

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

Appeal No. 49/2022

The Colva Civic & Consumer Forum ... Appellant

VERSUS

GCZMA & ors. ... Respondents

**I N D E X**

S.NO.	PARTICULARS	PAGE
1.	Reply Affidavit on behalf of the Respondent No. 5	

Place: Pune

Date: 13-09-2023

Respondent No. 5





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**AFFIDAVIT - IN - REPLY ON BEHALF OF**  
**THE RESPONDENT NO. 5**

I, Mr. Prakash Kalmadi, major of age, married, Indian National, Director of M/S. Kare Ayurveda and Yoga Retreat, Colva - Goa, inhabitant of 39/40, Profile Serene Apts, Flat no. 9, Erandavane, Pune, MH, the Respondent No.5 herein, do hereby on solemn affirmation state and submit as under:-

1. I say that I have read and understood the contents of the present Appeal and I am competent to file the present Affidavit-in-



Reply and Counter to the Appeal on behalf of the Respondent  
No. 5.

2. I say that I am well conversant with the facts of the case that are sought to be agitated in the present Appeal in so far as they pertain to the Respondent No. 5.
  
3. At the outset I deny all the allegations in the Appeal that are inconsistent with my case and/or the case that shall be pleaded by me hereinafter. Any allegation(s) and/or averment(s) and/or statement(s) and/or content(s) of the Appeal not specifically dealt with and/or denied and/or traversed by me hereinafter ought not to be construed as having been admitted for want of specific denials.

#### **PRELIMINARY OBJECTIONS**

4. Submissions for dismissal of the Appeal ex lege –
  - A. The principle challenge in the present Appeal is to the Order dated 12-10-2022 for dropping proceedings in



respect of the Respondent No. 4. The Respondent No. 5 is neither a party, nor concerned with the said proceedings dropping the Show Cause Notice against the Respondent No. 4, and/or the Impugned Order dated 12-10-2022. There is absolutely no finding against the Respondent No. 5 in the Impugned Order, nor are the temporary structures of the Respondent Nos. 5 subject matter of the Impugned Order. The Respondent No. 5 has been wrongly arrayed as the Respondent in the present proceedings.

B. Without prejudice, it appears, that the Appeal, in so far as it concerns the Respondent No. 5, lays a challenge to the GCZMA Permission/Approval dated 15-07-2022 granted to the Respondent No. 5. (Exhibit 'S') (hereinafter referred to as the "said Permission"). The Appellant seeks an Order from this Tribunal to set aside the said Permission. Assuming without admitting that the said Permission is amenable to challenge, the Appeal is filed on 14-11-2022, beyond the time stipulated in Section 16 of the NGT Act, 2010 and is therefore not maintainable. In short, the



present Appeal, in so far as it concerns the Respondent No. 5, is barred by limitation.

- C. Without prejudice, by way of the present Appeal, the Appellant seeks to challenge two diametrically different decisions in respect of two different establishments, there being no commonality on law and/or facts. Such a course of laying challenge to different decisions that have no relation to one another and/or in respect of two different parties and/or two different subject matters and constituting entirely different and distinct causes of action, is not maintainable. The present Appeal is thus bad for misjoinder of causes of action.
- D. Even otherwise, the Order dated 12-10-2022 for dropping proceedings in respect of the Respondent No. 4 and said Permission granted on 15-07-2022 to the Respondent No. 5 are cannot be compositely tried and/or decided in as much the powers in respect of both the Orders emanate from distinct provisions under the Environment Protection Act and the Laws made thereunder, and further, the statutory right to challenge against these Order/Permission also

emanate from different provisions of the National Green Tribunal Act, 2010. Hence the present Appeal is not maintainable.

- E. The present Appeal is not only contrary to the law, but also malafide and ill-motivated. It is evident that the Appellant is aggrieved by an Order dated 12-10-2022 passed in favour of the Respondent No. 4, but has surreptitiously proceeded against the Respondent No. 5 because the Respondent No. 5 is operating from the property of the Respondent No. 4.
- F. The present Appeal is barred by law.
- G. The present Appeal is baseless, vexatious, frivolous and an abuse of process of this Hon'ble Tribunal.

### **MERITS**

5. With respect to the contents of paragraph 3 under the heading 'Facts of the Case', it is denied that the Respondent No. 1 has discharged any proceedings against the Respondent No. 5. It is denied that the Permission dated 15-07-2022 is in violation of the Beach Carrying Capacity Report and/or in any contravention of the CRZ Notification 1991.





6. I say that the contents of paragraphs 4 to 27 do not pertain to the Respondent No. 5, hence merit no reply.
7. I deny, with respect to the stray paragraph after paragraph 27 that is highlighted and underlined, that the Approval dated 15-07-2022 has been granted in violation of the Beach Carrying Capacity Report for Goa.
8. I say that the contents of paragraphs 28 to 30 do not pertain to the Respondent No. 5, hence merit no reply.
9. The contents of paragraphs 31 to 33 of the Appeal are a matter of record.
10. With respect to the contents of paragraph 34 of the Appeal, it is denied that the Permission dated 15-07-2022 is in violation of the Beach Carrying Capacity Report for the State of Goa.
11. With respect to the contents of paragraph 35 of the Appeal, the proceedings of the 135<sup>th</sup> meeting of the GCZMA are self-explanatory.



