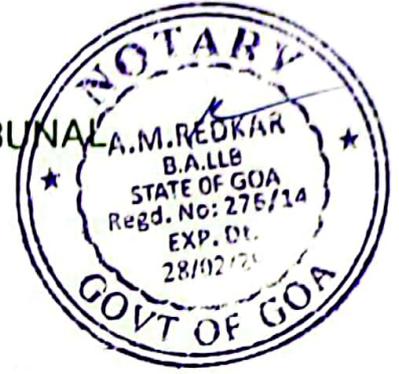


BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

IA NO. 36/2024

In

APPEAL NO. 11 / 2024



Alex J. Fernandes

... Applicant

v.

The State of Goa & Ors.

... Respondents

REPLY AFFIDAVIT TO APPLICATION FOR CONDONATION OF DELAY BY
RESPONDENT NO. 13, RITA RODRIGUES

I, Rita Rodrigues, the respondent no.13 in the present case, r/at Arradi Vado, Parra, Verla – Canca, Bardez, Goa do hereby state on solemn affirmation as under –

I am well conversant with the facts of the present case and I am competent to swear this Affidavit based upon the records available with me.

A handwritten signature in cursive script, appearing to read 'Rita Rodrigues'.

1. It is submitted that at the very outset this respondent denies each averment made in the present IA which is contrary to and inconsistent with the averments made and facts stated in the present reply. It is submitted that nothing stated in the application may be deemed to have been admitted by this respondent unless and until the same has been admitted by the respondent.



- The present appeal challenges the proposed NOC for reconstruction of house in the property bearing survey no. 200/13 of Calangute Village, Tal. Bardez. The said NOC has been granted by GCZMA to me vide their letter dated 14-09-2023.
3. I state that I am the rightful and absolute owner of the property which is a residential house. I acquired the said house vide registered sale deed bearing no. 1372 dated 31-08-1999. I have been granted the impugned NOC by GCZMA for reconstructing my house.
 4. Applicant has having a personal grudge against me. He has encroached upon my property and I have been pursuing with the respondent authorities for his eviction. He is an obstructionist and has filed multiple proceedings against me in the Civil Court and the Hon'ble High Court. Regular Civil Suit No. 126/2001 filed in the Ld. Civil Court, Junior Division, Mapusa was withdrawn by the Applicant on 28-01-2001.

R. Rodrigues

5. The Applicant had filed a petition bearing no. LD-CV-CW No. 93/2020 in the Hon'ble High Court of Bombay at Goa against me alleging encroachment on public road and unauthorised construction. The said petition was disposed off on 18th August, 2020 wherein I had undertaken to not proceed with the construction of my house, until I obtain all the requisite permissions. .



The Grampanchayat Calangute has directed the Applicant to demolish his shop encroached on my property. Since then, the Applicant has been harassing me on continuously and this fact is known to the Grampanchayat. I have even filed complaints with the Police Station, Calangute.

7. Subsequently, I have been granted the impugned NOC for reconstruction by GCZMA who have given me the permission by following the due process and the said permission is legal and valid.
8. Based on the complaints made by the Applicant with the GCZMA, they had issued show cause notices dated 23-07-2020 and 20-08-2020 to me. Hon'ble High Court vide order dated 17-07-2020 had directed GCZMA to conduct its site inspection and submit a report. Without admitting, I submit that GCZMA had observed that construction activity in CRZ area was carried out without permission of the authority.

