANT

N-71, Lower Ground Floor,

Greater Kailash-I, New Delhi - 110048

Email:litigation.life@gmail.com

Ph: 93124 07881

**VERIFICATION**

I, Dattaprasad Prabhu Gaonkar, r/o House No 234, Maxem, Canacona – 403728 do hereby solemnly affirm and state as under:

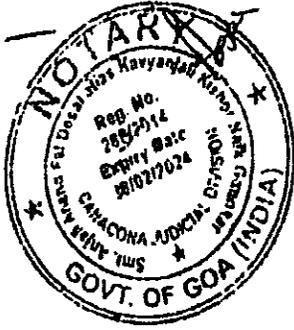
1. That I am the Applicant in the above titled Application and I am conversant with the facts and the circumstances of the case and competent to swear this affidavit.
2. That that the contents of the Application are true to my knowledge and/ or based on information, and/or the contents are based on the legal submission and/or inferences of facts, which I believe to be true.

Date:

Place:



APPLICANT



**BEFORE THE NATIONAL GREEN TRIBUNAL,  
WESTERN ZONAL BENCH SITTING AT PUNE  
ORIGINAL APPLICATION NO. 97 OF 2019**

**IN THE MATTER OF:**

DATTAPRASAD PRABHU GAONKAR ...APPLICANT

VERSUS

GCZMA & ORS. ...RESPONDENTS

**AFFIDAVIT**

I, Dattaprasad Prabhu Gaonkar, r/o House No 234, Maxem, Canacona – 403728 do hereby solemnly affirm and state as under:

1. That I am the Applicant in the above titled Application and am conversant with the facts and circumstances described in the present case and as such, I am competent to swear this affidavit.
2. That the contents of the accompanying Application are true and correct and nothing material has been concealed therefrom.

Solemnly affirmed before me by  
Shri/Smt. Dattaprasad P. Gaonkar

DEPONENT

Witnesses attested to me by  
Shri/Smt. Adv. H.C. 649, 72819028

To whom I personally know on  
this 10th day of August 2021  
Reg. No. 538/2021

Anjan Anand Desai 10/8/2021  
Smt. Anjan Anand Desai, s/o  
Kavyanjali Kislor Nalk Gaonkar  
NOTARY  
CANACONA GOA

..2..

**VERIFICATION**

Verified on this 10<sup>th</sup> of August 2021 that the contents of the above mentioned affidavit are true and correct and nothing material has been concealed therefrom.

  
**DEPONENT**



SIGNED BEFORE ME WHICH I ATTEST

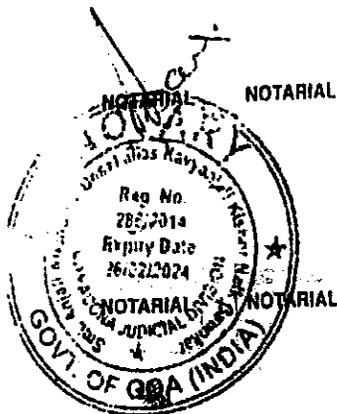
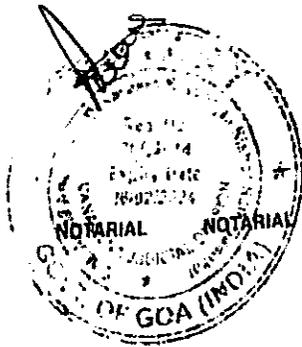
*10/08/2021*  
Smt. Anjali Anand Fal Desai alias:  
Kavyanjali Kishor Naik Gaunker

