



BEFORE THE NATIONAL GREEN TRIBUNAL WESTERN
ZONE BENCH PUNE

Appeal 48/2018

The Colva Civic & Consumer Forum ... Appellant

Versus

Goa Coastal Zone Management Authority & ors. ... Respondents

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO. 2

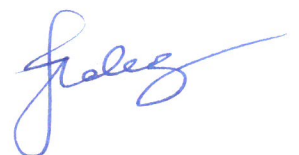
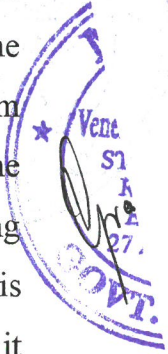
I, Shri. Johnson Fernandes, adult, being the Member Secretary of the Goa Coastal Zone Management Authority, having my office at 4th Floor, Dempo Towers, Patto, Panaji, Goa, do hereby solemnly affirm and state as under:

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, it should not be deemed of having being admitted 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 present Respondent has filed necessary compliance reports from time to time in view of various orders passed by the Hon'ble High Court of Bombay at Goa in the matter.
4. The above matter came up for hearing on 12/01/2015 before the Hon'ble High Court of Bombay at Goa and Ms. N. Alvares, learned Amicus Curiae produced

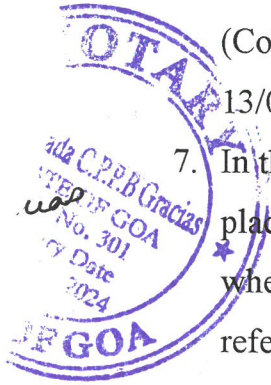
Johnson Fernandes

a list of pending structures which according to her no action has been taken. The structures are essentially concerning the Anjuna Village Panchayat; the Calangute Village Panchayat; Majorda Village Panchayat; and the Betalbatim Village Panchayat. Further the abovementioned parties were directed by the Hon'ble High Court of Bombay at Goa to file an additional affidavit disclosing the action taken in respect of such structures referred to in the said list which is marked 'X' for identification. With regard to the Village Panchayat of Colva, it was the contention of the learned Amicus Curiae that GCZMA has directed the local village panchayat to examine the legality of 19 structures which were referred to in the application for intervention filed by the intervener. The learned counsel appearing for the local village panchayat has pointed out that there is material on record to suggest that the structures are not illegal. The Hon'ble High Court called upon the Village Panchayat of Colva to furnish such material before the GCZMA and such Authorities with the direction to examine such material after hearing the parties in accordance with law.

5. I say and submit that in the said matter Mr. Manish Salkar, learned Government Advocate (Appearing on behalf of GCZMA) before the Hon'ble High Court of Bombay at Goa stated that such exercise shall be completed within six weeks from the receipt of such material from the Village Panchayat Colva who shall produce the material within one week from today before the GCZMA. Accordingly the Village Panchayat of Sernabatim, Vanelim, Colva & Gandaulim has produced its action taken report along with all the material record of relevant replies of the parties etc. to the office of GCZMA vide letter dated 19/1/2015 bearing ref no. VP/SVCG/1928/14-15.
6. I further say and submit that earlier pursuant to directions issued by the Hon'ble High Court of Bombay at Goa in Suo Moto W.P. 2/2006, as well as directions under section 5 of the Environment Protection Act, 1986 issued by GCZMA the Village Panchayat, Colva had issued Show Cause Notices to various parties/alleged violators. The action taken report was filed by the Village Panchayat, Colva to the Hon'ble High Court of Bombay at Goa in the said matter with two Additional Affidavits dated 03/10/2012 and 23/06/2014 respectively





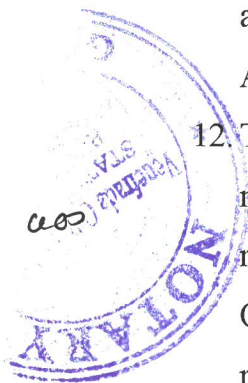
annexing all the documents with regard to structures pointed by the intervener (Colva Civic & Consumer Forum) in its intervention application dated 13/07/2012 bearing MCA No.635/2012.