Rodrigue

9. Subsequently, based on the GCZMA report and show cause notice issued to me, the Hon'ble High Court disposed of the matter vide their order dated 18-08-2020, directing the authorities to look into the matter, dispose off the show cause notices on their own merits and in accordance with law.
10. Subsequently, I moved an application with the GCZMA on 22-07-2020 for repairing my house. They considered the complaints made by the Applicant in multiple meetings and on 19-08-2021 they decided to drop the show cause notice with regards the encroachment on the road based on the report prepared by the PWD, Mapusa. With regards to application for reconstruction of the old structure, they decided to keep it in abeyance till the CZMP for Goa is finalised, then it will be examined on merits.
11. With these observations, the GCZMA vide their order dated 14-10-2021 has withdrawn the show cause notices dated 23-07-2020 and 20-08-2020 issued to me with regards to encroachment on the road and disposed off accordingly.
12. Subsequently, the GCZMA on 17-08-2023 considered my application dated 24-07-2020 for reconstruction of my house under the CRZ Notification, 2011 and vide the impugned order dated 14-09-2023 have granted me NOC subject to certain conditions.
13. The Applicant only with the intention to harass me challenged



Rodrigues

the said NOC before the Hon'ble High Court by filing PIL Writ Petition No. 39/2023 on 12-10-2023. The said petition was considered on 16th January, 2024 wherein the Hon'ble observed



3. This petition was filed on 12.10.2023. There is no reference in this petition to the Order of Discharge dated 14.10.2021 made by the Goa Coastal Zone Management Authority (GCZMA). This order was produced before the court today by Ms Sapna Mordekar, an additional government advocate.

4. On perusal of this order, it suggests that a copy of the same was marked to the petitioner and the petitioner's Advocate. However, Mr Rohit Bras De Sa, learned counsel for the petitioner, states that this copy was never served upon either the petitioner or his Advocate. This position is disputed by the Counsel for the Respondents. At this stage, we do not wish to go into this controversy.

5. The Site Inspection Reports, which are referred to in this petition and which are sought to be quashed, were considered or were suggested to be considered by the GCZMA. The Site Inspection Reports referred to by Mr Rohit Bras De Sa on page 88 of the paper book is dated 28.07.2020. Therefore by challenging some site inspection reports or suggesting that

Rohit Bras De Sa

others are to be preferred, the Petitioner basically wants his complaint to be revisited even though GCZMA has already made its order disposing of the complaint on 14.10.2021. This attempt is being made without even challenging the GCZMA order dated 14.10.2021. As against the Order of Discharge dated 14.10.2021 made by the GCZMA, the petitioner, if aggrieved, has a remedy before the National Green Tribunal.

6. Accordingly, without going into the issue as to whether the Discharge Order dated 14.10.2021 was indeed served upon the petitioner or not, we decline to entertain this petition because the petitioner has an alternate and efficacious remedy available under the National Green Tribunal, which he can always avail. From the perusal of the Discharge Order dated 14.10.2021, we find that the petitioner and his Advocate were present before the GCZMA. Mr Rohit Bras De Sa states that the petitioner may have filed written statements but was not given an oral hearing. Again, this is not a matter which can be gone into or which should be gone into in this petition.

7. The petition, as instituted, will also involve disputed questions of fact because the petitioner alleges that there is encroachment on the public road. The respondents contest this position. The parties rely upon the reports which favour themselves. This is yet another reason for not entertaining this writ petition.

8. At this stage, Mr Rohit Bras De Sa states that construction

Rohit Bras De Sa



requires NGPDA permissions, and until such permissions are obtained, restraint should be imposed upon the private respondent to carry out any encroachment on the site. As noted earlier, the thrust of the petitioner was concerning the Site Inspection and the proceedings before the GCZMA. Besides, there is no clarity on the issue of service of GCZMA order on the Petitioner. Therefore, at the behest of this petitioner, we do not think we should make any orders in this petition.



9. Accordingly, this petition is disposed of, however, by granting the petitioner liberty to avail of alternate remedies to seek redressal of his grievances. All the Respondent's contentions are also left open.

10. This Petition is disposed of in the above terms without any order for costs."

14. The present appeal has been filed challenging the same impugned order dated 14-09-2023 which the Applicant had challenged before the Hon'ble High Court which has been disposed off vide the above order dated 16-01-2024. Admittedly, the present appeal has been filed on 18-01-2024 at a belated stage with a delay of more than 124 days.