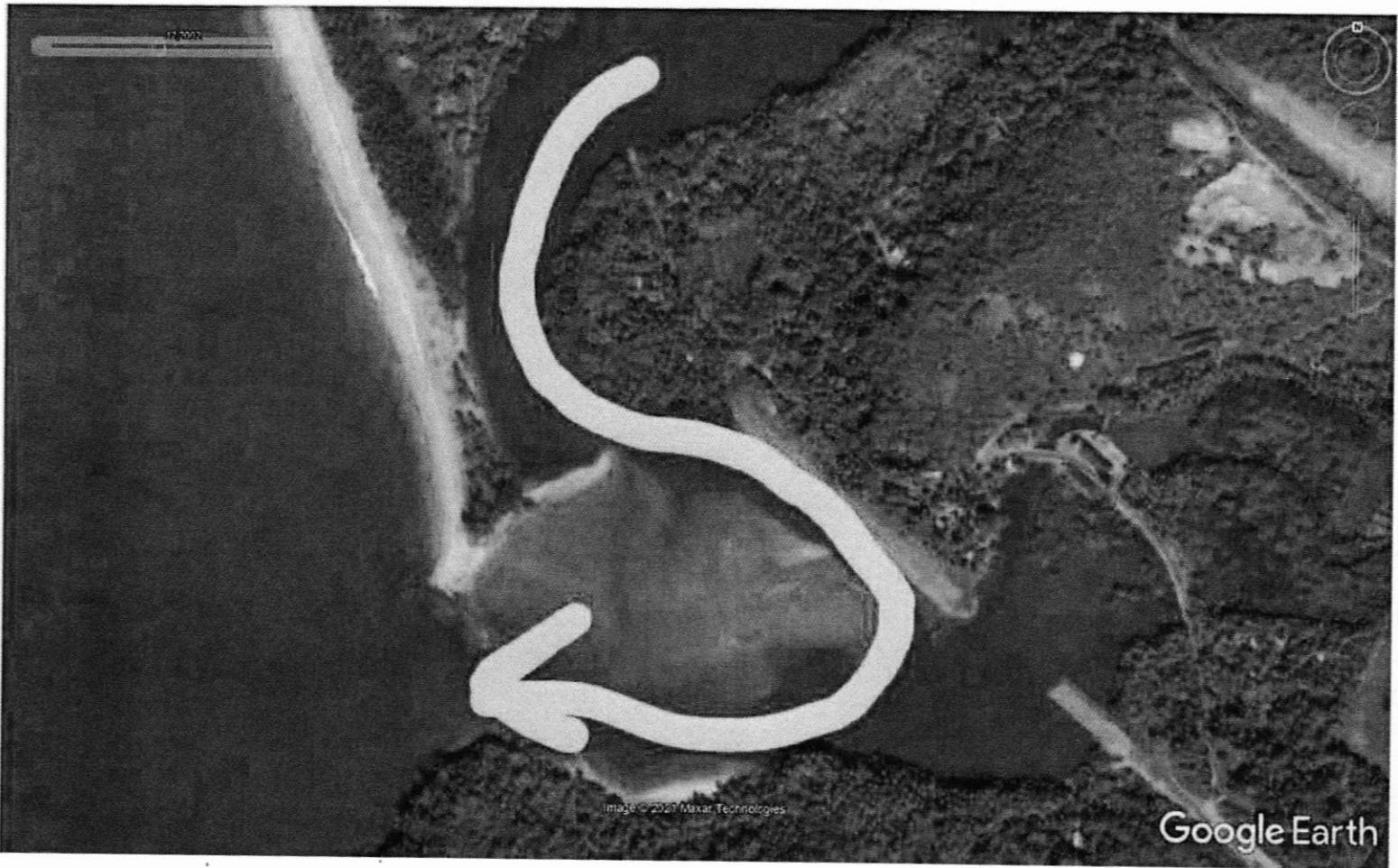
NOTARY  
CANACONA

STATE OF GOA, INDIA

Reg. No. *538/2021*

Date: *10/08/2021*







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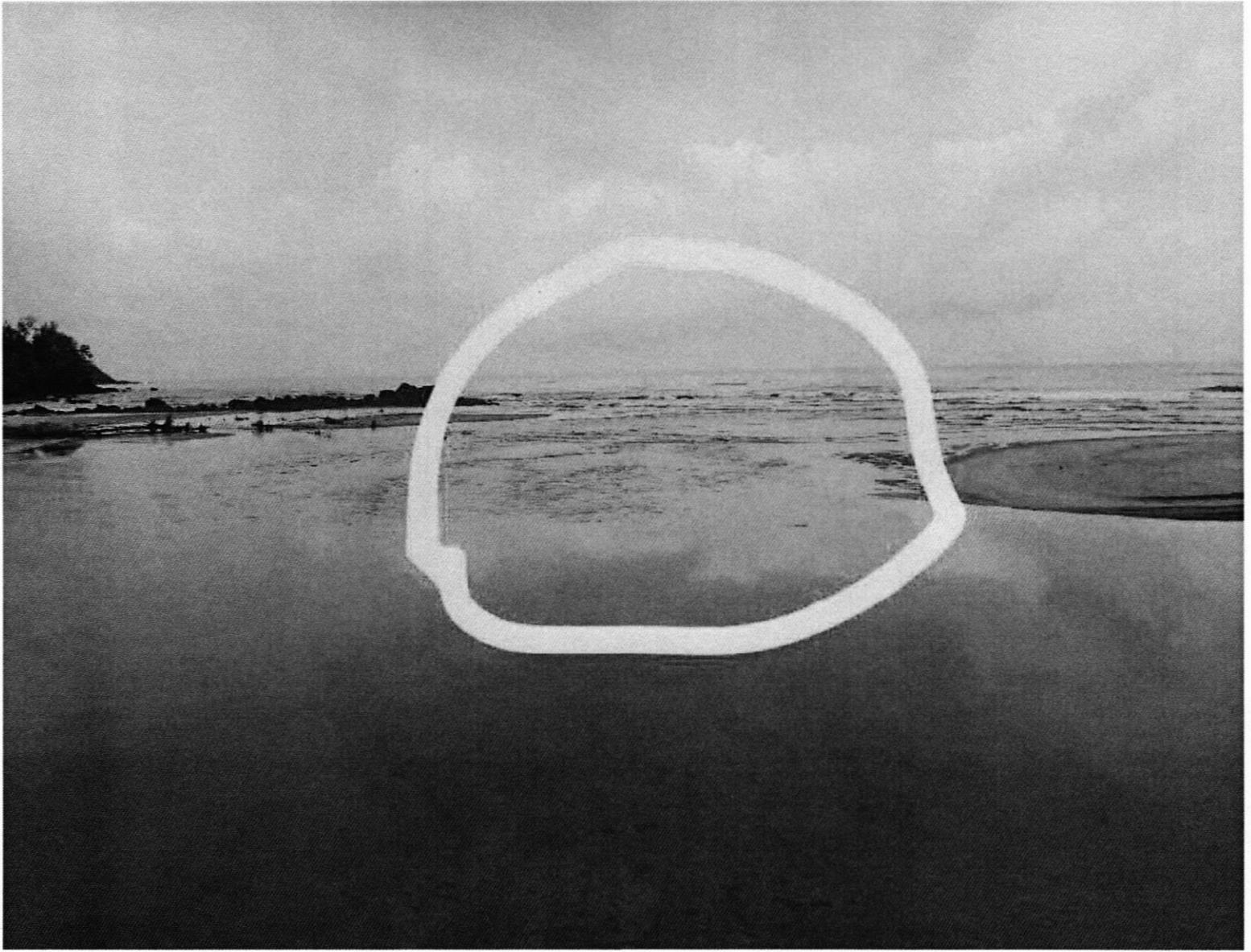
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1 cp no.9-19 in pilwp no.12-18  
and wp no.391-19

