

BEFORE THE NATIONAL GREEN TRIBUNAL WESTERN ZONE BENCH

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APPEAL 52/2022

COLMAR BEACH RESORT

...APPELLANT

VS.

GCZMA AND ORS.

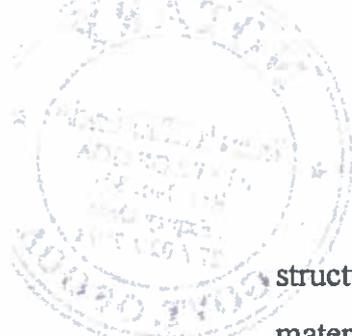
...RESPONDENTS

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1

I, Dr. Sneha Gitte, IAS, being the Member Secretary of the Respondent No. 4 Goa Coastal Zone Management Authority, having my office at: C/o. Department of Environment and Climate Change (Govt. of Goa), 4 th Floor, Dempo Towers, Patto, Panaji – Goa, do hereby solemnly affirm and state as under:

1. I say and submit that I have gone through the records of the present matter and after going through the relevant office records I am filing the present Affidavit. However, I should not be deemed to admit anything which is contrary to or inconsistent with what is stated hereinafter in the absence of specific denial.
2. It is pertinent to note that, the matter is part of Suo Moto cognizance of Hon'ble High Court of Bombay at Goa, Panaji about the illegalities/constructions in CRZ area. The Hon'ble High Court of Bombay at Goa vide Order dated 26/09/2007 passed in the matter of Suo Moto Writ petition no.02/2006 had directed all Panchayats /Municipalities to submit action taken report with regard to constructions in NDZ/CRZ area as per terms mentioned therein along with an affidavit.
3. The Hon'ble High Court of Bombay at Goa, Panaji vide its order dated 12/01/2015 passed in the matter of Suo Moto Writ Petition no.02/2006 had inter alia directed the respondent no.19 village of Colva to furnish the material on record to suggest the

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structures are not illegal before the GCZMA and such authorities shall examine such material after hearing the parties in accordance with law. The said Village Panchayat of Sernabatim, Vanelim, Colva and Gandaulim produced its action taken report along with all material record of relevant copies of the parties etc. to the office of GCZMA vide letter dated 19/01/2015. The action taken report was filed by the Village Panchayat of Sernabatim, Vanelim, Colva before the Hon'ble High Court of Bombay at Goa with two additional affidavits annexing all the documents of the structures pointed out by the intervener (Colva Civic and Consumer Forum) in its intervention application dated 13/07/2012 bearing MCA no.635/2012.

4. I say and submit that the matter was placed in the 115th GCZMA meeting held on 04/04/2015 wherein the authority after detailed discussion and due deliberations, decided to refer the matter to the Inquiry Committee of GCZMA to examine all the documents on record and hear the parties if required and submit the detailed report to the GCZMA within 30 days. The concerned file was forwarded to the Inquiry Committee of GCZMA for necessary actions vide letter dated 15/05/2015. In this regard the Inquiry Committee of GCZMA completed its inquiry and submitted its report dated 07/10/2015.
5. The matter came up of hearing before the Hon'ble High Court of Bombay at Goa on 21/06/2016 and was pleased to dispose off the matter interalia with direction which can be seen as follows:-

"Besides the above directions, the Anjuna as well as the Colva Panchayats namely respondent no.9 and 19 and the GCZMA are directed to take necessary action with regard to the structures identified in the report of the GCZMA and proceed to take necessary action in accordance with law within three months from today and file a compliance report with that regard."

6. The matter was placed in the 180th GCZMA meeting for hearing on 31/07/2018. The proceedings in the matter can be seen as follows:-

"The complainant Mrs. Judith Almeida remained present in person and submitted that village Panchayat had issued demolition order to the said structures, there was

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no permission was taken from the GCZMA. Further, complainant requested the Authority to conduct DSLR survey and mapping of the site. The respondent remained present through his representative. Complainant as well as respondent sought additional time to file submission before the Authority". In the said meeting it was decided as follows:

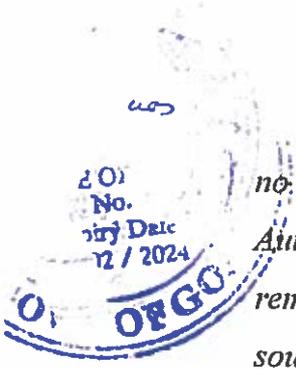
"the Authority after hearing all the above parties, took on record submissions made by them. It directed all the parties to file written submissions before 14/8/18. The hearing on all the matters to continue in the next GCZMA meeting on 14/08/2018. Personal hearing notices were waived off."