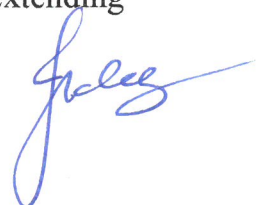


7. In this regard, the action taken report filed by the Village Panchayat, Colva was placed for necessary decision in the 115th GCZMA meeting held on 04/05/2015 wherein the Authority after detailed discussion and due deliberations, decided to refer the matter to the Inquiry Committee to examine all the documents on record and hear the parties if required and submit the detailed report to the GCZMA within 30 days. The Authority also decided to seek additional time of 3 months from the Hon'ble High Court of Bombay at Goa to place a detailed report of the GCZMA.
8. I say and submit that the decision taken by the authority was communicated to the Inquiry Committee of GCZMA vide letter dated 15/05/2015 bearing ref no. GEN- Misc/ 13-14 / 312 thereby referring the matter to them for necessary inquiry and report. The GCZMA has filed an affidavit dated 11/04/2016 before the Hon'ble High Court of Bombay at Goa informing that the Inquiry Committee of GCZMA has completed the inquiry in all cases except for structure located in the property bearing Sy no. 96/1, village Betalbatim and further that the authority will take final decision in respect of reports submitted by the Inquiry Committee of GCZMA and the entire exercise will be completed within 4 months and thereafter final order/ decision in all matters will be taken.
9. The matter came up for hearing before the Hon'ble High Court of Bombay at Goa on 21/06/2016 and was pleased to dispose off the matter with a direction which can be seen as under "*Besides the above directions, the Anjuna as well as the Colva Panchayats namely respondent nos. 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*".
10. The Inquiry Committee of the GCZMA completed its inquiry and has submitted 19 reports interalia stating its recommendations. The Report dated 24/12/2015

of present respondent submitted by the Inquiry Committee of the GCZMA can be briefly seen as under:- *“The inquiry committee GCZMA noted that the affected party Mr. Caesar Vaz relied on 3 sale deeds dated 11/08/2011, 20/03/2013 and 14/08/2014 , vide sale deed dated 11/08/2011 one Natalina D’silva sold plot along with residential house to affected party vide sale deed dated 20/03/2013 executed between Brahma V/s. Caesar Vaz (3 structures of 226 sq.mts and plot area of 4263 sq.mts) , Vide sale deed dated 14/08/2014 executed between Jose Menino Rosario, John Walter Moraice V/s. Caesar Vaz (3 structures of 226 sq.mts and plot area of 4263 sq.mts). The Inquiry Committee noted that at the time of sale deed between Natalina D’silva and the affected party Brahma was executed, there was only one structure of residential house in the said plot. The other sale deed executed on 20/03/2013 and 14/08/2014 beside the residential house also shows two more structure in the plot of land. The survey plan of survey no. 39/3 shows only one structure in ‘L’ shaped form. The large wing is in the western side i.e. Arabian sea and the other wing is on the northern side of the property. The survey plan do not show other two structures referred in the sale deed dated 20/03/2013 and 14/08/2014. Further the Inquiry Committee also noted that at the side in the property surveyed under survey no. 39/3 there are no two structures indicated in the sale deed dated 20/03/2013 and 14/08/2014.the photo-I shows only the old structure and the new structure in the yellow color;the structure shown in the survey plan ‘L’ shape is having an area of 63 sq. mts. The photo –III and photo-IV shows a continuous part of the wing of the old structure still exists and on the other part a new structure of yellow colour has been constructed. The inquiry committee GCZMA noted the village Panchayat took action in respect of the structure having 93 sq mts as the old structure having “L ” shaped is having an area of 63 sq mts and the structure in yellow color is new construction. Recommended GCZMA to demolish the entire structure of yellow color shown in photo 1,2,3 & 4 and having an area of 93 sq.mts in the property under Sy No.39/3 of Colva village and restore the land to its original condition.”*



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11. It may be noted that Inquiry Committee was constituted by GCZMA and reports are recommendatory in nature. The reports are not binding on Authority and Authority decides the matter after hearing the parties.
 12. The said matter was placed in the 1st meeting of the Committee to decide on CRZ matters held on 05/08/2016 as the term of GCZMA had expired and reconstitution of the GCZMA was awaited. During the said meeting the Committee noted that the Inquiry Committee of the GCZMA has submitted their report in 19 matters after hearing the parties and the same is to be examined before the Committee and as such after detailed discussion and due deliberation the Committee decided to grant personal hearing to all the concerned parties and to decide in accordance with law.
 13. The matter was placed for personal hearing to all the concerned parties in the 3rd Meeting of the Committee to decide on CRZ matters to be held on 08/09/2016, however, the said meeting could not take place.
 14. Further, an application filed bearing M.C.A No. 109 of 2017 in SMWP No. 02/2006 before the Hon'ble High Court of Bombay at Goa on behalf of the GCZMA seeking extension of time. The Hon'ble High Court vide Order dated 28/02/2017 was pleased to extend the time by 3 weeks. The matter pertaining to Respondent emanating from the Suo Moto Petition was never heard or decided.
 15. The Office of GCZMA was in receipt of application/ Proposal dated 31/08/2017 from Mr. Caesar Vaz and Mr. Walter Moraice regarding proposed reconstruction of house bearing H.No. 457 (New), H.No. 141 (old) located in the property bearing Sy.No. 39/3-A of Colva Village, Salcete-Goa.
 16. The site inspection of the above mentioned site/ area was conducted on 19/01/2017 along with the Expert Members of GCZMA. The site inspection report in short states as follows:
 - a. The house is falling within the 100m and is in the NDZ area.
 - b. Since it is an old house, repair and renovation to the extent specified in the CRZ Notification 2011 can be done without extending the plinth area or the FSI.