15. The Applicant was well aware of the entire proceedings since inception. Applicant's counsel regularly appears before this

[Handwritten signature]

Hon'ble Tribunal and is aware about the practice and procedure followed here. The Applicant is falsely stating that under the garb of obtaining multiple reliefs he challenged the impugned order before the Hon'ble High Court.



16. The Hon'ble High Court has rightly observed that the Applicant has alternate remedy available before this Hon'ble Tribunal.

17. Applicant has wrongly stated that he was under bonafide belief that the time consumed in pursuing the case before the Hon'ble High Court will be excluded in filing the present appeal. The Applicant neither sought such liberty from the Hon'ble High Court, nor he has been granted any such relief by the Hon'ble High Court as is evident from the order dated 16-01-2024.

18. The Applicant has wrongly mentioned the provisions of Limitation Act in the present application for condonation of delay. This Hon'ble Tribunal has been constituted under NGT Act, 2010 which is a special statute and the provisions of Limitation Act don't apply here.

19. Sec. 16 of the NGT Act is very clear –

any person aggrieved by Any person aggrieved by

Rodriguez

(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);

(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the Forest (Conservation)

R. Rodrigues

Act, 1980 (69 of 1980);

(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution)

Act, 1981 (14 of 1981);

(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986 (29 of 1986);

(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

Rodrigues

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal.

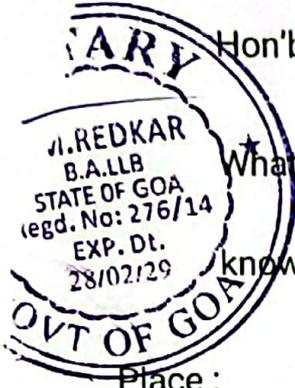
Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.

20. It is submitted that the Hon'ble Tribunal has no power to condone the delay beyond 90 days and admittedly the delay in the present case is more than 124 days and therefore the Hon'ble Tribunal cannot condone the delay prayed in the present application and hence reject the application.

21. In light of the above averments, this respondent craves leave to file any additional reply as and when required. It is respectfully



prayed I shall abide by any orders and directions issued by the
Hon'ble Tribunal.



Whatever is stated above is true and correct to the best of my
knowledge, ability and belief and I affirm it to be true.

Place :

Date

Rodrigues

Deponent

Rita Rodrigues

VERIFICATION

I, Rita Rodrigues, the Respondent no. 13 in the present appeal do hereby
verify and declare that the statements made in the aforesaid paras are
true and correct to the best of my knowledge and information and I
believe the same to be true and that no material is has been concealed
therefrom.



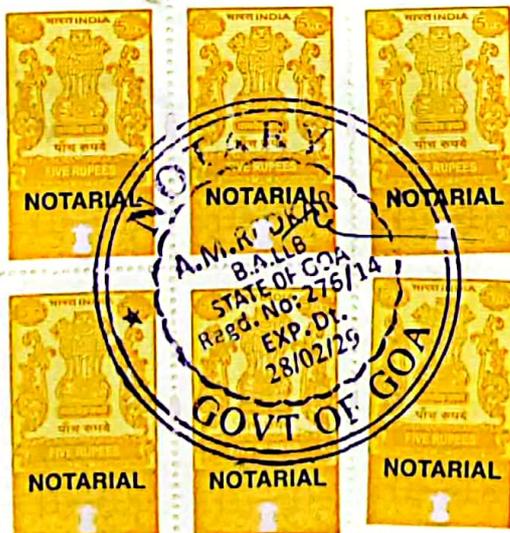
Solemnly affirmed on this 12 day of March, 2024 at Mapusa.

Deponent

Rodrigues

Rita Rodrigues

(Holder of Aadhar Card No.
9485 7303 3503 Issued by
Govt. of India)



Executed Before Me

at Mapusa on 12/03/2024

A. Redkar

A. M. REDKAR
B.A.L.B.

NOTARY
State of Goa
Reg. No 904/2024