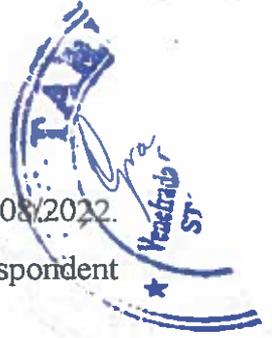
7. The matter was placed in the 181th GCZMA meeting held on 14/08/2018, it was decided that, "... Authority took a note of the written submission made by the complainant and directed respondent to file reply by 28/09/2018" The respondent has failed to file his reply; however, the Authority has derived certain points of determination as under: (iv) To prove that all the structure in Sy No. 40/4 of Colva Village is legal. (v) To produce the approved plan for the structures. (vi) Conversion Sanad. (vii) Whether M/s Colmar Beach Resort as it exists today has the necessary approvals from Competent Authority? (viii) Whether any unauthorized reconstruction / new construction extensions /alteration of the structures have been carried out by M/s Colmar Beach Resort? (ix) To furnish the names of all the Owners and Co-owners of M/s Colmar Beach Resort.

8. The matter was placed in the 202nd GCZMA meeting held on 29/05/2019

"the authority heard both the parties at length and also considered the documents produced by the parties. The authority took note of the approved plan submitted by the respondent. The Authority after detailed deliberation resolved to conduct site inspection/ mapping of the structures through Directorate of Survey & Land Records (DSLR) along with Expert member (GCZMA)." Pursuant to directions from Hon'ble High Court of Bombay at Goa, the office of DSLR conducted mapping of structures in Colva Village.

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9. The matter was placed in the 320th GCZMA meeting for hearing on 25/08/2022. The Complainant Mrs. Judith Almeida remained present in person. The Respondent remained absent.
10. The Authority noted the Respondent has filed application for time dated 23/08/2022. The Authority considering the application dated 23/08/2022 decided to grant time in the matter as last and final opportunity. The Authority decided not to grant any further time in the matter considering directions of the Hon'ble High court of Bombay Goa. The Authority directed the Respondent to file detailed reply along with supporting documents by 15/09/2022 with advance copy to the complainant. The matter is posted for further hearing on 21/09/2022 at 3.30 pm.
11. The matter placed in 323rd meeting of GCZMA held on 21/09/2022 The Complainant Mrs. Judith Almeida remained present in person. Adv Lea Diniz filed Memo of appearance on behalf of Respondent. She stated that the respondent has recently appointed her as his counsel and sought time to file reply in the matter. The Authority noted that the Respondent has taken the matter in a casual manner and has shown scant respect to the Authority and the directions of the Hon'ble High Court. The Authority decided to proceed in the matter based on documents on record and posted the matter for Orders on 30/09/2022 at 3.30p.m.
12. The matter placed before Authority in 325th Meeting held on 30/09/2022 & 04/10/2022 and it was deliberated and decided as follows:

The Authority perused all the documents produced by Complainant and the Respondents as well as the reply and rejoinder filed by the parties and gave due consideration to the oral submissions advanced by the parties.

The Authority observed and noted that present matter is interalia Suo Moto cognizance of Hon'ble High Court of Bombay at Goa, Panaji about the illegalities/constructions in NDZ of CRZ area. The Hon'ble High Court of Bombay at Goa vide Order dated 26/09/2007 passed in the matter of Suo Moto Writ Petition no.02/2006 had directed all panchyats/municipalities to submit action taken report with regard to constructions in NDZ/CRZ area as per terms mentioned therein along

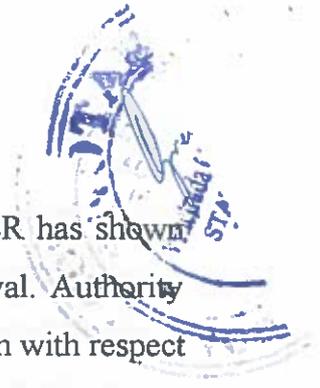
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with an affidavit. The Hon'ble High Court of Bombay at Goa, Panaji vide its order dated 12/01/2015 passed in the matter of Suo Moto Writ Petition no.02/2006 had interalia directed the respondent no.19 village of Colva to furnish the material on record to suggest the structures are not illegal before the GCZMA and such Authorities shall examine such material after hearing the parties in accordance with law.