- c. The plastering, painting can be allowed without changing the roof to a concrete slab. If roof needs repair, the Mangalore tiles roof should be maintained.
- d. There could be possibility that Mr. Vaz wants to connect the existing room which is 1 m away from the main house to make it a one house structure but this is not permitted in NDZ area.
- e. If house needs repair, he should repair both separately i.e. the house and the room but cannot join the two to make it one house.



Further, the application was taken up in the 142nd GCZMA Meeting held on 28/02/2017 and the Authority after detailed discussion and due deliberation and on considering the site inspection report of the Expert members of the GCMA, decided to approve the said proposal of reconstruction of residential house bearing H.No. 457 (New), H.No. 141 (old) located in the property bearing Sy.No. 39/3-A of Colva Village, Salcete-Goa in terms of the CRZ Notification 2011.

17. Accordingly, the Office of GCZMA issued NOC/ Permission dated 10/03/2017 vide letter bearing no. GCZMA/S/16-127/72/2367.
18. Further the Office was in receipt of complaint letter dated 21/04/2017 from Judith Almeida, Colva Civic and Consumer Forum stating that the said case is pending before the Hon'ble High Court of Bombay at Goa in Misc. Civil Application No. 109 of 2017 in Suo Moto Writ Petition No. 02 of 2006.
19. The matter was placed in the 149th GCZMA meeting held on 09/05/2017 wherein it was decided as follows:-

“The Authority perused the agenda item and decided to re-examine the matter in the light of the relevant Orders / directions contained therein passed by the Hon'ble High Court of Bombay at Goa in Suo Moto Writ Petition No. 02/2006 and other relevant materials pertaining to the said matter and to take up the matter thereafter in its next meeting.”

20. In the 150th GCZMA meeting held on 23/05/2017 it was decided as follows: *“The Authority perused the agenda note and noted that the survey no. 39/3 of village Colva for which a permission was granted to Mr. Caesar Vaz and Mr. Walter Moraice in respect of the reconstruction of house is a subject matter before the Hon’ble High Court of Bombay at Goa in S.M.W.P No. 02/2006 and the same was not brought to the notice of the Authority when the Application seeking NOC for the same was placed before the Authority.*

The Authority after detailed discussion and due deliberation and in view of the above decided to withdraw the NOC dated 10/03/2017 issued to Mr. Caesar Vaz and Mr. Walter Moraice in respect of the reconstruction of house bearing H.No. 457 (New), H.No. 141 (old) located in the property bearing Sy.No. 39/3-A of Colva Village, Salcete- Goa.

The Authority further directed the Member Secretary to inquire in the misconduct by the staff of the GCZMA as to why the fact of the matter pending before the Hon’ble High Court of Bombay at Goa in SMWP No. 02/2006 was not brought to the notice of the Expert members when the inspection was conducted and when the approval was being granted for the same in the 142nd GCZMA Meeting held on 28/02/2017”.

21. Mr. Caesar Vaz being aggrieved by the revocation/withdrawal of the approval dated 06/06/2017 before the Hon’ble High Court of Bombay at Goa vide Writ Petition bearing no.604/2017. The Hon’ble High Court of Bombay at Goa vide order dated 12/07/2017 interalia directed to issue a show cause notice to petitioner and take decision within three months.

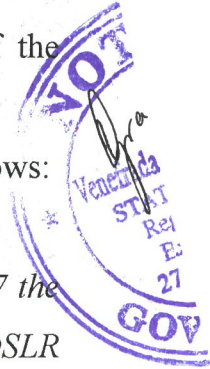
22. The matter was placed in the 164th GCZMA meeting held on 29/11/2017. The Authority decided to take up the matter for hearing before this Authority on 12/12/ 2017. However Authority postponed its meeting to 27/12/2017 due to Winter Assembly session.