**IN THE HIGH COURT OF BOMBAY AT GOA**

**CONTEMPT PETITION NO.9 OF 2019  
IN  
PIL WRIT PETITION NO.12 OF 2018  
AND  
WRIT PETITION NO.391 OF 2019**

**CONTEMPT PETITION NO.9 OF 2019  
IN  
PIL WRIT PETITION NO.12 OF 2018**

Mrs. Pamela Rodrigues .... Petitioner  
V/s.

Mr. Vijaykumar Verenkar & Ors. .... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.  
Mr. D. Pangam, Advocate General with Mr. P. Faldessai,  
Additional Government Advocate for Respondents No.1 to 3, 5 &  
6.

Ms. Vidhati Shetye, Advocate for Respondent No.4.

**AND  
WRIT PETITION NO.391 OF 2019**

Mr. Mateus Pedro Romano  
Dias & Ors. .... Petitioners  
V/s

State of Goa, through  
the Chief Secretary & Ors. .... Respondents

Mr. Shivan Desai, Advocate for the Petitioners.  
Mr. D. Pangam, Advocate General with Mr. P. Faldessai,  
Additional Government Advocate for Respondents No.1 to 6.  
Ms. Vidhati Shetye, Advocate for Respondent No.7.

**Coram :- S. C. GUPTE &  
NUTAN D. SARDESSAI, JJ.**

**Date:- 6<sup>th</sup> June 2019**

**P.C.:**

This PIL Petition concerns earth filling work carried  
out in the river front areas of two rivers, namely, Galgibag and

Mashem. On the last occasion, the State was asked to file an affidavit along with photographs in support of its compliance with the statement made before this Court on 02/05/2019.

2. Learned Advocate General on behalf of the State tenders an affidavit in reply of respondent no.1. The affidavit sets out the manner in which the statement was complied with by the State Government along with photographs. Learned Counsel for the petitioner seeks time to take instructions since the affidavit has been served on him across the Bar only today. The PIL Writ Petition is stood over to 19/07/2019.

3. In the companion petition, a grievance is voiced on behalf of the petitioners by learned Counsel appearing for them that whilst carrying out the work, their structures should not be affected, since they are in close proximity with the site where the work is being carried out.

4. Learned Advocate General assures the Court, after taking instructions from the Chief Engineer, Public Works Division of the State, that the respondents shall leave a buffer of at least 10 metres between the petitioner's structures and the

3 cp no.9-19 in pilwp no.12-18  
and wp no.391-19

water line. The statement is accepted.

5. Since this takes care of the petitioner's grievance, no further directions may be necessary. Learned Counsel submits that in view of the statement made, he will consider whether he would like to press the petition any further. The petition is, in the premises, stood over along with the PIL Writ Petition to 19/07/2019.

**NUTAN D. SARDESSAI, J.**

**S. C. GUPTE, J.**

NH