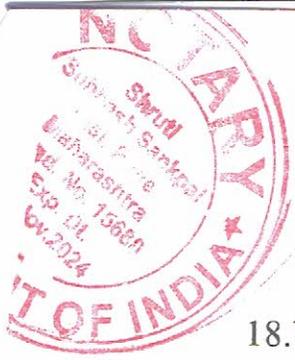
12. With respect to the contents of paragraph 36, the contents thereof are not admitted. The Respondent No. 5 seeks to rely upon the Report for a true and correct interpretation thereof, including the object and purpose of making the said Report. The Appellant has not annexed the entire Report which would otherwise be relevant for the purpose of its interpretation, and since the Appellant is relying on the report, it was incumbent upon the Appellant to attach the entire Report.
13. I say that notwithstanding the fact that the Beach Carrying Capacity Report is in the form of Guidelines, the Respondent No. 5 is in adherence of the Planning Principles and safeguards enumerated in the Report. In addition, the said permission and the structures erected in terms of the said permissions are abiding with the specific recommendations of Temporary Structures and the CRZ Notification 2011 (as amended from time to time).
14. I say that Colva falls within the jurisdiction of South Goa. And as far as South Goa is concerned, the BCCR clearly says in its final recommendations that the Report that the erection of



shacks, huts/tents/cottages may be permitted for erection in private areas based on the guiding principles and following the procedures recommended in Table 24. I say that there is absolutely no embargo in the BCCR from granting permission for erection of temporary shacks in private plots and infact the BCCR recommends that the '*GCZMA should consider applications for erecting beach shcaks/huts/cottages/tents in private areas with 33% coverage/FAR/FSI on case-to-case basis by carrying out physical inspection .....*', . I say that, as such, an interpretation of the BCCR to say that the BCCR prohibits erection of temporary strictures in Colva would lead to absurdity in the coastal setup where erection and removal of temporary structures is a dynamic concept and permissible activity. Even otherwise an interpretation of the BCCR sought to be canvassed in the Appeal is contra to the CRZ Notification which clearly permits the erection of temporary strictures in 0-200 meters NDZ. I say that the CRZ Notification is the law on the regulation of erection of structures in NDZ and upto 500 meters from HTL.



15. Without prejudice, I say that in any event, the Beach Carrying Capacity Report has worked itself out in terms of its own conclusions and recommendations that says that the State Government/GCZMA could review Carrying Capacity in five-year' time.
16. The contents of paragraph 37 are not admitted. It is denied that the approval dated 15.07.2022 for the erection of Ayurveda Spa and Yoga Retreat Centre with Canteen and Store room cannot be sustained and/or ought to be set aside.
17. With respect to the contents of paragraph 38 of the Appeal, it is denied that the Government authorities have accommodated private interests and/or gone out of any way to accommodate any such alleged private interests in the case of grant of the said permission . It is denied that the said permission is without regards for the provisions of the CRZ Notification and/or the ecology of Goa. I say that there are no sand dunes in the suit property and thus there is not question of affecting the coastal ecology.



18. With respect to the contents of paragraph 39 of the Appeal, it is denied that the approval dated 15.07.2022 smacks any arbitrariness and/or non-application of mind as alleged. It is denied that the Respondent No. 5 has constructed the Ayurveda Spa and Retreat Center. It is denied that the said permission to erect the Ayurveda Spa and Retreat Center with a canteen and Store room is in any violation and/or specific violation of the approved Beach Carrying Capacity Report and/or the provisions of the CRZ regulations. It is denied that the said permission violated the No Development Zone. It is denied that the Appellant had approached the Hon'ble Tribunal seeking urgent intervention.
19. I say that the contents of paragraphs 40 to 43 and 45 to 47 do not pertain to the Respondent No. 5, hence merit no reply.
20. The contents of paragraph 44 are repeated. I deny the contents of paragraph 44 of the Appeal.
21. With respect to the Limitation Clause, it is denied that the Appeal is filed within limitation and /or that Appellant came in receipt of the said permission on 14.10.2022.

22.I say that for reasons aforestated, the Appeal in so far as the Respondent No. 5 is concerned is not maintainable and no reliefs can be granted.

23.I say that the contents of paragraphs 1 to 3, 5 to 14part, 15 to 20, 22 and 23 of the present Affidavit are true to my own knowledge and/or derived from records and the contents of the remaining paragraphs 4, 14 part and 21 are based on legal submissions which I believe to be true.

24.I say that whatever has been stated hereinabove is true to my own knowledge and belief.

Solemnly affirmed this 13<sup>th</sup> day of September 2023 at Pune, MH.



*Prakash*

Deponent

BEFORE ME

*Shruti Subhash Chankpal*

Shruti Subhash Chankpal  
ADVOCATE & NOTARY  
GOVERNMENT OF INDIA

Noted & Registered  
at Serial No. 1451/2023

Date. 17 SEP 2023