23. A show cause notice dated 08/12/2017 was issued to respondent for concealment of material facts for grant of noc/permission.



24. The matter was placed in the 166th GCZMA meeting held on 27/12/2017 wherein the Authority after deliberation and discussion decided to direct surveyor of DSLR to verify the area of the proposed structure visa-vis the area of the structure in the survey plan.
25. The matter was placed in the 169th GCZMA meeting it was decided as follows:

The Authority noted that during 166th GCZMA meeting held on 27/12/2017 the Authority after deliberation and discussion decided to direct surveyor of DSLR to verify the area of the proposed structure visa- vis the area of the structure in the survey plan. The Directorate of Settlement and Land Records, (DSLRL) Panaji vide letter dated 23/02/2018 bearing no.19/ DSLR/ Re-cell/ Resurvey Misc/ 18/ 09/ 757 submitted area of structure as per Form I & XIV and Survey plan. Further the said matter was taken up during 169th meeting held on 01/03/2018, wherein the authority noted the DSLR, Panaji in its letter dated 23/02/2018 has submitted that the area of the structure on plan is as mentioned in the Form I & XIV as Pot-Kharab, Class (a) i.e. 125 sq mts. The authority decided that in view of the aforementioned letter from DSLR, the contention/ allegation of the complainant that the structure is 60m2/or less is not sustainable. The authority further noted that the inspection carried out by the expert members on 28/02/2017 and the applicant having removed/ demolished all structures confirms that the other contentions of the complainant as regards to illegal construction and cutting of sand dunes is not sustainable. Further the authority noted the complainant has not produced any evidence as regards to the existence of any sand dunes other than mere allegations in the complaints. Accordingly authority based on report of Directorate of Settlement and Land Records, Panaji and after considering oral/written representation of complainant and respondent decided to dismiss the complaint. Further the authority decided to consider the proposal of reconstruction of residential house bearing H.No. 457 (New), H.No. 141 (old) located in the property bearing Sy.No. 39/3-A of Colva Village, Salcete-Goa Mr. Caesar Vaz only for area of 125 sqmts. The authority decided to direct the applicant Mr. Caesar Vaz to submit revised plans accordingly. In



Caesar

the light of the above, the authority decided to drop the show cause notice as the structure is prior to 1991.

26. Accordingly, an order dated 05/03/2018 discharging the respondent was issued by this Respondent.

27. The Authority was in receipt of application of revised plans from Mr. Caesar Vaz vide letter dated 01/06/2018 and also informing the residential house was demolished in April 2017.

28. The matter was placed in the 177th GCZMA meeting held on 26/06/2018 for discussion and deliberation. In the said meeting it was decided as follows:-


The Authority noted that the applicant has been granted permission for reconstruction of existing house in Survey No. 39/3-A for a plinth area of 144.37 Sq mt as per GCZMA's 142nd Meeting held on 28/02/2017 and further, Authority in its 169th Meeting held on 01/03/2018 resolved to consider the proposal of reconstruction of existing house in the same survey No. for an area of 125 Sq.mt and directed the applicant to submit a revised plan. Accordingly, the present proposal is for revision of the plinth area to 125 Sq. mt along with a shift of location of proposed construction in the existing plinth. Authority noted that the proposal does not exceed the existing FSI, plinth area and is permissible in view of NGT in Appeal No.67/2016 dated 29th March 2017. Therefore, the proposal is approved for revised plan.

29. The Dy. Town planner vide letter dated 10/07/2018 informed that *the village panchayat of Colva in its inspection held on 21/06/2018 noted that construction is carried out upto plinth level to a height of about 0.90 mts from ground level. The construction is of plinth carried out in site is not in accordance with Technical clearance granted by this office for revised plans. The alignment of plinth has changed on site. The location of structure shown survey plan and actual construction carried out on site do not tally. The revised approval is granted for 125m² and plinth carried out on site is 127.64m².*

30. The said matter was placed in the 179th GCZMA meeting held on 19/07/2018 for discussion and deliberation. In the said meeting it was decided as follows:-