13. In view of above it prominent to note that Authority has to see/identify what structures comes within NDZ 0-200 mts from High tide line and Authority has to verify whether those structures constructed within NDZ prior to 1991 before the CRZ Act came into force and if any structures constructed after 1991, then whether those structures constructed with valid permission and approval from competent Authorities. The Hon'ble High court in its sou moto petition 2/2006 crystal clear that this Authority has to take action on all the unauthorized/illegal structures which existing within NDZ. Pursuant to direction of High court Authority decided to map all the structures which comes within NDZ of Colva village and accordingly the office of DSLR conducted mapping of all structures in Colva Village which comes within NDZ and submitted the report before this Authority.
14. I say and submit that the issue involved in present matter is very limited and specific whether Respondent constructed any illegal Structures within NDZ. In order to ascertain aforesaid controversy Authority observed Mapping of DSLR, all the documents relied and produced by the Respondent on record. The GCZMA noted that as per DSLR mapping subject matter structures of Respondent completely falls within NDZ i.e. 0-200 mts from High Tide Line as per CZMP 2011. The DSLR shown several structures other than existing structures recorded at time of survey conducted by DSLR in year 1970-1974. Authority perused all the documents produced by complainant as well as Respondent on record. The Authority also noted that Respondent owned the property by deed of sale dated 11/03/1980 and 04/05/1987. Respondent repaired and altered the existing building after getting approval from GSCCE in year 1997.

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15. It is pertinent to note that in present matter mapping done by DSLR has shown additional structures other than which Respondent has legal approval. Authority compared both approved plan of Respondent and DSLR mapping plan with respect to Respondent structures and it is noted that there are additional structures other than approved structures of Respondent. The Respondent has not given any clarification with respect to additional structures reflecting/marked on DSLR map by DSLR at time of site inspection. Also Respondent has not produced any document to establish whatever additional structures demarcated by DSLR in its mapping are legal/authorized structures, similarly Respondent even failed to prove that said additional structures are constructed prior to year 1991.
16. In view of above Authority after discussion and deliberation concluded that additional structures which are shown by DSLR in Respondent plot shall be demolished and approved structures as per approved plan of Respondent shall be retained. Authority through its technical team verified the all structures shown on approved plan of Respondent and DSLR mapping. Authority through technical official compared both plan i.e. approved plan of Respondent and mapping plan of DSLR and marked structures as alphabet A to G which not as per approved plan of Respondent. Authority come to conclusion that whatever additional structures which are Marked "A" to "G" shall be demolished as Respondent has not produced any statutory permission for said additional structures from any competent authorities and Authority noted that approved structures of Respondent at loco are not as per approved plan same are vary and alter/extended from original approved structures for which approval was granted to present Respondent.
17. The GCZMA in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 (Central Act 29 of 1986) read with sub-rule (3) (a) of Rule 4 of the Environment (Protection) Rules 1986, and read with power vested with the GCZMA vide Order S.O. 3975 (E) dated 31/10/2019 issued by the Ministry of Environment & Forests, Government of India, hereby directs M/s Colmar Beach Resort to demolish all structures which are marked by Authority

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through its technical official as A to G structures in survey No.40/4 (part) of village Golya Salcete Goa, The plan showing A to G structures which need to be demolished annexed along with this order and Respondent hereby directed to restore the land to its original condition, within 30 days from the date of receipt of this order, failing which the concerned Deputy Collector/ S.D.O Margao Goa shall demolish all the structures.

- 18. In Appeal only ground taken is violation of principle of natural justice, it is submitted that there is no violation of principle of natural justice in passing present order. The GCZMA granted ample opportunities to Respondent to show the legality of his structures which Respondent failed to prove and after due process of law GCZMA issued the order of demolition.
- 19. Hence it is submitted that the Order under challenge has been passed after following due process of law and no illegality and/or irregularity has occurred.

Solemnly affirmed on this the 12th day of September 2023 at Goa .



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Affiant

Solemnly affirmed before me

Dr Sneha Gitle

Who is identified before me by

At Panjim - Goa

Sr. No. 164/09/2023

Date. 12/09/2023

Gracias
Venefrada C.P.B. Gracias
Advocate & Notary Goa State



Substantively affirmed before me

Who is identified before me by

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Advocate & Notary for State
Vancouver B.C. P. 2008