“The Authority noted that GCZMA has granted the NOC for reconstruction in Sy No. 39/3-A of Colva village to Mr. Caesar Vaz by its resolution of 142nd meeting dated 28/02/2017. The said NOC was withdrawn in 150th GCZMA meeting held on 23/05/2017. However, subsequent to the orders from Hon’ble High Court of Bombay at Goa and personal hearings thereafter, the said NOC has been re-affirmed by resolution of GCZMA in 169th meeting held on 01/03/2018 with a revision of reconstruction area to 125 Sq. mt. The applicant was also directed to submit a revised plan in 169th meeting held on 01/03/2018. Further, GCZMA in its 177th meeting held on 26/6/2018 had approved the revised plan submitted by the applicant. Therefore, Authority held that any construction beyond the approved area of 125 sq. mt and the plan would be illegal. The Authority also resolved to issue directions to VP, Colva and Town and Country Planning (TCP) to ensure that no construction beyond the approved area and plan is carried out by the applicant. Necessary steps be taken to ensure compliance and any violation of these directives be brought to the knowledge of the Authority”

31. In terms of decision taken in 179th GCZMA meeting Mr. Caesar vaz was directed to adhere to revise plans and stick to approved area of 125sqmts.
32. The decision taken in 179th GCZMA meeting was also communicated to Dy. Town Planner Margao vide letter dated 10/08/2018.
33. The Deputy Town Planner vide letter dated 19/09/2018 and 01/10/2018 forwarded complaints filed Colva Civic and Consumer Forum requesting revocation technical clearance.
34. The GCZMA fixed site inspection along with complainant on 24/10/2018 through its Expert Members. The report noted L shaped structure with 4 steps constructed at site. TCP official present at site informed the plinth constructed at



site is 125 sqm excluding steps are not counted. Report recommended mapping of structure through DSLR.

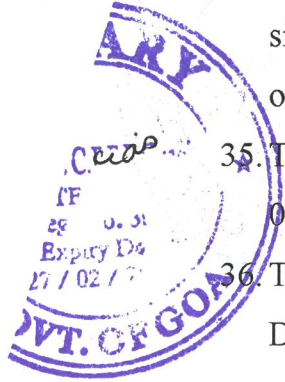
35. The structure was mapped as and DSLR submitted a plan vide letter dated 08/11/2018.

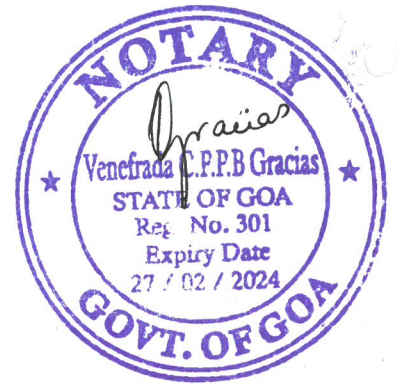
36. The site inspection report of Expert Member GCZMA and plan submitted by the DSLR was placed in the 191st GCZMA meeting held on 04/01/2019 wherein it was decided as follows:-

The Authority perused the site inspection report of Expert Member of GCZMA and the map submitted by the office of Directorate of Settlement & Land Records, Panaji Goa, bearing no. 19/DSLR/Resurvey cell/CRZ –mapping /18/65/6749 dated 8/11/2018. The Authority noted that there are no illegalities in the construction and the only question to be determined is the area of plinth of the construction. As per the DSLR map the structure is 130 Sq mt. The Authority observed that it had approved construction for area of 125 sq mts. This is a minor variation. Hence, the authority decided to direct the applicant /proponent Mr. Cesar Vaz to ensure strict adherence of the said area 125 sq mts for purpose of construction. Further the authority decided to direct the Town & Country planning (TCP), Margao, Goa to ensure construction is carried out within approved area of 125sq mts by Mr. Cesar Vaz.

37. I say That as per the revised plans which are approved for an area of 125 sq.mts although there is a shift of the alleged offending structure it is not towards the sea side which can be already deciphered from the dimensions if taken by simple measuring tools. I say that the original structure was located at the distance of 39 sq.mts approx. away from the boundary of the property bearing survey No.39/3-A of village Colva, if measured from sea side and the current structure as approved by GCZMA is at a distance of 42 mts approx. away from the sea side.

38. The decision taken in 191st GCZMA meeting held on 04/01/2019 was communicated by GCZMA to Dy.Town planner Margao and Mr.Caesar vaz vide letter dated 28/02/2019.





Solemnly affirmed on this the 2th day of January 2024

Johnson
Affiant 21/1/24



Solemnly affirmed before me

Johnson Fernandes

Who is identified before me by

_____ At Panjim - Goa

Sr. No. 01/01/2024

Date. 02/01/2024

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